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ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.

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

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	Chapter 11
L.P.,	§	
	§	Case No. 19-34054-sgj11
Debtor.	§	
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HIGHLAND CAPITAL MANAGEMENT,	§	
L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT	§	
FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	

**DEFENDANT’S REPLY IN SUPPORT OF ITS  
SECOND MOTION FOR LEAVE TO AMEND ANSWER**

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Highland Capital Management Fund Advisors, L.P. (“HCMFA”), the defendant in the above styled and numbered Adversary Proceeding, and files this its *Reply* in support of its *Defendant’s Second Motion for Leave to Amend Answer and Brief In Support Thereof* (the “Motion”), replying to the objection to the Motion filed by Highland Capital Management, L.P. (the “Debtor”), the plaintiff in this Adversary Proceeding, respectfully stating as follows:



## I. SUMMARY

1. It is a fact that Mr. Waterhouse did not sign the Notes. Whether he authorized Ms. Hendrix to sign them electronically for him is a separate matter. It is also a fact that this was not learned until October 25, 2021, when the Debtor finally produced the originals of the Notes. It is also a fact that HCMFA requested the production of those originals in May, 2021 and that, as late as October 19, 2021, the Debtor was refusing to produce the same. Any delay was caused by the Debtor. The only issue is whether leave to assert an affirmative defense more expressly—that the Notes were not signed by Mr. Waterhouse—should be granted. Since Mr. Waterhouse did not sign them, and since the Debtor is responsible for any delay, leave should be freely granted. The Debtor’s arguments in response do not address these discrete issues, but rather seek to try the underlying facts and allegations—something that cannot be done on a Rule 15 motion. And, the Debtor’s arguments of prejudice are without merit: HCMFA informed the Debtor that it would be asserting this defense *before* the Debtor ever indicated any intention to seek summary judgment, and HCMFA filed its Motion weeks before the Debtor actually sought summary judgment. Likewise, the alleged need to take additional depositions is wrong. The only two individuals with knowledge of these facts have already been deposed and asked about these precise issues at length. There is therefore no “substantial reason” to deny the Motion.

## II. REPLY

### A. NO UNDUE DELAY; ANY DELAY WAS SOLELY THE DEBTOR’S FAULT

2. The Debtor asserts that HCMFA delayed with respect to its affirmative defense that Mr. Waterhouse did not sign the Notes. It did not. Any delay is due solely to the Debtor’s unexplained and unreasonable refusal to produce the originals of the Notes for almost five (5) months and until *after* the parties deposed Mr. Waterhouse. As late as October 19, 2021 and while

Mr. Waterhouse was being deposed, the Debtor was refusing—without explanation—to produce the originals of the Notes. *See* Motion at ¶ 4(ii)-(v).<sup>1, 2</sup>

3. Even so, there was no delay. As HCMFA has always explained, HCMFA did not know anything about the Notes. *See* HCMFA App. 4. When this Adversary Proceeding was filed, HCMFA was prevented from discussing the Notes with its own officer and with Debtor employees who knew some of the relevant background. *See id.* at 5 (¶¶ 14-21). Only after the Debtor terminated most of its employees and HCMFA was able to talk to former employees did HCMFA learn that the Notes were executed in error. *See id.* HCMFA promptly asked Mr. Waterhouse whether he signed the Notes and, at that time, having signed many, many documents over the

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<sup>1</sup> Contemporaneously with the filing of this reply, HCMFA is filing its *Defendant's Supplemental Appendix in Support of its Second Motion for Leave to Amend Answer*, the pagination of which, beginning HCMFA APP 829, is continued from the *Defendant's Appendix in Support of Second Motion for Leave to Amend Answer* (Dkt. No. 87).

<sup>2</sup> Ms. Winograd states in her declaration that the Debtor produced the originals of the Notes on July 2, 2021. That production scrubbed the Metadata, meaning that it was impossible to know when the Notes were created, who created them, and whether, how, and when they were signed. HCMFA APP 829. Certainly, for example, if Mr. Waterhouse drafted the Notes and affixed his own electronic signature, then there would be no issue (and it is only now known that he did not prepare them or affix his signature, but that Ms. Hendrix instead did so). Had the Notes been produced in their original format with all Metadata, then HCMFA would not have been asking for them as late as October 19, 2021, and the Debtor would not have been refusing to produce the same. *See* Motion at p. 3, n. 3.

Likewise with respect to Mr. Morris' attempt to e-mail the originals of the Notes on October 25, 2021, the cover e-mail for which is included in Ms. Winograd's declaration. *See* Debtor APP. 781. Those Word documents came through with the Metadata scrubbed, probably due to an automatic e-mail filter. HCMFA APP 829-30, 832. Mr. Morris resent the same on October 26, 2021, with the Metadata. HCMFA APP 830. That was the first time that the Debtor produced the originals of the Notes in their native format with Metadata and the first time that it was learned that Ms. Hendrix prepared the Notes and affixed Mr. Waterhouse's electronic signature.

In fact, it was not until October 23, 2021, during negotiations concerning discovery, that the Debtor agreed to produce the originals: "We also expect to produce to you the Word versions of each of the Notes in advance of the depositions . . . Davor, based on Highland's willingness to produce the Word versions of the Notes, please confirm that HCMFA and NexPoint will produce reasonably in advance of Mr. Dondero's deposition their actual 15c responses to the Retail Board from later 2020." HCMFA APP 834-35. Counsel for both the Debtor and HCMFA would not have engaged in these discussions had the Debtor in fact produced the originals of the Notes beforehand.

This agreement and production was the culmination of negotiations concerning the production of the originals. HCMFA APP 836 (October 15, 2021 e-mail requesting the production of the "word versions of all of the Notes at issue" and Debtor responding that it will "look into it.").

years, he informed HCMFA that he must have because the signatures were his. *See id.* at 7 (¶¶ 22-23). HCMFA acted promptly in asking this question—only the facts were not then known. Without having the originals, HCMFA could not inquire further, but it never delayed in inquiring into whether the Notes were signed. Even so, on May 22, 2021, once HCMFA began learning the background, it filed its motion for leave to amend its answer to assert affirmative defenses, in which HCMFA denied having executed the Notes. *See* Docket No. 32 and Docket No. 48 at ¶¶ 13-14. Since May 22, 2021, the Debtor has known that HCMFA was denying that it signed the Notes, even though, at that time, the fact that the Notes were not even actually signed by Mr. Waterhouse was still not known. And then, for five (5) months, the Debtor inexplicably refused to produce the originals of the Notes even though it responded to discovery in late June, 2021 that it would produce them. *See* Motion at ¶ 4 and p. 3, n. 3.

4. The Debtor does not address the foregoing facts and instead makes the sweeping argument that “HCMFA knew, or should have known, of the facts upon which the Proposed Amendment is based given the litany of events between May 2019 and July 2021 that should have caused HCMFA to inquire.” Response Brief at ¶ 66. This argument appears to address HCMFA’s underlying defense that the Notes were created in error but it does not address the actual issue before the Court, which is that Mr. Waterhouse did not sign the Notes or authorize their execution using his electronic signature. Nothing between May, 2019 and July, 2021 would lead HCMFA to reasonably suspect this—in fact, HCMFA was not aware of the Notes until shortly before this litigation and, with the originals in the Debtor’s possession, *not* HCMFA’s possession, HCMFA could not ascertain even the simple fact that the Notes were signed electronically by Ms. Hendrix. The Debtor does not seriously attempt to demonstrate any actual delay regarding this issue, which is the only relevant one.

5. A party asserting undue delay to defeat a Rule 15 motion must present evidence of undue delay. *See, e.g., Onasset Intelligence Inc. v. 7PSolutions, LLC*, 2013 U.S. Dist. LEXIS 195013 at \*23 (N.D. Tex. 2013). The Debtor’s sweeping statement that HCMFA should have known that Mr. Waterhouse did not sign the note between 2019 and 2021 is not evidence; it is a conclusory statement. And, the Debtor offers no evidence to support this conclusion (such as some prior e-mail or statement by Mr. Waterhouse that he did not sign the Notes). On the contrary, the only evidence is that Mr. Waterhouse himself *assumed* that he signed the Notes until the October depositions when the Debtor finally ended up producing the originals.

**B. THE PROPOSED AMENDMENT IS NOT FUTILE**

6. The Debtor argues that the relief requested in the Motion is futile because “there is a complete absence of evidence to support the notion that Mr. Waterhouse did not sign and authorize the HCMFA Notes, and all of the testimonial and documentary evidence goes the other way.” Response Brief at p. 20. HCMFA does not understand how the Debtor can make this argument. It is a fact that Mr. Waterhouse did not sign the Notes and that Ms. Hendrix instead affixed his electronic signature. *See* Motion at ¶¶ 29-37. Less clear is whether he authorized Ms. Hendrix to do so, on which there is conflicting evidence, but to say that “all . . . of the evidence goes the other way” is demonstrably false. And, that Mr. Waterhouse may have been copied on e-mails concerning the creation of the Notes does not mean that he signed them or that he authorized his electronic signature.

7. Regardless, the Debtor’s arguments on futility are irrelevant because the Debtor asks the Court to effectively try the underlying facts. This argument is not appropriate on a Rule 15 motion and the Court should not pass on the credibility or merits of the underlying facts and allegations. An amendment is futile if the amendment “would fail to state a claim upon which relief could be granted.” *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000). “[T]o

determine futility, we will apply the same standard of legal sufficiency as applies under Rule 12(b)(6).” *Id.* (internal quotation omitted). “The question therefore is whether in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* The Court must accept the well pled facts as true, and the Court must limit itself to the contents of the pleadings and necessary attachments thereto. *See, e.g., Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000).

8. Here, HCMFA has demonstrated that the Uniform Commercial Code provides a defense to a promissory note that is not signed. *See* TEX. BUS. & COMM. CODE ANN. § 3.308(a). HCMFA’s proposed amendment alleges that Mr. Waterhouse did not sign the Notes, which is undeniably true, and that he did not authorize Ms. Hendrix to sign them for him electronically. These well pled facts must be accepted as true. As such, the law recognizes a defense to the Notes and the amendment is not futile. On the contrary, the amendment is appropriate to ensure that justice be done.

9. Notwithstanding this clear conclusion, HCMFA has demonstrated more than ample facts to support its defenses. In this respect, the Court should remember two key facts. First, separate and apart from the Notes at issue, HCMFA previously executed two other *valid* demand notes to the Debtor for very similar amounts, with respect to which the Debtor later extended the date that these other notes could be demanded to May 31, 2021. *See* Adversary Proceeding No. 21-03082 at docket no. 1 (complaint by the Debtor against HCMFA on account of the two prior promissory note and exhibit 3 to same extending date for demand). Second, it is normal that the very people (Debtor employees; not HCMFA employees) who mistakenly created the new Notes would carry the Notes on the books and records as debts of HCMFA. That is the nature of a mistake; that it be compounded in the future. But the continuation of a mistake does not make the mistake any less a mistake.

10. The Debtor's smoking gun on the futility argument is a written acknowledgment from officers of HCMFA in October 2020 to the board of the retail funds that HCMFA manages to the effect that the Notes are valid and are debt obligations. That is not correct. In fact, the Debtor's alleged smoking gun states: "The earliest the Note between HCMLP and HCMFA could come due is in May 2021." Debtor APP. 172.

11. The same is true of the internal communications leading up to this document, in which Mr. Waterhouse, who purportedly signed the Notes, writes: "The HCMFA note is a demand note. . . There was an agreement between HCMLP and HCMFA the earliest they could demand is May 2021." Debtor APP. 156.

12. These communications cannot be referring to the Notes at issue, since these statements acknowledge the existence of *one* note that cannot be collected before May, 2021 (recalling that the two promissory notes that are valid were extended through this date). If anything, these communications demonstrate that HCMFA was not aware of the Notes at issue, especially because there were the communications from Mr. Waterhouse himself; *i.e.* if he did not remember the Notes at issue but instead only remembered the prior notes whose demand dates had been extended, then that is evidence that the present Notes were in fact created by mistake and not, as the Debtor suggests, that HCMFA always knew of the Notes.

13. Likewise with respect to how the Notes were allegedly recorded and communicated to HCMFA. As an example, the Debtor includes an e-mail from Ms. Hendrix to Mr. Dondero listing all affiliate notes to the Debtor. *See* Debtor APP. 685-688. The entry for HCMFA states: "10,530,971 Demand." *See id.* at 688. Recalling that there were the two prior notes totaling \$6.3 million, not to mention many other affiliate notes, it is easy to see why Mr. Dondero and others would not have realized the mistake. The fact of four (4) alleged notes owing by HCMFA is not disclosed, only an aggregate amount owing (and even then an amount that does not total the

principal sums under the four alleged notes). And, recalling that the two prior notes were extended on April 15, 2019 to May 31, 2021 because HCMFA “expects that it may be unable to repay such amounts should they become due,” *see* Adversary Proceeding No. 21-03082 at docket no. 1-3, it defies logic that, two weeks later, the Debtor would loan an additional \$7.4 million to HCMFA.

14. HCMFA conceded that there is evidence that both the Debtor and HCMFA carried the Notes on their books and records as debt obligations of HCMFA. *See* Motion at ¶ 12. That is not determinative of the underlying issue of whether the Notes were ever valid, which issue is not even relevant to the Motion. What is relevant is that Mr. Waterhouse did not sign the Notes, and that there is strong evidence that he did not authorize Mr. Hendrix to sign them for him either.

**C. THERE IS NO PREJUDICE TO THE DEBTOR**

15. The Debtor argues prejudice in two forms: first, that the Motion seeks leave after the Debtor filed its motion for summary judgment; second, that the Debtor would have to engage in more discovery. Both arguments are factually incorrect and are not evidenced by the Debtor.

16. First the Debtor argues that the Motion “comes after [] Highland’s Motion for Summary Judgment was filed.” Response Brief at ¶ 77. This is obviously false. HCMFA filed its Motion on November 30, 2021. The Debtor filed its motion for summary judgment on December 17, 2021. *See* Docket No. 91. Perhaps what the Debtor is referring to is its announcement to HCMFA that it would be filing a motion for summary judgment, which the Debtor did on November 6, 2021. HCMFA APP 830, 843. But HCMFA informed the Debtor that it would be asserting the defense of non-signature on October 28, 2021, well before the Debtor ever raised the prospect of its summary judgment proceedings, at which time the Debtor informed HCMFA that it would oppose a motion to amend. HCMFA APP 830, 842. And, the Debtor could have prevented any prejudice by simply agreeing to the proposed amendment.



17. On the issue of additional discovery, the Debtor argues that it would need to re-depose HCMFA, Mr. Waterhouse, Mr. Dondero, and Mr. Sauter. This is a nonsensical argument: only Mr. Waterhouse knows whether he signed the Notes and only he and Ms. Hendrix know whether Mr. Waterhouse authorized Ms. Hendrix to sign the Notes using his electronic signature, and both were deposed regarding these precise issues at length. HCMFA, Mr. Dondero, and Mr. Sauter would have no discoverable information on these issues. All relevant facts regarding these issues are already known. Ms. Hendrix continues to be a Debtor employee and the Debtor has free access to her should the Debtor be able to locate any authorization by Mr. Waterhouse to Ms. Hendrix to sign the Notes for him.

### **III. CONCLUSION**

18. Leave to amend HCMFA's answer should be "freely given" unless there is a "substantial reason" to deny such leave. There is no substantial reason to deny the Motion. The issue is not the merits of HCMFA's defenses, but simply whether HCMFA should be permitted to more expressly assert that the Notes were not signed. There has been no undue delay by HCMFA and the only delay was caused by the Debtor in not producing the originals of the Notes for five (5) months after HCMFA requested them. The amendment is not futile because the law recognizes a defense to a promissory note that is not signed. And, there is no prejudice to the Debtor, since the Motion was filed prior to the Debtor's summary judgment motion and since no additional discovery is needed.

RESPECTFULLY SUBMITTED this 7th day of January, 2022.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina

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**ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on January 7, 2022, a true and correct copy of the foregoing document, including any exhibits thereto, was served on the following recipients via the Court's CM/ECF system:

Zachery Z. Annable on behalf of Plaintiff Highland Capital Management, L.P.  
[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)

Melissa S. Hayward on behalf of Plaintiff Highland Capital Management, L.P.  
[MHayward@HaywardFirm.com](mailto:MHayward@HaywardFirm.com), [mholmes@HaywardFirm.com](mailto:mholmes@HaywardFirm.com)

Juliana Hoffman on behalf of Creditor Committee Official Committee of Unsecured Creditors  
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Julian Preston Vasek on behalf of Defendant Highland Capital Management Fund Advisors, L.P.  
[jvasek@munsch.com](mailto:jvasek@munsch.com)

/s/ Davor Rukavina  
Davor Rukavina

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 Julian P. Vasek  
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IN THE UNITED STATES DISTRICT COURT  
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In re	§	
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v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
	§	
Defendant.	§	

**DEFENDANT’S SUPPLEMENTAL APPENDIX IN SUPPORT OF ITS  
 SECOND MOTION FOR LEAVE TO AMEND ANSWER**

TO THE HONORABLE STACEY G. C. JERNIGAN, U.S. BANKRUPTCY JUDGE:

COMES NOW Highland Capital Management Fund Advisors, L.P., the defendant in the above styled and numbered Adversary Proceeding, and files this its *Supplemental Appendix* in support of its *Defendant’s Second Motion for Leave to Amend Answer* and its *Defendant’s Reply in Support of Its Second Motion for Leave to Amend Answer*, as follows:

<b>DESCRIPTION</b>		<b>RANGE</b>
Supplemental Declaration of Davor Rukavina		829-831
A	Email chain dated October 26, 2021	832-833
B	Email dated October 23, 2021	834-835
C	Email chain dated October 15, 2021	836-841
D	D. Rukavina Time Entry October 28, 2021	842
E	Email dated November 6, 2021	843

RESPECTFULLY SUBMITTED this 7th day of January, 2022.

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Davor Rukavina \_\_\_\_\_

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Email: jvasek@munsch.com

**ATTORNEYS FOR HIGHLAND CAPITAL  
MANAGEMENT FUND ADVISORS, L.P.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on January 7, 2022, a true and correct copy of the foregoing document, including any exhibits thereto, was served on the following recipients via the Court's CM/ECF system:

Zachery Z. Annable on behalf of Plaintiff Highland Capital Management, L.P.  
[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)

Melissa S. Hayward on behalf of Plaintiff Highland Capital Management, L.P.  
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Juliana Hoffman on behalf of Creditor Committee Official Committee of Unsecured Creditors  
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Julian Preston Vasek on behalf of Defendant Highland Capital Management Fund Advisors, L.P.  
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/s/ Davor Rukavina

Davor Rukavina

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

In re	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Chapter 11
	§	
Debtor.	§	Case No. 19-34054-sgj11
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	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Adv. No. 21-03004
	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.	§	
	§	
Defendant.	§	
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**SUPPLEMENTAL DECLARATION OF DAVOR RUKAVINA**

The undersigned, Davor Rukavina, hereby declares under penalty of perjury pursuant to the laws of the United States of America the following:

1. My name is Davor Rukavina. I am over the age of 21, have never been convicted of a felony or crime of moral turpitude, and am otherwise qualified to give this Declaration.

2. I am an attorney duly licensed to practice law in the State of Texas. I am lead counsel for Highland Capital Management Fund Advisors, L.P. (“HCMFA”), in the above styled and numbered Adversary Proceeding commenced by Highland Capital Management, L.P. (the “Debtor”).

3. The Debtor’s production of documents in July, 2021 did not include Word versions of the promissory notes with metadata, meaning that HCMFA was not able to determine who created the notes, when, and who signed them. Likewise when counsel for the Debtor attempted

to e-mail the originals of the notes on October 25, 2021, when the metadata was again excluded from the notes, as evidenced by Exhibit “A” attached hereto.

4. In fact, it was not until October 23, 2021 that the Debtor agreed to produce the originals of the notes, and then only after HCMFA agreed to produce certain other documents that the Debtor had requested, as evidenced by Exhibit “B” attached hereto.

5. This is further evidenced by an e-mail exchange on October 15, 2021, attached hereto as Exhibit “C,” where my co-counsel Deborah Deitsch-Perez requested of the Debtor’s counsel that the Debtor produce the originals of all of the notes.

6. The Debtor produced those versions with all metadata only on October 26, 2021, as I stated in my original declaration.

7. I first informed the Debtor, through its counsel John A. Morris, Esq., that HCMFA would be seeking to amend its answer to assert that Mr. Waterhouse did not sign the notes at issue, during a telephone conference we had on October 28, 2021 addressing various issues. Attached hereto as Exhibit “D” is a true and correct copy of my time entry for this matter for that day, which I entered and kept contemporaneously.

8. During that conference, Mr. Morris informed me that he believed that any such amended answer would be filed in bad faith. Both HCMFA and myself took this very seriously, and we spent considerable efforts to go over all evidence, document production, deposition transcripts, and the law to assure ourselves that HCFMA would be proceeding in good faith, as it always believed it was. This was the reason why the filing of the motion to amend was delayed by several weeks.

9. To the best of my memory, the first time that the Debtor informed me and HCMFA that it would be filing a motion for summary judgment in this Adversary Proceeding was on November 6, 2021, when Mr. Morris sent me (and others) an e-mail to that effect, which is attached

hereto as Exhibit “E.” However, I cannot state for a fact that this is the first time that Mr. Morris informed me of the Debtor’s intention to seek summary judgment, as I have a vague memory that he may have mentioned this to me before. In any event, I do not believe that Mr. Morris informed me of the Debtor’s intention to seek summary judgment before I informed him that HCMFA would seek to amend its answer.

10. I hereby swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and ability.

Executed: January 7, 2022.

/s/ Davor Rukavina  
DAVOR RUKAVINA



## Rukavina, Davor

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**From:** John A. Morris <jmorris@pszjlaw.com>  
**Sent:** Tuesday, October 26, 2021 8:34 AM  
**To:** Vasek, Julian; Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com); Aigen, Michael P. (michael.aigen@stinson.com); Rukavina, Davor; Berghman, Thomas; Clay Taylor (clay.taylor@bondsellis.com); Bryan Assink (bryan.assink@bondsellis.com); 'ddraper@hellerdraper.com'  
**Cc:** Jeff Pomerantz; Gregory V. Demo; Hayley R. Winograd; La Asia S. Canty  
**Subject:** RE: Highland: Word Versions of the Notes

In transit. Will respond when I land Julian.

Thanks.

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**From:** Vasek, Julian [mailto:jvasek@munsch.com]  
**Sent:** Tuesday, October 26, 2021 9:30 AM  
**To:** John A. Morris <jmorris@pszjlaw.com>; Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com) <deborah.deitschperez@stinson.com>; Aigen, Michael P. (michael.aigen@stinson.com) <michael.aigen@stinson.com>; Rukavina, Davor <drukavina@munsch.com>; Berghman, Thomas <tberghman@munsch.com>; Clay Taylor (clay.taylor@bondsellis.com) <clay.taylor@bondsellis.com>; Bryan Assink (bryan.assink@bondsellis.com) <bryan.assink@bondsellis.com>; 'ddraper@hellerdraper.com' <ddraper@hellerdraper.com>  
**Cc:** Jeff Pomerantz <jpomerantz@pszjlaw.com>; Gregory V. Demo <GDemo@pszjlaw.com>; Hayley R. Winograd <hwinograd@pszjlaw.com>; La Asia S. Canty <lsc@pszjlaw.com>  
**Subject:** RE: Highland: Word Versions of the Notes

John:

Does your firm use a metadata scrubber on outgoing emails? I ask because the metadata on all these files matches the time and date of your email below (see attached). I also wonder whether the files were scrubbed once before, when Highland sent them to you. Will you please look into this? As a workaround, I can send a courier to Highland's office if you will ask them to save the files directly to a flash drive. Please let me know.

Thanks,  
Julian

### Julian P. Vasek

Munsch Hardt Kopf & Harr, P.C.  
500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659

Direct: +1.214.855.7528 / [jvasek@munsch.com](mailto:jvasek@munsch.com) / [munsch.com](http://munsch.com)

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---

**From:** John A. Morris <jmorris@pszjlaw.com>  
**Sent:** Monday, October 25, 2021 4:39 PM  
**To:** Deborah R. Deitsch-Perez ([deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)) <[deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)>; Aigen,

Michael P. ([michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)) <[michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)>; Rukavina, Davor <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; Berghman, Thomas <[tberghman@munsch.com](mailto:tberghman@munsch.com)>; Vasek, Julian <[jvasek@munsch.com](mailto:jvasek@munsch.com)>; Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)) <[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)>; Bryan Assink ([bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)) <[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)>; 'ddraper@hellerdraper.com' <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>  
**Cc:** Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; Hayley R. Winograd <[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)>; La Asia S. Canty <[lsc@pszjlaw.com](mailto:lsc@pszjlaw.com)>

**Subject:** Highland: Word Versions of the Notes

Counsel:

As requested, attached are two zip files containing the Word versions of the Notes.

Because they are Word versions, they have not been bates stamped. Therefore, this e-mail will serve as the “proof” of the form, format, timing, and content of the production.

As I mentioned, Highland has retained an expert who has performed his analysis of the Metadata but has not prepared a report. Insofar as Mr. Dondero and his related entities will be liable for Highland’s fees and expenses in the event Highland prevails in this matter, please let me know if the Defendants intend to dispute the authenticity of the Notes or otherwise challenge any aspect of their creation as soon as possible so we don’t unnecessarily incur an expense.

If we don’t hear from you by the close of business on Wednesday on this matter, we will direct the expert to turn his findings into a report for delivery on Friday, make him available for a deposition, and include those expenses in a future supplemental production.

Also, Davor, please produce the Advisors’ 15c report (including responses to questions 1 and 2) from 2020 by the close of business tomorrow (Tuesday) or Highland will move to compel production.

Please let me know if you have any questions.

Regards,

John

**John A. Morris**

Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

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[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

[vCard](#) | [Bio](#) | [LinkedIn](#)

## Rukavina, Davor

---

**From:** John A. Morris <jmorris@pszjlaw.com>  
**Sent:** Saturday, October 23, 2021 6:19 AM  
**To:** Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com); Rukavina, Davor  
**Cc:** Jeff Pomerantz; Gregory V. Demo; Hayley R. Winograd; Aigen, Michael P. (michael.aigen@stinson.com); Bryan Assink (bryan.assink@bondsellis.com); Clay Taylor (clay.taylor@bondsellis.com); 'ddraper@hellerdraper.com'  
**Subject:** Highland: Outstanding Discovery (TIME SENSITIVE)

Deborah and Davor:

I am still waiting for responses to the following questions:

1. Will Mr. Dondero make himself available for a full-day deposition on Monday, Thursday or Friday of this upcoming week? If so, when?
2. Assuming the Defendants still intend to call them, when do you propose to make your expert witnesses available for deposition between November 1 and November 8?
3. Do the defendants intend to call any witnesses that have not been previously noticed so that Highland has an opportunity to depose them?

We need prompt answers to these questions, the latter two of which have been asked multiple times over several weeks.

Separately, while the Defendants never accepted Highland's offers to consider any specific requests Defendants had concerning e-mail searches, be advised that based on the questions at the end of Mr. Seery's deposition, out of an abundance of caution, Highland ran the following e-mail searches yesterday that are intended to cover the period surrounding the dates each note was executed:

1. Custodians (a) Kristin Hendrix, (b) Frank Waterhouse, and (c) "Corporate Accounting" using the search terms (i) "loan" and (ii) "note" for the following dates:
  - May 28, 2017 through June 2, 2017
  - October 14, 2018 through October 16, 2018
  - May 1, 2019 through May 4, 2019
  - May 28, 2019 through May 30, 2019
  - June 24, 2019 through June 26, 2019
  - September 24, 2019 through September 26, 2019
2. Custodians (a) Drew Wilson, (b) Frank Waterhouse, and (c) "Corporate Accounting" using the search terms (i) "loan" and (ii) "note" for the following dates:
  - May 28, 2017 through June 2, 2017
  - October 11, 2017 through October 13, 2017
  - February 1, 2018 through February 3, 2018
  - March 27, 2018 through March 29, 2018
  - June 24, 2018 through June 26, 2018
  - July 31, 2018 through August 2, 2018
  - August 10, 2018 through August 14, 2018

**Exhibit B**

We will produce responsive documents (if any, and we're not checking to see if they have already been produced so anything produced may be duplicative) in advance of Wednesday's depositions.

We also expect to produce to you the Word versions of each of the Notes in advance of the depositions. Please let us know whether Defendants will challenge the authenticity or raise any other issue concerning the creation and editing (if any) of any of the Notes because Highland has engaged an expert who is reviewing the metadata and who will be prepared to offer an expert report next Friday concerning those matters, if needed.

Davor, based on Highland's willingness to produce the Word versions of the Notes, please confirm that HCMFA and NexPoint will produce reasonably in advance of Mr. Dondero's deposition their actual 15c responses to the Retail Board from later 2020 covering both question numbers 1 (shared services) and 2 (debts to HCMLP).

I look forward to your attention and prompt responses.

Regards,

John

**John A. Morris**

Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)

[vCard](#) | [Bio](#) | [LinkedIn](#)

## Rukavina, Davor

---

**From:** John A. Morris <jmorris@pszjlaw.com>  
**Sent:** Friday, October 15, 2021 1:41 PM  
**To:** Deitsch-Perez, Deborah R.; Aigen, Michael P.; Hayley R. Winograd  
**Cc:** Jeff Pomerantz; Gregory V. Demo; Hayley R. Winograd; 'zannable@haywardfirm.com'; Rukavina, Davor; 'ddraper@hellerdraper.com'; Vasek, Julian; Berghman, Thomas; Clay Taylor (clay.taylor@bondsellis.com); Bryan Assink (bryan.assink@bondsellis.com); Douglas Draper; elmsd@gtlaw.com  
**Subject:** RE: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

I'll look into it, Deborah.

When can I expect responses to the questions I asked concerning (a) the witnesses your client intends to call so I can have a chance to depose them, and (b) whether there are any other factual bases for the defenses of "waiver" and "estoppel" other than what Mr. Rukavina identified that you now contend fall within those general defenses?

I need answers to those questions – and they are within your knowledge yet you seem to be neglecting them.

John

---

**From:** Deitsch-Perez, Deborah R. [mailto:deborah.deitschperez@stinson.com]  
**Sent:** Friday, October 15, 2021 2:59 PM  
**To:** Aigen, Michael P. ; John A. Morris ; Hayley R. Winograd  
**Cc:** Jeff Pomerantz ; Gregory V. Demo ; Hayley R. Winograd ; 'zannable@haywardfirm.com' ; Rukavina, Davor (drukavina@munsch.com) ; 'ddraper@hellerdraper.com' ; Vasek, Julian (jvasek@munsch.com) ; Berghman, Thomas (tberghman@munsch.com) ; Clay Taylor (clay.taylor@bondsellis.com) ; Bryan Assink (bryan.assink@bondsellis.com) ; Douglas Draper ; elmsd@gtlaw.com  
**Subject:** RE: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

John, Please have Debtor produce the word versions of all of the Notes at issue. We have searched and it does not appear that they were produced. Can you do that today, thanks.

### Deborah R. Deitsch-Perez

Partner

STINSON LLP  
3102 Oak Lawn Avenue, Suite 777  
Dallas, TX 75219  
Direct: 214.560.2218 \ Mobile: 214.232.7582 \ [Bio](#)

Assistant: Kinga McCoy \ 214.560.2212 \ [kinga.mccoy@stinson.com](mailto:kinga.mccoy@stinson.com)

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---

**From:** Aigen, Michael P. <[michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)>  
**Sent:** Friday, October 15, 2021 12:23 PM  
**To:** John A. Morris <[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)>  
**Cc:** Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; Hayley R. Winograd <[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)>; 'zannable@haywardfirm.com' <[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)>; Rukavina, Davor

([drukavina@munsch.com](mailto:drukavina@munsch.com)) <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; Deitsch-Perez, Deborah R. <[deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)>; 'ddraper@hellerdraper.com' <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>; Vasek, Julian ([jvasek@munsch.com](mailto:jvasek@munsch.com)) <[jvasek@munsch.com](mailto:jvasek@munsch.com)>; Berghman, Thomas ([tberghman@munsch.com](mailto:tberghman@munsch.com)) <[tberghman@munsch.com](mailto:tberghman@munsch.com)>; Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)) <[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)>; Bryan Assink ([bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)) <[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)>; Douglas Draper <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>; [elmsd@gtlaw.com](mailto:elmsd@gtlaw.com)

**Subject:** RE: HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

John:

Defendants have the following objections to your corporate representative topics:

NexPoint, HCMS and HCRE

Topic 1: Your answer.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 2: Each Affirmative Defense asserted in Your Answer, including but not limited to all facts and circumstances, Communications, and Documents Concerning each Affirmative Defense.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Subject to these objections, Defendants will provide a witness on this topic.

Topic 3: The Note, including but not limited to (a) the negotiation of the Note, (b) the terms of the Note, (c) Communications Concerning the Note, (d) any payments of principal or interest made by You or on Your behalf with respect to the Note; (e) the use of the proceeds of the Note, (f) Your communications with Your outside auditors Concerning the Note and the obligations thereunder, and (g) all agreements Concerning the Note.

Defendants object to the portion of this topic seeking information related to the use of the proceeds of the Note because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendants will provide a witness on this topic.

Topic 4: Your responses to the Discovery Requests.

Defendants object to this topic because it is vague and not specific enough to allow Defendants to adequately prepare a witness. Defendants incorporate all objections made in their discovery responses. Subject to these objections, Defendants will provide a witness on this topic.

Dugaboy

Topic 2: Your authority to enter into the Alleged Agreement.

Defendant objects to this topic to the extent that it seeks privileged information and seeks legal conclusions. Subject to these objections, Defendant will provide a witness on this topic.

Topic 3: Ownership, beneficial ownership, and control of The Dugaboy Investment Trust.

Defendant objects to this topic because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on this topic.

Topics 4-8: Other agreements other than the agreements at issue in these proceedings.

Defendant object to these topics because that information is not reasonably calculated to lead to the discovery of admissible evidence. Subject to these objections, Defendant will provide a witness on these topics.

Topic 9: Your responses to the Discovery Requests.

Defendant objects to this topic because it is vague and not specific enough to allow Defendant to adequately prepare a witness. Defendant incorporates all objections made in its discovery responses. Subject to these objections, Defendant will provide a witness on this topic.

Michael P. Aigen  
Partner  
Dallas  
214.560.2207  
x62207

---

**From:** John A. Morris <[jmorris@pszilaw.com](mailto:jmorris@pszilaw.com)>  
**Sent:** Tuesday, October 12, 2021 5:50 PM  
**To:** Aigen, Michael P. <[michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)>  
**Cc:** Jeff Pomerantz <[jpomerantz@pszilaw.com](mailto:jpomerantz@pszilaw.com)>; Gregory V. Demo <[GDemo@pszilaw.com](mailto:GDemo@pszilaw.com)>; Hayley R. Winograd <[hwinograd@pszilaw.com](mailto:hwinograd@pszilaw.com)>; 'zannable@haywardfirm.com' <[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)>; Rukavina, Davor ([drukavina@munsch.com](mailto:drukavina@munsch.com)) <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; Deitsch-Perez, Deborah R. <[deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)>; 'ddraper@hellerdraper.com' <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>; Vasek, Julian ([jvasek@munsch.com](mailto:jvasek@munsch.com)) <[jvasek@munsch.com](mailto:jvasek@munsch.com)>; Berghman, Thomas ([tberghman@munsch.com](mailto:tberghman@munsch.com)) <[tberghman@munsch.com](mailto:tberghman@munsch.com)>; Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)) <[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)>; Bryan Assink ([bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)) <[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)>  
**Subject:** HCMLP's Objections to Defendants' Rule 30(b)(6) Notice

Michael:

HCMLP has the following objections to the attached Rule 30(b)(6) notice:

**HCMLP objects to Topic No. 2** (a) to the extent it calls for HCMLP to tender a witness to testify with precision to all principal, interest, and fees due under each Note that is the subject of the Complaints, and on the grounds that (b) HCMLP provided calculations of damages in its demand and default letters as well as its Complaints, (c) the categories of damages are all (i) unpaid principal, (ii) accrued but unpaid interest, and (iii) costs of collection, including reasonable attorneys' fees (the "Damages"), (d) based on the Notes and the documents produced proving HCMLP's costs of collection (which will be supplemented from time to time to account for additional costs), the Defendants are just as easily capable of calculating the Damages at any moment in time as HCMLP, (e) it is unreasonable to expect any witness to specifically recall the precise Damages due under each Note, particularly when such Damages continue to increase every day.

Subject to those objections, HCMLP will tender a witness prepared to testify on Topic No. 2.

**HCMLP objects to Topic No. 4** on the grounds that (a) the phrase “involved in” is vague and ambiguous, and (b) it assumes that any of the Notes were subject to “negotiations.”

Subject to those objections, HCMLP will tender a witness prepared to testify as to the identify of individuals it knows were involved in communications related to the execution and/or terms of the notes.

**HCMLP objects to Topic No. 7** on the grounds that (a) it seeks “facts” that are solely within the Defendants’ knowledge, and that (b) Defendants’ defenses and affirmative defenses have materially changed over time, and are otherwise ambiguous or not specifically set forth in the Answers.

Subject to that objection, HCMLP will tender a witness prepared to testify as to facts that it knows of that relate to or concern the defenses and affirmative defenses specifically proffered by any of the Defendants.

**HCMLP objects to Topics No. 9** on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP’s audited financial statements for each year from 2008 through 2018 (including the sections concerning “Subsequent Events”), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

**HCMLP objects to Topics No. 10** on the grounds that (a) there is no time limitation, (b) the existence and terms of all affiliate loans, including all issues concerning forgiveness and forbearance, are set forth in detail in each of HCMLP’s audited financial statements for each year from 2008 through 2018 (including the sections concerning “Subsequent Events”), and HCMLP specifically refers Defendants to those audited financial statements, and (c) it is unreasonable to expect any witness to specifically recall the identity of all affiliated borrowers, and the amounts, dates, and terms of all loans made to affiliated borrowers, including whether, when, and to what extent any such affiliated loans were forgiven.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

**HCMLP objects to Topics No. 11** on the grounds that (a) there is no time limitation, (b) documents concerning Mr. Dondero’s compensation for the period 2016 through 2020 (the “Compensation Documents”) have been or will be produced and HCMLP specifically refers Defendants to the Compensation Documents, and (c) it is unreasonable to expect any witness to specifically recall the specific amounts and components of Mr. Dondero’s compensation from 2016 and 2020.

Subject to those objections, HCMLP will tender a witness prepared to testify as to loans it made to employees or officers that were forgiven, in whole or in part, during the period 2008 through the Petition Date.

**HCMLP objects to Topic No. 12** on the grounds that it is (a) overly broad, unduly burdensome, and not relevant to the claims or defenses in this adversary proceeding, and (b) none of the Defendants who served the attached Rule 30(b)(6) notice is or was a party to a Shared Services Agreement with HCMLP.

Based on the forgoing, HCMLP will not proffer a witness to testify as to Topic No. 12.

**HCMLP objects to Topic Nos. 13, 14, 15, 16, and 17** to the extent those topics assume that HCMLP had any contractual or legal duty or obligation to take or refrain from taking the actions described therein.



Subject to those objections, and any additional objections referred to below, HCMLP will tender a witness prepared to testify on Topics 13, 14, 15, 16, and 17.

**HCMLP objects to Topic No. 14** on the ground that the phrase “may have previously had any role” is speculative, vague, and ambiguous.

Subject to that objection, HCMLP will tender a witness prepared to testify as to those referenced employees who actually processed, made, facilitated or coordinated such payments, if any.

**HCMLP objects to Topic No. 15** on the grounds that the phrase (a) “[a]ny communications or instructions that may have been given” is speculative, vague, and ambiguous, and (b) there is no time limitation.

Subject to those objections, HCMLP will tender a witness prepared to testify as to communications or instructions that were actually given from 2018 to the present, if any.

---

**From:** Aigen, Michael P. [<mailto:michael.aigen@stinson.com>]

**Sent:** Thursday, October 07, 2021 2:49 PM

**To:** Rukavina, Davor <[drukavina@munsch.com](mailto:drukavina@munsch.com)>; 'zannable@haywardfirm.com' <[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)>; John A. Morris <[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)>; Deitsch-Perez, Deborah R. <[deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)>; Douglas Draper <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>

**Cc:** Vasek, Julian <[jvasek@munsch.com](mailto:jvasek@munsch.com)>; Berghman, Thomas <[tberghman@munsch.com](mailto:tberghman@munsch.com)>; Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)) <[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)>; Bryan Assink ([bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)) <[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)>; Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>; Hayley R. Winograd <[hwinograd@pszjlaw.com](mailto:hwinograd@pszjlaw.com)>

**Subject:** RE: NexPoint Notice of 30(b)(6) to Debtor

Please see attached notice for the Seery/30B6 deposition.

**Michael P. Aigen**

Partner

STINSON LLP

3102 Oak Lawn Avenue, Suite 777

Dallas, TX 75219

Direct: 214.560.2201 | [Bio](#)

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---

**From:** Rukavina, Davor <[drukavina@munsch.com](mailto:drukavina@munsch.com)>

**Sent:** Thursday, October 7, 2021 11:42 AM

**To:** 'zannable@haywardfirm.com' <[zannable@haywardfirm.com](mailto:zannable@haywardfirm.com)>; John A. Morris <[jmorris@pszjlaw.com](mailto:jmorris@pszjlaw.com)>; Deitsch-Perez, Deborah R. <[deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)>; Douglas Draper <[ddraper@hellerdraper.com](mailto:ddraper@hellerdraper.com)>

**Cc:** Vasek, Julian <[jvasek@munsch.com](mailto:jvasek@munsch.com)>; Berghman, Thomas <[tberghman@munsch.com](mailto:tberghman@munsch.com)>; Aigen, Michael P. <[michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)>; Clay Taylor ([clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)) <[clay.taylor@bondsellis.com](mailto:clay.taylor@bondsellis.com)>; Bryan Assink ([bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)) <[bryan.assink@bondsellis.com](mailto:bryan.assink@bondsellis.com)>; Jeff Pomerantz <[jpomerantz@pszjlaw.com](mailto:jpomerantz@pszjlaw.com)>; Hayley R.

Winograd <[hwinograd@pszilaw.com](mailto:hwinograd@pszilaw.com)>

**Subject:** NexPoint Notice of 30(b)(6) to Debtor

**External Email – Use Caution**

Counsel, please see attached notice.

Thank you

**Davor Rukavina, Esq.**

Munsch Hardt Kopf & Harr, P.C.

500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659

Direct: +1.214.855.7587 / [drukavina@munsch.com](mailto:drukavina@munsch.com) / [munsch.com](http://munsch.com)

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Date Worked:	10/28/2021 Thursday, October 28, 2021	Navigation icons
Client:	019717 NexPoint Advisors, LP	More >>
Matter:	00004 Notes Litigation	
Time:	2.50 Billable Status: Billable	
NO CHARGE:		

Narrative:  
Conference with John Morris regarding deposition scheduling and closing discovery; communications with DC Sauter and Dustin Norris regarding same and regarding discovery; multiple communications and conference with Deborah Perez regarding expert retention and expert issues, Dondero deposition preparation, and amending answers; communications with John Morris regarding motions to amend answers; follow-up strategy communications regarding same and coordinate drafting of motions; communications with duties expert and coordinate retention of same

**Exhibit D**

**Rukavina, Davor**

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**From:** John A. Morris <jmorris@pszjlaw.com>  
**Sent:** Saturday, November 6, 2021 1:08 PM  
**To:** Deborah R. Deitsch-Perez (deborah.deitschperez@stinson.com); Aigen, Michael P. (michael.aigen@stinson.com); Rukavina, Davor; Berghman, Thomas; Vasek, Julian; Bryan Assink (bryan.assink@bondsellis.com); Clay Taylor (clay.taylor@bondsellis.com); 'ddraper@hellerdraper.com'  
**Cc:** Jeff Pomerantz; Gregory V. Demo; Hayley R. Winograd  
**Subject:** Highland: Proposed schedule for summary judgment in the Notes Litigation

Counsel:

Highland intends to inform the Court at next week’s hearing that it will be moving for summary judgment on some or all of the counts asserted in the five pending “notes litigations.” We will share with you the specific counts as soon as practicable after the hearing but the motion will certainly cover at least all counts not subject to the motion to dismiss and all defenses thereto.

In that regard, Highland proposes the following briefing schedule:

<u>Deadline</u>	<u>Event</u>
12/17/21 documents in support thereof	Highland files its opening brief in support of its motion for summary judgment and all
1/17/22	Defendants file their opposition to the MTD and all documents in support thereof
1/31/22	Highland files its reply papers and all documents in support thereof

Please let us know as soon as possible (and in any event, reasonably in advance of the November 9 hearing) if the defendants have any comments to this proposed schedule.

Regards,

John

**John A. Morris**  
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**Exhibit E**