

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz (CA Bar No.143717) (*admitted pro hac vice*)
John A. Morris (NY Bar No. 2405397) (*admitted pro hac vice*)
Gregory V. Demo (NY Bar No. 5371992) (*admitted pro hac vice*)
Hayley R. Winograd (NY Bar No. 5612569) (*admitted pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760

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

Counsel for Highland Capital Management, L.P.

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

In re:	§
	§ Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§
	§ Case No. 19-34054-sgj11
Reorganized Debtor.	§
-----	§
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§
	§
Plaintiff,	§ Adversary Proceeding No.
	§
vs.	§ 21-03010-sgj
	§
HIGHLAND CAPITAL MANAGEMENT FUND	§
ADVISORS, L.P., AND NEXPOINT ADVISORS,	§
L.P.,	§
	§
Defendants.	§

**DECLARATION OF JOHN A. MORRIS IN SUPPORT OF HIGHLAND'S
RESPONSE TO OBJECTIONS TO TRIAL SUBPOENAS DUCES TECUM**

¹ The Reorganized Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Reorganized Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.



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

1. I am an attorney in the law firm of Pachulski, Stang, Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., the reorganized debtor in the above-captioned chapter 11 case and plaintiff in the above-referenced adversary proceeding, and I submit this Declaration in support of *Highland's Response to Objections to Trial Subpoenas Duces Tecum* (the "Response"). All capitalized terms used but not defined herein have the meanings given to them in the Response. I submit this Declaration based on my personal knowledge and review of the documents listed below.

2. Attached as **Exhibit 1** is a true and correct copy of the March 4, 2022 deposition of Dustin Norris.

3. Attached as **Exhibit 2** is a true and correct copy of an e-mail, dated March 15, 2022, notifying the Advisors' counsel that Highland intends to serve subpoenas seeking documents relating to the Postpetition Payments.

4. Attached as **Exhibit 3** is a true and correct copy of an e-mail, dated March 15, 2022, emailing copies of the subpoenas to the Advisors' counsel and asking whether counsel was authorized to accept service.

5. Attached as **Exhibit 4** are true and correct copies of several emails to the Advisors' counsel seeking confirmation as to whether Advisors' counsel would accept service of the subpoenas (as well as the subpoenas for Mr. Dondero and Mr. Norris).

6. Attached as **Exhibit 5** is a true and correct copy of excerpts of relevant portions of the March 28, 2022 deposition of Frank Waterhouse.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Dated: April 11, 2022

/s/ John A. Morris
John A. Morris

EXHIBIT 1

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

3 In re: §
4 HIGHLAND CAPITAL § Chapter 11
MANAGEMENT, L.P., § Case No. 19-34054-sgj11
5 Reorganized Debtor. §
6

7
8
9 DEPOSITION OF DUSTIN NORRIS AND 30(b)(6) OF
10 HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.,
11 AND NEXPOINT ADVISORS, L.P.

12 Dallas, Texas

13 Friday, March 4, 2022

14 (REPORTED REMOTELY)
15
16
17
18
19
20
21
22

23 REPORTED BY:

24 Linda Russell, CSR

25 JOB NO: 207400

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NORRIS

March 4, 2022

9:33 a.m.

DEPOSITION OF DUSTIN NORRIS, conducted via Zoom, taken before Linda Russell, Certified Court Reporter No. 2965, pursuant to the Federal Rules of Civil Procedure for the United States District Court pertaining to the taking of depositions, commencing at 9:33 a.m. Central Time, on March 4, 2022.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

NORRIS

A P P E A R A N C E S

(Attendees appearing via remote videoconference)

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT, L.P.:
HAYLEY WINOGRAD, ESQ.
JOHN MORRIS, ESQ.
Pachulski Stang Ziehl & Jones
780 Third Avenue
New York, New York 10017

COUNSEL FOR HIGHLAND CAPITAL MANAGEMENT FUND
ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.
DAVOR RUKAVINA, ESQ.
THOMAS BERGHMAN, ESQ.
Munsch Hardt Kopf & Harr
500 N. Akard Street

Dallas, Texas 75201

ALSO PRESENT:
La Asia Canty, Paralegal

I N D E X

1			
2			Page
3	DUSTIN NORRIS		
3	BY MS. WINOGRAD		7
4	BY MR. MORRIS		201
4	CERTIFICATE		274
5	ERRATA SHEET		275

EXHIBITS MARKED

7	No.	Description	Page
8	Exhibit 1	Highland's Second Amended	9
9		Notice of Rule 30(b)(6)	
10		Deposition to (A) Highland	
11		Capital Management Fund	
11		Advisors, LP and (B) NexPoint	
11		Advisors, LP	
12	Exhibit 2	HCMFA--HCMLP 2nd AR Shared	20
13		Services Agreement (Effective	
13		2.8.2013)	
14	Exhibit 3	NexPoint Advisors_Shared	27
15		Services Agreement	
16	Exhibit 5	NexPoint Advisors_Sub-Advisory	80
16		Agreement	
17	Exhibit 6	NPA HCMLP Payroll Reimbursement	86
18		5.1.18	
19	Exhibit 8	HCMFA HCMLP Expense	104
19		Reimbursement 5.1.18	
20	Exhibit 11	Docket No. 1826 - Admin Claim	42
21	Exhibit 13	Docket No. 49 - Advisors'	184
22		Response	
23	Exhibit 14	Response to Debtor's Discovery	134
24	Exhibit 26	Email from D Klos	227
24		12_1_20_Advisors-Admin-000713	

1	Exhibit 29	NexPoint HCMLP Shared Services Agreement 6.5.13_ACL-080614	23
2			
3	Exhibit 30	Order on Motion for Clarification of Ruling_dkt 935	69
4	Exhibit 34	Trey Parker March 2019 Compensation Statement_ACL-080630	144
5			
6	Exhibit 35	Email chain attaching TerreStar 2.29.20 Draft	173
7			
8	Exhibit 41	Email from K. Irving re 3_31 TerreStar Analysis_ACL-080672	178
9	Exhibit 51	Advisors_Admin_Supp_000010	259
10	Exhibit 54	Pyxis Shared Services Agreement - 02.09.2012_ACL-081276	18
11			
12	Exhibit 55	Pyxis Amended Restated Shared Services Agreement - 09.12.2012_ACL-081289	19
13			
14	Exhibit 56	ACL-025012	240
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

1 NORRIS

2 P-R-O-C-E-E-D-I-N-G-S

3 COURT REPORTER: My name is Linda
4 Russell. I am a certified court reporter in
5 association with TSG Reporting, Inc.

6 Today's date is March 4, 2022, and
7 the time is 9:33 a.m. Central Time.

8 Due to the severity of COVID-19 and
9 following the practice of social distancing, I
10 will not be in the same room with the witness but
11 will record this deposition remotely and will
12 swear the witness remotely.

13 Do all parties stipulate to the
14 validity of the remote recording and remote
15 swearing and that it will be admissible in the
16 courtroom as if it had been taken following
17 Rule 30 of the Federal Rules of Civil Procedures
18 and/or the State's rules where this case is
19 pending?

20 MR. RUKAVINA: The Advisors so
21 stipulate.

22 MS. WINOGRAD: Highland stipulates as
23 well.

24 DUSTIN NORRIS,
25 having sworn or affirmed to tell the

1 NORRIS

2 truth, the whole truth and nothing but the
3 truth was examined and testified as
4 follows:

5 EXAMINATION

6 BY MS. WINOGRAD:

7 Q. Good morning, Mr. Norris. My name is
8 Hayley Winograd, I'm an attorney at the law firm
9 of Pachulski Stang Ziehl & Jones, and I'll be --
10 I'll be taking your deposition today. We
11 represent Highland Capital Management, LP. Do
12 you understand that?

13 A. Yes.

14 Q. Okay. And do you understand that
15 you're going to be deposed today in your capacity
16 as a 30(b)(6) witness on behalf of NexPoint
17 Advisors, LP?

18 A. I do.

19 Q. And can we refer to NexPoint Advisors
20 as NexPoint?

21 A. Yes.

22 Q. And you also understand that you are
23 going to be deposed in your 30(b)(6) capacity for
24 the entity Highland Capital Management Fund
25 Advisors, LP, right?

1 NORRIS

2 A. Yes.

3 Q. And can we refer to that entity as
4 HCMFA?

5 A. Yes.

6 MR. RUKAVINA: I'm sorry, I can
7 barely hear you, Dustin.

8 Can you hear him, Hayley, just fine?
9 Dustin, just say --

10 MS. WINOGRAD: I don't think -- can
11 you --

12 THE WITNESS: Can you hear me -- if I
13 speak louder, is that better?

14 MR. RUKAVINA: Yeah, that's better.

15 MS. WINOGRAD: That's better.

16 BY MS. WINOGRAD:

17 Q. I'm also going to ask that when I ask
18 you a question, you just wait for me to finish
19 the question before you begin your answer. Is
20 that fair?

21 A. Yes.

22 Q. Okay. And I'm going to be -- we're
23 going to be putting up documents on the screen
24 from time to time, so if you need to see any
25 other portion of the document in order to give a

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

more complete answer, just let us know.

A. Okay.

Q. And if you need me to repeat a question if you can't hear me, just ask me, and I can repeat it.

Okay. I'm going to ask my colleague Ms. La Asia Canty to please put Exhibit 1 on the screen.

(Exhibit 1 marked for identification.)

BY MS. WINOGRAD:

Q. Okay. Mr. Norris, have you seen this document before?

A. Yes.

Q. Okay. Do you understand that your answers as the Advisors' corporate representative will be binding on the Advisors?

A. I do.

Q. And that every time I ask you a question, it will be in your 30(b)(6) capacity as a witness unless I say otherwise?

A. Yes.

Q. And can you -- can you testify that you -- can you confirm that you're prepared to testify on all of the topics set forth therein?

1 NORRIS

2 A. Yes, I've -- I have spent time
3 preparing, and I would note that there is a
4 number of discovery items ongoing. We have not
5 deposed Mr. Waterhouse. We haven't deposed
6 Mr. Klos as well as Mr. Seery. And we haven't
7 had access to Mr. Waterhouse.

8 So with that, yes, I've done the best
9 that I can in preparing and spoken to a lot of
10 people and then prepared to answer the questions
11 to the best of my ability.

12 Q. Okay. Who did you speak to in
13 preparing?

14 A. Yeah, so obviously spoke with outside
15 counsel, with Davor and his counterparts. I
16 spoke with our in-house general counsel, which is
17 DC Sauter. Spoke with Mr. Dondero. I spoke with
18 Brian Collins, who's former HR director at
19 Highland, now Skyview. Spoke with Stephanie
20 Vitiello who is chief compliance officer of our
21 Advisors. And also spoke with Kevin Fullmer
22 who's on our product strategy team. Brian Mitts
23 over time as well. Brian Mitts, he's involved in
24 our Advisors. And I think that's most of who I
25 spoke with.

1 NORRIS

2 Q. Okay. And did you review any
3 documents in preparing?

4 A. I did, yeah. I reviewed all of the
5 filings, complaints, responses. I reviewed the
6 Shared Services Agreements, the Payroll
7 Reimbursement Agreements. I reviewed your
8 notice. I reviewed documents that had been
9 provided in discovery from Highland that my
10 attorneys provided me. Emails, calculations that
11 Mr. Klos and Mr. Waterhouse prepared. I reviewed
12 emails that were responsive that I could try and
13 find within my system. I searched our document
14 drive to find responsive documents, and so
15 reviewing quite a bit of material that I could.

16 Q. Do you have a title at NexPoint?

17 A. I do.

18 Q. What is that title?

19 A. Yeah, executive vice president --

20 Q. Okay.

21 A. -- of NexPoint.

22 Q. How long have you held that title?

23 A. I believe it was in 2018 or 2019 that
24 I became executive vice president.

25 Q. Okay. So was it like -- was it the

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

end of 2018?

A. I can't remember the specific date.

Q. Okay. Do you have a title at HCMFA?

A. Yes, the same, executive vice president.

Q. Okay. And how long have you held that title?

A. Probably the same amount of time.

Q. Okay.

A. And I also function as -- my operating role is to lead head of distribution and chief product strategist. So that's my title that I also operate under. As an officer of the Advisors, it's executive vice president.

Q. Got it. And who is your employer now?

A. So NexPoint Advisors.

Q. So they pay you?

A. They do.

Q. And who do you -- do you report to somebody at NexPoint?

A. Jim Dondero.

Q. Okay. So who controls the Advisors today?

1 NORRIS

2 A. I think it's been clear in the record
3 Mr. Dondero owns and has controlling interest in
4 the Advisors.

5 Q. Okay. And when were the Advisors
6 formed?

7 A. NexPoint Advisors I believe was 2011,
8 maybe 2012. And Highland Capital Fund Advisors
9 was formerly known as Pyxis Capital. Prior to
10 that name change was Highland Funds Asset
11 Management. I don't know the specific date, but
12 it's been over a decade ago that HCMFA was
13 formed.

14 Q. And James Dondero controlled the
15 Advisors since they were formed, right?

16 A. I'm not sure on the total history.

17 Q. Were they created at his direction?

18 A. I don't know -- I don't know the
19 background of the formation other than, you know,
20 there was -- when they worked for him, there was
21 a number of independent boards involved. These
22 Advisors are Advisors of '40 Act funds. There
23 was a number of counsel in the discussion. So it
24 was at the direction, I believe, of counsel and
25 several of the parties involved.

1 NORRIS

2 Q. But James Dondero was involved with
3 the formation, right?

4 A. I would assume so, but I'm not sure.

5 Q. So the Advisors are registered
6 investment Advisors, right?

7 A. That's correct.

8 Q. Okay. And so in this role they
9 provide advisory service to certain funds, right?

10 A. Funds and other entities, yeah.
11 Publicly traded REITs, private REITs, private
12 placement vehicles. So funds and other vehicles,
13 investment vehicles.

14 Q. Okay. Can we call these -- they are
15 retail funds, though, right?

16 A. Largely, yes.

17 Q. So moving forward, can we refer to
18 these as "the funds"?

19 A. That's fine.

20 Q. And the Advisors provide these
21 advisory services to the funds pursuant to
22 certain written agreements, right?

23 A. Correct.

24 Q. And these are investment advisory
25 agreements, right?

1 NORRIS

2 A. Correct.

3 Q. And these agreements are among the
4 most important agreements that the Advisors have,
5 right?

6 A. Yes, among the most important.

7 Q. And the reason for the Advisors'
8 existence is to service those funds, right?

9 A. Yes.

10 Q. So the funds are the principal source
11 of the Advisors' revenue, then, right?

12 A. That's correct.

13 Q. Okay. So other than to service the
14 retail funds, there is no other reason for
15 Advisors' existence, right?

16 A. The Advisors do have some investments
17 on their balance sheet, right. So to say the
18 only reason, there's -- that's the principal
19 reason.

20 Q. That's the principal one. Okay.

21 So in your individual capacity, are
22 you an officer of any of the funds?

23 A. I am.

24 Q. Okay. What's your title?

25 A. So for our '40 Act mutual funds,

1 NORRIS

2 closed-end funds, I am the executive vice
3 president. I don't hold a title for our REITs
4 which are other entities advised by NexPoint.

5 Q. Okay. But the retail funds that we
6 talking about which we refer to as the funds, you
7 hold title with most of them?

8 A. Well, I think -- I told you that the
9 funds were -- you referred to the vehicles, which
10 would include the retail funds and other vehicles
11 that I mentioned: REITs, private placements, and
12 other investment vehicles you said, well, can we
13 refer to that as the funds.

14 So the funds is encompassing.
15 There's an aspect of it that's -- the '40 Act
16 registered funds I'm an officer of. So that's
17 the funds.

18 Q. Okay. So the retail funds, though,
19 are the funds that the Advisors provided these
20 investment services to?

21 A. That's some of what they provided
22 investment services. They also provide
23 investment services to REITs, which are publicly
24 listed, some are private, some are other
25 vehicles.

1 NORRIS

2 Q. But when you said that the principal
3 source -- the principal reason that the Advisors
4 exist is to provide the investment advice to the
5 funds. I was talking about the retail funds.

6 A. Got it. So if you were talking about
7 the retail funds, my understanding was you define
8 that as the funds as a whole, all of those
9 investment vehicles. So if it's just the retail
10 funds, there is a lot of other things we provide,
11 which is publicly traded REITs which is material
12 part of the assets we manage, there is private
13 vehicles, there is -- and so there is -- there
14 is -- but those are all investment vehicles.

15 Q. Okay. But those -- those other
16 vehicles that you mentioned, the Advisors aren't
17 performing the services pursuant to those written
18 contracts, right?

19 A. They are pursuant -- they are using
20 them -- they are managing them pursuant to
21 written investment advisory contracts. They are
22 different contracts. Each entity has an
23 investment advisory agreement with the Advisors,
24 one of or both of the Advisors.

25 Q. Okay.

1 NORRIS

2 MS. WINOGRAD: Can we please pull up
3 Exhibit 54, La Asia.

4 (Exhibit 54 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Okay. Mr. Norris, do you see this
7 document?

8 A. I do.

9 Q. Okay. Do you recognize it?

10 A. I do.

11 Q. Is this an original Shared Services
12 Agreement between Highland and an entity that you
13 mentioned earlier, Pyxis Capital, LP?

14 MR. RUKAVINA: Objection. Form.

15 A. I don't know if it's an original, but
16 it is an Investment Advisory Agreement dated
17 effective December 15th, between Pyxis Capital,
18 formerly known as Highland Funds Asset
19 Management, which I waked through earlier when
20 they changed its name. And I don't know if this
21 is the original or if it's -- it doesn't say
22 amended. So it's Shared Services Agreement.

23 BY MS. WINOGRAD:

24 Q. It's a Shared Services Agreement,
25 though. Okay. And did Pyxis Capital, LP turn

1 NORRIS

2 into HCMFA by name?

3 A. It did, yes, in February 2013, I
4 believe.

5 MS. WINOGRAD: Okay. La Asia, can we
6 now put Exhibit 55 on the screen, please?

7 A. And by "turn into" -- you said "turn
8 into." It's really the name change.

9 BY MS. WINOGRAD:

10 Q. The name change, yeah.

11 A. It was simply a name change.

12 Q. Okay. Thank you for clarifying.

13 (Exhibit 55 marked for identification.)

14 BY MS. WINOGRAD:

15 Q. And then this is an Amended and
16 Restated Shared Services Agreement between
17 Highland and Pyxis Capital, LP, right?

18 A. 12th day of September 2012. That's
19 what it says, yes.

20 Q. And it's effective as of December
21 15th, 2011, right?

22 A. Yeah, which is just the original date
23 on the last agreement.

24 Q. Okay.

25 A. Since it's amended and restated.

1 NORRIS

2 MS. WINOGRAD: Okay. And then,
3 La Asia, if we could put up Exhibit 2 now.

4 (Exhibit 2 marked for identification.)

5 BY MS. WINOGRAD:

6 Q. Do you recognize this agreement?

7 A. I do.

8 Q. This is the Second Amended and
9 Restated Shared Services Agreement between
10 Highland and HCMFA, right?

11 A. Right.

12 Q. And this is the amendment to the
13 earlier Shared Services Agreements we just looked
14 at, right?

15 A. It's a amendment. I don't have
16 knowledge if there was one in between, but this
17 is a amendment. Since it says "Second," I would
18 assume that's the second amended and restated. I
19 don't know if there was another amended, but this
20 is the second amended and restated.

21 MS. WINOGRAD: Okay. Can we please
22 scroll to page 11.

23 BY MS. WINOGRAD:

24 Q. This was signed by James Dondero on
25 behalf of Highland, right?

1 NORRIS

2 A. It appears so. It says James Dondero
3 on the signature block.

4 Q. And it's on behalf of HCMFA, right?

5 A. It's by Strand Advisors, its general
6 partner of HCMFA, yes.

7 Q. But that's Brian Mitts' signature,
8 right?

9 A. It looks like Brian Mitts' signature,
10 and it says Brian Mitts there. So I would assume
11 it's his signature.

12 MS. WINOGRAD: And, La Asia, if we
13 could just go back to the first page, please.

14 BY MS. WINOGRAD:

15 Q. This Second Amended and Restated
16 Shared Services Agreement became effective
17 February 8th of 2013, right?

18 A. Yes, that's what it says. Entered
19 into to be effective as of the 8th day of
20 February 2013, which was the time of the name
21 change, I believe, to Pyxis Capital -- or sorry,
22 Pyxis Capital to HCMFA.

23 Q. Okay. So under this Shared Services
24 Agreement, the Advisors who were at HCMFA agreed
25 to pay Highland for the actual cost incurred from

1 NORRIS

2 certain back and middle office services, right?

3 A. If you want to scroll down and point
4 to the section --

5 Q. We can go to --

6 A. I believe this was an actual cost
7 plus a margin amount of 5 percent.

8 Q. Okay. So who -- do you know who
9 drafted this?

10 A. I don't.

11 Q. Okay. Do you know if this was the
12 subject of negotiation?

13 A. It was definitely -- when you -- when
14 you look at all of the Shared Services Agreement,
15 there was negotiation. As I mentioned, outside
16 legal counsel involved. There was a Board of
17 Directors of the retail funds that was involved.
18 So there was definitely an extensive process that
19 went into this.

20 In this one in particular, I would
21 have to look. I don't know if there is any
22 significant changes between the first and the
23 second. Maybe you could tell me, but I believe
24 this one is just the name change on this -- this
25 document right here.

NORRIS

1
2 Q. Okay. So did HCMFA have its own
3 counsel in the drafting of this agreement, if
4 we're just considering the original agreement,
5 the first one that we looked at?

6 A. There was -- there was -- HCMFA
7 carried its own Advisor counsel, and the Board of
8 Directors has an independent counsel. And there
9 was definitely outside counsel involved.

10 Q. Okay. Did Highland have its own
11 outside counsel separate from HCMFA's outside
12 counsel?

13 A. I'm not sure. Again, this was over a
14 decade ago, and these agreements have been --
15 they've been in place a very long time. But
16 there was a lot involved here, and it was an
17 extensive discussion and conversation.

18 Q. Okay.

19 A. So I -- but, again, the original
20 agreement for Highland Funds Asset Management was
21 sometime before 2012, so over a decade ago.

22 MS. WINOGRAD: Okay. La Asia, can we
23 please look at Exhibit 29.

24 (Exhibit 29 marked for identification.)

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. Okay. Mr. Norris, do you recognize
3 this document?

4 A. Yes.

5 Q. Can you confirm this is the Shared
6 Services Agreement between NexPoint and Highland?

7 MR. RUKAVINA: Well, in fairness,
8 scroll down, Dustin, if you need to, or Hayley
9 can represent that it's a full and, you know,
10 correct --

11 THE WITNESS: Yeah, if you could
12 scroll down. Keep going. Scroll back up --
13 actually, no, keep going. Yeah.

14 MS. WINOGRAD: Yeah, we can scroll
15 all the way to -- if we can go to page 11. Yeah,
16 there we go.

17 BY MS. WINOGRAD:

18 Q. So you agree this was signed by James
19 Dondero on behalf of both NexPoint and Highland,
20 right?

21 A. That appears to be his signature and
22 the signature block looks to -- it says James
23 Dondero, at least on the Highland one. It
24 doesn't have his name written, but it does look
25 like his signature. The bottom one just says

1 NORRIS

2 NexPoint Advisors and it says general partner and
3 I would say those signatures look pretty close,
4 but there is no name or title written.

5 Q. Okay. So do you know if this
6 agreement was subject to any negotiation?

7 A. Yes, just like the HCMFA agreements,
8 there was detailed discussion, conversations.
9 And a big aspect of this is the retail board's
10 consideration was services provided couldn't
11 be -- between Advisors or affiliated Advisors
12 couldn't be a profit there. And so a big part of
13 that negotiation was it needed to be a cost
14 plus-type arrangement where there was a
15 reimbursement, not a payment or a profit center
16 for an affiliated Advisor.

17 Q. So was this the subject of
18 negotiation, yes or no?

19 A. Yes, there was definitely
20 negotiation. There was outside counsel involved.
21 There was extensive discussion. There was an
22 independent board.

23 Q. Who represent -- did somebody
24 represent NexPoint when the agreement was
25 negotiated?

1 NORRIS

2 A. Yes, I believe so --

3 MR. RUKAVINA: Hold on, Dustin. Just
4 objection. Form.

5 Go ahead and answer.

6 A. I don't know specifically. Again, it
7 was over a decade ago. But as I mentioned, there
8 was outside counsel involved. There was board
9 counsel. There was an independent board.

10 BY MS. WINOGRAD:

11 Q. So do you -- so you don't -- I just
12 want to make sure I have the answer. So you
13 don't know if Highland and NexPoint had separate
14 counsel when this agreement was entered into at
15 the time?

16 A. Generally -- generally Highland and
17 the retail advisors had different counsel and
18 there was an offsetting, but I don't know
19 specifically on this.

20 Q. You don't know if they did with this
21 agreement, right?

22 A. I don't know.

23 Q. Okay. So this agreement was amended
24 in 2018, right?

25 A. I believe that's the case. You have

1 NORRIS

2 an amended 2018 agreement?

3 MS. WINOGRAD: Yeah, La Asia, can we
4 go ahead and show Exhibit 3, please.

5 (Exhibit 3 marked for identification.)

6 BY MS. WINOGRAD:

7 Q. Okay. Do you recognize this?

8 A. I do.

9 Q. Okay. So this is the Amended and
10 Restated Shared Services Agreement between
11 NexPoint and Highland, right?

12 A. It looks to be, yes.

13 Q. Okay. And it's effective January 1st
14 of 2018, right?

15 A. Dated effective January 1st, 2018.

16 Q. Uh-huh. And this was an amendment to
17 the Shared Services Agreement that we just looked
18 at, right?

19 A. It doesn't reference -- whereas the
20 parties enter into a certain Shared Services
21 Agreement effective January 1st, the original
22 agreement.

23 So it appears to be that's the same
24 agreement.

25 Q. Okay. Great.

1 NORRIS

2 MS. WINOGRAD: Could we scroll to
3 page 19, please.

4 BY MS. WINOGRAD:

5 Q. Okay. So this was signed by Frank
6 Waterhouse on behalf of both NexPoint and
7 Highland, right?

8 A. I don't -- again, just looking at the
9 signatures, I see Frank's name there but don't
10 have any evidence, you know, that Frank actually
11 did sign. In addition, I would also clarify in
12 all this that we will be deposing Frank. And we
13 haven't had access to Frank in preparation for
14 this.

15 Q. Okay. I'm just going to have you try
16 to listen to the questions I'm asking and answer
17 those specific questions to the best of your
18 ability.

19 At the time this agreement was
20 entered into, was Frank Waterhouse the treasurer
21 of NexPoint?

22 A. I don't know. It says it on there,
23 but I'm not -- I'm not certain.

24 Q. Okay. So under the NexPoint -- under
25 this NexPoint Amended and Restated Shared

1 NORRIS

2 Services Agreement, the Advisors agree to pay
3 Highland for its middle and back office services
4 in the amount of \$168,000 per month, right?

5 MR. RUKAVINA: Objection to the
6 extent it calls for a legal conclusion.

7 A. Can you repeat your question, please.

8 BY MS. WINOGRAD:

9 Q. So the Advisors agreed to pay
10 Highland \$168,000 per month for Highland's back
11 and middle office services, right?

12 MR. RUKAVINA: Objection. Legal
13 conclusion.

14 A. Can you scroll to the section where
15 it actually shows what was agreed upon?

16 MS. WINOGRAD: La Asia, could we
17 scroll up a little bit, maybe to the first page.

18 Okay. So go down a little bit. Keep
19 scrolling, please.

20 Okay. Sorry. Go to the top of
21 page 4.

22 MR. RUKAVINA: Hayley, can we open
23 this in the Chat, and then Dustin and I can look
24 at it and move around? I don't know how that
25 works.

1 NORRIS

2 MS. WINOGRAD: I think for now we'll
3 just look at the screen so that I can make sure
4 I'm on the same part as you guys.

5 THE WITNESS: And I might have this
6 agreement up on my desk. Hold on.

7 MS. CANTY: I've been putting all the
8 exhibits in the Chat.

9 MR. RUKAVINA: Oh, I know, but I just
10 don't know how to use it, honestly. I guess I
11 can click Chat and see.

12 MS. WINOGRAD: Okay. Can you scroll
13 up a little bit, please. Okay. Just down. I
14 want to get to Article 2. So the bottom of that
15 page. Okay. Right there.

16 BY MS. WINOGRAD:

17 Q. Do you see under Article 3,
18 Section 2.02(a), that says back and middle
19 office, right?

20 A. It does say back and middle office.

21 Q. Okay. Let's stay there for a second.
22 And it says "assistance and advise with respect
23 to back and middle office functions including but
24 not limited to," and then it goes on to list a
25 number of services, right, if we scroll down a

1 NORRIS

2 little bit?

3 A. Investment research, trade desk
4 services, yeah, yeah, yeah, it goes on and on,
5 yes.

6 Q. Okay. So it's fair to say that based
7 on the terms of the agreement NexPoint was paying
8 Highland for back and middle office services,
9 right?

10 A. That was the general -- yes, this was
11 shared services, primarily back and middle office
12 services provided to NexPoint Advisors.

13 Q. Okay. How was the \$168,000 a
14 month -- how was this -- how was this figure of
15 \$168,000 arrived at?

16 A. Yeah, on this one, our -- in
17 preparation for this I prepared by, as I
18 mentioned, talking to a lot of different people.
19 The people involved in creating that calculation
20 were Dave Klos and Frank Waterhouse and the
21 accounting teams under them. And so we haven't
22 had access to either of them and so we don't --
23 we don't know specifically on this \$168,000 how
24 it was calculated.

25 Q. Okay.

1 NORRIS

2 A. But we expect to ask Mr. Waterhouse
3 and Mr. Klos on that in their deposition, and
4 we'll get more information from them.

5 Q. Okay. So I just want to make sure I
6 have this straight. So as the 30(b)(6)
7 representative for NexPoint, you don't understand
8 how certain terms of this Agreement came into
9 existence?

10 A. As a 30(b)(6) witness, I did all of
11 the diligence that I could leading up to this to
12 determine that, but didn't have access, and
13 discovery is ongoing. So we do believe that we
14 will be able to get answers on that --

15 Q. I just asked a yes-or-no question.
16 So I just wanted to make sure the answer was no,
17 you didn't know?

18 A. Can you ask your original question
19 again?

20 Q. I said as a 30(b)(6) witness for
21 the -- for NexPoint Advisors, you don't
22 understand how certain terms in this agreement
23 were arrived at?

24 A. I understand how the terms generally,
25 but I don't -- again, I did all my research as a

1 NORRIS

2 30(b)(6) witness, and a key component of this is
3 people involved, we haven't had access to in
4 preparation.

5 Q. Let me rephrase the question. In
6 your individual capacity holding the title as
7 executive vice president of NexPoint, you don't
8 understand how the \$168,000 figure was arrived at
9 in this agreement that NexPoint was a party to?

10 A. No, in my individual capacity as
11 executive vice president, my job was not the
12 responsibility of calculating payments, doing
13 back office and middle office services. It
14 wasn't agreements. It wasn't legal services. In
15 fact, we had outsourced and relied on Highland
16 for those specific services. We had outsourced
17 accounting, legal services, calculation of these
18 types of things to Highland and relied heavily on
19 them.

20 I as executive vice president did not
21 have my own separate accounting team. I don't
22 have a legal team, and so that was relied on
23 heavily by --

24 Q. So the -- so the answer is no?

25 MR. RUKAVINA: Objection. Form.

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. You don't know as the executive vice
4 president how the \$168,000 was arrived at, yes or
5 no?

6 A. I said exactly that. But as the
7 executive vice president, that wasn't my
8 responsibility. I don't know in an individual
9 capacity how the \$168,000 was calculated.

10 Q. And so there is nobody at NexPoint --
11 at NexPoint who -- who had any involvement in
12 arriving at this \$168,000 number?

13 MR. RUKAVINA: Objection. Form.

14 A. So if you look at the officers at
15 that time, Mr. Waterhouse was involved. We had
16 outsourced -- again, NexPoint didn't have an
17 accounting group. And this was created -- this
18 structure was created for efficiency and
19 effectiveness utilizing resources. We weren't
20 paying someone else for additional accounting
21 services, this was done by Highland and NexPoint
22 didn't carry its own account back office and
23 middle office services group to do things like
24 this.

25 BY MS. WINOGRAD:

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. Okay. Can I refer to the HCMFA Shared Services Agreement and the NexPoint Shared Services Agreement as the Shared Services Agreement going forward? So if I say that, you will understand what I mean; I'm talking about both of them?

A. That's fine. I know there are different provisions of each of those. They aren't identical. So if you are just referring to the general, that's great, but I do -- I do know there are different provisions.

Q. Okay. So the Shared Services Agreements were both in effect as of early 2013, right?

A. And sometime before that, yes, but as of early 2013, they were both in effect.

Q. Okay. So other than to out- -- so the purpose of these Shared Services Agreements was to outsource certain middle and back office functions, right?

A. The -- yes, to contract to achieve certain back office and middle office functions that the Advisors did not carry in-house.

Q. Okay. And other than to outsource

1 NORRIS

2 these certain middle and back office functions,
3 was there any other purpose of the Shared
4 Services Agreement?

5 A. I believe the agreements speak for
6 themselves for the services included and -- you
7 know, the services that are in there, that was
8 the purpose of contracting.

9 Q. Can you think of any other purpose?

10 A. Well, here is what I would say -- let
11 me -- let me go back to the agreement here you
12 have up. The provision that says back and middle
13 office, that's 2.02(a). Then you got (b), legal
14 compliance and risk analysis. Legal compliance
15 and risk analysis, there is a lot there involved.
16 Within back office and middle office, it's a very
17 broad term. But if you look at that, it says
18 "assistance and advice back and middle office
19 including but not limited to." And it's a very
20 broad provision: investment research, trade desk
21 services --

22 Q. Okay. Is there any service in the
23 Shared Services Agreement that you would not
24 categorize as a back and middle office service?

25 A. Again, here you separated out back

NORRIS

1
2 and middle office, legal compliance, risk
3 analysis. It even says investment research in
4 back and middle office. So I think they're using
5 that term as one point. And then now if you can
6 scroll down past legal compliance, risk analysis.
7 A lot of people would say that's not just back
8 office. I think that's probably why it's a
9 separate function.

10 Q. So I don't care what a lot of people
11 would say. According to the Advisors, were they
12 categorizing these functions as back and middle
13 office services at the time this agreement was in
14 effect?

15 A. Well, I don't think (b), (c), (d),
16 and beyond a sub-bullets of (a). So they are
17 separate categories.

18 Q. Okay. So let's just look at
19 subsection (c), "Tax, assistance an advice with
20 respect to tax audit support, tax planning and
21 tax preparation." Is this a back or middle
22 office function?

23 A. I think we're splitting hairs here,
24 and I don't think it matters. But there is no
25 defining big B, big M, you know, back and middle

1 NORRIS

2 office as a defined term, unless you define
3 (a) -- again, I'm not an attorney and coming up
4 with the interpretation of a meaning in a
5 document, I can't do that.

6 Q. So was the purpose of the Advisors
7 outsource -- outsourcing these services that are
8 listed in this agreement, were they to enable the
9 Advisors to comply with the Advisors' obligations
10 to the funds?

11 A. They were a help. They weren't to
12 enable. And maybe backing up, I think it's
13 important to note even before these agreements
14 were in place, there was -- these retail advisors
15 did a lot of this on their own. In fact, I was
16 an accounting manager for the retail advisors
17 doing back office services, including a separate
18 valuation committee. There was essentially a
19 Chinese wall. And we even had separate floors at
20 one point.

21 And this allowed them to centralize
22 it and to share in those thoughts between the
23 affiliated Advisors. So you weren't duplicating
24 services. So this enabled -- but this does
25 enable the Advisors to -- to perform their

1 NORRIS

2 function under the 1940 Act of providing the
3 services needed.

4 So it's outsourcing a portion of
5 those services that we would otherwise have to
6 provide. And if there is already a separate
7 group providing those, this created efficiencies.

8 Q. Let me ask this. If these agreements
9 were not in effect, would the Advisors still have
10 been able to fulfill their obligations to the
11 funds?

12 A. They would have had to do that
13 through additional employees or other outsourced
14 Advisors or other outsourced services. We
15 outsource a number of things today, and we
16 actually saw this when we transitioned away from
17 Highland. There was a sub-period, it was only a
18 week, but where we had to --

19 Q. You've answered my question. So I
20 would like to move on now, if that's okay.

21 A. Yeah, that's great.

22 Q. Do the Advisors have contracts with
23 anyone other than the funds to provide services?

24 A. Do our Advisors or -- sorry, can you
25 repeat the question?

NORRIS

1
2 Q. Okay. So let me ask it this way. So
3 do the Advisors perform any services to any
4 entities other than the funds through the Shared
5 Services Agreements?

6 A. Through these Shared Services
7 Agreements?

8 Q. Yes.

9 A. These Shared Services Agreements are
10 services that HCMLP is providing to NexPoint
11 Advisors and HCMFA.

12 Q. Right. And as you said before, it's
13 to enable the Advisors to perform their
14 obligations to the funds, right?

15 A. Correct.

16 Q. So do the Advisors perform any
17 obligations to any entities other than the funds?

18 A. We're talking just the retail funds?

19 Q. Yes.

20 A. Meaning any services at all?

21 Q. Investment advisory services.

22 A. Yeah, certainly we provide investment
23 advisory services under advisory contracts with
24 publicly traded REITs, private REITs, Delaware
25 statutory trusts that are 1031 DSTs, other

1 NORRIS

2 private placements. You have a couple of
3 co-invest opportunities. So there is a number of
4 other vehicles other than the retail funds or the
5 '40 Act funds that the Advisors -- primarily
6 NexPoint Advisors provides investment advisory
7 services.

8 Q. So prior to the execution of the
9 Shared Services Agreements, were these Advisors
10 receiving the services set forth in these Shared
11 Services Agreements from Highland?

12 A. I don't believe so. And as I
13 mentioned, I was actually involved in a large
14 part at the Advisors providing services to the
15 Advisors. We weren't outsourcing. I ran a trade
16 settlement group as well as an operations group
17 in accounting. We had a number of -- we actually
18 had our own traders. We had our own valuation
19 committee. All these things are listed in here.

20 And so there was some of these
21 services, and it was phased in over time. And so
22 there was a handoff and a coordination in order
23 to reduce the duplication of costs. So...

24 Q. Okay. So they weren't receiving --
25 the Advisors weren't receiving these services

1 NORRIS

2 prior to the Shared Services Agreements from
3 Highland?

4 A. I'm not sure specifically on any of
5 them. Again, it's over a decade ago, and that's
6 not something that I have an answer for.

7 Q. Okay. So let's move on. Are you
8 aware that the Advisors filed an administrative
9 claim against Highland in January of 2021?

10 A. I am.

11 MS. WINOGRAD: Okay. La Asia, can we
12 pull up Exhibit 11. Scroll down a little bit,
13 please.

14 (Exhibit 11 marked for identification.)

15 BY MS. WINOGRAD:

16 Q. Okay. Do you recognize this
17 document?

18 A. I do. And I think I actually have it
19 on my desk.

20 Q. So this is the administrative claim
21 filed by the Advisors on January 25th of 2021,
22 right?

23 A. Yes.

24 Q. So the facts set forth in this
25 document state the basis for the Advisors' claim

1 NORRIS

2 against Highland, right?

3 A. As known at that time, yes.

4 Q. Is there anything inaccurate in this
5 document?

6 A. Based on what we knew at that time,
7 no. And there's been a number of other things we
8 have learned through discovery, and discovery is
9 ongoing, as I mentioned. We haven't had the
10 ability to talk to Mr. Waterhouse or Mr. Klos.
11 Mr. Seery will be deposed.

12 Q. Okay.

13 A. And so --

14 MS. WINOGRAD: Can we please scroll
15 to paragraph 16.

16 MR. RUKAVINA: I'll note for the
17 record that counsel keeps cutting off the witness
18 before he finishes his answer. So that was an
19 example.

20 THE WITNESS: True.

21 BY MS. WINOGRAD:

22 Q. Okay. Mr. Norris, looking at
23 paragraph 16, it says, "Beginning around
24 July 2020, Mr. Seery directed the Debtor to cease
25 providing to the Advisors as otherwise

NORRIS

1
2 contemplated under the Shared Services
3 Agreement" -- SSA stands for Shared Services
4 Agreement, right?

5 A. Yes, it's defined as Shared Services
6 Agreement in this document.

7 Q. Okay. And PRAs, and that's defined
8 as Payroll Reimbursement Agreements, right?

9 A. Correct.

10 Q. Do the Advisors contend that this
11 statement is accurate?

12 A. Yes.

13 Q. Okay. So in July of 2020, Mr. Seery
14 was Highland's CEO, correct?

15 A. I'm not sure what his specific title
16 was in July of 2020.

17 Q. Okay. Can you tell me all of the
18 facts you're aware of that supports the statement
19 in paragraph 16 that I just read?

20 A. Yeah. And, again, I would point out
21 that discovery is ongoing. There is a number of
22 facts that we hope to be able to obtain from
23 Mr. Waterhouse and Mr. Klos who haven't been able
24 to talk to us. Obviously Mr. Klos, because he's
25 employed by the Debtor or employed by Highland,

1 NORRIS

2 and Mr. Waterhouse because his attorneys haven't
3 allowed us to talk to him. And so we think we'll
4 get more information on this.

5 But -- and key here, beginning around
6 July 2020, there was a number of services.
7 Mr. Seery appeared in August with our retail
8 board and told them specifically he was not
9 allowing his employees, his legal team, his front
10 office investment teams under the Shared Services
11 and PRAs, the services they normally would
12 provide, to provide certain services related to
13 assets that were held across both entities.
14 There were multiple instances where they were no
15 longer going to be providing services.

16 Historically Highland had provided
17 our legal services, compliance services. And so
18 there was a number of things specifically where
19 they were told do not work on. Those were things
20 we normally would have help on. That includes --
21 we had a conflicts committee any time there were
22 cross-held positions. There were instances where
23 we had to convene our own investment research.
24 They had analysts in the front office that
25 covered these names; we were not. And so we were

NORRIS

1
2 paying for front office services for investments
3 that our funds were invested in that we could no
4 longer receive those services for. And we had to
5 do a number of things in order to plug those
6 holes. But it was very clear, I even saw an
7 email from Mr. Seery to the legal team saying
8 they would be fired if they worked on a certain
9 matter. That was an entity -- an asset that was
10 cross-held that -- obviously there is the
11 contention on Highland's side if there was
12 conflicts, but those were things that were
13 provided under the Shared Services Agreements and
14 PRAs prior that were no longer provided starting
15 on or around that time.

16 Q. Okay. So that was a lot, so I'm just
17 going to try to clarify a few things.

18 Can you specify what services you
19 were referring to? You mentioned legal, but I
20 just want to make sure I understand the specific
21 services that you were stating there.

22 A. Yeah. Legal and compliance services.
23 There was litigation support as well. There was
24 some items that we were involved in litigation on
25 that Mr. Surgent, for example, was participating

1 NORRIS

2 in. He had to drop that at Mr. Seery's request
3 and turn it over to DC Sauter on our end.

4 There is front office investment
5 services related to certain entities. There was
6 valuation related to that, valuation services.
7 There was committees and conflicts-related
8 committees that were always handled and run by
9 HCMLP and their legal compliance and investment
10 professionals.

11 Let me go to the advisory agreement
12 here, specifically. If you want to pull up -- we
13 can go line by line if you -- actually, let me
14 pull up -- I think, again, that's a start. And
15 there are other items. And, again, discovery is
16 ongoing, but our position is that there were
17 significant items that would have normally been
18 provided during that time period under those
19 agreements.

20 Q. What -- what exactly did Mr. Seery
21 say to Highland in July of 2020?

22 A. What did he say to Highland?

23 Q. Uh-huh.

24 A. As in directed to the Debtor?

25 Q. Yeah. So looking at paragraph 16, it

1 NORRIS

2 says, "Beginning around July 2020, Mr. Seery
3 directed the Debtor to cease providing services."

4 What did he say?

5 A. Yeah, we -- again, discovery is
6 ongoing. We're going to have a chance to
7 actually talk to Mr. Seery, too, get his
8 testimony. But we know that he told the legal
9 team and the compliance teams to specifically not
10 work on certain things. He told the investment
11 professionals as well. He told our traders --
12 again, our traders cannot do something for us.
13 They were providing trading services, yet, the
14 traders were employed by our Advisors. And so --
15 but there were specifically certain matters.

16 And he told Mr. Sauter that he had
17 instructed his team not to work on things that
18 were in opposition to the Debtor, which could be
19 understandable, but those services also impacted
20 our investments that they normally would work on
21 under the Shared Services Agreements. And we had
22 to find ways to handle that. So...

23 Q. Okay. Did Mr. Seery say all of these
24 things in person?

25 A. The call that he had with our board

1 NORRIS

2 was he called -- he dialed in. And I don't -- to
3 the extent of certain individuals, some of it was
4 in writing; some of it was in person. We haven't
5 actually seen one of the emails I referred to yet
6 from your discovery. That one hasn't been
7 provided maybe because it was to the legal team,
8 and there is a claim of privilege. But he said
9 to Mr. Sauter in email specifically that his
10 legal team was not allowed to work on certain
11 matters. But there was other items that were
12 directed in person or by phone.

13 Q. Okay. And as a result of Mr. Seery's
14 statements, did the Debtor stop providing
15 services to the Advisors?

16 A. Yes.

17 And I would also point out that there
18 was a number of things that typically -- and I
19 mentioned -- another one I thought of is there
20 were officers of our retail funds that were
21 employed by HCMLP. That was one of the services.
22 And we had a number of board meetings and
23 matters, they just didn't join because there was
24 a potential conflict. And that included Lauren
25 Thedford, Dave Klos, Frank Waterhouse. And we

1 NORRIS

2 would typically have had much more support under
3 the Shared Services Agreement. And that was a
4 direct result of the concerns they had with even
5 potentially having an issue with Mr. Seery,
6 Mr. Klos, and Mr. Waterhouse have told me that
7 they were concerned that Mr. Seery had said
8 multiple times that they would have potential
9 personal liability and be fired if they did
10 anything that could be detrimental to the estate
11 or could harm the monetary interest of Highland.

12 So they were -- they were concerned.
13 And so they understandably were very cautious in
14 what they were doing and providing, and that
15 second -- you know, during that entire period
16 after that on or around July 20th, there was
17 significant less -- significantly less support
18 from the Highland group.

19 Q. When did the Advisors first learn
20 that Highland stopped providing those services?

21 A. There was -- you know, obviously --
22 in regard to just this or in regard to just
23 services in general?

24 Q. The services that are referenced in
25 the second sentence of paragraph 16 that you just

1 NORRIS

2 talked about.

3 A. Yeah. In regard to the Court's
4 concerns about providing certain services to
5 non-Advisors resulting in on or around. I think
6 that's pretty clear, you know, as a result
7 beginning on or around July 20th.

8 Q. Okay. So the Advisors learned this
9 on or around July 2020?

10 A. Uh-huh.

11 Q. Okay. So when they found out that
12 Highland stopped performing these services, what
13 did the Advisors do?

14 A. Yeah, so we had a number of
15 discussions, including emails with Mr. Seery,
16 including discussions with Mr. Waterhouse,
17 Mr. Klos. We had -- our attorneys had
18 discussions and conversations with Highland's
19 attorney. There was an email back and forth
20 between your firm, Pachulski, and our attorney,
21 K&L Gates, in October. Our board expressed
22 concerns when Mr. Seery was on the call in August
23 directly to him. There was a number of
24 conversations. Mr. Sauter had ongoing
25 conversations --

1 NORRIS

2 THE WITNESS: Excuse me, was that --

3 MR. RUKAVINA: My fault.

4 A. There was a number of discussions
5 regarding services being provided. And granted
6 at this point -- up until this point, largely
7 both sides believed there would be an amicable
8 resolution to the whole bankruptcy, including
9 Mr. Seery who multiple times even told our board
10 that he viewed that there would be an amicable
11 resolution. And so we had a lot of ongoing
12 discussion throughout all this, and the response
13 was, sorry, this is, you know, from
14 Mr. Waterhouse and Mr. Klos, this is what we've
15 been directed to do; there is an automatic stay.
16 I've been told we can't do this. We have to be
17 careful. We're worried about what Mr. Seery will
18 do. And the direction from Mr. Seery to
19 Mr. Sauter was what you find in the email and
20 discussions.

21 BY MS. WINOGRAD:

22 Q. Okay. Just moving forward, I'm going
23 to ask you to just try to listen really carefully
24 to what I'm asking and keep your answer
25 responsive to my question.

1 NORRIS

2 MR. RUKAVINA: And I would ask you
3 when you find a convenient time for a restroom
4 break, no rush.

5 THE WITNESS: I could use one, too.

6 MS. WINOGRAD: Sure. Let me just
7 finish this line of questioning, and then we'll
8 take a small break. I should be done in a couple
9 of minutes.

10 BY MS. WINOGRAD:

11 Q. Did the Advisors tell Highland in or
12 around July of -- July or August of 2020 that
13 Highland was in breach of the Shared Services
14 Agreements as a result of Mr. Seery's direction?

15 A. Did we tell Highland that they were
16 in breach? I'll just reiterate my -- there was a
17 lot of discussions ongoing about the concerns of
18 the services and -- including both the Shared
19 Services and Payroll Reimbursement Agreement.

20 Q. Okay. But there was no discussion
21 regarding a breach on Highland's part?

22 A. Oh, I think there -- I don't know if
23 that's a defined term, "breach," but we certainly
24 clarified that we were paying for services we
25 were not receiving under both agreements, and

1 NORRIS

2 that was clear throughout.

3 Q. Okay. So as a result of Mr. Seery's
4 direction, did the Advisors in or around July
5 of 2020 and August of 2020 make a demand on
6 Highland that it perform under the Shared
7 Services Agreements?

8 A. That specifically, we demand you
9 perform, no. But we sent a letter, an email that
10 we thought that they were overbilling. And we
11 actually asked for the invoices --

12 Q. When --

13 A. -- and none were provided to us.

14 What's that?

15 Q. No, I didn't -- I thought you were
16 done. Continue.

17 A. Yeah, I cut off my train of thought
18 there. But there was multiple requests
19 specifically to what they were charging us.
20 Because if you go back to the Shared Services
21 Agreement for HCMFA, it was a cost plus 5
22 percent. If you go to the Payroll Reimbursement
23 Agreement, it was a reimbursement for actual
24 employee expenses. So on or around this time, we
25 started asking for invoices, and we did that over

1 NORRIS

2 many months asking many different people, and
3 they wouldn't provide it to us because they had
4 said they couldn't. Mr. Seery wouldn't allow it.
5 We would ask; they couldn't. And that was DSI,
6 that was Frank and Dave, that was directly to
7 Pachulski in multiple -- there was an email and
8 then there was a letter on December 11th.

9 So there was ongoing discussion
10 throughout this time period that we were trying
11 to get to the answer. We didn't know. We had
12 outsourced this to Highland to take care of, and
13 we assumed they were billing us for the proper
14 amount. That's important. We relied on Highland
15 for what they were billing us. And so we assumed
16 they are doing less services. Okay. If they are
17 doing less services, they would bill us for
18 actual services. We later found out that wasn't
19 the case.

20 Q. Okay. So other than asking Highland
21 for invoices, did the Advisors say to Highland in
22 or around July and August of 2020 that Highland
23 was not performing under the Shared Services
24 Agreement?

25 A. Your language there "not performing."

1 NORRIS

2 There were still certain services they were
3 doing. It wasn't they ceased all services.
4 Right? And what we did, instead of making a
5 major issue about it, because we knew there was
6 an automatic stay, we knew we couldn't terminate
7 the agreement, what we did is we went and hired
8 additional employees. We brought Jason Post
9 in-house. He was a Highland employee. That was
10 approved by Mr. Seery and Mr. Surgent.

11 We also hired another attorney
12 because we couldn't provide -- Highland wasn't
13 providing those services. In addition, we had to
14 rely on firms like K&L Gates who was Advisor
15 counsel to provide an up- -- a big increase in
16 additional services during that time period that
17 we would have received from Highland.

18 Mr. Sauter -- you want to interrupt?

19 Mr. Sauter, who was hired as a -- an
20 attorney to work on real estate-related
21 acquisitions and transactions had to step in and
22 do a lot of things that Highland's legal and
23 compliance team would have done, and litigation
24 support would have done.

25 So there was the understanding that

1 NORRIS

2 we were paying for services that were provided,
3 not paying for what wasn't provided, which is
4 what we ended up learning that, one, we paid for
5 services that weren't provided, which was a
6 reimbursement on both the PRAs and SSAs.

7 Q. Are you done?

8 A. I am, yeah.

9 MS. WINOGRAD: I'm going to move to
10 strike all of that because none of it was
11 responsive to my question.

12 BY MS. WINOGRAD:

13 Q. Did Highland in or around July or
14 August of 2020 tell the Advi- -- did the Advisors
15 tell Highland in or around July or August of 2020
16 that Highland was not performing under the Shared
17 Services Agreement, yes or no?

18 A. I -- I know you moved to strike, but
19 I believe that was responsive in that we
20 provided -- my screen went blank. Sorry. It's
21 back.

22 All of that was explaining what we
23 actually notified Highland of and the discussions
24 we had had regarding the quality of service.

25 Q. Okay. So is there a document that

1 NORRIS

2 reflects the Advisors telling Highland during
3 this time that Highland was not performing its
4 obligations under the Shared Services Agreements?

5 A. Again, let's go back to "not
6 performing their obligation." There is a number
7 of services they were providing. We acknowledge
8 that. It's just were we paying for what was
9 provided, right? Did they -- did they drop all
10 services? No. They provided a number of
11 services. And there was a lot of people working
12 really hard during this time period, a lot of
13 great -- great people that did great work. But
14 they were charging us for the full amount of
15 services that they were providing pre-bankruptcy,
16 continued to charge us for the same amounts
17 without adjustments.

18 And on the PRAs, we didn't know that
19 they continued to charge us for employees that
20 were no longer hired or employed by Highland. In
21 fact, many of them weren't even employed at the
22 filing of the bankruptcy. And so at this point
23 we were relying on Highland to be paying the
24 proper amounts and to be billing us the proper
25 amounts, and they continued to charge for

1 NORRIS

2 employees that weren't there.

3 MR. MORRIS: Can I have the question
4 read back, please?

5 MR. RUKAVINA: I just want to note
6 again that my witness was interrupted in
7 mid-sentence.

8 MR. MORRIS: The question was whether
9 there's anything in writing. So let's have the
10 question read back, please. These speeches are
11 getting a little longwinded.

12 MR. RUKAVINA: Yeah, yeah. I'll
13 answer that. Is Mr. Morris asking the question
14 now, or is that coming from Hayley.

15 MR. MORRIS: I want to know what the
16 question was asked, and then I will let
17 Ms. Winograd take over.

18 THE REPORTER: QUESTION: "So is there a
19 document that reflects the Advisors
20 telling Highland during this time that
21 Highland was not performing its
22 obligations under the Shared Services
23 Agreements?"

24 A. There are emails saying that the
25 services -- we believed that we were paying for

NORRIS

1
2 services not provided. There is an email from
3 our counsel, K&L Gates, to Pachulski in October.
4 There is an email in December, December 11th that
5 was sent requesting documents. There is emails
6 from myself and DC Sauter to Frank and Dave
7 trying to understand what we were paying for.
8 And a response saying that there was a profit
9 being charged and that they were charging for
10 employees that were no longer employed. So that
11 is -- those are the -- those are the written
12 items. There may be others. Again, we haven't
13 had a chance to conclude our discovery. We
14 haven't even spoken to Mr. Waterhouse on this.
15 He may know of other items. We haven't spoken to
16 Mr. Klos. We haven't deposed Mr. Klos. But I
17 think there is a lot of written materials there.

18 BY MS. WINOGRAD:

19 Q. Okay. Mr. Norris, I don't care what
20 all of these other people know about this. I'm
21 asking you as a 30(b)(6) witness just for the
22 record. And so you mentioned that the Advisors
23 found out that -- that the Debtor stopped
24 providing these services as of July of 2020, but
25 then the first time that this was reflected in an

1 NORRIS

2 email was October of 2020, as you just said.

3 A. Yeah, I think the -- well, there may
4 be others, and there was conversations with our
5 board. I'm sure there's board minutes. There
6 was conversation with Seery in August where they
7 expressed concerns.

8 But the key aspect here, even during
9 this timeframe when we found out, we assumed we
10 would be paying for actual services provided plus
11 5 percent. If they stopped providing the
12 services for legal and compliance, if they
13 stopped providing certain services, we would
14 assume they wouldn't be billing us for that. And
15 so was there a need? Well, sure, certain
16 services dropped off. We understood that the
17 Court had concerns. We understood that there was
18 conflicts that people couldn't be working. We
19 were understanding. Like, this was a unique
20 situation. But we didn't assume we would
21 continue to pay the same amount.

22 You know, if someone's at one point
23 paying -- providing investment advisory services,
24 again, the Investment Advisory Agreement -- or
25 PRAs are a cost plus.

1 NORRIS

2 MR. RUKAVINA: Is this a good point
3 for a restroom break?

4 MS. WINOGRAD: I have one more
5 question before we take a restroom break.

6 BY MS. WINOGRAD:

7 Q. If the Advisors knew as early as July
8 of 2020 that Highland wasn't performing its
9 obligations, why did it continue to pay for these
10 services for up until at least October of 2020?

11 A. Yeah, and I'll -- I'll lay this out
12 again. We didn't pay. We had actually provided
13 and relied on Highland, HCMLP, and their
14 accounting services, their legal services to
15 continue to pay. Highland employees prepared an
16 invoice, they made a payment, they actually had
17 access to our bank account, they continued to
18 make those payments all along the way. We did
19 not know that we were paying for services that
20 were not provided. We didn't know at that time
21 that we were paying for employees that were no
22 longer employed. Had we known about it and we
23 started to get an understanding or started to
24 think that and we asked multiple times, and until
25 we actually got the data or started to get the

1 NORRIS

2 data -- and, in fact, when we found out we were
3 paying for employees that were no longer
4 employed, we were shocked, looking at the actual
5 schedule of who they were charging for.

6 So what were we paying Highland for
7 if not for accounting back office payments,
8 accounts payable services, and Highland knew of
9 the overpayments and continued to process them in
10 the ordinary course. And Dave and Frank told us
11 when we asked about it and finally found this
12 out. They said they discussed it. They even
13 created a calculation of overpayment. They
14 discussed it with Highland counsel. They
15 discussed it with management, and there was
16 nothing they -- they were told there was nothing
17 they could do because of the automatic stay.

18 And it's at that point that was the
19 first time -- I'm not an attorney, and I'm not a
20 bankruptcy attorney at all -- heard the word
21 "automatic stay." So there is -- that's a
22 longwinded way of answering the question.

23 Q. So NexPoint was paying almost
24 \$200,000 a month, correct?

25 A. The exact number -- NexPoint was

1 NORRIS

2 paying \$252 for -- \$252,000 for payroll
3 reimbursement amount.

4 Q. No, I'm talking about the -- under
5 shared services.

6 A. Did you say HCMFA or NexPoint?

7 Q. NexPoint.

8 A. NexPoint I believe the number was
9 168,000.

10 Q. 168,000. But it didn't know what it
11 was paying for, right?

12 A. Can you clarify your question?

13 Q. You said that -- earlier you said
14 Highland was paying, you said when I asked why
15 the Advisors continued to pay. So NexPoint --
16 isn't it fair to say, then, that NexPoint was
17 paying all this money but that they didn't
18 understand what it was paying for during this
19 time?

20 A. We thought we knew what we were
21 paying for, right? And I'll clarify here. There
22 is a NexPoint agreement that has a stated
23 \$168,000 as you mention, and there's a HCMFA
24 agreement that's cost plus. We thought we were
25 getting the services we bargained for, and we

1 NORRIS

2 would assume that Highland would actually bill us
3 for the actual services provided, which we were
4 paying around \$300,000 a month for HCMFA Shared
5 Services Agreement. And it was \$252,000 a month
6 for NexPoint Advisors PRAs, and the HCMFA PRAs
7 were \$416,000 a month. We can go through the
8 calculations on what we believe was the
9 overpayment during this entire period, but it's,
10 you know, significant, right? We provided our
11 calculation, which is utilizing Ms. Hendrix
12 numbers for payroll that I believe was taken
13 directly from the payroll system, and that shows
14 \$7.6 million for paying for employees that were
15 no longer employed.

16 MS. WINOGRAD: Okay. I'm going to
17 move to strike all of that. It was unresponsive
18 to my question. And we're going to now take a
19 five-minute break. So why don't we come back at
20 11:45.

21 MR. RUKAVINA: Can we take ten,
22 Hayley? I've got to make a quick call.

23 MS. WINOGRAD: Sure. Let's come back
24 at 11:50.

25 MR. RUKAVINA: Thank you.

1 NORRIS

2 (A break was taken from 10:39 a.m. to
3 10:52 a.m.)

4 MS. WINOGRAD: I apologize for
5 interrupting you before. I didn't intend to, and
6 I will try to make sure that you finish your
7 complete answer. At times there was a little
8 pause and I maybe thought you were done and I got
9 ahead of myself. But in turn, I would also ask
10 that you please listen carefully to my questions
11 and just answer the questions that I asked. Is
12 that fair?

13 THE WITNESS: Yeah, I -- no, I
14 appreciate that. And I may well have been
15 attempting to answer the question the best I can.

16 MS. WINOGRAD: Thank you. All right.
17 We'll get through this.

18 BY MS. WINOGRAD:

19 Q. So I just want to go back a little
20 bit about these -- you mentioned that the --
21 there were certain conflict issues relating to
22 Mr. Seery's directions to the Debtor, right?

23 A. Uh-huh.

24 Q. One of those issues involved OmniMax,
25 right?

1 NORRIS

2 A. It did.

3 Q. Were there any other conflicts that
4 existed other than OmniMax?

5 A. There were a number of -- other
6 issues, investment -- in addition to OmniMax.

7 Q. Okay. Were there any issues
8 unrelated to issues of conflicts?

9 A. So I think when you look at -- you
10 have conflicts, but then it started out with the
11 OmniMax transaction where no one can work on
12 this, and then it turned into, well, anything
13 that could be perceived as being amicable to the
14 Debtor, and then it turned into most of the
15 services, legal and compliance, just eventually
16 stopped. And so it wasn't a, you know,
17 let's-halt-everything-can't-do-anything. So
18 outside of conflict, there was a drop-off in the
19 overall services, I think also in line with what
20 was going on at this time.

21 Q. Okay. So just to confirm, the -- so
22 in paragraph 16 that we talked about for a while,
23 when Mr. Seery directed the Debtor as it's
24 alleged in the claim, there was -- those
25 directions related to issues of conflict, right?

1 NORRIS

2 A. Largely, yes. And I would say
3 particularly at the start, yes.

4 Q. Okay. Did the Advisors inform the
5 retail boards that there were these issues going
6 on at the time?

7 A. Yes.

8 Q. Okay. When, exactly, did they inform
9 them?

10 A. As they were happening. I kind of
11 laid out that timeframe, but as they were
12 happening. We had -- I don't remember the
13 specific number, but it was around 24 retail
14 board meetings in 2020, and particularly around
15 this time period, beginning in July and on many
16 more. And in the first two months of 2021, we
17 had a significant number of board meetings. So
18 the board was very aware of all those challenges.
19 And Mr. Seery had joined the board meeting and
20 expressed some of those items directly to the
21 board.

22 Q. Okay. Do the Advisors contend that
23 the -- that Highland is required to perform
24 certain services that would have been adverse to
25 the Debtor?

NORRIS

1
2 A. I don't think that's our contention,
3 right? There would be certainly areas where
4 there would be conflicts sort of -- yeah, that's
5 not our contention.

6 Q. Okay. Are you aware that in August
7 of 2020 the court -- the bankruptcy court issued
8 an order expressing concern regarding certain
9 Highland lawyers' conflicts of interest?

10 A. Yeah, I think that's probably what we
11 referred to in our filing.

12 Q. Uh-huh.

13 A. If you can open it back up, I think
14 it says -- I don't have it in front of -- that
15 one right in front of me, but it said including
16 the Court's statements.

17 Q. Okay. So you are aware, right?

18 A. Yes.

19 Q. Okay.

20 MS. WINOGRAD: So, La Asia, can we
21 please pull up Exhibit 30.

22 (Exhibit 30 marked for identification.)

23 BY MS. WINOGRAD:

24 Q. This is it the order we just referred
25 to, right?

NORRIS

1
2 A. I don't know. I've never seen the
3 order.

4 Q. Okay. That's fine. This was the
5 issued by the bankruptcy court on August 11th,
6 2020, right?

7 A. Again, I don't know. I'm not an
8 attorney. I'm still learning what court
9 documents mean. But it says "order" down below,
10 and it's signed August 11th.

11 Q. Okay. That's fine.

12 MS. WINOGRAD: La Asia, can we scroll
13 to page 10, please. There we go.

14 BY MS. WINOGRAD:

15 Q. Do you see here in bold it says, "The
16 court trusts the Debtor's independent directors
17 and new CEO are scrutinizing the issue of
18 in-house lawyers potentially advising both the
19 Debtor and Highland Non-Debtor Entity targets"?

20 A. Yes.

21 Q. Okay. And it's fair to say when the
22 Court refers to the new CEO, it's referring to
23 Mr. Seery, right?

24 A. I'm not -- I'm not familiar with the
25 structure. So I don't know that that's a safe

1 NORRIS

2 assumption. But if you tell me that's the case,
3 I'll take your word.

4 Q. Okay. Do the Advisors contend that
5 Highland breached its duties around July of 2020,
6 August 2020, by avoiding conflicts pursuant to
7 this language?

8 A. And I don't believe that's our
9 stance, right? The approach here is we were
10 paying for actual services provided, and if they
11 couldn't provide them because of conflicts, they
12 should have charged us for them or reduced our
13 billing. Those services were normally provided.
14 Even if there is a conflict, you can't just bill
15 for the cost of something that was not provided.

16 So we don't contend that they should
17 have been providing services that were, you know,
18 in conflict to your own state.

19 Q. Okay. Was there anyone at the
20 Advisors charged with the responsibility of
21 making sure that the Advisors paid for services
22 that they were, in fact, receiving?

23 A. We had outsourced that to Highland.
24 And -- and up until this point, we had believed
25 that Highland was doing the right thing. And the

1 NORRIS

2 agreements are very clear on what the
3 responsibilities in fair dealing are, and we had
4 tasked Highland with that.

5 At this time because of the
6 conflicts, other people started to get more
7 involved because Highland couldn't perform those
8 functions. And that's when all of the -- all of
9 the things we've been talking about came about.

10 So we did not have an accounting team
11 or someone in-house that was tasked with
12 verifying the payments. And because we had a
13 trusted -- we thought trusted group -- and even
14 then we think that the accounting team had done
15 the right thing in tracking it, but did not bring
16 it to our attention, the overpayment, because
17 they were told by Mr. Seery and their counsel and
18 DSI that they couldn't do anything about it
19 because of the automatic stay.

20 Q. Okay. But didn't the accounting team
21 report to Mr. Waterhouse?

22 A. They did, who was the CFO of Highland
23 Capital Management, LP.

24 Q. And he was also the treasurer of
25 NexPoint, right?

NORRIS

1
2 A. He was the treasurer of our Advisors,
3 correct. But he performed those functions and
4 his accounting function that was outsourced
5 Highland.

6 Q. Okay. So did -- was Mr. Waterhouse
7 aware in July of 2020 of these issues of conflict
8 that we just talked about?

9 A. I mean, we haven't had a chance to
10 talk to Mr. Waterhouse in preparation for this,
11 and we'll definitely ask him that in the
12 deposition. But we don't -- I don't know what
13 Mr. Waterhouse knew and when.

14 MS. WINOGRAD: Okay. La Asia, can we
15 show Exhibit 11, please. Yeah, can we scroll to
16 paragraph 17, please.

17 BY MS. WINOGRAD:

18 Q. Do you see here in the second
19 sentence of paragraph 17 that it says, "For
20 example, upon information and belief, the Debtor
21 has booked a net income from the Shared Services
22 Agreement of approximately \$10 million since the
23 petition date?"

24 A. I do.

25 Q. Okay. Do the Advisors contend that

1 NORRIS

2 this statement is accurate?

3 A. Yeah, so based on at that time of
4 what we knew and understanding, we were taking
5 this from information that was relayed from
6 Mr. Klos and Mr. Waterhouse without seeing
7 documents. Now that we have received the
8 discovery items, we believe this number is for
9 the Shared Services Agreements and PRAs, right,
10 that there had been profits. We received the
11 calculation from Mr. Klos that shows \$9.6 million
12 of annual profits that were reported.

13 Q. Okay. So I just want to make sure I
14 have this correct. You said that the \$10 million
15 is actually profits from both the Shared Services
16 Agreement and the Payroll Reimbursement
17 Agreement?

18 A. Yeah. And that was based on the
19 information we had at the time. And that should
20 be Shared Services Agreements and PRAs.

21 Q. Okay. And the \$10 million is
22 reflected in a document; is that right?

23 A. Of approximately, yeah. So in
24 discovery there was a document provided. The
25 label is ACL025012. This is Intercompany

1 NORRIS

2 Services Agreement. And it has a, quote,
3 "estimated gain on all intercompany agreements of
4 \$9.6 million."

5 Q. Okay.

6 A. And that is -- in the email that was
7 an annual amount, and we're talking 16 months in
8 the bankruptcy filing until the end of the SSAs
9 and PRAs, so arguably that is higher.

10 Q. Okay. And then it says in the first
11 sentence of paragraph 17, "The Advisors continued
12 to pay for those services under the Shared
13 Services Agreements and PRAs consistent with
14 historical practice despite the fact that the
15 Debtor is not providing all of the required
16 services.

17 So what do the Advisors mean by
18 historical practice?

19 A. Yeah, the historical practice was we
20 outsourced payments, calculation of those
21 payments to Highland, and the actual -- they had
22 access to our bank accounts to make the actual
23 wires and approve those. So that continued.

24 The accounting team over there,
25 Kristin, Dave, Hayley, Frank, they continued to

1 NORRIS

2 make those payments. And we assumed that they
3 were continuing to make the payments based on the
4 actual services provided.

5 Q. Okay. So before making the payments
6 each month, did the Advisors take any steps to
7 ensure that it was paying for service it
8 received?

9 MR. RUKAVINA: Objection. Form.

10 A. Again, we relied on the provided
11 services -- and if you look at the Shared
12 Services Agreement, it's accounts payable, it's
13 accounting services, and that was what we relied
14 on.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We didn't -- sorry. Go ahead.

18 Q. No, continue. I thought you were
19 done.

20 A. I'm good.

21 Q. Okay. So in that same paragraph in
22 the last sentence, it states that, "The Advisors
23 have incurred significant additional expenses
24 obtaining services elsewhere that the Debtor was
25 required to provide under the Shared Services

1 NORRIS

2 Agreements." Do you see that?

3 A. I do.

4 Q. Okay. What services are the Advisors
5 referring to here?

6 A. Yeah, so specifically this is legal
7 and compliance services. And so there were
8 significant additional costs. I mentioned we had
9 to hire another attorney who is not -- doesn't do
10 any litigation-related work or related bankruptcy
11 work. It's general legal services.

12 And then Jason Post, who was hired
13 directly to the Advisor, while we continued to
14 still pay the same dollar amounts even after he
15 moved over. So those -- those were the
16 additional expenses.

17 In addition, there were outside legal
18 expenses. We had to lean heavily on K&L Gates
19 and Davor and his team. But, you know, we had
20 considered including those expenses here, the
21 outside legal expenses, but in order to not waive
22 privilege, we're not going to try and quantify
23 those. We quantified what we believe is the cost
24 for the additional attorney and Mr. Post for the
25 five months Post -- that they moved over or were

1 NORRIS

2 hired. But those are the significant additional
3 expenses for the Shared Services Agreements.

4 Q. Okay. And are there documents to
5 reflect these additional expenses you just talked
6 about?

7 A. Yeah, we have hiring documents.
8 There is emails coming from Mr. Surgent to
9 Mr. Sauter saying that these -- that Jason Post
10 needs to move over, that it's been approved, the
11 reason and rationale. And then we have -- it's
12 just a simple math, what was their pay. And I
13 confirmed with our payroll team, accounting team
14 on what the compensation for the additional
15 attorney from the time he was hired in October
16 until the end. And then Mr. Post's compensation
17 during that time as well.

18 Q. Okay. Those documents that you just
19 mentioned, do you know if those have been
20 produced to Highland?

21 A. The emails between Mr. Surgent and
22 Mr. Sauter are in your possession. The
23 additional payroll items I'm not sure. I can
24 check with Mr. Rukavina.

25 Q. Uh-huh.

1 NORRIS

2 A. And I can talk about the amounts, if
3 you want, what we assume the amounts to be.

4 Q. Okay. Can we go to paragraph 19,
5 please.

6 Okay. It says here, "The Advisors
7 have brought these issues to Mr. Seery's
8 attention."

9 We kind of touched on this earlier,
10 but I want to get a little bit more specific.
11 What issue is this sentence referring to?

12 A. I would -- it's probably in the
13 paragraphs above. Maybe we scroll back up and
14 see what "these issues."

15 Q. Are these issues relating to the
16 conflicts issues?

17 A. I don't see -- the paragraph
18 immediately above said, "There have also been
19 similar overpayments under the PRAs. There is a
20 schedule attached to PRAs of investment
21 professionals whose compensation would be
22 reimbursed by the Advisors, but this schedule is
23 incredibly outdated and includes many
24 individuals, for example, who departed the Debtor
25 before the petition date or during the bankruptcy

NORRIS

1
2 case. As a result, the Advisors estimate that
3 since the petition they've overpaid under the
4 PRAs more than \$9 million."

5 That is certainly an issue that would
6 be these issues. If you scroll up to 17, maybe
7 you can scroll up, we can take a look at that.

8 Q. Okay. And so do you know when the
9 Advisors brought these issues to Mr. Seery's
10 attention? Was it -- yeah, do you know when?

11 A. There was multiple times throughout
12 that time period, that late 2020 period.

13 Q. Okay.

14 MS. WINOGRAD: La Asia, can we please
15 pull up Exhibit 5. Thank you.

16 (Exhibit 5 marked for identification.)

17 BY MS. WINOGRAD:

18 Q. Are you familiar with this document?

19 A. Very high level.

20 Q. Okay. Can you confirm this is a
21 Sub-Advisory Agreement between Highland and
22 NexPoint?

23 A. This Sub-Advisory Agreement dated
24 effective January 1st, entered into between
25 NexPoint and -- yeah, that looks to be the case.

1 NORRIS

2 Q. Okay.

3 MS. WINOGRAD: La Asia, can we please
4 scroll to page 13. Thank you.

5 BY MS. WINOGRAD:

6 Q. So this was signed by Frank
7 Waterhouse on behalf of both Highland and
8 NexPoint, right?

9 A. Again, that appears to be the case.
10 Without checking with Mr. Waterhouse, I don't
11 know that he personally signed, but it does
12 appear to be his signatures.

13 Q. Okay. And as you just said, this --
14 this agreement was effective January 1st of 2018,
15 right?

16 A. We'd have to go back up and look. I
17 think that was the date.

18 Q. We'll just go back to the first page
19 just to confirm.

20 A. Yeah, effective as of January 1st,
21 2018, that's correct.

22 Q. Okay. Do you know the purpose of
23 this agreement?

24 A. So on this, I do not. Again, this is
25 one that we have not had access to

1 NORRIS

2 Mr. Waterhouse, who signed this, in understanding
3 the purpose of this.

4 If you go down reading the agreement,
5 if you want to scroll down, I believe this was to
6 provide compensation for certain front office
7 services.

8 Q. Uh-huh. And are front office
9 services, are they investment advisory-type
10 services?

11 A. Again, let's look -- and I'm not as
12 familiar with this document. I know I had seen
13 it at some point, but maybe you can scroll down.

14 Q. Yeah, let's go to Section 1. There
15 we go. It says here, "Limited Scope of
16 Services." Do you see here in subsection (a) it
17 says, "Highland is hereby appointed a Sub-Advisor
18 to the Management Company for the purpose of
19 assisting the Management Company in managing the
20 Portfolios of each Account pursuant to the
21 Management Agreement and Related Agreements"?

22 A. Yes.

23 Q. Okay. So is it fair to say based on
24 that language that this agreement related to
25 investment services?

1 NORRIS

2 A. It appears that way, but I'm not
3 great at interpreting legal documents, because
4 I'm not an attorney.

5 Q. Okay. So do you know if this was
6 subject to negotiation?

7 A. I -- I do not know on this one. And
8 this is one that I asked -- in preparation for
9 this, I spoke with different people, and I don't
10 know the process that went into the creation of
11 this document.

12 MS. WINOGRAD: Okay. Can we go to --
13 go to page 3, please.

14 BY MS. WINOGRAD:

15 Q. Do you see here where it says
16 "Compensation" under subsection 2?

17 A. Uh-huh.

18 Q. And it says here, "As compensation
19 for its performance of its obligations as
20 Sub-Advisor" -- and Sub-Advisor, can we agree,
21 refers to Highland?

22 A. Yes.

23 Q. Okay. And then it says, "...the
24 Sub-Advisor will be entitled to receive a monthly
25 fee in the amount of \$252,000," right?

NORRIS

1
2 A. Yes.

3 Q. Do you have any idea how this number
4 was arrived at?

5 A. I do not.

6 Q. Okay.

7 A. Again, we haven't had access to
8 Mr. Waterhouse and Mr. Klos, who I believe
9 prepared that. And the number is, I would say,
10 the exact number that is from the Payroll
11 Reimbursement Agreement, which was instituted and
12 may have, I think, took over this agreement
13 effective the same date, and was applied to a
14 certain number of employees and their specific
15 allocations of time and compensation. So I don't
16 know for certain that that's -- it just happens
17 to be the same amount, but then the other
18 agreement came in as effective the same date. We
19 haven't been able to speak to Mr. Waterhouse to
20 get the full details, but I -- I think it's based
21 on the reading here and the number, it is based
22 on if it were the same exact number of the same
23 agreement, which was, I think, superseded this,
24 effectively the compensation for those front
25 office employees at that time.

NORRIS

1
2 Q. Okay. So it's fair to say, then,
3 based on this agreement, what we're looking at,
4 that this is the number that the Advisors paid to
5 Highland for certain sub-advisory services
6 rendered by Highland, right?

7 A. Only to the extent this agreement was
8 in force.

9 Q. Okay. Perfect.

10 Do you know when this agreement was
11 terminated?

12 A. I don't. And you have the --
13 actually, I have the PRA for NexPoint Advisors.

14 Q. Okay. We'll -- we'll get to that,
15 but we -- we can get there in a second. So --

16 A. I think it was -- sorry, go ahead.

17 Q. So just to stick with this specific
18 agreement for a second before we move on to the
19 PRAs.

20 So people employed by Highland had
21 been providing advisory services to the Advisors
22 since the Advisors were formed, right?

23 A. Sorry, go ahead. Can you repeat
24 that?

25 Q. Highland employees had been providing

1 NORRIS

2 Advisory services to the Advisors since the
3 Advisors were formed, right?

4 A. Not necessarily. There was -- like I
5 mentioned earlier when the Advisors were first
6 formed, there were a number of employees employed
7 directly by the Advisors and providing those
8 services. And, in fact, some of the services
9 that HCMFA continues to provide has front office
10 services from certain employees. So there may
11 have been some services provided prior to that,
12 but I don't know the extent.

13 Q. Okay. That's fine.

14 MS. WINOGRAD: La Asia, can you pull
15 up Exhibit 6.

16 (Exhibit 6 marked for identification.)

17 MS. WINOGRAD: Okay. Thanks.

18 BY MS. WINOGRAD:

19 Q. Are you familiar with this document?

20 A. I am.

21 Q. Okay. This is a Payroll
22 Reimbursement Agreement between Highland and
23 NexPoint, right?

24 A. It is.

25 Q. And it's entered into May 1st of

1 NORRIS

2 2018, right?

3 A. Yes. Effective January 1st, 2018.

4 Q. Great. That was my next question.

5 Okay. And this was four months after the
6 Sub-Advisory Agreement became effective, right?

7 A. That is correct.

8 MS. WINOGRAD: Okay. Can we go to
9 page pdf 526, please.

10 BY MS. WINOGRAD:

11 Q. Does that look like Frank
12 Waterhouse's signature to you?

13 A. I would assume so, but I would be
14 speculating. There is no name or title there,
15 but --

16 Q. That's fine.

17 A. -- it looks similar to the other ones
18 we saw.

19 Q. Do you know who drafted this Payroll
20 Reimbursement Agreement?

21 A. I do not.

22 Q. Okay. So the Payroll Reimbursement
23 Agreement provided that the Advisors would pay
24 Highland for Highland providing certain
25 sub-advisory -- certain advisory investment

1 NORRIS

2 services, right?

3 A. It would not pay. It would be a
4 reimbursement. And this, again, gets back to a
5 point I made earlier that this was an important
6 point, we couldn't be a profit center. This is a
7 reimbursement for actual expenditures for -- if
8 you go to the top, I think you can see the
9 provision. It's dual employees -- maybe you can
10 scroll up to --

11 Q. Let's go to page 1, Section A,
12 because that spells it out.

13 A. Yeah: Dual employees who are
14 providing investment and -- who are dual
15 employees and providing investment advisory
16 services.

17 And, again, it's a reimbursement for
18 the actual cost, which historically -- and if you
19 see in the appendix it's what percentage of their
20 time was allocated to services provided, whether
21 a dual employee and providing investment advisory
22 services.

23 Q. Okay. Fair enough.

24 So if we look at recital Section A,
25 it says "HCMLP" -- which you agree refers to

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Highland, right?

A. Yes.

Q. -- "will seek reimbursement from NexPoint for the cost of certain employees who were dual employees of HCMLP and NexPoint and who provide advice to registered investment companies advised by NexPoint under the direction and supervision of NexPoint as more fully described in this Agreement below."

So it's fair to say that these were similar types of services that Highland was providing under the terms of the Sub-Advisory Agreement, right?

A. Again, I'm not certain. I believe this was to supersede that. And the understanding was the way that was drafted was not appropriate, given the nature of the '40 Act funds they were serving. But, again, we need to talk to Mr. Waterhouse for the intent or the reason for the two different agreements. But our understanding was this agreement, the other one was drafted, and this is to replace that. And that's why it's effective the same date and has the same amounts. But it is not sub-advisory

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

services but reimbursement for actual costs.

Q. Okay. So dual employees, as that is set forth in the agreement of Highland, were providing these investment services, right?

A. Yes. Dual, and there may have been some dual employees that weren't providing -- weren't providing investment services. So this was they had to be a dual employee and providing services.

Q. Right. Dual employees that were providing -- the employees that worked at Highland that were providing these services under this agreement, they were called dual employees?

A. Well, they are in this agreement because they are dual employees, right. If they are in that appendix, they were dual employees, not the other way around.

MS. WINOGRAD: Okay. Can we go to page 7, please.

BY MS. WINOGRAD:

Q. Okay. This is an Exhibit A to the Payroll Reimbursement Agreement, right?

A. It is.

Q. Okay. And this is the list of the

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

dual employees we just talked about, right?

A. No. This is a starting point of the dual employees as of January 1st, 2018. And these were the percentages at that time of the dual employees.

A dual employee, as you note, is an employee that is employed, and in order to be an employee, has to be employed and providing services. So we're talking postpetition claim here. Almost -- more than half of these employees weren't even employed as of the petition date of the bankruptcy filing date.

Q. Okay.

A. But -- go ahead.

Q. But this -- these are the employees that as of the time this agreement was entered into who were -- who were supposed to provide these services, right?

A. Yes, that's correct.

Q. Okay.

A. And I would note subject -- at that time, it's a point in time. So -- well, go ahead. Go ahead.

MS. WINOGRAD: Can we -- can we go

1 NORRIS

2 back to -- okay. Let's go to -- let's stay on
3 this page, actually.

4 BY MS. WINOGRAD:

5 Q. Do you see Matthew Gray here?

6 A. I do.

7 Q. Okay. And Matthew -- so what do
8 these percentage allocations mean in simple
9 terms?

10 A. Yeah, so I -- and agree it may
11 specify it, but it's the percentage of their time
12 that was spent providing investment advisory
13 services to this particular Advisor.

14 Q. Okay.

15 A. Matthew Gray, for example, was
16 employed by HCMLP. He worked for the
17 organization. He did a lot of work on different
18 entities including HCMLP, but 9 percent of his
19 time for his allocation of costs were allocated
20 to NexPoint Advisors as of this point in time.

21 MS. WINOGRAD: Okay. Could we scroll
22 to Section 3.01 -- I'm sorry, actually -- yeah.

23 BY MS. WINOGRAD:

24 Q. So it says here, "Actual Cost
25 Allocation. The Actual Cost of any Dual Employee

1 NORRIS

2 relating to the investment advisory services
3 provided to a Fund shall be allocated based on
4 the Allocation Percentage. For purposes of this
5 Agreement, 'Allocation Percentage' means the
6 Parties' good faith determination of the
7 percentage of each Dual Employee's aggregate
8 hours worked during a quarter that were spent on
9 NexPoint matters." Do you see that?

10 A. I do.

11 Q. So was there a way for the Advisors
12 to track the aggregate amount of hours that an
13 employee worked during a quarter?

14 A. We would -- and, again, this says the
15 parties' determination. So Highland as well was
16 responsible, and they were tasked with seeking
17 reimbursement, right? So they had a process. I
18 don't know exactly the process.

19 And, again, we haven't deposed
20 Mr. Waterhouse and Mr. Klos, who would have been
21 performing this. So this is the service --
22 accounting services we outsourced or leaned on
23 Highland to provide, but also they would know the
24 percentage of time that their employees spend.

25 And clearly in the appendix they have

1 NORRIS

2 an allocated percentage. And -- so there -- I
3 assume there is a mechanism and there was a
4 mechanism, and I would even go to Mr. Klos'
5 calculation that he did for the overpayment that
6 we received in discovery.

7 He actually has an amount of actual
8 investment support provided as of that point in
9 time in late 2019 -- or late 2020, for the year
10 period, with that. So it appears they have a
11 methodology, but we'll learn more of that from
12 Mr. Klos and Mr. Waterhouse.

13 Q. Okay. And just to kind of remind you
14 to answer the questions I've asked. I asked if
15 the Advisors had a way to know, but it sounds
16 like your answer is no, right?

17 A. Specifically, again, these were
18 employees of HCMLP. We didn't have access to
19 their specific timesheets or their process. So
20 we didn't -- no, we, again, we relied on Highland
21 for that.

22 Q. Okay. So did Highland decide on
23 these allocation percentages?

24 A. Again, as -- on this one in
25 particular, the actual details around how these

1 NORRIS

2 numbers were calculated, we don't know. Based on
3 the information that I was able to glean as a
4 30(b)(6) witness from many discussions, we don't
5 know. We are going to be relying -- not relying.
6 We're looking forward to learning that from
7 Mr. Klos and Mr. Waterhouse, but the actual
8 specifics, we don't know.

9 Q. Okay. And if we go back to actual
10 costs, if we just scroll down a little bit.

11 MS. WINOGRAD: La Asia, if we could
12 scroll down a tiny bit. Thank you. Up a little
13 bit. It's in the definitions section.

14 BY MS. WINOGRAD:

15 Q. So there it is, yeah. So it says
16 here the actual costs -- it says, "Actual Cost"
17 means, with respect to any period hereunder, the
18 actual costs and expenses caused by, incurred or
19 otherwise arising from or relating to each Dual
20 Employee, in each case during such period.
21 Absent any changes to employee reimbursement, as
22 set forth in Section 2.02, such costs and
23 expenses are equal to \$252,000 per month."

24 Right?

25 A. That's what it says.

1 NORRIS

2 Q. Okay. And so as we just talked
3 about, this is the same number that was reflected
4 in the Sub-Advisory Agreement, right?

5 A. It is.

6 Q. Okay. So -- so it says here, "Absent
7 any changes to employee reimbursement as set
8 forth in Section 2.02, such cost and expenses are
9 equal to \$252,000 a month." That statement makes
10 sense to you, right?

11 A. Does it make sense?

12 Q. If you -- okay. Let me rephrase it.
13 Do you see that, what I just read?

14 A. I do.

15 Q. Okay. So it mentions Section 2.02.

16 MS. WINOGRAD: La Asia, can we scroll
17 to Section 2.02, please, to just try to get
18 context for what that sentence means.

19 BY MS. WINOGRAD:

20 Q. So now we see under Article II it
21 says -- under Section 2.02, "Changes to Employee
22 Reimbursement. During the Term, the Parties may
23 agree to modify the terms and conditions of
24 NexPoint's reimbursement in order to reflect new
25 procedures or processes, including modifying the

1 NORRIS

2 Allocation Percentage (defined below) applicable
3 to such Dual Employee to reflect the then current
4 fair market value of each such Dual Employee's
5 employment. The Parties will negotiate in good
6 faith the terms of such modification."

7 Do you see that paragraph?

8 A. I do.

9 Q. Okay. So at any time that this
10 Payroll Reimbursement Agreement was in effect,
11 did anyone at the Advisors seek to modify the
12 terms and conditions of the \$252,000
13 reimbursement?

14 A. Yeah, there was an amendment done in
15 2018. And the way we understand it, the intent
16 of this was a reimbursement for actual employee.
17 And to make that easier, instead of a monthly
18 true-up with trying to calculate everyone's time,
19 there was an annual amount. And the procedures
20 then were essentially changed. In 2018, there
21 was an annual true-up done in December. And I
22 learned this from talking to Dave Klos and Frank
23 Waterhouse when they first told us about the
24 amount they had continued to charge throughout
25 the postpetition period and why they didn't

NORRIS

1
2 modify them and why there was no true-up done,
3 that the function was at the end of the year they
4 ran the numbers, they figured out the
5 allocations, and we provided, I believe, in
6 discovery the amendments that were done in
7 December 2018. And at that point we actually
8 owed Highland and paid it to Highland an amount
9 for additional services. And so there was no
10 true-up done in 2019. There was no true-up done
11 in 2020. Our view is that it should have been
12 done. And, in fact, the parties will negotiate
13 in good faith as a key part of this here, the
14 terms of any modification.

15 Similarly in 4.02, I think it says
16 should either party determine a change to
17 employee reimbursement is appropriate, we do know
18 that Mr. Klos and Mr. Waterhouse knew and
19 calculated and provided -- in discovery you
20 provided us their overpayment calculations. And
21 in the email Mr. -- I have it right here, it even
22 says that they knew about this the year before
23 and they were just rolling forward the analysis
24 done for DSI the previous fall.

25 So there was clear knowledge by the

NORRIS

1
2 Advisors -- by Highland, and they knew the
3 intents of this was the reimbursement, and they
4 did not modify in good faith or even tell us
5 until we found out about it. And when we found
6 out about it, they specifically said they
7 couldn't even provide the calculation.

8 Q. Okay. So just backing up for a
9 second, because, again, I'm just trying to
10 understand this, so I want to take this one step
11 at a time.

12 A. Yes.

13 Q. So Section 2.02 says -- again, it
14 says that during the term, the parties may agree
15 to modify the terms in order to reflect new
16 procedures or processes, including the
17 modification of the allocation percentage.

18 And you answered that there was this
19 amendment done later in 2018. Do I have that
20 right?

21 A. Yes, December 2018, there was an
22 amendment to each payroll reimbursement for each
23 HCMFA and NexPoint separately.

24 Q. And was this amendment a result of
25 the Advisors invoking their right pursuant to

1 NORRIS

2 Section 4.02 which you just talked about?

3 A. Again, on this, this was based on our
4 ability to understand why the amendment was made
5 and to what extent. We don't have an answer.

6 Again, we haven't completed discovery with
7 Mr. Waterhouse and Mr. Klos. They were the ones
8 involved in this, and so we look forward to
9 hearing their discussion on this.

10 Q. Okay.

11 A. But our understanding was that -- and
12 our understanding is that was done to be able to
13 out -- to actually come up with the proper
14 reimbursement. Because, again, the agreement is
15 a reimbursement of actual costs of employees that
16 were dual employees providing investment advisory
17 services. So there is a calculation done to
18 determine if there needs to be a true-up.

19 Q. Okay. So let me phrase it this way.
20 During the time that this agreement was
21 effective, did the parties ever -- did NexPoint
22 ever -- did the -- did NexPoint ever notify
23 Highland on the last business day of any calendar
24 month that a change to employee reimbursement
25 needed to occur?

1 NORRIS

2 A. Again, key aspect here: The Highland
3 employees were the ones tasked with creating the
4 calculations, making the payments. And our
5 understanding is they were reimbursing for actual
6 employees. And so we did not understand that
7 they were not. And as soon as we did, we asked
8 for a modification, right? We asked for a
9 calculation. And I should clarify, not even
10 asking for a modification. We -- we began to --
11 I should say we asked on several occasions for
12 the actual calculation of who they were even
13 paying for. They wouldn't provide that to us.

14 We asked DSI, we asked Highland, we
15 asked your counsel for the calculations of who
16 they were charging for which employee, and the
17 answer eventually from your counsel was, maybe
18 you need to file an admin claim. And so we filed
19 an admin claim. And so we filed an admin claim.
20 We sought out remedies at that point once we had
21 found out. But there was -- yeah, that's --

22 Q. When were you -- when is the first
23 time the Advisors asked for that calculation?

24 A. So we found out about this in late
25 November, early December. And me and DC Sauter

1 NORRIS

2 asked Frank and Dave for the calculation, and
3 they said that they will check, but they would
4 not -- didn't think that Seery would allow it.
5 They said they couldn't provide it. We then
6 asked for it again. We asked for it in a letter
7 on December 11th. We asked for it again in
8 January multiple times from DSI, in talking to
9 Fred Caruso, Brad Sharp. We asked again multiple
10 times from Dave Klos and Brian Collins and Frank
11 Waterhouse in January.

12 So once we found out and were frankly
13 shocked that we were paying for these
14 employees -- and Dave and Frank said they had
15 talked to counsel, they had talked to Highland's
16 counsel, and the answer was, we can't do anything
17 about it because of the automatic stay.

18 And at that point we couldn't just
19 march in and say, "Well, we're just changing the
20 amount," because we didn't want to disrupt the
21 challenges that we were already facing with the
22 court, right? There was an automatic stay. And
23 so we sought through our proper remedies an admin
24 claim, and that's where we sit today.

25 Q. Okay. So just coming back to the

1 NORRIS

2 original question, you said -- and I just want to
3 make sure I have this right -- you said before
4 late October, early November, before this time
5 NexPoint had not -- had not tried to change the
6 conditions of NexPoint's reimbursement under this
7 agreement?

8 A. Up until this point, we assumed
9 incorrectly that Highland was doing the right
10 thing and reimbursing for actual costs. What
11 were we paying them for as our accounting and AP
12 services, as our legal services to be able to
13 perform under agreement and to act in good faith.
14 So, no, we didn't know. We assumed that they
15 were paying the actual allocations, not the
16 allocations from January 1st, 2018, for
17 75 percent of the employees that are no longer
18 even employed. Partners, I would say.

19 If you look at Andrew Parmentier, he
20 was a partner who was fired before the bankruptcy
21 filing; yet, we were paying 40 percent of his
22 compensation from NexPoint Advisors and
23 40 percent from HCMFA, all the way through
24 postbankruptcy up until the end of the agreement.

25 So we didn't know, and once we knew,

1 NORRIS

2 we went through our normal remedies of an admin
3 claim.

4 MS. WINOGRAD: Okay. La Asia, can
5 you pull up Exhibit 8.

6 (Exhibit 8 marked for identification.)

7 BY MS. WINOGRAD:

8 Q. Okay. Are you familiar with what
9 this document --

10 A. I am.

11 Q. Okay. This is the payroll
12 reimbursement between Highland and HCMFA, right?

13 A. It is.

14 Q. And it's effective as of January 1st,
15 2018, right?

16 A. Correct.

17 Q. And it was entered into May 1st of
18 2018, right?

19 A. I don't know if it was May -- oh,
20 yeah, first day of May 2018, effective
21 January 1st, 2018, correct.

22 MS. WINOGRAD: Okay. And can we
23 scroll to page 5 and 6, please. I think it's
24 last part of 5, beginning of 6. Thanks.

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. So this agreement was signed, right?

3 A. It was signed, yes.

4 Q. Okay. Do you know who drafted this
5 agreement?

6 A. I don't.

7 Q. Okay. So pursuant to this
8 agreement -- so let's go back to Recital A, so we
9 have the terms in front of us.

10 So pursuant to Recital A, Highland
11 employees were to provide investment advisory
12 services to HCMFA, right?

13 A. Sorry, can you repeat the question?

14 Q. So pursuant to subsection "A,"
15 Highland was to provide investment advisory
16 services to HCMFA as set forth -- under the
17 direction and supervision of HCMFA as set forth
18 in the agreement, right?

19 A. I think "A" speaks for itself, but
20 I -- and it says -- well, I don't know that this
21 agreement mandates they perform the services, but
22 it says we -- HCMLP will seek reimbursement for
23 such services.

24 MS. WINOGRAD: Okay. Can we --

25 BY MS. WINOGRAD:

1 NORRIS

2 Q. Well, backing up a second, do you
3 know if this agreement was negotiated?

4 A. Same answer on this one as the other
5 one is we don't know. We weren't -- based on the
6 conversations I had, and we're going to be -- we
7 haven't been able to talk to Mr. Waterhouse
8 regarding this and nor have been able to talk to
9 Mr. Klos, and we believe that they have more
10 information.

11 MS. WINOGRAD: Okay. Could we scroll
12 to page 7.

13 BY MS. WINOGRAD:

14 Q. Okay. So similar to the NexPoint PRA
15 reimbursement agreement we just looked at, at
16 times I might say PRA, but I'm referring to the
17 Payroll Reimbursement Agreement.

18 A. Uh-huh.

19 Q. These percentage allocations reflect
20 how much time a particular Highland employee was
21 to work on HCMFA matters, right?

22 A. Again, my answer for NexPoint would
23 apply here, but you said the time they were to.
24 I would say that was at the time -- again, I
25 don't know how these numbers were calculated

NORRIS

1
2 specifically, but based on the agreement, this
3 was laid out that those were the percentages of
4 their time being spent on services provided as a
5 dual employee for providing advice under this
6 agreement.

7 Q. Okay. And did HCMFA ever seek to
8 change the reimbursement amount under this
9 agreement?

10 A. I would use my -- go back to my same
11 exact answer I used for NexPoint Advisors. Same
12 answer applies for both agreements.

13 Q. Okay. And do you know who decided
14 these allocations? Was that Highland, also?

15 A. I don't know.

16 Q. Okay. Can I refer to the two -- like
17 the HCMFA Payroll Reimbursement Agreement and the
18 NexPoint one as just the Payroll Reimbursement
19 Agreements unless I specify which one it is?

20 A. Yes.

21 Q. So at the time the Advisors entered
22 into the Payroll Reimbursement Agreements, the
23 Shared Services Agreement had been in effect for
24 about five years, right?

25 A. At least, or approximately, yeah.

1 NORRIS

2 Q. And during those five years, were the
3 Advisors receiving investment advisory
4 services -- any investment advisory services from
5 Highland?

6 A. I'm not certain, but maybe you could
7 pull up the Shared Services Agreements. I think
8 one of them we looked at earlier I think talks
9 about investment services, and so those services
10 may have been provided under the Shared Services
11 Agreement. I'm trying to --

12 Q. Okay.

13 A. I know we were looking at one, and
14 one of those under the middle and back office
15 said investment services, investment advisory
16 services. But so -- let me go back to your
17 question. I don't know the answer.

18 Q. Okay. And that's fine.

19 Do you know who made the decision to
20 enter into the PRAs or Payroll Reimbursement
21 Agreements?

22 A. We don't. Based on my analysis and
23 discussion with various people, no one had any
24 recollection of -- of that. And so, again, you
25 know, we're going to talk to Frank Waterhouse.

1 NORRIS

2 We haven't had access to him, and Dave Klos, who
3 we believe were very involved in preparation and
4 creation of these.

5 Q. Okay. So do you know -- do you know
6 who decided who these employees would be that are
7 listed here?

8 A. I don't, but just based on the
9 agreement and my understanding of the intent, it
10 was to list all of the dual employees that were
11 providing investment advisory services to
12 retail advisors. And having worked here, looking
13 at the list, this looks like a comprehensive list
14 of the individuals that were providing investment
15 advisory services to the retail advisors at a --
16 not their whole time but as a percentage of their
17 time. And I have interacted with each one of
18 them and knew each one of them and would say this
19 is a reasonable list of individuals that were
20 providing investment advisory services --
21 employed by Highland and providing investment
22 advisory services and acting as a dual employee
23 of HCMLP and the Advisors.

24 Q. Okay. So just to sort that out a
25 little bit, does that mean that, for instance,

1 NORRIS

2 when Highland was providing investment advisory
3 services under the Sub-Advisory Agreement, is it
4 fair to say that these are the people that would
5 have been providing those services under the
6 Sub-Advisory Agreement, also?

7 A. They both have the same effective
8 date. So I don't know -- I -- going back to my
9 other answer, I don't know the origin or the
10 creation of that Sub-Advisory Agreement, but
11 these people -- this is the same effective date,
12 and this says as of January 1st, 2018. So that
13 appears reasonable.

14 Q. Uh-huh. So -- and this is just me
15 wanting to clarify what you said before. So the
16 Advisors -- did the Advisors ever try to figure
17 out whether the dual employees were allocating
18 their time pursuant to this Agreement?

19 A. I don't know.

20 Q. Okay.

21 A. And I need to go back. HCMLP will
22 seek reimbursement, right? A reimbursement is on
23 their end telling us what the actual costs were.
24 And we had a great relationship. We were
25 affiliates. We relied on Highland. We trusted

1 NORRIS

2 their calculations and judgment. And it was
3 their responsibility to seek reimbursement of
4 actual costs of what the employees who were, one,
5 dual employees employed, and, two, providing
6 investment advisory services to us.

7 Q. Okay. Let's look at an example that
8 might just make things a little bit more
9 concrete. Let's look at Nathan Burns.

10 A. Yeah.

11 Q. You've heard his name, right?

12 A. I have. I've worked with him for
13 years.

14 Q. Great. So he's listed as a dual
15 employee on both of the PRAs, right?

16 A. Yeah.

17 Q. Okay. So pursuant to the NexPoint
18 PRA which we're looking at, he was -- at the time
19 this was executed --

20 A. This is the HCMFA PRA, sorry to
21 interrupt, but you said NexPoint.

22 Q. Oh, got it. Okay. So, yeah, you're
23 right. So I did mean to say NexPoint.

24 So pursuant to NexPoint's -- the
25 NexPoint PRA, he was supposed to allocate

1 NORRIS

2 70 percent of the time working for NexPoint,
3 right?

4 A. I see that. I got it here.

5 Q. So the --

6 A. No, no, going back. It wasn't he was
7 supposed to, that's the time he would have been
8 spending on NexPoint Advisors work.

9 Q. That's -- okay. That's fair enough.
10 Thank you for the clarification.

11 And so pursuant to the HCMFA PRA
12 which we're looking at right now, he was --
13 Nathan Burns was allocating 10 percent of his
14 time to HCMFA matters, right?

15 A. So he wasn't allocating it, he was
16 working that amount of time, assuming Highland's
17 numbers are correct here. But they are
18 allocating his time that that's what he worked.

19 Q. Okay. So based on these numbers,
20 Highland was allocating 10 percent of his time?

21 A. Yeah.

22 Q. Okay. Was anyone at the Advisors
23 charged with the responsibility of making sure
24 that Nathan allocated 70 percent of his time to
25 NexPoint matters?

1 NORRIS

2 A. Again, this is -- he wasn't -- he
3 didn't have to allocate. This is the calculation
4 of what his time allocation was. But I can tell
5 you just sitting here today, I can look at the
6 numbers and I knew what people did and I
7 interacted with them. Nate Burns' was -- primary
8 job was Nexpoint Capital, Inc., our BDC, the
9 healthcare-focused BDC. That's advised by
10 NexPoint Advisors. That's 70 percent of Nate's
11 time. So very reasonable.

12 We knew what these people did. It's
13 not a big organization. But to answer your
14 question, did we have someone at the Advisors
15 responsible for ensuring their time was spent
16 here? No, this is HCMLP responsible for seeking
17 reimbursement.

18 Q. Okay.

19 A. So that's them -- they need to --
20 they are responsible for seeking reimbursement.

21 Q. Are you familiar with a former HCMFA
22 employee named Andrew, I think, Hilgenbrink?

23 A. I am.

24 Q. Okay.

25 A. Sorry. Let me correct you here.

1 NORRIS

2 Andy was not an HCMLP employee, my understanding,
3 he was an HCMFA employee.

4 Q. Oh, yeah. I thought I said HCMFA.

5 A. Maybe you did. Maybe you did.

6 Q. Okay. So are you aware that Andrew
7 worked for HCMFA as a portfolio manager of a fund
8 managed by the Advisors?

9 A. During which time period?

10 Q. Up until 2019?

11 A. Yes, he was the portfolio manager of
12 the Highland Longshore Healthcare Fund. And
13 prior to that time, he worked as an investment
14 analyst or a senior analyst covering healthcare.
15 He covered biotech, pharmaceuticals. He had a
16 Ph.D. in biochemistry, Dr. Hilgenbrink. Smart
17 guy. So, yes.

18 Q. Okay. So are you aware that he
19 resigned from this position as portfolio manager
20 of this healthcare fund on April 24th of 2019?

21 A. That seems about right, yeah.

22 Q. Okay. Are you aware that on the same
23 date Nathan Burns became the portfolio manager of
24 the healthcare fund?

25 A. I'm not specifically aware of the

NORRIS

1
2 date, but I believe Nate was portfolio manager of
3 that fund. And I should say he was providing
4 research to the healthcare team prior to that as
5 well.

6 Q. Okay. But around that date he --

7 A. Yeah.

8 Q. -- right?

9 A. Yeah.

10 Q. Okay. So HCMFA was aware that Nathan
11 took over Andrew's role around the time that
12 Andrew left, right?

13 A. Yeah.

14 Q. Okay. So one year after the
15 payroll -- the HCMFA Payroll Reimbursement
16 Agreement became effective, Nathan started
17 performing additional services for HCMFA, right?

18 A. Well, here is what I would say.
19 Maybe not at this -- maybe the percentage
20 allocation would have swapped, he was 70 percent
21 of his time of NexPoint Advisors, 10 at HCMFA,
22 combined 80. Maybe it was a movement between,
23 and he would have allocated to the other entity.
24 The other 20 percent, HCMLP. I would also note
25 that I do know that Nate became a key contributor

1 NORRIS

2 to the healthcare private equity fund at that
3 time, which he hadn't been primarily focused on.

4 So, yes, your point is Nate was
5 providing more services now at HCMFA. He only
6 has a hundred percent of his time. Was it just
7 the movement of the 5? What is the allocation?
8 I'm interested to see -- and one thing I would
9 point out here, I would love to see this, is Dave
10 Klos created this classification with
11 Mr. Waterhouse at the end of 2020, so after this
12 time period we're talking about where he actually
13 calculated the amount of investment services
14 under the Payroll Reimbursement Agreement. And
15 we've asked for the backup of this multiple
16 times.

17 Davor told me he has asked Mr. Morris
18 for the actual support of the spreadsheet behind
19 it, including a name of the spreadsheet, which we
20 haven't received yet. So maybe Highland has been
21 already allocating -- and I would hope they
22 would, that's what we would hope that Highland
23 was giving the proper allocation for these
24 people's time, but we haven't seen that yet.

25 So I don't know if that's already

1 NORRIS

2 been updated or changed or what. Dave Klos I
3 would assume who was the controller at that time,
4 now CFO of Highland, would have had proper access
5 to these numbers.

6 Q. Okay. So just taking a step back.
7 Focusing on just this -- you said that HCMFA knew
8 that he started providing these additional
9 services relating to this healthcare fund?

10 A. Again, I didn't say additional
11 services. It's he's providing additional time
12 maybe allocated to HCMFA. Again, I don't know if
13 it's more time. I mean, this is a really small
14 healthcare fund with public equities. Nate was
15 already covering securities, covering healthcare.

16 And I don't know the specifics of his
17 time. I would have to look to you. We were
18 aware that he was portfolio manager. We were
19 aware he has been contributing names. There's a
20 lot of things.

21 Q. Okay. So if he took on this new
22 role, did HCMFA ever seek to make sure that the
23 10 percent allocated was still accurate?

24 A. Again, I'll go back to my same
25 comments. Until late 2020, we had expected and

NORRIS

1
2 outsourced and hoped and fully believed that
3 Highland was doing that, right? And we believed
4 that we were reimbursing -- the intent of this
5 wasn't to keep charging the same amount. We
6 thought Highland was, and so we think that there
7 should be a proper calculation done that would
8 allocate the proper amount spent.

9 Q. Okay. Are you familiar with an
10 individual named Ajit Jain?

11 A. I am. It's Ajit, not Ajit.

12 Q. Ajit. Okay. Do you know what his
13 title was -- did he work at Highland?

14 A. He worked at Highland.

15 Q. Do you know what his title was?

16 A. I don't remember his specific title,
17 but I bet you have it right there to tell me.

18 Q. Does it sound familiar if I say he
19 was a risk management -- he was head of the risk
20 management program?

21 A. I know he -- I don't know if I would
22 say he's the head of risk management. Joe Sowin,
23 I think he reported to Joe. But he oversaw risk
24 management, yeah. And so there was some trading
25 of derivatives and certain things he did.

1 NORRIS

2 Q. Okay. So in his role it's fair to
3 say he performed advisory services for the
4 Advisors, right?

5 A. I wouldn't necessarily say they were
6 advisory services. I mean, risk management is
7 more of a middle office-type function. Trading
8 services, which were fully under the Shared
9 Services Agreement, I would say -- I would
10 classify Ajit more of a middle office type, back
11 office type -- not back office but middle office
12 services providing risk management and more of a
13 compliance/risk management and trading service.

14 Q. Okay. Did Ajit provide any
15 investment advisory services for the Advisors?

16 A. I don't know. I don't know.

17 And along with this, we're not
18 contending that there's not a true-up of certain
19 aspects of this that need to be made. If HCMLP
20 has employees that they are arguing were
21 providing advisory services, we would love to see
22 it, but we haven't seen any yet. And we would
23 love to have an opportunity to negotiate in good
24 faith a resolution on it. So we're welcome to
25 see if -- if I'm following your line of

1 NORRIS

2 questioning, you're saying that you think Ajit
3 was providing investment advisory services. We
4 could argue otherwise; but, you know, we would
5 love to hear if you think there is other
6 employees.

7 Q. Okay. Well, no, I mean, I'm still
8 trying to get a sense of how these lists in these
9 allocations work. So I'm just trying to
10 understand, and maybe you can answer this. If
11 Ajit was providing investment advisory services
12 to the Advisors, do the Advisors contend -- or to
13 HCMFA, would --

14 A. Yeah, maybe I think -- I think Ajit
15 was hired -- do you have the date there he was
16 hired? I think it was maybe 2015 or 2016.

17 Q. Well, he started performing services
18 for the Advisors around May 21st of 2018.

19 A. So I believe he was hired in 2016,
20 and his role remained largely the same his entire
21 time here. So we have a point in time,
22 January 1st, that Highland, who prepared -- we
23 believe prepared this -- and, again, we don't
24 have the insight of Frank and Dave and what we're
25 going to be able to depose them, and we don't

1 NORRIS
2 have the backup of Frank's spreadsheet. But I do
3 know very well that Ajit -- why wouldn't they
4 have included him here as of January 1st. And
5 I'll -- I'll stop there.

6 Q. Okay. So let me go back to the
7 question I was going to ask.

8 So if Ajit provided investment
9 advisory services to HCMFA, do the Advisors
10 contend that Ajit should have been on the list of
11 dual employees?

12 A. I would say -- I would say we don't
13 believe there is anyone that's not on the list
14 that shouldn't have been added, right? And
15 the -- if you look at Agit's -- let's ignore
16 Ajit. Let's look at what was provided. And even
17 Agit's role as being -- I would say is more
18 middle office. And we can go back and look at
19 the agreements: trading services, compliance,
20 risk management may even be mentioned. Those are
21 all things Ajit was doing. I think that's
22 probably why he wasn't included.

23 Again, I'm only speculating, because
24 we haven't asked Mr. Waterhouse around why these
25 were formed. So I would leave it as we'll wait

1 NORRIS

2 to depose Mr. Waterhouse and Mr. Klos on this.

3 Q. Okay. So are you saying -- again,
4 I'm just trying to understand what you're saying.
5 Are you saying there was nobody that was working
6 at Highland that was providing investment
7 advisory services to the Advisors who was not
8 included on the list?

9 A. In 2018.

10 MR. RUKAVINA: Objection. Form.

11 A. Again --

12 BY MS. WINOGRAD:

13 Q. Okay.

14 A. -- our understanding is that was a
15 list of the dual employees that were providing
16 investment advisory services and -- it's an
17 and -- dual employee and providing investment
18 advisory services. If Highland decided, hey,
19 they weren't going to include someone, I would
20 love to know why, but we can't speculate on that.

21 Q. Okay. So let's just go back to 2018.
22 Was there anybody providing investment advisory
23 services to the Advisors in 2018 who was not on
24 that list?

25 A. Not that I'm aware of.

1 NORRIS

2 Q. Okay. And if they were, is it the
3 Advisors' contention that that person should have
4 been on the list?

5 A. I think that's probably asking for a
6 legal conclusion and, again, I don't -- I
7 don't -- I'm not an attorney.

8 Q. Okay. But based on the terms of
9 the -- but the purpose of the agreement was so
10 that Highland could provide employees to service
11 the Advisors regarding these investment advisory
12 services, right?

13 A. Yes. It was to reimburse for actual
14 services provided for dual employees that were
15 providing investment advisory services. And I
16 mentioned it, if there were employees that were
17 providing those services that Highland didn't
18 mention, we would love to learn, right? We would
19 love to see the support and have a good faith
20 discussion on that. And I think, you know, we'll
21 be interested to see the calculation that
22 Mr. Klos provided at the end of December -- or
23 December of 2020 where he has a list of who he
24 included -- who Highland included as dual
25 employees providing investment advisory services.

1 NORRIS

2 Q. Okay. So if there is a person that
3 should have been included on that list because
4 they were providing investment advisory services
5 but that wasn't on that list, do the Advisors
6 contend they should have paid for that person?

7 A. Again, I'll -- I'll -- knowing the
8 process and the true-up -- I don't know what went
9 into the 2018 true-up, right? Was Agit's numbers
10 or someone else -- there clearly was someone
11 else, or we believe there was maybe more at that
12 time, or other services provided, because we had
13 to pay Highland. Clearly there is a number of
14 employees here. Our number shows it's worth over
15 \$7.6 million of services we paid for for
16 employees that were no longer there, not even
17 services but cost, reimbursement for employees
18 there were no longer there.

19 Q. Okay.

20 MR. RUKAVINA: When you find a
21 convenience time, please, let's take a break.
22 Again, no rush.

23 MS. WINOGRAD: Why don't we take a
24 five-minute break right now.

25 (A break was taken from 12:00 p.m. to

1 NORRIS

2 12:50 p.m.)

3 BY MS. WINOGRAD:

4 Q. So I just want to go back to
5 something you said before our lunch break. You
6 said that, and correct me if I'm wrong, but that
7 Klos and Waterhouse did some sort of analysis
8 that led to the amendment. Do you have the
9 document that reflects the analysis?

10 A. I would say that's an assumption. I
11 would assume that in order to calculate an amount
12 they did an analysis, but we haven't been able to
13 speak to them and we don't have a document
14 relating to that. It hasn't been provided in
15 discovery on your end, and we don't -- we aren't
16 aware of what it looks like. But if you have
17 that, we would love to see it.

18 Q. Okay. And, then, so the Advisors
19 contend in their administrative claim, as we
20 discussed earlier this morning, that Mr. Seery
21 directed -- that in or around July of 2020,
22 Mr. Seery gave some directives to the Debtor. Do
23 you remember that?

24 A. I remember our discussion earlier and
25 the question --

1 NORRIS

2 Q. Exactly. So do the Advisors contend
3 that Highland failed to perform any services
4 before July of 2020?

5 A. In regards to the PRAs, yes, right,
6 we believe that prior to that there was
7 significant overcharging with paying for
8 employees that were no longer employed. But as
9 far as damages and calculations that we're
10 proposing here on the Shared Services Agreement,
11 it's that period beyond. What I talked about, it
12 was having to hire an outside attorney, having to
13 bring in Mr. Post.

14 Q. Okay.

15 A. And there may have been services that
16 had been reduced, right, and I would point to
17 those are the specific ones that we can point to.
18 But if there were services prior that we were
19 being charged for that we weren't receiving, then
20 that should be calculated in as well. But we
21 haven't finished our deposition of Mr. Klos and
22 Mr. Waterhouse, who are closest to that
23 information.

24 Q. Okay. And, then, do you remember
25 when I asked you a couple of questions about the

1 NORRIS

2 sub-advis- -- the NexPoint sub-advisory
3 agreement?

4 A. I do.

5 Q. And do you remember when you said
6 that the NexPoint PRA replaced the sub-advisory
7 agreement?

8 A. I think I said I thought. I don't
9 have all the details of what went into that, as I
10 explained. And we don't. So, yes.

11 Q. Okay. So why do you think the PRA
12 replaced the sub-advisory agreement?

13 A. They had the same intent of
14 investment advisory agreements. And based on the
15 limited knowledge that we're able to gain was
16 that it was a replacement, right? But that was
17 put in place, and there was some advice from
18 counsel that it needed to be drafted in another
19 way, that it couldn't just be an absolute payment
20 or an advisory agreement. It had to be a
21 reimbursement for services provided. There was
22 sensitivity from the '40 Act perspective that you
23 can't have a profit center at an affiliated
24 Advisor, and it needed to be a reimbursement. So
25 that's the limited knowledge we have. Again, we

1 NORRIS

2 haven't been able to talk to Mr. Klos and
3 Mr. Waterhouse, who we believe have more
4 information on that.

5 Q. Okay. So do you know whether the
6 sub-advisory agreement would have required a vote
7 of the retail funds?

8 A. A vote of retail funds? No, there
9 wouldn't be -- the Advisor enters into the
10 agreements. However, yes, there is no vote of
11 the retail funds related to advisory,
12 sub-advisory or Shared Services Agreement.

13 Q. Okay. So like the sub-advisory
14 agreement didn't meet any kind of shareholder
15 approval?

16 A. No. We have exemptive relief. And,
17 again, I don't know how this one -- just
18 generally a sub-advisory agreement we have
19 exemptive relief to appoint sub-Advisors without
20 the vote of shareholders.

21 But, again, this particular instance,
22 an affiliated sub-advisor, I don't know what
23 analysis went into it and what would have been
24 the requirement.

25 Q. Okay. So Mr. Waterhouse was the

1 NORRIS

2 treasurer of NexPoint during the time the Shared
3 Services Agreement was in effect, right?

4 A. I don't know if it was the entire
5 time the Shared Services Agreements were in
6 effect, but for a portion of it.

7 Q. Okay. But you said that he was the
8 treasurer of the Advisors for a portion of the
9 time these agreements were in?

10 A. Correct.

11 Q. Okay. So as his role, he was -- is
12 it fair to say he was involved in the financing
13 of the Advisors? Let me rephrase that. In the
14 financial affairs of the Advisors?

15 A. Well, we had outsourced to Highland
16 the books and records for the actual Advisors as
17 well. So the accounting team at HCMLP and all
18 the accounting team members performed those
19 accounting functions for the Advisors.

20 Q. Okay. So the Advisors relied on
21 Highland to make determination regarding the
22 accuracy of the allocations in the PRAs, right?

23 A. You want to repeat that one more
24 time.

25 Q. So you had said earlier -- and

NORRIS

1
2 correct me if I'm wrong -- but that the Advisors
3 relied on Highland to make sure that the
4 allocations in the PRAs were accurate, right?

5 A. We had relied on them to actually
6 submit reimbursements for the appropriate amounts
7 and pay the appropriate amounts, yes.

8 Q. And to make sure that an employee on
9 the PRA list, that that percentage allocation was
10 accurate for a particular employee, right?

11 A. Generally speaking, we assumed that
12 those numbers were being updated and were
13 accurate. And there was an operating procedure
14 before bankruptcy where they did a true-up, as
15 you talked about, at the end of 2018. And so
16 they had been -- up until that point we assumed
17 they had been continuing to do so.

18 Q. Okay. And did the Advisors, when
19 they were advising -- when they were relying on
20 Highland, were they also relying on
21 Mr. Waterhouse?

22 A. I don't know if Mr. Waterhouse --
23 again, we haven't had the chance to depose
24 Mr. Waterhouse, but it was the accounting team:
25 Mr. Klos, Mr. Waterhouse, Hayley, Kristin. There

1 NORRIS

2 was a team of people involved that were Highland
3 employees tasked with the accounting.

4 Q. Okay. So it's fair to say
5 Mr. Waterhouse was on that team?

6 A. He was the CFO of HCMLP.

7 Q. So he was involved with that process,
8 then, right?

9 A. I would think so. Again, we haven't
10 asked Mr. Waterhouse. We didn't have access to
11 him prior to this. So we look forward to what
12 we'll hear from him.

13 Q. Okay. So I want to just hear more
14 about what -- you mentioned there was this
15 true-up. What is a true-up?

16 A. Yeah, so -- and I call it a true-up
17 because that's the terms that Dave Klos told me
18 that were used. But essentially it is a -- it is
19 very challenging on a monthly basis to figure out
20 what the allocations were, figure out who the
21 employees were, because things did change, as we
22 see. There was a number of employees, almost 75
23 percent of the schedule, maybe more, that were no
24 longer employed.

25 And so they would do a calculation to

1 NORRIS

2 say, I'm assuming -- again, we haven't spoken to
3 Dave and Frank to try to understand the
4 process -- but assuming that the process was,
5 given what they told us a true-up, what are the
6 actual expenses. The true-up was not done in
7 2019 and 2020. There were no adjustments made.
8 And even in 2018 when it happened, we wrote a
9 check -- the Advisors wrote a check to Highland
10 because we consumed additional services. We very
11 clearly believe, and I think there's plenty of
12 evidence here, that we overpaid in '19 and '20,
13 but there needs to be a true-up.

14 Q. Okay. So in simple terms, a true-up
15 is -- so it's an analysis that helps the Advisors
16 understand if the payments they were making were
17 for the employees that they had assumed were
18 there at the -- working for the Advisors?

19 A. I wouldn't say it's to help us assume
20 or understand the allocation. It's to figure out
21 what the true reimbursement amount is.

22 Q. Okay.

23 A. And that is what is the actual costs
24 incurred, and reimburse that. And so it wasn't
25 something that was done, our understanding, prior

NORRIS

1
2 to the end of 2018, because operationally it
3 wasn't efficient. And so they did it once a
4 year. Would it have been done in 2019? Dave
5 Klos said yes, but they filed for bankruptcy in
6 October, and for whatever reason, they decided
7 not to do it.

8 Q. Okay. So the true-up would have been
9 done at the end of 2019?

10 A. That is our understanding.

11 Q. Do you know around what month in
12 2019?

13 A. It was done in December of 2018. One
14 could speculate -- again, agreements were put in
15 place in January 2018. They did it in
16 December 2018. Logically, it would be an annual
17 process, and Dave even said it would have been
18 done at the end of the year. Seems like the
19 year-end would be a great time to do it.

20 Q. Um-hum.

21 So was it the Advisors' contention
22 that the true-up wasn't performed in 2019 because
23 of the bankruptcy?

24 A. We were told by Mr. Klos and
25 Mr. Waterhouse that there were no adjustments.

1 NORRIS

2 The amounts continued because of, they thought,
3 the automatic stay prevented it. And so that was
4 their contention. And, again, our recourse here
5 was to file an admin claim, and that's -- that's
6 the route we went.

7 Q. Okay.

8 MS. WINOGRAD: La Asia, can we show
9 Exhibit 14, please.

10 (Exhibit 14 marked for identification.)

11 BY MS. WINOGRAD:

12 Q. Mr. Norris, are you familiar with
13 this document?

14 A. I am. I believe I have it printed
15 here, if it's the same one. Hold on.

16 This is Defendants' Objections and
17 Responses to Plaintiffs' Requests for Admissions.

18 Maybe you can scroll down, and I can
19 look at the document?

20 Q. Yeah, why don't we do that.

21 A. I believe this is the ones responsive
22 to discovery and --

23 Q. Yes.

24 A. Okay.

25 Q. These are the Advisors' responses

1 NORRIS

2 responsive to Highland's discovery request,
3 right?

4 A. Here it is. I believe it's the same
5 one. 18 pages long? Yes.

6 Q. Okay. Is the information contained
7 in this -- in these responses, was it true and
8 accurate at the time it was written?

9 A. Yes.

10 Q. Okay. Do you think there is anything
11 that needs to be amended?

12 MR. RUKAVINA: We -- I'll answer
13 that. We're going to supplement one of the
14 interrogatories.

15 If you can scroll down.

16 We are going to supplement an
17 interrogatory. I'm trying to find the document.
18 Oh, I'm sorry.

19 I'm sorry, Ms. -- okay. She just
20 shared it.

21 MS. CANTY: It's also in the Chat,
22 guys.

23 MR. RUKAVINA: I just did that. Let
24 me just pull it up.

25 MR. MORRIS: Can you just tell us

1 NORRIS

2 what the amendment is?

3 MR. RUKAVINA: Well, that's what I'm
4 trying to --

5 MR. MORRIS: Okay. I'm sorry.

6 MR. RUKAVINA: If you would, maybe
7 it's fastest if you scroll down through the
8 interrogatories.

9 MS. WINOGRAD: They start at -- go to
10 page 11, I think. Yeah, there we go.

11 MR. RUKAVINA: All right. Please
12 scroll down. Stop there.

13 Please scroll down. Stop there.

14 Please scroll down.

15 All right. Scroll back up to 12.

16 Okay. Then, I apologize, maybe I'm
17 wrong. We were going to -- just so, John, you
18 know, we were going to change the amount of
19 damages from 14 million to 10 million. I'm using
20 round numbers. I thought it was in here
21 somewhere but I don't want to waste --

22 MR. MORRIS: All right. But he's
23 going to testify to it anyway when I ask him
24 about damages.

25 MR. RUKAVINA: Then I apologize

1 NORRIS

2 for taking everyone's time.

3 MR. MORRIS: No problem.

4 MS. WINOGRAD: I'm sorry, can you
5 hold on for one second?

6 Okay. Can you hear me okay?

7 THE WITNESS: I can.

8 BY MS. WINOGRAD:

9 Q. Okay. So can we scroll to page 12,
10 please.

11 Okay. Do you see here in
12 Interrogatory Number 3, Highland asked the
13 Advisors to identify the date on which they
14 believed that the former dual employees
15 identified on the lists we just discussed
16 attached as Exhibit A departed the Debtor? Do
17 you see that?

18 A. Yes.

19 Q. Okay. And then in the Advisors'
20 response they list all of the dual employees and
21 then the corresponding date that they contend
22 those employees departed the Debtor?

23 A. Yes.

24 Q. Okay. And so the Advisors -- the
25 Advisors were generally aware of the employees'

1 NORRIS

2 terminations and departures as they occurred,
3 right?

4 MR. RUKAVINA: I think there is a
5 question on here.

6 MS. WINOGRAD: Yes, it's the next
7 one.

8 THE WITNESS: Yeah, let's go to the
9 next one, and I would say our response is
10 accurate.

11 MS. WINOGRAD: Okay. So we can just
12 scroll through it, La Asia.

13 A. There you go. The Advisors were
14 generally aware of the employees' terminations
15 and departures as they occurred.

16 BY MS. WINOGRAD:

17 Q. Okay. So does this mean that the
18 Advisors became aware of the employees'
19 departures at the time the employees left?

20 A. As they -- maybe not the same day,
21 but we were generally aware. We knew people had
22 left. We also receive a monthly report from HR
23 at HCMLP of employees that had departed.

24 Q. Okay. Great.

25 So within a week were the Advisors

1 NORRIS

2 generally aware that employees had left?

3 A. Again, so there's a monthly report,
4 if it was the beginning of the month, it may have
5 been a month, but generally as they occurred.

6 Q. Okay. So for any --

7 MS. WINOGRAD: Can we go back to
8 page 12, La Asia.

9 Thanks.

10 BY MS. WINOGRAD:

11 Q. So for any of the employees listed
12 here, if we could scroll down just a tiny bit,
13 and then a little bit more, because I think there
14 is one employee -- there we go. That's fine.

15 For any of the employees listed here,
16 did the Advisors exercise their rights under
17 Section 4.02 of the Payroll Reimbursement
18 Agreement after they left?

19 A. 4.02. The Advisors?

20 Q. Do you want to go back to
21 Section 4.02, or do you have it in front of you?

22 A. Yeah, I think -- and if I'm looking
23 at this as -- hang on, I'll come back to it.

24 I would say it gets back to we were
25 aware they left. We had relied on Highland to

1 NORRIS

2 perform the calculations. And 4.02 clearly says,
3 should either party determine that a change to an
4 employee reimbursement is appropriate, Highland
5 knew they had left, they knew they continued to
6 charge us more. Why didn't they make an update,
7 right? And that's our contention.

8 We relied on Highland to do the
9 calculation, as I discussed earlier, and we
10 assumed, and appropriately here, that they were
11 doing that. Again, that wasn't the fault of the
12 individuals. They were told they couldn't
13 because of the automatic stay, and they even had
14 the overpayment calculation, what the actual
15 proper calculation should be.

16 And again, we haven't received the
17 backup detail from Mr. Klos's calculation. But
18 looking at the numbers, she was calculating an
19 actual amount when they had dropped these
20 employees.

21 Q. Okay. But the employees didn't --
22 did the employees ever ask Highland if the list
23 should be -- if the allocation should be changed?

24 A. The employees, as in these employees
25 that left?

1 NORRIS

2 Q. Yeah, locations on the list, yeah.

3 A. I don't know that these employees
4 were involved at all in the calculation or the
5 allocations. The employees leaving requesting a
6 change to the allocations, the employees didn't
7 really impact that, to my understanding.

8 Q. So you're saying that if an employee
9 on the Exhibit A of the Payroll Reimbursement
10 Agreement left, then that wouldn't affect that
11 person's name appearing on that list?

12 A. It would, but you asked if that
13 employee would ask for the allocation to be
14 updated.

15 Q. No, no, I think that -- let me -- I
16 think there was a misunderstanding.

17 So after an employee left, did the
18 Advisors ask Highland if -- if the -- if the list
19 should be updated?

20 A. We had hired Highland for accounting,
21 payables, all of this, including the calculations
22 within that realm. We thought that they had --
23 that was being updated, right? And it wasn't.
24 Or maybe it was, they just didn't notify us or
25 bring it to our attention because they were told

1 NORRIS

2 they could not.

3 Q. But the Advisors -- but the Advisors
4 kept paying Highland the same amounts per month
5 even after certain employees left, right?

6 A. No, the Advisors never voluntarily
7 said, yeah, let me pay the same amount. We were
8 under the understanding that Highland, who was
9 handling our payments -- again, the entire
10 Highland accounting team had access, was creating
11 the calculations, created an invoice for the
12 wrong amount, transferred the cash, had access to
13 our bank account, with no one at the Advisors
14 even knowing that was happening.

15 And so we didn't -- we didn't pay.
16 It was paid by Highland employees, and that was
17 the process.

18 Q. Okay. So after any of these
19 employees departed the Debtor, were there any
20 specific services that the Advisors stopped
21 receiving from Highland?

22 A. Yeah.

23 Q. Can you identify an employee who
24 got -- you know, who that would apply to?

25 A. Yeah, that's just -- here is one real

1 NORRIS

2 easy one: Trey Parker. He was the chief
3 investment officer. He left. Joe Sowin was
4 appointed as chief investment officer or co-CIO
5 with Jim. Joe Sowin is an HCMFA employee. And
6 that's a simple one.

7 John Poglitsch, head of credit
8 research, left December 22nd, 2020. There was no
9 head of credit research when John left employed
10 at HCMLP providing that service.

11 Yeah, I can go down the list if you
12 want, but, you know, there is -- each one of
13 these, there was not a hire made to replace, my
14 understanding, any of these people by HCMLP.
15 They were in bankruptcy, right? They were a
16 debtor in possession. They weren't hiring new
17 people to replace these individuals.

18 And so that is -- that's our belief
19 and our position.

20 Q. Okay. So I'm going to skip ahead to
21 a question here about Trey Parker because you
22 just mentioned him. So what title -- can you
23 repeat for me what title Trey Parker held?

24 A. He was co-CIO.

25 Q. Okay. So he held the title of

1 NORRIS

2 co-head of private equity; is that right?

3 A. He may have.

4 Q. Okay.

5 A. I don't know. In his actions
6 regarding our retail funds, the co-CIO is the
7 role in which we interacted with him.

8 MS. WINOGRAD: Okay. La Asia, can
9 you put up Exhibit 14 for a moment.

10 MS. CANTY: This is 14.

11 MS. WINOGRAD: I'm sorry.

12 Exhibit 34.

13 (Exhibit 34 marked for identification.)

14 BY MS. WINOGRAD:

15 Q. Okay. So this is Trey's compensation
16 statement. Right?

17 A. Yeah.

18 Q. Okay. And it says here that he has a
19 title of partner co-head of private equity,
20 right?

21 A. According to this.

22 Q. Okay. So it's fair to say that was
23 his title at Highland, right?

24 A. I mean, at the top it says partner
25 and co-CIO, which is --

1 NORRIS

2 Q. Okay. But it says that effective
3 March 1st, 2019 his new title will be partner
4 co-head of private equity.

5 A. Got it. And maybe it was at that
6 time that Joe Sowin took over the role, again, an
7 HCMFA employee.

8 Q. Okay.

9 A. Maybe at that point Trey Parker
10 wasn't providing as much services to the
11 retail advisors. Because the private equity was
12 largely on the institutional side and -- so,
13 yeah, I see what it says here in the title.

14 Q. Okay. I just wanted to make sure we
15 were on the same page about what his title was.

16 MS. WINOGRAD: La Asia, can we go
17 back to the Exhibit 14, please.

18 Thank you.

19 BY MS. WINOGRAD:

20 Q. So in his role, what services did
21 Trey perform?

22 A. Yeah, he was the portfolio manager
23 for our Highland Floating Rate Opportunities
24 Fund, changed its name to Highland Income Fund.
25 He was a portfolio manager on the Opportunistic

NORRIS

1
2 Credit Fund. He helped manage the investment
3 services of our credit investments that were in
4 our retail funds.

5 He also handled private equity
6 investments of which the Debtor had a significant
7 portion on their balance sheet. And so -- but
8 his largely was the overseeing the investment
9 process.

10 And how that applied to our Advisors
11 was he was a named portfolio manager on a couple
12 of our funds, including the Highland Income Fund,
13 the Opportunistic Credit Fund, maybe another fund
14 or two, but those were his primary duties in
15 interacting with us.

16 Q. Okay. Are you familiar with
17 TerreStar Investments?

18 A. I am.

19 Q. Okay. Did Trey perform investment
20 services for TerreStar?

21 A. My understanding is that he did.

22 Q. Okay. And TerreStar was a big
23 investment held by the funds, right?

24 MR. RUKAVINA: Objection. Form.

25 A. Yeah, big? Sorry.

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. How would you categorize it?

4 A. It was a material position held by
5 one fund and held in a few of our other funds.
6 Yeah.

7 Q. Okay. So it was a significant
8 investment for the funds, right?

9 A. Funds, plural, no. One singular
10 fund, it was an important position.

11 Q. Was it -- was it a significant
12 investment -- investment for the Global
13 Allocation Fund?

14 A. Are we talking a legal term
15 "significant"?

16 Q. Was it a large investment for the
17 Global Allocation Fund?

18 A. By and large.

19 Q. More than -- among the top ten or
20 just holdings for the fund?

21 A. Yeah, yeah.

22 Q. Was it among the top --

23 A. Sorry, go ahead.

24 Q. I was just going to say, is it among
25 the top ten largest holdings for the NexPoint

1 NORRIS

2 Strategic Opportunity Fund?

3 A. I don't know on the position side.

4 It was much smaller in that fund.

5 Q. Okay. Nexpoint Capital, Inc., was it
6 among the top ten largest holdings of this fund
7 as of 2020?

8 A. I don't know without having the
9 answers -- again, this is not something I believe
10 was on the preparation material, so as the -- I'm
11 not prepared to answer the holding sizes of
12 positions. But that would be factual information
13 that you could find.

14 Q. Okay. But TerreStar was -- but
15 TerreStar was a significant investment for some
16 of the funds, right?

17 A. At least the Global Allocation Fund.
18 Again, we haven't defined "significant" but it
19 was a top ten position, if that was your
20 definition. That one, I do know. On the others,
21 I don't know if it fell into the top ten or was
22 further down, but I know it was much smaller than
23 the other funds.

24 Q. Okay. So is it fair to say Trey
25 spent a significant amount of his time servicing

1 NORRIS

2 TerreStar?

3 A. I don't know that's the case. It was
4 one position. I think they covered hundreds of
5 positions. So I don't know what times -- you
6 know, Trey's time was allocated to TerreStar.

7 Q. Okay. Do you have, like, a rough
8 estimate of what percentage of Trey's time he
9 spent on TerreStar? Was it over 50?

10 A. Oh, I would imagine it's much smaller
11 than 50, but I would be speculating. Again, I
12 think they covered hundreds of positions, and he
13 was the CIO and, you know, head of credit
14 research before that. He oversaw the investment
15 process and he had a large, you know, commitment
16 of time.

17 My understanding of TerreStar is
18 there was only two board members. Trey was one
19 of them. And there was periodic meetings. But
20 it was not an operating company, it's an asset.
21 But I don't think there was that much ongoing
22 time, based on our understanding. But I don't --
23 I'm, again, speculating.

24 Q. Okay. So when -- so the Advisors
25 contend Trey Parker left the Debtor on

1 NORRIS

2 February 28th of 2020, right?

3 A. Based on this schedule, which I
4 believe these dates were taken from the Debtor's
5 schedules that we received from Debtor employees.

6 Q. And when Trey left, did the Advisors
7 exercise their rights under Section 4.02 and
8 Section 2.02 of the PRA?

9 A. I'll just go back to my previous
10 answer on that. When you asked about any of
11 these employees, it's the same answer.

12 Q. After Trey left, did the Advisors
13 stop receiving investment advisory services
14 relating to TerreStar?

15 A. Not that I know of.

16 Q. And after Trey left, did the Advisors
17 stop receiving any of the investment advisory
18 services that Trey had performed?

19 A. Certainly, yeah. There was a lot of
20 his time allocation that there was no replacement
21 person. We certainly -- there was -- you take a
22 senior partner away, who was doing a lot for our
23 funds, we had to replace him with HCMFA
24 employees.

25 Joe Sowin, I know, was appointed as a

1 NORRIS

2 portfolio manager of one of the funds. One of
3 the other funds we had to liquidate. So, yeah,
4 we had a drop-off. We didn't receive any
5 replacement services largely for what Trey
6 performed.

7 Q. Okay. So you mentioned specifically
8 the services that he was -- what were the
9 services that he was providing that you're saying
10 were no longer provided?

11 A. Yeah, the -- the day-to-day -- let's
12 go to -- let's go to his payroll reimbursement,
13 for Trey Parker is 30 percent of his time to
14 HCMFA and NexPoint Advisors is 15 percent maybe.

15 So you take approximately 45 percent
16 of a person's time that was at some point
17 committed to these Advisors, and he leaves, there
18 was no person hired to handle the credit
19 research, there was no person hired by HCMLP to
20 handle his portfolio management duty, and the
21 income -- the Highland Income Fund was a billion
22 dollar fund. Right? There was a lot going on
23 with that fund.

24 The Opportunistic Credit Fund, which
25 Trey was a portfolio manager of. We didn't have

1 NORRIS

2 a replacement portfolio manager, support
3 management services, credit research, all of
4 those, those services. He also did some public
5 equity stuff, oversaw a lot of the investment
6 profits. So I do know that -- yeah.

7 Q. So as a result of Trey's departure,
8 were the Advisors unable to perform certain
9 services to those funds that you just mentioned?

10 A. No. We had to adjust -- right -- and
11 reallocate our existing resources. I mentioned
12 reallocating Joe Sowin as a portfolio manager.
13 Jim had to step in where he didn't before
14 previously before do some of the day to day in
15 some of the investments. We have other employees
16 that are at the Advisors that are front office
17 employees that had to pitch in and perform those
18 duties.

19 Q. And are those -- did that -- did that
20 cost the Advisors to incur additional expenses?

21 A. None that -- I guess in this instance
22 we're asserting that we paid for services we
23 weren't receiving. Right? I'm not prepared to
24 talk about other additional costs. I'm sure,
25 again, we had to reallocate people and time, so I

1 NORRIS

2 don't know the answer to that.

3 Q. Okay. You just talked about those
4 services that the Advisors were no longer
5 receiving as a result of Trey's departure --

6 A. And here is another point on that, to
7 be -- you know, Trey's departure came at a time
8 when the -- and going back to our firm, a lot of
9 what he had been focused on, our credit business
10 went from having 20 analysts at Highland to, I
11 don't know, a handful, maybe three, two. The
12 private equity book had shrunk significantly.
13 And so his responsibilities over time related to
14 our Advisors had also shrunk.

15 And so are we able to continue
16 performing our services, yes, with the existing
17 resources and maybe we had to hire one or two
18 more. And then eventually hired some of the
19 front office people from Highland to help fill
20 those holes after the transfer.

21 Q. Um-hum. And so -- when this was all
22 happening, did the Advisors tell Highland that it
23 was unable to perform these services -- that the
24 Advisors were unable to perform these services?

25 A. Well, no, because we didn't tell them

1 NORRIS

2 that the Advisors were unable to perform the
3 services because Highland was in bankruptcy, we
4 were aware of that. We were performing them
5 ourselves at this point. We were not unable, we
6 were able to perform the services.

7 Q. I'm sorry, say that last part again.
8 I don't think I understood you.

9 A. Yeah, you asked did we tell them we
10 were unable to perform these services, and I
11 said, no, we didn't tell them that because we
12 were able to. We didn't tell them we were unable
13 to, we were able to. And we were performing the
14 services.

15 Q. Okay. I thought you just said that
16 after Trey left the Advisors weren't able to
17 perform certain services for the funds when Trey
18 left, right?

19 A. What I -- and maybe you
20 misunderstood. Highland didn't perform those
21 services, the Advisors, our Advisors had to step
22 in.

23 Q. Okay. And then my question is after
24 Trey left and the Advisors were no longer able to
25 perform these services, did the Advisors tell

1 NORRIS

2 Highland that the Advisors were not able to
3 perform certain services?

4 A. No, because we were able to perform
5 the services.

6 Q. Okay. So you're saying -- are you
7 saying -- you said that the Advisors weren't able
8 to perform certain services, but then are you
9 saying --

10 A. I don't think I said that.

11 Q. So -- okay. So --

12 A. And maybe I misunderstood your
13 question.

14 Q. Okay. Let's take a couple of steps
15 back.

16 So after Trey left, you're saying the
17 Advisors weren't receiving certain services from
18 Highland that Trey had been performing. Right?

19 A. Correct.

20 Q. Okay. So does that mean that as a
21 result of Trey's departure, the Advisors were not
22 able to perform its own services to the funds?

23 A. No. We, with our personnel, were
24 able to perform the required services under our
25 advisory agreements.

1 NORRIS

2 And some of that was spread to other
3 Highland employees, it wasn't just that Trey
4 left, it was, okay, well, now, Matthew Gray,
5 you're going to cover this name and, you know,
6 whoever else is still here is going to cover a
7 different name. Nate Burns, you know, you are
8 going to cover that. And they reallocated his
9 work without hiring additional people.

10 Q. Okay. And so then when you're saying
11 that you guys had to shuffle things around and
12 hire other people after Trey left, did the
13 Advisors tell Highland that that was going on?

14 A. At this time we were all under the
15 same roof. Right? This is February 2020,
16 beginning of bankruptcy. We're all working
17 together. We knew what the responsibilities
18 were. It wasn't -- so certainly Highland, you
19 know, the Advisors and Highland had that
20 communication, because we were working closely
21 together.

22 It's not the position you sit in
23 today where we're in separate offices and there
24 is litigation back and forth. It's a frame
25 February 2020, there was a belief that the

1 NORRIS

2 bankruptcy would happen very quickly. Trey
3 Parker had already planned to leave
4 pre-bankruptcy, or just after, my understanding.
5 But in anticipation that this would be a quick
6 resolution, and all these people were working
7 closely together cooperatively with no issues.

8 Q. Okay. So just to make sure I have
9 this right, you're saying that when Trey left,
10 the Advisors reshuffled things, hired their own
11 people to replace Trey's services, were no longer
12 able to receive certain services from Highland
13 and didn't tell Highland directly that it was --
14 that it was reshuffling things?

15 A. I think that's a -- that's not the
16 way at all that I would explain it. I explained
17 it that we were all there -- there was not like,
18 let me formally send Highland -- we were in the
19 same office working collaboratively together as
20 affiliates, right, up until just, you know,
21 around that time.

22 And so it was very -- I mean, some --
23 you were literally in the same office. Some were
24 Advisor employees, some were HCMLP employees.
25 They worked closely together. And with Trey

NORRIS

1
2 leaving, all right, we're going to -- some of
3 HCMLP employees will do the job and some of the
4 Advisors -- a lot of it was the Advisor
5 employees, including the key -- the key aspects
6 of his job of portfolio management, which we used
7 our existing advisor employee Mr. Andrews for his
8 replacement.

9 Q. Okay. So let's stay on this list for
10 a second. So it says on this list that Michael
11 Phillips left Highland February 20th of 2018,
12 right?

13 A. Yes.

14 Q. And then Jake Tomlin left Highland
15 February 20th of 2018, right?

16 A. Yes.

17 Q. Sanjay Gulati left March of 2018?

18 A. Yes.

19 Q. Phil Ryder left Highland April of
20 2018, right?

21 A. Yes.

22 Q. So there is a total of four employees
23 that left Highland before May 1st of 2018, right?

24 A. I can't see the top, but if you tell
25 me that's the case, then that's the case.

1 NORRIS

2 Q. Okay. We can scroll up a little bit.

3 Okay. And this was before the
4 Payroll Reimbursement Agreements were executed,
5 right?

6 A. Yes. But that was effective
7 January 1st, 2018. So before they quit, the
8 effectiveness of the agreement.

9 Q. Okay. But the Advisors were aware --
10 excuse me -- of these four employees' departures
11 prior to executing the payroll reimbursement,
12 right?

13 A. Again, that would be on Frank. The
14 Advisors -- I go back to my same answer. We knew
15 when employees left, and we relied on Highland
16 for the actual preparation of the calculation.

17 Q. Okay. So let me ask you this. Did
18 anybody at the Advisors review this agreement
19 before the Advisors entered into it?

20 A. We don't know.

21 Q. Okay. So the Advisors may have
22 entered this agreement without understanding its
23 terms?

24 A. Again, we haven't deposed
25 Mr. Waterhouse, who signed the agreement, I

1 NORRIS

2 believe is what -- this specific agreement.

3 And you've got to believe -- I
4 can't -- as an individual looking at this, say,
5 oh, we knew nothing, we didn't understand the
6 agreement. There was knowledge entering into the
7 agreement, we just need to understand from Frank
8 and Dave what the process and who those were
9 involved.

10 Q. Okay. So the Advisors entered into
11 this agreement knowing that four of those
12 employees were no longer working at Highland?

13 A. I don't know if that's -- I don't
14 know.

15 But, again, the effective -- there is
16 a really clear reason why you would want to
17 include them. It's effective and payments were
18 effective as of January 1st. So for the
19 sub-period that they were employed, they would
20 have paid for their costs. So it was logical to
21 think that even if they knew that they were no
22 longer employed, that they would include them on
23 there because they were employed effective
24 January 1st, and there was work performed.

25 Q. But they weren't going to be working

NORRIS

1
2 after May 1st of 2018, right?

3 A. Yes, exactly. And that is exactly
4 why we shouldn't be paying for them. And why we
5 were shocked that we continued to pay at the same
6 rate in 2020, the end of 2020, for exactly the
7 people that were no longer employed in
8 February 2018, well before the actual filing of
9 the bankruptcy.

10 So there was obviously a true-up in
11 2018, so one would speculate that Mr. Klos
12 updated for those and factored that in, and we
13 would hope that's the case. But nothing happened
14 in 2019, nothing happened in 2020, and the
15 amounts that are considered on here and the
16 amounts paying match up to what these employees
17 were as of this date.

18 Q. Okay. But if the -- if the Advisors
19 don't contend that they shouldn't have been
20 paying for these four employees, why did they
21 enter into an agreement to pay for these four
22 employees?

23 A. Again, the effective date is
24 January 1st. Again, and I don't have all the
25 background. I'm sure Mr. Waterhouse and Mr. Klos

1 NORRIS

2 would have a good understanding, but one could
3 speculate, and I don't have to tell you, one
4 could speculate that that's fair, they are going
5 to be paid during that period, and after that
6 they wouldn't be paid. Because it's actual cost,
7 it's reimbursement for services of people that
8 are dual employees. If they are not longer
9 employed, logically you would think, sure, of
10 course we're not going to pay them. Why in the
11 world would you pay for someone that is no longer
12 employed?

13 And so logically that was actually
14 the intent of the agreement. They would drop
15 off, okay, we are not going to reimburse because
16 they are no longer employed and they're no longer
17 providing services.

18 And this states -- the agreement
19 clearly states we reimbursed for employees that
20 are, one, employed as a dual employee, and, two,
21 providing investment advisory services.

22 So, again, speculation, but it seems
23 completely reasonable to me why they would have
24 included them if the effective date is January
25 1st.

1 NORRIS

2 Q. But if the Advisors knew of their
3 departures around the time they left, why didn't
4 the Advisors exercise their rights under
5 Section 4.04 to adjust the allocations?

6 A. I'll go back to my previous responses
7 on the same topic, which is, we relied on
8 Highland, and you can go look at every other
9 response I had on this. And we assumed that it
10 would be done the correct way, and in 2018, our
11 understanding is it was.

12 There was a true-up in December. And
13 so why didn't we adjust it? Well, the operating
14 procedure at that point was to adjust at the end
15 of the year. There is nothing in these
16 agreements that say you can't adjust something
17 after the fact, and that was what was done, and
18 we expected it would have continued to be done
19 after that.

20 Q. So if you were relying -- if the
21 Advisors were relying on Highland to make sure
22 all of these allocations were accurate, what was
23 the purpose for Section 4.04?

24 A. That's a great question. Again, we
25 weren't involved in the drafting of agreements.

1 NORRIS

2 And I think that the intent is very clear in what
3 an agreement -- the agreement is for. It's a
4 reimbursement. Right? It's not, you're going to
5 pay a fixed cost to us. It's, you are going to
6 reimburse for actual cost of what it cost to
7 employ someone as a dual employee and if they are
8 providing services.

9 That is the intent of the agreement.

10 And I don't know how you interpret reimbursement
11 as anything other than paying for someone that's
12 provided -- it's a reimbursing.

13 Q. So I understand that you're -- that
14 the Advisors are contending that they have relied
15 on Highland to ensure that these allocations were
16 accurate, but did the Advisors have any way of
17 ensuring that the allocations were accurate?

18 A. We, as I already said, we didn't have
19 a separate group running calculations. We don't
20 an accounting group. We don't have a legal
21 services group. That's why we paid Highland to
22 do this. So we didn't have a way of double
23 checking or hiring someone else to come in and
24 sleuth it because that was what we paid Highland
25 to do.

1 NORRIS

2 Q. Are you aware that certain employees
3 of Highland took over Trey Parker's title after
4 he left?

5 A. Which title?

6 Q. The co-head of private equity.

7 A. I'm aware that the -- there were some
8 people in the legal team that had already been
9 providing similar services to some of these
10 companies, were given certain additional titles,
11 so their titles of counsel or general counsel or
12 whatever. Our understanding of that and our
13 position is that that was somewhat of a carrot.
14 During the middle of bankruptcy, we need to
15 provide something for employees to -- additional
16 for them to feel good about, and it was in
17 addition to their other services that they were
18 providing.

19 Q. Okay. Are you aware that on the very
20 day Trey Parker left, JP Sevilla became co-head
21 of private equity?

22 A. I believe that your documents you
23 sent over last night, that was the first time I
24 had realized that or seen that. And, again,
25 given that I'm here, it wasn't allowed. Now JP

1 NORRIS

2 is doing Trey's job. It was a maybe you could
3 help cover one of the names from a legal
4 perspective. And, again, context is important.
5 2020, we had a whole team of talented people.
6 You file for bankruptcy. You've got to try and
7 retain them. And giving people additional titles
8 is a carrot, right, and I think that's a big part
9 of it. And maybe we can ask JP how did -- how
10 did his role change? Our view was it didn't
11 change really at all. Maybe there was a little
12 bit of an allocation, that he was performing
13 work, as we know he was on TerreStar. Did he
14 attend a board meeting once a quarter, what was
15 his time allocation. Again, I mentioned before,
16 if there's a good faith estimate or, you know,
17 something that the Debtor would like to
18 negotiate, we would love to hear it.

19 In this instance, due to, you know,
20 he was helping with TerreStar, maybe there is a
21 time allotment, and we can get J.P.'s time,
22 right? But that -- he did not take over the job
23 of Trey.

24 And as I mentioned before, private
25 equity was on its downswing. You can probably

1 NORRIS

2 look and track the private equity investments.
3 Trey's main job related to our Advisors was a
4 portfolio management role, an investment analyst
5 role for our closed-end fund, our open-end fund,
6 and overseeing the profits on the investments
7 that rolled into -- rolled into our funds. And
8 nobody stepped in from that legal team to do
9 those services.

10 Q. So when JP took over Trey's title on
11 the day Trey left, did JP start performing any of
12 the functions that Trey performed previously?

13 A. I don't know. I would have to ask.
14 I'm not -- other than helping with TerreStar, I
15 think it was probably -- I think it was a group
16 effort. I know Jim pitched in. I know there
17 were other people. It was a group effort. But,
18 again, a company with no operations, no cash
19 flows, it's literally an asset. And so I don't
20 know what else JP did, but we can certainly ask
21 him.

22 Q. Okay. But JP did start helping on
23 TerreStar, right, when Trey left?

24 A. I believe that's the case, but I'm
25 not certain. I know he had given a few updates

1 NORRIS

2 occasionally. My interaction there was very
3 limited because I don't think there was much for
4 him to do.

5 Q. Okay. But TerreStar -- okay. So --
6 so did the Advisors contend that they shouldn't
7 pay for J.P.'s time working on TerreStar?

8 A. If there was a portion of his time,
9 again, we'd love to hear if he was providing
10 investment advisory services. If he's providing
11 legal and compliance services related to a
12 company that one of our funds owns, then, again,
13 there's splitting hairs on what it actually was
14 that he did. But, again, you mentioned there was
15 a significant size of his overall allocation
16 time. Doesn't mean there was a lot of work
17 involved when JP came in.

18 Q. But even if JP spent, let's just say,
19 an hour a week on TerreStar, do the Advisors
20 contend they shouldn't have to pay for that?

21 A. Again, like I said, we are open to
22 hearing, and specifically if there are areas
23 where people who were providing were dual
24 employee, one, and providing investment advisory
25 services that meet the definitions of the

NORRIS

1
2 agreement, we're happy to discuss that. And if
3 there should be a true-up, let's do a true-up.
4 That's what we've been clamoring for since we
5 first found out about this. And so definitely
6 open to hearing what you have from a document in
7 evidence standpoint.

8 Again, I'll go back to in December
9 2020, the Debtor's CFO and Controller created a
10 calculation of what the front office services
11 should have been for 2020, and that was well
12 after Trey Parker left and JP was appointed
13 co-head of private equity and continued his
14 normal role as associate counsel or whatever he
15 was at HCMLP. But we haven't had the backup yet.
16 Maybe it's already in there or maybe it's not,
17 but if it's not, I would be curious on why Dave
18 wouldn't have included that if HCMLP knew you was
19 providing those services.

20 Q. So there was a group of people that
21 started working on TerreStar after Trey left,
22 right?

23 A. I don't know if "a group of people"
24 is accurate. I mean, he is who I heard a couple
25 of updates from. And, again, I don't know if

1 NORRIS

2 there is a material amount of time. I guess one
3 hour a week -- sure, let's run the numbers. One
4 hour divided by his sixty hours, it's 1.6 percent
5 of his time. And if his pay is, let's just
6 assume, I don't know, \$600,000. 9,999. We'll
7 cut you a check for that amount. And our numbers
8 we're showing are \$7.7 million. So I think we're
9 talking about a small amount. But we're open to
10 it. We've asked. We've asked for what we were
11 paying for. We've asked many times over many,
12 many months and haven't received it until
13 discovery. And so we've been open all along to
14 have those conversations and would love to do it.

15 When I say write that check, I say
16 that somewhat sarcastically. We overpaid by
17 7.6 million. So we can net it against at least
18 the 7.6 million. Dave Klos' number is actually
19 larger. He shows a larger amount. We'll get
20 into damages when we talk with Mr. Morris. But
21 we're not contending that we shouldn't pay for
22 dual employees that are providing investment
23 advisory services.

24 Q. Okay. But, again, you are not
25 contending that what? I couldn't hear that last

1 NORRIS

2 part.

3 A. That we shouldn't pay for dual
4 employees that are providing investment advisory
5 services under the Payroll Reimbursement
6 Agreement.

7 Q. Okay. So were there employees
8 providing advisory services that aren't part of
9 this list?

10 A. We don't believe there is.

11 Q. But didn't you just say JP Sevilla
12 was providing advisory services?

13 A. Again, I don't -- advisory -- I
14 wouldn't contend that at all, and I didn't say
15 that. He was sitting on the board of a portfolio
16 management company I believe that was already
17 owned, that was already in operation, and he
18 wasn't giving any recommendations, to my
19 understanding, in advisory service on what we
20 should do with TerreStar. He was acting in an
21 operational or legal capacity. So we would
22 contend that, no, that's not investment advice.
23 He wasn't giving advice. He was providing
24 information for the company, very standard from a
25 legal and compliance perspective.

1 NORRIS

2 Q. Okay. Are you aware that five other
3 employees got title changes the day Trey left?

4 A. I believe I saw that in the documents
5 you sent last night, uh-huh.

6 Q. Okay. And just tell me again -- if
7 you have already, I apologize -- but I'm just
8 trying to understand why did this -- why did this
9 all happen the day he left?

10 A. Yeah, again, I'll go back to our view
11 is, look, you had someone that was high profile
12 leave. He left when private equity had
13 diminished, and there were a lot of employees who
14 wanted time retained. And that was done to help
15 them feel good about the opportunity, stick
16 around. I think most of them probably did stick
17 around. But that's -- you know, when someone
18 leaves, sometimes you reappoint titles. And --
19 but our view is we didn't see anything
20 significant in any way from any of them from an
21 investment advice standpoint.

22 Q. Okay. So, again --

23 A. Sorry. Go ahead.

24 Q. -- do the Advisors contend that these
25 six individuals who got the title changes, for

1 NORRIS

2 those individuals their work didn't actually
3 change, it was just their title?

4 A. Largely, yes.

5 Now, their work was -- their work was
6 legal and compliance services, litigation
7 support, and those were services that were paid
8 for under the Shared Services Agreement.

9 Again, but I don't -- I don't have
10 detailed knowledge. I haven't spoken to them
11 regarding how their title changed. I wasn't
12 prepared to really address what happened in their
13 role. First time I saw this and was brought to
14 my attention was the documents you sent last
15 night. Wasn't on our radar at all because in our
16 view their role did not change.

17 Q. Their role didn't change. Okay.

18 MS. WINOGRAD: Can we pull up
19 Exhibit 35.

20 (Exhibit 35 marked for identification.)

21 BY MS. WINOGRAD:

22 Q. Okay. Have you seen this email
23 before?

24 A. No.

25 Q. Okay. This is an email from Katie

1 NORRIS

2 Irving to Dave Klos, James Mills, Will Duffy,
3 cc'ing Tim Cournoyer and JP Sevilla, right?

4 A. Yes.

5 Q. And it's dated March 3rd of 2020,
6 right?

7 A. Looks like it, yes.

8 Q. And it's just less than a week after
9 Trey departed the Debtor, right?

10 A. Yes.

11 Q. And it's just less than a week after
12 Katie, Tim, and JP took on new titles with
13 Highland, right?

14 A. I don't know that Katie or Tim. I
15 believe that was in your materials, but I'll take
16 your word for it if that's the case.

17 Q. Okay. Because I can show their title
18 changes if you want.

19 A. I'll take your word for it.

20 Q. Okay. And the subject of this email
21 is "Draft TerreStar Valuation," right?

22 A. Yes.

23 Q. What's the purpose of this email?

24 A. I have no idea. Houlihan Lokey
25 helped provide third-party support. Seems like a

NORRIS

1
2 logical service here, something related to
3 valuation, which we were paying Highland for
4 under our Shared Services Agreement.

5 But I -- "any info you have on
6 TerreStar opinions or its valuation." Looks like
7 a very simple email requesting information
8 regarding valuation.

9 Q. Okay. Is this a type of valuation
10 analysis Trey would have been involved in when he
11 worked at Highland?

12 A. I don't know. But Highland was
13 performing valuation services of which part was
14 Trey sat on the valuation committee and we were
15 paying them for valuation services of which
16 included the performance of various employees
17 related to valuation.

18 Q. So it's fair to say he would have
19 probably been cc'd on this email or otherwise
20 included in some way?

21 A. I don't know. My guess is -- I can't
22 speculate on that.

23 Q. Okay. But he was involved in
24 TerreStar valuation analyses while he was working
25 at the Debtor?

1 NORRIS

2 A. I'm not -- again, I don't -- I don't
3 know the specifics of his involvement in the
4 valuation process of TerreStar. I know he was
5 involved with TerreStar from an investment
6 perspective. He sat on the valuation committee.
7 But I don't know particularly any specifics.

8 Q. Do you know if Katie had any
9 involvement with TerreStar prior to Trey's
10 departure?

11 A. I don't know.

12 Q. Do you know if -- do you know if Tim
13 did?

14 A. I don't know. And I don't even
15 recollect having any discussion with Tim after
16 this on TerreStar in any way.

17 Q. Okay. So do you know if JP did?

18 A. Prior?

19 Q. Prior to his title change?

20 A. I'm not sure.

21 Q. Okay.

22 A. He may have. I think he may have,
23 but I'm not sure. And I would say the legal team
24 regularly provided support to investment
25 professionals on agreement review, on

NORRIS

1
2 structuring. So it would be very realistic to
3 think that JP and Tim had some involvement on
4 TerreStar prior to that.

5 Q. Right. But this is more focused on
6 investment advisory topics, right? This is --

7 A. I don't think so -- I'm sorry, go
8 ahead.

9 Q. No, I was just going to say this is
10 more about valuations rather than legal advice,
11 right?

12 A. Yeah, but valuation is not investment
13 advice. That's covered under back and middle
14 office-type services which were provided under
15 the Shared Services Agreement. It mentions
16 valuation services in the Agreement. That's
17 front and center of what shared services is,
18 which that was across many different teams. The
19 legal team had a lot to play on any given month
20 related to valuation. In fact, legal and
21 compliance, I believe, ran the valuation
22 committee with Thomas Surgent and Jason Post,
23 like, they were integral into the valuation
24 process.

25 Q. Okay. So Katie and Tim and JP, are

1 NORRIS

2 you saying they would have been involved in this
3 type of email before Trey left?

4 A. I don't know.

5 Q. Do you know if these individuals on
6 this email continued to provide services for
7 TerreStar in April?

8 A. In April?

9 Q. Of 2020. So like the following
10 month?

11 A. I don't know. My only personal
12 knowledge was Katie was involved in the
13 beginning, and I haven't heard anything else from
14 Katie on TerreStar. It's been JP. So I haven't
15 actually heard from Katie in a very long time. I
16 don't even know if she's still employed by
17 Skyview or Highland.

18 Q. Okay.

19 A. I don't know.

20 MS. WINOGRAD: Can we show
21 Exhibit 41.

22 (Exhibit 41 marked for identification.)

23 MS. CANTY: Give me just one second.

24 BY MS. WINOGRAD:

25 Q. Okay. Do you see the document?

1 NORRIS

2 A. Yes.

3 Q. Okay. So this is an email from Katie
4 Irving on April 6th of 2020, right?

5 A. Yes.

6 Q. Okay. So she says, "Good afternoon,
7 this looks fine. Approved. Thank you."

8 What exactly is she approving?

9 A. I don't know. First time I've seen
10 the email.

11 Q. Okay. So it says "3/31 TerreStar
12 analysis." Do you have any idea what this could
13 be referring to?

14 A. Let me read here. "Tim/JP/Katie,
15 Please find the draft 3/31 TerreStar valuation
16 attached. The equity mark movement was driven
17 by: Updated financials, debt balance increased
18 2.1 million; updated transaction weightings, due
19 to the passage of time."

20 "The debt mark decreased slightly due
21 to 0.25 percent."

22 "See page 16 for the enterprise value
23 conclusion."

24 "Term Loan."

25 "Please let us know if you have

1 NORRIS

2 comments. As a reminder, we'll need a simple
3 approval from you before incorporating these
4 marks in the NAVs for the retail funds."

5 "Simple approval" is what this looks
6 like, of -- in order to incorporate into the
7 NAVs, based on the email.

8 But, again, I'm not on the email.
9 I've never been -- it's been many, many years
10 since I was involved in the valuation process,
11 but standard valuation-related work.

12 Q. Okay. Do you know if Trey ever
13 approved valuations like this?

14 A. I'm not sure.

15 Q. Okay. So for the work that Katie and
16 JP and Tim and the total of six employees we
17 discussed, they were working on TerreStar issues
18 after Trey left, right? Whether we want to call
19 those investment advisory or not, right?

20 A. I mean, issues, I see this -- all
21 you've shown me so far is an mail saying, can you
22 provide me valuation data and then looks fine,
23 approved. If that's -- and it's just Katie. I
24 don't have any -- there is no evidence who
25 provided things. The others are working on it.

1 NORRIS

2 So I don't know.

3 Q. Tim and JP were cc'd on all these
4 emails. You already said JP was involved in
5 TerreStar issues. So it's fair to say there were
6 people working on TerreStar after Trey left,
7 right, on some level?

8 A. Yeah. And, again, here we've got
9 value -- very valuation-specific items.
10 And -- but your comment was a team of five, and
11 here is two. I know JP. Katie had a couple of
12 emails.

13 Q. Okay. So do --

14 A. I have no evidence to support -- or
15 unless you have it, pull it up on Tim's
16 involvement.

17 Q. Okay. Well, Tim was cc'd on these
18 emails. Do you see his name? It says to Tim on
19 April 6?

20 A. Yeah, I -- just, I mean, I get sent
21 emails and cc'd on emails all the time, and
22 doesn't mean that I did work on it.

23 Q. Okay. So is it the Advisors'
24 contention that whatever work Tim and JP and
25 Katie did on TerreStar, the Advisors shouldn't

1 NORRIS

2 have to pay for it under the PRAs?

3 A. I think we would have to
4 understand -- I mean, this is the first time we
5 even saw this last night, the document. It's not
6 something we had discussed or prepared for in
7 detail. I don't know if it's part of the topics
8 that -- I don't know the level of work they put
9 into it. So I don't know what they were doing.
10 I don't have background. There's no -- other
11 than a couple of emails you showed me. I have no
12 personal experience, and I don't have any other
13 based on my preparation.

14 MS. WINOGRAD: Okay. I think that I
15 want to take a little break right now before we
16 move on. So let's just plan on coming back at
17 3:10, if that works for everybody.

18 THE WITNESS: Yeah.

19 (A break was taken from 1:58 p.m. to
20 2:18 p.m.)

21 BY MS. WINOGRAD:

22 Q. So I may have misunderstood you, but
23 you had talked about an analysis conducted by
24 Frank Waterhouse and Dave Klos in 2020. I think
25 it may have been December of 2020. Can you give

1 NORRIS

2 me the Bates number for that document?

3 THE WITNESS: Davor, I don't know
4 Bates numbers. Is that the ACL thing, or is that
5 something else?

6 MR. RUKAVINA: Ask again, please,
7 Ms. Winograd.

8 MS. WINOGRAD: Yeah, there was --

9 THE WITNESS: You provided it. All I
10 remember I sent him ACL-025012. Is that the
11 Bates? I don't know.

12 MR. RUKAVINA: It's one of them.
13 It's been produced in several different numbers,
14 but that's it.

15 BY MS. WINOGRAD:

16 Q. Okay.

17 A. We don't have the underlying support,
18 as I've mentioned several times here. And I
19 believe Mr. Morris said before you got back on
20 that he would get that to us by Monday.

21 MR. MORRIS: Yeah, I promise to get
22 that to you.

23 Can you just read it again, slowly,
24 Mr. Norris, so I can tie it together?

25 THE WITNESS: Yeah. ACL025012.

1 NORRIS

2 MR. RUKAVINA: Thanks so much.

3 A. I believe Mr. Rukavina also provided
4 file an actual file name, an Excel file name for
5 the underlying support.

6 BY MS. WINOGRAD:

7 Q. Okay.

8 A. Which we haven't received yet, but so
9 you can help in finding that.

10 Q. You had also mentioned that Dave Klos
11 said that a true-up couldn't be done in 2019
12 because of the bankruptcy, right?

13 A. So he told -- he told us that a
14 true-up was not done because of the automatic
15 stay. They were told, and they brought this to
16 the attention of DSI and Highland, Highland's
17 counsel and I believe Mr. Seery, because of the
18 automatic stay. That was what they pulled up.

19 Q. Is that in writing?

20 A. I don't believe it's in writing, but
21 myself and DC Sauter heard directly from him and
22 Mr. Waterhouse on that matter.

23 MS. WINOGRAD: Okay. Can we go to
24 Exhibit 13, please.

25 (Exhibit 13 marked for identification.)

1 NORRIS

2 BY MS. WINOGRAD:

3 Q. Okay. Are you familiar with this
4 document?

5 A. Yes, I believe I have it here. This
6 is just your response to our -- our claim; is
7 that right?

8 Q. This is the Advisors --

9 A. Oh, it's ours, yes. This is -- yes.
10 If you scroll up, it was filed on 12-22?

11 Q. Yes.

12 A. Yes.

13 MS. WINOGRAD: And so can we scroll
14 to page -- pdf page 3, please.

15 Actually, let's go to page 8. Okay.
16 Just go up a little bit. A little bit more.

17 BY MS. WINOGRAD:

18 Q. Okay. So do you see here it says --
19 let me ask it this way: The Advisors contend
20 that they -- that they paid under the agreement
21 due to a mistake of facts, right? Under the
22 Payroll Reimbursement Agreement due to a mistake
23 of facts, right?

24 A. We contend that we -- we didn't pay.
25 We were relying on Highland for those payments.

1 NORRIS

2 Q. Right. But you're saying that -- the
3 Advisors are saying that they paid because they
4 were -- the Advisors contend that they overpaid
5 under the PRAs for employees that were no longer
6 at the Debtor, right?

7 A. Because we were relying on the Debtor
8 to determine that, yes. I'm sorry, maybe ask
9 your question one more time.

10 Q. Okay. So do the Advisors contend --
11 don't the Advisors contend that they overpaid
12 under the Payroll Reimbursement Agreements
13 because they were paying for employees who were
14 no longer at the Debtor?

15 A. I believe that's a part of it. I
16 think this is in our response. This talks
17 specifically about the voluntary payment rule in
18 our stand here, but that's a part of it, that we
19 overpaid for --

20 Q. But with regard to the overpayments
21 for the Payroll Reimbursement Agreements, the
22 core of the Advisors' claim is that they overpaid
23 because they were paying for employees who were
24 no longer employed at the Debtor, right?

25 A. The core issue is we were relying on

1 NORRIS

2 Highland to make the payments, and we were
3 relying on Highland to prepare the calculations
4 appropriately and to seek reimbursement for
5 employees that provided actual services and were
6 dual employees. So, yes, we were paying. And
7 you'll see in our calculation there's -- and
8 based on the schedule we discussed, we were
9 paying for employees that were no longer
10 employed.

11 Q. Okay. So let's go to paragraph 21
12 quickly. It says, "Here, the Advisors were not
13 aware of all of the facts until late
14 November 2020." Do you see that?

15 A. I do.

16 Q. Okay. So are the facts that the
17 Advisors were not aware of that certain employees
18 were not employed at the Debtor?

19 A. No. And I've answered that multiple
20 times for you. We were aware that they were no
21 longer employed. We just weren't aware that
22 Highland had been paying the same amount for
23 those employees that are no longer here, or no
24 longer employed.

25 Q. Okay. Prior to the termination of

NORRIS

1
2 the Payroll Reimbursement Agreements, were the
3 Advisors ever in breach of their obligations to
4 the retail funds?

5 A. The Advisors meaning us in breach of
6 our duties to the retail funds?

7 Q. Uh-huh.

8 A. No.

9 Q. Okay. Did the Advisors ever tell the
10 retail board that Highland was in breach of any
11 of its obligations under the Payroll
12 Reimbursement Agreements?

13 A. Once we found out, we let the board
14 know that we were paying for employees that were
15 no longer employed, or they have been continuing
16 to charge the same amount that they had been
17 charging pre-bankruptcy even though they were no
18 longer employed.

19 Q. Okay. Who at the Advisors told them?

20 A. Who would we have told?

21 Q. No, who at the Advisors told the
22 retail board?

23 A. It would have been DC Sauter or
24 myself. In -- we had, as I mentioned, a number
25 of board meetings throughout this time period.

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. So when did the Advisors tell the retail board that Highland was in breach?

A. It would have been sometime -- DC and myself found out in late November/early December when we found out they continued to pay these amounts, and there would have been multiple conversations thereafter we had board meetings in December. We had multiple board meetings in January, had multiple board meetings in February, and it was a topic of conversation.

Q. So did the Advisors tell the retail board, then, in December of 2020?

A. I don't remember specifically.

Q. Okay. But it was after -- it was December 1st -- it was after December 1st?

A. I don't remember the exact time period, but all of this happened, and once we knew -- it wasn't -- as soon as we find out -- we needed to find out the details, and we had been asking for specific details for quite a while. But I don't remember the exact time period or the exact date, but we had board meetings in December multiple board meetings in January, board meetings in February, and it was discussed

NORRIS

1
2 multiple times with the board.

3 Q. Okay. Is there any document
4 reflecting the Advisors telling the retail board
5 this?

6 A. I don't know. I believe we provided
7 all documents that are responsive. I don't know
8 if there's -- we keep minutes of board meetings.
9 I don't know if that was included.

10 Q. And I apologize if this covers
11 something you already said, but just for my own
12 clarity, what exactly did the Advisors tell the
13 retail board?

14 A. Yeah, we told them -- we explained
15 the key different -- the key agreements which is
16 the Shared Services Agreement and the Payroll
17 Reimbursement Agreement. They were very aware we
18 had to hire Jason Post. In fact, that was at
19 their urging, knowing that we were continuing to
20 pay the same amount to Highland under the Shared
21 Services Agreement. So that was a very clear
22 communication. In addition, we had told them
23 that we were paying for certain investment
24 professionals under the Payroll Reimbursement
25 Agreement for the schedules based on employees

1 NORRIS

2 largely that no longer were employed. So that
3 was communicated to the board.

4 Q. Okay. So the Advisors told the
5 retail board about the -- about Highland's breach
6 under the Payroll Reimbursement Agreements at the
7 same time they told the retail board about the
8 breach under the Shared Services Agreements?

9 A. And, again, breach, I don't know if
10 you're using the right term there.

11 Q. Let me rephrase it. That Highland
12 wasn't performing under the --

13 A. Again, our claim isn't that you
14 weren't performing all services under the
15 agreement, we were just being billed the wrong
16 amount, right? So -- but the board was very
17 aware of our concerns and they, themselves, had
18 concerns about the services provided and
19 expressed those. And that was a meaningful part
20 of the conversation, so much, in fact, that they
21 had concerns about allowing us to hire Skyview,
22 who was hired -- created from the old Highland
23 employees because they were concerned it was
24 going to be the same people providing shared
25 services, and they had concerns about the

1 NORRIS

2 services that were provide before. So it was a
3 two-way conversation and understanding with our
4 board throughout this process.

5 Q. Okay. So -- and I want to get
6 straight what the Advisors' claim is with the
7 PRAs. The Advisors are contending not that
8 Highland -- they are not contending that Highland
9 didn't perform under the PRAs, they are -- right?

10 A. And I don't know if performing under
11 an agreement sounds like a legal term. I don't
12 know that I'm able to answer or make that
13 determination, but it's very simple. We
14 overpaid. We are to reimburse for actual
15 employees, and so our contention is we overpaid
16 for the services provided. This was not a you
17 provide the services you get paid regardless.
18 It's we're reimbursing you for actual costs of
19 those employees. And so they were charging us
20 too much money, and we have provided a
21 calculation of what we believe that is.

22 Q. Okay. But the Advisors contend that
23 the services were being provided, right?

24 A. There were investments -- we are
25 saying there's not investment advisory services

1 NORRIS

2 of dual employees. And, in fact, this report we
3 send shows there's still dual employees providing
4 investment advisory services. So it was a use
5 it, right, and pay. And so there was not a,
6 okay, you're no longer providing these services.
7 Same thing with shared services with the
8 agreement HCMFA was paying a cost plus 5 percent,
9 and it should just be the cost, not a stagnant
10 amount based on pre-bankruptcy billings.

11 Q. Okay. Because I'm just trying to
12 understand if the Advisors are saying that the
13 investment advisory services were being performed
14 by Highland but that the specific employees just
15 weren't providing them and that that was why
16 Highland breached under the PRAs.

17 A. The services changed dramatically,
18 the amount of services provided, but that was
19 fully functional under the agreement. You could
20 provide this level of service, and we would pay
21 this level plus 5 percent. Or you could provide
22 this level of service, and we would provide this
23 plus 5 percent.

24 And naturally the head count shrunk
25 dramatically at Highland pre-bankruptcy and

1 NORRIS

2 through the bankruptcy as people left, and there
3 were investment advisory services that continued,
4 and there were a number of them that did not.

5 And that was -- our view is that was what the
6 agreement contemplated. You pay for the
7 reimbursement of or the services provided. And
8 that continued -- the services continued, again,
9 at a lower level, but we were overcharged and
10 Highland paid for us too much.

11 Q. Okay. So are the Advisors contending
12 that they overpaid for services that they weren't
13 receiving under the PRAs, that they overpaid for
14 employees that weren't working there under the
15 PRAs, or both?

16 A. The PRAs -- the services provided are
17 investment advisory services. Those -- the
18 number of people and actions providing those was
19 significantly reduced. The head count was
20 significantly reduced. And we were paying based
21 on the old rates. So it's -- the services
22 provided is not services detailed in there other
23 than dual employees, and there's not a
24 requirement that they have to have a certain
25 number of dual employees. We were overpaying

NORRIS

1
2 because we were paying for employees that were no
3 longer employed, and there was not a new person
4 replacing that other -- that other
5 responsibility.

6 Q. Okay. And are you -- are you aware
7 in your individual capacity that in the fall of
8 2020, the retail board conducted an annual review
9 of whether to renew its agreement with the
10 Advisors?

11 A. Yes.

12 Q. Okay. And this is called the 15(c)
13 review, right?

14 A. Yes.

15 Q. Okay. And you're aware that part of
16 this involved an analysis of the quality of
17 services that the Advisors are performing to the
18 retail funds, right?

19 A. Yes.

20 Q. Okay. Did you participate in that
21 annual review in your --

22 A. I did.

23 Q. -- individual capacity?

24 A. I did.

25 Q. What parts did you participate in?

1 NORRIS

2 A. I participated in the board meetings
3 where they were discussed, I gave business
4 updates. My job is running the sales and
5 distribution effort. So I provided updates on
6 our sales successes. I was involved in the
7 conversations throughout. We relied heavily on
8 HCMLP's employees in regards to the services and
9 the shared services, but I was involved in the
10 conversations. Not all the conversations but the
11 board meetings that were 15(c) we discussed.

12 Q. And so is it fair to say you're
13 familiar with the board minutes from those
14 meetings?

15 A. I would be familiar with what we
16 discussed, but the board minutes, I don't know
17 that I've read board minutes.

18 Q. Okay. So just going back to the
19 meetings themselves and the fact that you were
20 there, was there anything -- was there anything
21 inaccurate that was said at those board meetings?

22 A. Inaccurate?

23 Q. Uh-huh.

24 A. Not that I know of.

25 Q. Okay. And are you familiar with the

1 NORRIS

2 reports that the Advisors sent to the retail
3 board in connection with the 15(c) review?

4 A. The memos, is that what you mean?

5 Q. Yes, the memos.

6 A. I'm generally familiar with them,
7 yes.

8 Q. Okay. Are you aware of anything
9 inaccurate in those memos?

10 A. I haven't read the memos, so -- and
11 you are asking me in my personal capacity, I
12 believe, so I'm not aware. Again, I haven't read
13 them. I may have read portions of them, but I
14 didn't read the whole memos.

15 MS. WINOGRAD: Okay. I might be
16 close to finishing up, I just want to take --
17 let's take like a -- let's take like a
18 three-minute break. Let's come back at 3:40. I
19 just want to look through some documents.

20 THE WITNESS: Okay.

21 (A break was taken from 2:36 p.m. to
22 2:41 p.m.)

23 BY MS. WINOGRAD:

24 Q. Do you know if, as the 30(b)(6)
25 witness, between the petition date and the date

1 NORRIS

2 of the administrative claim, did the Advisors
3 ever say any -- did the Advisors ever make any
4 inaccurate statements to the retail board?

5 A. None that I know of that would have
6 been intentional. And I say that "intentional"
7 because also a point in time, it's important to
8 note that particularly in this fall 2020 period,
9 we mentioned the 15(c) process, we had -- it was
10 more of an iterative process, and we were going
11 through usually the board would approve things
12 over two meetings because of everything going on
13 with the Shared Services Agreement and the
14 bankruptcy, it lasted longer. And also during
15 this time period, the tenor of the entire
16 relationship with Highland started to change.
17 And so some statements that may have been given
18 in September, October, may have changed
19 dramatically by November once the services had
20 changed, or once things had changed. So I don't
21 think there was anything intentional.

22 I know that there was a question of
23 some -- some documents that had been provided by
24 Frank Waterhouse that were related to a note.
25 And it mentioned -- it was -- in looking back at

NORRIS

1
2 it, we looked at those, the numbers didn't make
3 sense to the Advisors. And I don't remember all
4 the particulars, but I think that came up in
5 another case, and there was a contention that
6 that wasn't completely accurate, but it wasn't an
7 intentional item.

8 MS. WINOGRAD: Okay. So I'm going to
9 move to strike that.

10 BY MS. WINOGRAD:

11 Q. Are you aware today as you sit here
12 of any inaccurate statements that were made to
13 the retail board between the petition date and
14 the date of the admin claim filing?

15 A. In all instances we tried to be a
16 hundred percent forthright with the board. The
17 accuracy at the time of each submission was --
18 our view was things were accurate.

19 Q. So earlier when I asked you who you
20 spoke to to prepare for today's deposition as a
21 30(b)(6) witness, you named a few people. And
22 correct me if I'm wrong, but I heard -- I heard
23 James Dondero, Collins, Vitiello, Mitts. And was
24 it Fuller? I couldn't hear --

25 A. Yeah, Fullmer. Kevin Fullmer.

1 NORRIS

2 Q. Okay. And am I missing anybody that
3 you said you spoke to?

4 A. DC Sauter, my outside counsel. I got
5 some numbers from Hayley Eliason, who is in
6 accounting. I think that's everyone.

7 Q. Okay. And you said that you reviewed
8 a number of documents, right?

9 A. I did.

10 Q. Okay. So based on the people that
11 you spoke to, the people that you just named, and
12 all of the documents reviewed, you answered my
13 questions today with all of the facts that you
14 had knowledge of, right?

15 A. Yes.

16 Q. You answered my questions to the best
17 of your knowledge today, right?

18 A. I did.

19 Q. Okay.

20 A. And I think I said it I don't know
21 how many times, but, you know, we unfortunately
22 did not have access to Mr. Waterhouse, and that
23 would have been helpful. At his attorney's
24 suggestion and requirement, we couldn't prep or
25 use him or talk to him in this. And then

1 NORRIS

2 obviously we couldn't talk to Mr. Klos. And
3 they'll both be deposed, and we'll find more
4 additional information.

5 Q. Okay. So we're finishing up here,
6 and the last thing I want to ask you is: Is
7 there any answer that you gave me today that you
8 want to supplement or amend?

9 A. I don't think so. I probably talked
10 more than you wanted me to. I think that -- I
11 think that covers the items.

12 MS. WINOGRAD: Okay. Well, that's
13 all I have. So thank you very much, Mr. Norris.
14 And I'm going to let John Morris now take this
15 over. So I will say goodbye. Thank you again.

16 THE WITNESS: Thank you.

17 EXAMINATION

18 BY MR. MORRIS:

19 Q. Hi, Mr. Norris.

20 A. Hello.

21 Q. So I just want to cover the singular
22 topic of damages.

23 A. Yes.

24 Q. Are you aware that damages was one of
25 the topics on the 30(b)(6) notice?

1 NORRIS

2 A. Yes.

3 Q. And are you prepared to share with me
4 all information that you have that relates to
5 that topic?

6 A. I am.

7 Q. Okay. The Advisors' administrative
8 claim is based on its contention that Highland
9 has breached two different Shared Services
10 Agreements and two different Payroll
11 Reimbursement Agreements; do I have that right?

12 MR. RUKAVINA: Objection. Form.

13 A. Yeah, again, the language I talked
14 about earlier is breached. I, again, believe
15 that the issue at hand is that we've been paying
16 for services or overpaying for services that we
17 never received and that Highland, who we had
18 outsourced and relied on for payment of these,
19 continued to pay at a higher rate. So that's
20 the --

21 BY MR. MORRIS:

22 Q. So you are uncomfortable using the
23 word "breach"? Do I have that right; you don't
24 want to use that word?

25 A. Yeah, again, I'm not an attorney.

NORRIS

1
2 And as I look at this, there were services
3 provided under the Shared Services Agreement and
4 the intent, again, was to be -- particularly the
5 HCMFA and then payroll reimbursement the
6 cost-plus agreement, and the view here is there
7 were services provided -- right -- and they
8 performed under those agreements. A lot of good
9 people working hard. It was just that we were
10 billed at a prepetition rate for services that
11 were postpetition and employees that were no
12 longer there.

13 Q. Let's take them one at a time.

14 Are you -- do you have an
15 understanding of HCMFA's claims under the Shared
16 Services Agreement?

17 A. I do.

18 Q. Okay. Does HCMFA claim that Highland
19 breached its obligations under the Shared
20 Services Agreement?

21 A. I have the same answer I just
22 provided on breach.

23 Q. Can you just answer my question.
24 Does HCMFA contend that Highland breached any
25 obligation under the Shared Services Agreement?

1 NORRIS

2 A. Well, particularly if you look at the
3 responsibility to handle accounting and payroll,
4 we relied on them for those calculations, and
5 particularly related to this agreement, there was
6 overbilling and overpayments. But whether you
7 call that a breach or not, that's what we
8 contend.

9 Q. Okay. Are there any other breaches
10 that HCMFA contends Highland did with respect to
11 the Shared Services Agreement?

12 A. No. Again, I would point out that
13 discovery is still ongoing. We haven't talked to
14 Mr. Waterhouse. But as we sit here today, it's
15 very simple, straightforward. We paid for
16 services we didn't receive.

17 Q. Okay.

18 A. And we were overbilled, we overpaid
19 for whatever reason. Those are the damages.

20 Q. Okay. I just want to make sure that
21 we're on the same page here. I'm only talking
22 about HCMFA, and I'm only talking about the
23 Shared Services Agreement. Do you understand
24 that?

25 A. I do.

1 NORRIS

2 Q. Okay. How much do the -- does HCMFA
3 contend it is entitled to recover from Highland
4 under the Shared Services Agreement?

5 A. Yeah, so under the Shared Services
6 Agreement, in going into this, there is two
7 aspects of this. One is the calculation. That
8 is the payroll reimbursement. We had to hire
9 additional employees to compensate for reduction
10 in services from Highland. And so that's the
11 damages. There was a hire of Rob Harris, an
12 outside attorney who came in, and hiring of Jason
13 Post. Jason Post split his duties between HCMFA
14 and NexPoint Advisors.

15 In addition, those are the direct
16 costs that we had to pay. The others are, as you
17 will recall, you provided a calculation for
18 Mr. Klos on the amount of Shared Services
19 Agreement payments for overpayments. So there's
20 a number on there that shows a \$1 million gain
21 unrelated to the Shared Services Agreement, and
22 that's the damages that we assert related to the
23 Shared Services Agreement.

24 One million was an annual number, and
25 so you take 16 months, which is the period, and

1 NORRIS

2 amounts to approximately 1.3 million. And that
3 is split between HCMFA. It has it on its
4 schedule, and I'll point you back to it. We
5 haven't received the support yet which you said
6 you would provide by Monday, and the amount
7 listed for a point in time, the annual
8 profitability at that time was 0.4 million for
9 NexPoint Advisors and HCMFA \$600,000. So if
10 we're just talking HCMFA, it's \$600,000.

11 The additional employees is \$425,000
12 between Rob and Jason Post. And we can talk
13 about allocations, but an even split between the
14 two entities is a logical split.

15 Q. I'm sorry, I'm going to try this a
16 little bit different.

17 Can you give me the total number, and
18 then we'll break it down? What is the total
19 amount that HCMFA claims it is due as a result of
20 Highland's either breach or failure to perform
21 under the Shared Services Agreement?

22 A. Yeah. So it is one -- HCMFA, I've
23 got an aggregate number of 1.3 million, which is
24 HCMFA \$600,000, based on Dave Klos' spreadsheet,
25 which is an annual number, which is \$800,000. So

1 NORRIS

2 \$800,000 for overbilling of services that were
3 not received, right, for overpaying. And then
4 hiring of additional employees is \$212,000 for
5 HCMFA and \$212,000 for NexPoint Advisors. And I
6 apologize for the -- I have the overall number
7 for both entities, 1.3 million plus 425,000, and
8 that is split between the two entities.

9 Q. So the 1.3 million is total for both
10 entities, right?

11 A. Sorry, the 1.3 is related to
12 overpayment for the shared services, and 425,000
13 for the additional employees. And -- maybe that
14 wasn't --

15 Q. So let me try again.

16 A. Yeah, yeah.

17 Q. You said it's 600,000 from the cost
18 analysis for HCMFA?

19 A. Related to the shared services for
20 one year, and it was 16 months, so it was
21 800,000.

22 Q. Okay. 800?

23 A. 800.

24 Q. And then how much -- is the same
25 analysis done for NexPoint?

1 NORRIS

2 A. Yes. And that's \$500,000 for
3 NexPoint.

4 Q. Okay. So -- and then you took the
5 425 for Harris and Post, and you split it between
6 the two?

7 A. Correct.

8 Q. Okay. So that -- do I have this
9 right, for HCMFA the total claim has two
10 components, one of which is \$800,000. That comes
11 from the Klos analysis. And the other is
12 \$212,000, which is one-half of the total cost of
13 Harris and Post for a total of \$1,012,000?

14 A. Yes.

15 Q. Perfect.

16 Does HCMFA rely on anything other
17 than the cost analysis to support the \$800,000?
18 Are there any other facts that you're aware of
19 that support that number?

20 A. This -- obviously this is the best
21 available information prepared by the Debtor
22 employees at this time and, you know, they were
23 the closest to the numbers. We don't have the
24 backup for this, so we would love to see more.
25 But we're going to be able to talk to Mr. Klos

1 NORRIS

2 and Mr. Waterhouse as well. We tried to
3 receive -- you sent us invoices that we barely
4 got with passwords protected. We got the
5 passwords removed, that had invoice amounts and
6 dollar amounts paid and tried to back into
7 numbers. But ultimately don't have the level of
8 info that Mr. Klos and Mr. Waterhouse do, and
9 their analysis here I think is the best available
10 information.

11 Q. Okay. So subject to any further
12 information you may obtain, HCMFA's sole basis
13 for the \$800,000 number is the cost analysis,
14 correct?

15 A. That's -- that's one analysis. And
16 also the analysis that we knew we were getting
17 less service during this time period but paying
18 the same dollar amount. So we were paying -- we
19 did additional digging in those invoices you
20 provided, and in some of those months we were
21 paying for employees that we know were not
22 providing us any services. So HCMFA is at cost
23 plus 5 percent and the response and discussion we
24 had with Mr. Klos was, well, we just continued to
25 charge the same amount. So it matches up with

1 NORRIS

2 our understanding and our research that we were
3 being overbilled, and Dave Klos already came up
4 with the calculation. So it's our understanding
5 of the situation combined with his analysis.

6 Q. Okay. And did HCMFA ever make any
7 attempt to quantify the dollar value of the loss
8 of services that it sustained?

9 A. Yeah. And we did an analysis. We
10 actually -- and I mentioned this earlier, but we
11 included -- we had to incur additional legal
12 bills. We had to incur additional time of
13 Mr. Sauter who was spending significant amounts
14 of time that otherwise would have been litigation
15 support and legal services, and we did quantify
16 that. However, we chose at this time to exclude
17 those. So we're not seeking the additional
18 damages or costs that we incurred in K&L Gates
19 and Davor's firm and D.C.'s time to maintain
20 attorney-client privilege.

21 Q. So the \$800,000 piece from Mr. Klos,
22 is that \$50,000 a month?

23 A. In his calculation he has \$600,000
24 divided by 12, \$50,000 a month.

25 Q. Okay. And do you understand what the

1 NORRIS

2 basis for that \$50,000 monthly figure is?

3 A. No. We're waiting on the backup
4 from -- from you, from Mr. Klos. Now, I can
5 speculate because we have other invoices that we
6 got from you that show we were paying, for
7 example, for compliance and legal services that
8 we know were not performed. We were paying for
9 bonuses for insiders that were not giving
10 bonuses. We were paying for a number of
11 things -- and we can speculate. Again, that's
12 all speculation.

13 Q. I'm going to be rude and interrupt
14 and say -- I think Mr. Rukavina will join me in
15 saying we don't want you to speculate.

16 MR. MORRIS: So I'm going to move to
17 strike and just ask the question again very
18 simply.

19 BY MR. MORRIS:

20 Q. Does HCMFA know the basis today of
21 the \$50,000 monthly figure that Mr. Klos arrived
22 at?

23 A. No.

24 Q. Thank you.

25 Is it -- is it HCMFA's contention

1 NORRIS

2 that the diminished services from Highland were
3 equal from the petition date until the end of
4 2020? Was it constant over that period of time?

5 A. No, it -- it -- as I had discussed
6 earlier in the deposition, things changed over
7 time, right? And the quality of service changed
8 over time. The number of employees serving us
9 was reduced over time. So it was over time
10 reduction and quality of services -- or not
11 quality but the actual services provided were
12 reduced.

13 Q. And, in fact, for the first few
14 months of the bankruptcy, Mr. Dondero retained
15 control of both the Advisors and Highland,
16 correct?

17 A. I'm not sure what the first few
18 months was from a legal perspective. I wasn't
19 involved in November and December, January prior
20 to Jim completely ceding control. So I don't
21 know what the mechanism was.

22 Q. I think the pleading says that the
23 diminishment of services began with Mr. Seery's
24 directive in July of 2020. Do I have that right?

25 A. I'd have to -- you have to pull it

1 NORRIS

2 up. I don't know that that was the beginning,
3 but that was -- there were certain things that
4 very specifically were diminished at that point.

5 Q. Okay. Did the -- does HCMFA contend
6 that Highland failed to provide any services
7 prior to July of 2020?

8 A. There were certainly services that
9 were not provided at the same level as
10 pre-bankruptcy. And, you know, that's -- that's
11 very clear. The level of service dropped off.
12 But, again, the HCMFA agreement is a cost plus 5
13 percent. There was a lot of things we had to do,
14 even before July, that required additional work
15 on our end and we filled it. Right?

16 And we were all working towards a
17 peaceful resolution. I believe everyone thought
18 there was going to be an amicable resolution,
19 even Mr. Seery, and so everyone did their best
20 effort, but it was -- but there were some things
21 that were not provided.

22 There were people that I interacted
23 with that I never saw. Highland wasn't coming in
24 to the office. We were. I know there was
25 COVID-related items, but the level of interaction

1 NORRIS

2 and service dropped off.

3 Q. When did the drop-off begin?

4 A. When you filed for bankruptcy.

5 Q. Okay. Can you tell me how the filing
6 for bankruptcy, what specific services that
7 Highland failed to provide on the day it filed
8 for bankruptcy?

9 A. Again, service -- services provided
10 is we're paying for the services that are
11 provided. Right? It's a cost plus 5 percent
12 here. So go through the chain, everything became
13 harder after the bankruptcy filing. You had, for
14 example, PR, legal, litigation support. Those
15 people were all wrapped up in all the other
16 stuff, and so they were providing less of a
17 service for what we were doing.

18 It was -- you had the same number of
19 people -- actually you had far less, because
20 people started to quit, and there weren't large
21 hires to replace that. So just naturally there
22 was a -- across all of the services, a diminished
23 impact.

24 Q. So it's HCMFA's contention that the
25 moment Highland started -- filed for bankruptcy

1 NORRIS

2 that -- withdrawn.

3 Based on the information you have
4 today, it's HCMFA's contention that from the
5 moment Highland filed for bankruptcy it ceased to
6 provide services on a monthly basis that were
7 valued at \$50,000, and that monthly valuation of
8 loss of services continued until the end of
9 December 2020. Do I have that right?

10 A. Again, we're taking Dave Klos's
11 calculations. We need to see the backup, because
12 we don't have an insight into your actual
13 services you billed us for, which is a key
14 component. What were you actually providing and
15 what were we paying.

16 We were paying for a prepetition
17 amount for actual services plus 5 percent, yet
18 they continued to bill us for the work that was
19 done thereafter.

20 And, again, this is not getting too
21 complex. Here is Mr. Klos's analysis showing --
22 related to both entities' overall gain. And
23 there is other things in there that we could
24 argue, but that's -- that's the simple analysis.

25 Q. Okay. I'm just asking you as the

1 NORRIS

2 30(b)(6) witness charged with the responsibility
3 of answering questions about damages, what
4 HCMFA's position is. Do you understand that?

5 A. I do.

6 Q. Okay. When did HCMFA first learn
7 that Highland was providing less service?

8 A. As I mentioned, it was ongoing
9 throughout. It was -- we knew it was happening,
10 but all the way up through that point, from day
11 one on, the goal was to have a quick resolution
12 in this. You were even working for Mr. Dondero,
13 right? He hired you.

14 And then things changed. Right?
15 There was a gradual iterative process. And even
16 until late 2020 we continued to work. Everyone
17 worked hard. We tried to resolve things. We
18 took on more as the Advisors. The goal and
19 vision was that things would be wrapped up
20 amicably.

21 Q. Okay. You know Frank Waterhouse.
22 You've mentioned him quite a few times today,
23 correct?

24 A. I do know Frank, yes, and I have
25 mentioned him a quite a few times.

1 NORRIS

2 Q. You know that during the relative
3 time period prior to the filing of the
4 administrative claim, Frank Waterhouse was
5 Highland's CFO, correct?

6 A. Prior to the filing of what, sorry?

7 Q. The administrative claim in January
8 of 2020.

9 A. Yes.

10 Q. I apologize. Let me withdraw that.

11 You understand that Mr. Waterhouse
12 was Highland's CFO from the petition date through
13 at least the date that the Advisors filed their
14 administrative claim in January 2021, correct?

15 A. I believe that's the case.

16 Q. Okay. Do you have any reason to
17 believe that Mr. Waterhouse didn't have full
18 access to Highland's accounting system?

19 A. We had access to Highland's
20 accounting system.

21 Q. And he also had access to Highland's
22 books and records, correct?

23 A. He did.

24 Q. And he also served as the Advisors'
25 treasurer during the same period of time,

1 NORRIS

2 correct?

3 A. I believe that's the case, yes.

4 Q. And he was an officer of the -- of
5 the Advisors during the same period of time,
6 correct?

7 A. An officer of the Advisors, is that
8 what you said?

9 Q. Yes.

10 A. That was -- you said treasurer, I
11 believe, that's the --

12 Q. First I asked about treasurer and
13 then I'm asking about his status as an officer.
14 So let me just ask the questions again.

15 You are aware that from the petition
16 date until the date the Advisors filed their
17 administrative claim, that Mr. Waterhouse served
18 as the treasurer of the Advisors, correct?

19 A. I believe that's the case, yeah.

20 Q. And during the same period of time he
21 was an officer of the Advisors, correct?

22 A. Yeah, I believe the treasurer is an
23 officer role.

24 Q. Okay. Was Mr. Waterhouse the person
25 charged with the responsibility of authorizing

1 NORRIS

2 payments to be made on behalf of the Advisors?

3 A. Either Mr. Waterhouse or Mr. Klos.

4 Q. And you understand -- I'm sorry.

5 A. Go ahead.

6 Q. You understand that Mr. Klos reported
7 at all times to Mr. Waterhouse, correct?

8 A. I believe that's the case. And if
9 you tell me, then I'll believe that.

10 Q. Do you have any reason to believe
11 that Mr. Klos ever did anything without the
12 knowledge of Mr. Waterhouse, at least with
13 respect to the payments that were made under the
14 Shared Services Agreement and the Payroll
15 Reimbursement Agreements?

16 A. I don't know. And, again, we haven't
17 been able to depose both of them. But I know
18 both of them knew of the overpayment. Both of
19 them had raised the issue to DSI and to Highland
20 and to counsel. And even the support that you
21 provided us shows that they had an email in this
22 calculation that was just a roll-forward of the
23 analysis that had been done previously for DSI.

24 So they knew. They told us that they
25 had -- couldn't do anything about it or were told

1 NORRIS

2 by Highland's counsel there was nothing they
3 could do about it, and so they were in a tough
4 position. Right? Frank and Dave were in a tough
5 position, being stuck between both Advisors and
6 having threats of their personal liability and
7 firing, if they did anything to harm the economic
8 interest of Highland.

9 So I see where you're coming from,
10 but that's -- that's our view is they knew about
11 it, they worked together, they raised the issue
12 on multiple occasions, but we don't have all
13 those details, other than what they told us in
14 December of 2020.

15 Q. Did they raise the issue at any time
16 before December 2020?

17 A. To me and -- and, again, it was
18 around the end of November, beginning of 2020, I
19 don't know if they raised the issue to me
20 personally or to -- or they didn't to me or DC.
21 We know they raised it -- you're saying to the
22 Advisors or to Highland?

23 Q. To the Advisors.

24 A. Not that I'm aware of. Right? The
25 first time we had heard about it was around that

1 NORRIS

2 timeframe, and we were shocked, including
3 Mr. Dondero. Right? This is an important time
4 period, and myself and DC when we found out.

5 Q. That's because -- that's because
6 Highland had just -- all of this came to light
7 after Highland gave notice of termination of the
8 Shared Services Agreement on November 30th,
9 correct?

10 A. I don't think so. I think that it
11 had started earlier. And we actually sent, I
12 think, a letter to your firm in October where we
13 suspected we were overpaying, and we asked for
14 the invoices.

15 And so DC and myself started to get
16 involved in October, November, December because
17 there were certain employees that couldn't be
18 providing those services due to, you know, as we
19 talked about earlier in the deposition, all of
20 the things that were going on.

21 And so we started to understand a
22 little bit more. We found out, we thought, on
23 certain aspects of it, but it was that October,
24 November, December timeframe.

25 Q. You mentioned that part of HCMFA's

1 NORRIS

2 damages are half the cost of Harris and Post; do
3 I have that right?

4 A. That's correct.

5 Q. Okay. Over what period of time does
6 HCMFA contend Highland should have to reimburse
7 it for for their services?

8 A. Yeah, so the period of time is from
9 the time period which Jason Post moved over until
10 the termination of the agreement, not the
11 termination notice, but the actual termination of
12 the agreements, and then from the time period
13 that Mr. Harris was hired, which was in October,
14 until the end of the Shared Services Agreement.
15 He was hired specifically to fill the avoid of
16 the legal services that had been provided
17 previously. And Mr. Post was moved over, yet we
18 continued to pay for his services.

19 Q. Do you know what Mr. Post's salary
20 is? Withdrawn.

21 Is that \$425,000 number based on
22 anything other than their salary, their W-2
23 salary?

24 A. It's salaries, bonuses and benefits
25 received during that time period.

1 NORRIS

2 Q. And how much salary, bonus and
3 benefits did Mr. Post receive during that time
4 period?

5 A. I don't have the breakout. I got
6 this -- I got the total numbers from -- from
7 Brian Collins. So I just have the total number.

8 Q. Do you know if any documents have
9 been produced in discovery that would support
10 your contention as to the cost of those two
11 employees?

12 MR. RUKAVINA: If you have knowledge,
13 John. If you would like them, we'll produce them
14 in confidence.

15 MR. MORRIS: I'm happy to take them
16 in confidence. But, yes, I would like any
17 document that the Advisors contend supports their
18 damage theory.

19 MR. RUKAVINA: We'll get that to you
20 ASAP. Just because it's personal, I just --

21 MR. MORRIS: No problem.

22 BY MR. MORRIS:

23 Q. Okay. Is there any difference in the
24 analysis under the NexPoint shared services
25 damage calculation than what we just talked about

1 NORRIS

2 for HCMFA, other than the fact that I guess the
3 monthly number is a little bit less.

4 A. It's the same.

5 Q. It's otherwise the same theory, do I
6 have that right?

7 A. Yes.

8 Q. Okay. So it's half the cost of
9 Harris and Post's salary benefits and bonuses
10 from the period they were hired until the
11 termination date; is that right?

12 A. That's correct.

13 Q. And then you took the annual cost
14 under the Shared Services Agreement -- actually,
15 you know, I'm going to ask another question, go
16 back to that \$800,000 question.

17 I understand that it's \$500,000 a
18 month, but what portion of the annual payments
19 under the Shared Services Agreement does the
20 \$800,000 represent?

21 A. If you look at Dave's analysis, it
22 was during the time period he looked at, current
23 charges of 3.6 million, shared services costs,
24 3 million, so the 600,000 for the year divided by
25 3.6 is approximately 16.66 percent, I believe.

1 NORRIS

2 600 divided by --

3 Q. Okay. So, again, you're just relying
4 on Mr. Klos's analysis at this time?

5 A. That's correct. It was prepared by
6 the Debtor as an estimate of overpayments.

7 Q. Did you talk to Mr. Klos about that
8 analysis?

9 A. So he told me it existed.
10 Mr. Waterhouse as well. But I asked for a copy
11 of it, he said he would have to check and didn't
12 believe that they would allow -- you, Highland,
13 would allow him to provide it. And that was the
14 case, you wouldn't allow him to provide it.

15 So we talked to him and Frank about
16 the overpayments that occurred in the analysis,
17 but we didn't actually get a copy of it until
18 discovery.

19 Q. And Mr. -- after Mr. Waterhouse left
20 Highland but before his lawyer, I guess,
21 intervened and said you're not allowed to speak
22 with him, did anybody from the Advisors ask him
23 about that analysis?

24 A. After he left?

25 Q. Uh-huh.

1 NORRIS

2 A. I don't remember -- no, he left at
3 the end of February, right?

4 Q. Right.

5 A. Yeah, I don't -- we had talked to
6 him, I don't know the time period, but we had
7 talked to him about this in that period of
8 December/January/November, same time as Dave
9 Klos. I don't know that there was discussion
10 with him. There may have been, but I don't know.

11 Q. Did Dave or Frank tell you or anybody
12 at the Advisors, prior to the filing of the
13 administrative claim, what the overpayment number
14 was?

15 A. Yeah, there was discussion. Dave
16 wouldn't give specifics except that it was large,
17 you know, close to -- I believe there were
18 estimates. And I believe Frank had said
19 something like \$14 million, which amounted to --
20 which was a source of what we included in our
21 admin claim. We included 14 million originally.

22 So it was all verbal. And so what we
23 -- we were working off the best available
24 information, and they -- they were in a tough
25 spot, too. They couldn't provide the

1 NORRIS

2 information. They couldn't give us the detailed
3 calculation. I think they gave us rough
4 ballpark.

5 MR. MORRIS: La Asia, can you pull up
6 Exhibit 26, please.

7 (Exhibit 26 marked for identification.)

8 MS. CANTY: Sure, give me one second.
9 Let me see if I have it.

10 BY MR. MORRIS:

11 Q. So do you see you wrote an email on
12 December 1st, 2020?

13 A. Yeah.

14 Q. And do you remember writing this
15 email?

16 A. I do.

17 Q. And this is at 8:53 in the morning,
18 after Highland has given notice the prior day of
19 termination of the Shared Services Agreement.

20 Do you remember that?

21 A. I actually had not received the
22 shared services termination at that time. And I
23 don't know -- I do recall I didn't hear about it
24 until later, and I wasn't copied on the original
25 notice.

1 NORRIS

2 Q. It couldn't have been too much later
3 because you refer to the termination notices in
4 your December 1st email at 8:53 a.m., right?

5 A. Oh, I must have, yeah, you're right.

6 Q. What's --

7 A. When was the date of the termination
8 notices?

9 Q. I'll represent to you that it was
10 November 30th.

11 A. Perfect. Yeah. So evidently I don't
12 remember as many details about writing this
13 email. I have to look back at this.

14 Q. Okay. So before 9:00 o'clock on the
15 morning after the termination notice is sent --
16 how come -- how come you're doing this analysis
17 that morning, do you remember?

18 A. Well, even prior to this, D.C. and I
19 were trying to understand the separation -- the
20 separation of all the agreements. At this time
21 now Highland was moving towards a liquidation.
22 We were now going to be responsible for our own
23 services. And so I was trying to understand --
24 this is when I first got a glimpse into these
25 numbers, was trying to understand what we were

1 NORRIS

2 paying and for what. And you can clearly tell
3 from this and his responses we didn't know
4 exactly the amounts that were being paid for what
5 specifically. And that's what we were trying to
6 do.

7 Q. Okay. Do you see that your total is
8 \$14 million?

9 A. I do, yeah.

10 Q. That's the number that you came up
11 with, right?

12 A. No, this is actually taken directly
13 from materials, the trailing 12 months ended
14 6-30. This is the actual services. This isn't
15 an overpayment calculation. This is an actual
16 services provided. And I believe I stripped this
17 from materials that Mr. Klos had provided to our
18 board.

19 Q. Do you know what materials those are?

20 A. If it's related to income statement
21 items, which I believe this is, he provides an
22 annual as part of the 15(c) process expenditures
23 that are paid. I think that may have been the
24 source of it, but I'm not sure. These were items
25 I stripped from materials that Mr. Klos had

1 NORRIS

2 already prepared or Mr. Waterhouse or their
3 accounting team.

4 Q. And they are numbers that come off
5 the income statement, correct, your
6 understanding?

7 A. I believe so. Yeah. And you have an
8 expense line item, right? That would be from the
9 income statement.

10 Q. And would the -- would the Advisors'
11 books and records reflect amounts paid to
12 Highland under the Shared Services Agreement and
13 Payroll Reimbursement Agreement?

14 A. Would the Advis- -- sorry, can you
15 repeat that?

16 Q. Would the Advisors' books and records
17 reflect all payments made to Highland under the
18 Payroll Reimbursement Agreement and the Shared
19 Services Agreements?

20 A. They should, right? You have just
21 the cash -- cash going out and an expense line
22 item, and what we've said all along here is we
23 were relying on Highland to outsource the
24 accounting and the books and records, including
25 payments to them, and they were booking them as

1 NORRIS

2 they came through.

3 Q. Okay. So -- so would the payments --
4 do you understand whether the payments made by
5 the Advisors to Highland would be reflected in
6 the general ledger of the Advisors as payable on
7 the accounts -- withdrawn. Let me ask a better
8 question.

9 Do you understand that all payments
10 made by the Advisors to Highland would be
11 reflected on the Advisors' respective accounts
12 payable ledger?

13 A. If they were approved, a payable is a
14 liability and would be a payable on accounts
15 payable ledger. An actual accounts paid or
16 expenditures or cash outflows ledger, I mean,
17 we're talking about specifics, but they would
18 have been reporting what they were charging us
19 and what they were billing us, which we contend
20 is an overbilling for services actually provided.
21 We're not intending --

22 Q. Let me interrupt.

23 MR. MORRIS: I'm going to move to
24 strike and ask you to listen carefully to my
25 question.

1 NORRIS

2 BY MR. MORRIS:

3 Q. Do you know whether payments made by
4 the Advisors are reflected in the Advisors'
5 respective accounts payable ledger?

6 A. I don't know. I've never seen the
7 accounts payable ledger. But Mr. Klos and
8 Mr. Waterhouse would have maintained that and
9 their team. So we would be able to find out.

10 Q. Do you know where in the Advisors'
11 books and records payments made by them to
12 Highland under the Shared Services Agreements and
13 the Payroll Reimbursement Agreements would be
14 reflected?

15 A. Do you want the debits and credits?
16 I'm a CPA, but I haven't actually done accounting
17 in a long time.

18 Q. I'm asking for your knowledge.

19 A. It's an income statement, right? I
20 mean, you have an expense line item and, you
21 know, and then you're also going to hit the
22 balance sheet because you have cash flowing out.
23 It's going to reduce the assets. Our assets were
24 reduced. And our claim here is our assets were
25 reduced far more than they should have been

1 NORRIS

2 because we were overpaying for services. And the
3 expense line item would have been too high
4 because we were paying for things that we
5 shouldn't have.

6 Q. Do you know if the Advisors' income
7 statements were distributed to its officers on
8 any periodic basis, whether it's monthly or
9 quarterly or semiannually?

10 A. I don't know.

11 Q. Did you in your capacity as the
12 Executive Vice President of the Advisors ever
13 review the Advisors' financial statements?

14 A. Not in the context of they sent them
15 to me to review. Occasionally I would look at
16 them on the 15(c) materials, which were usually
17 published as of June 30th, because those meetings
18 were in August and September. But that was more
19 of a cursory review from, hey, I'm curious. It
20 wasn't my responsibility to handle any of the
21 accounting or the financials. I rarely even
22 understood the financials from that perspective.

23 Q. Prior to the end of 2020, from the
24 petition date until December 31st, 2020, do you
25 know whether the Advisors had any monthly expense

1 NORRIS

2 greater than the expenses they were paying to
3 Highland under the Shared Services Agreements and
4 the Payroll Reimbursement Agreements?

5 A. Sorry, from what period?

6 Q. From the petition date until the end
7 of December 2020.

8 A. I don't know. Again, I -- I don't
9 know.

10 Q. Can you identify any service provider
11 that the Advisors had during that period of time
12 which either of the Advisors paid, you know, more
13 than a hundred thousand dollars?

14 A. I wasn't involved in the financials.
15 Again, we outsourced that. We relied on Highland
16 and Frank and Dave and his team. So I'm not
17 familiar with the actual financials and all the
18 service providers involved, so I can't answer
19 that.

20 Q. When you -- when you spoke with
21 Mr. Dondero in preparation for your deposition
22 today, did you ask him if he was aware of the
23 amounts that the Advisors were paying to Highland
24 under the Shared Services Agreement and the
25 Payroll Reimbursement Agreements after the

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

petition date?

A. Of the specific dollar amounts?

Q. Just whether he was aware.

A. Yeah, we talked about -- I asked him if he was aware that we were paying for services we weren't receiving and that we were overpaying. And he said, no, up until the point when we discovered it, he did not know.

Q. Did you ask him if he knew of the services that weren't being provided?

A. We discussed more generally services that weren't being provided, particularly the employees that were no longer employed, some of the legal and compliance services, more generally. He didn't get into "do you know the specifics." But his understanding was there were services not being provided.

And he said -- this is what he said, he said, "Well, our understanding is we were in discussions and Mr. Seery had said that those items would be netted out."

We were working towards an amicable resolution and Mr. Seery had represented -- and this is coming from Mr. Dondero -- that those

1 NORRIS

2 items would be netted out.

3 And so there was discussions, I'm
4 sure there was knowledge of certain overpayments,
5 underpayments, but these items would have been
6 resolved.

7 Q. Did you ask Mr. Dondero why the
8 Advisors continued to pay full freight when they
9 knew that they weren't getting full services?

10 A. We did not -- yeah, we discussed
11 that. He did not know and I did not know and no
12 one that we spoke to knew that we were paying,
13 you call it full freight, I would say full
14 freight plus some, because we weren't paying for
15 the services received, we were paying for
16 employees no longer there.

17 And that's the big part of it, the
18 payroll reimbursement. We talked about the
19 numbers related to Shared Services Agreement, but
20 these payroll numbers which we provide in our
21 analysis are pretty significant. And we -- and
22 his view, too, is what were we paying Highland
23 for if not to provide the actual accounting and
24 payables and calculations correctly.

25 Q. Did he provide any explanation as to

1 NORRIS

2 why the Advisors have been unaware until October
3 or November 2020 that they were overpaying?

4 A. Yeah. Yeah. Actually, he said to
5 me, he said, "You don't have" -- "We don't have a
6 separate accounting team." Right? "We don't
7 have duplicate, we're not hiring someone else to
8 come in and check, we're relying on Highland."

9 And up until that point we expected
10 to be charged and billed the proper amount. So,
11 yeah, we did discuss that and those are some of
12 the things I've been representing today.

13 Q. Okay. Do you know if anybody on
14 behalf of the Advisors had any conversation with
15 Mr. Waterhouse between the moment that he left
16 Highland and the moment that his lawyers said you
17 can no longer speak to him about these issues of
18 damages and amounts paid and due under these
19 agreements?

20 A. I know there were discussions where
21 he reiterated that a calculation was done and
22 Dave Klos prepared it, but I don't know who or
23 when. And I think even then he was reserved on
24 what he could or couldn't provide, given the
25 threats that had been provided to him that he

1 NORRIS

2 would be personally responsible for any economic
3 damages.

4 Q. Okay. During your diligence in
5 preparing for this deposition, did anybody tell
6 you that Frank Waterhouse had provided any
7 information about amounts paid or overpaid under
8 these agreements between the time he left
9 Highland and the time his lawyer said he could no
10 longer speak with the Advisors?

11 A. No. And -- and he, from the
12 beginning, you may remember there was limited
13 amount we could access Mr. Waterhouse. And so
14 all of our communication, I believe, is before
15 the filing. And he didn't have access to his
16 files. He left the firm. He didn't have emails.
17 He didn't have the calculation from Mr. Klos.
18 And so there's limited things that he could
19 provide.

20 MR. MORRIS: I'm going to move to
21 strike. And I'm going to ask you to listen
22 carefully to my question.

23 BY MR. MORRIS:

24 Q. During your diligence did anybody
25 tell you that Mr. Waterhouse said anything

1 NORRIS

2 between the period between leaving Highland and
3 the time his lawyer said he could no longer speak
4 with the Advisors concerning amounts paid or
5 overpaid under the four agreements?

6 A. No, not in my -- my diligence in
7 preparing.

8 Q. Thank you very much.

9 MR. RUKAVINA: John, when you find a
10 convenient time, I request a restroom break.

11 MR. MORRIS: I'll do it right now for
12 you, Mr. Davor.

13 (A break was taken from 3:29 p.m. to
14 3:41 p.m.)

15 BY MR. MORRIS:

16 Q. Mr. Norris, we're going to put up on
17 the screen the document that you were kind enough
18 to identify and I just want to ask you a few
19 questions about it. Is this the document you
20 were referring to?

21 A. Which one am I referring to?

22 Q. The analysis that was prepared by
23 Mr. Klos.

24 A. No, this is -- this is the analysis
25 that I prepared regarding --

1 NORRIS

2 Q. Oh, you're right. You know what, I
3 don't have that other one.

4 MR. MORRIS: Can we take this down
5 for the moment?

6 MS. CANTY: Do you want the other
7 one?

8 MS. WINOGRAD: I wanted the one with
9 that Bates number HCL-025012.

10 MS. CANTY: Okay. Give me one minute
11 to get it up.

12 MR. MORRIS: Okay.

13 (Discussion off the record.)

14 (Exhibit 56 marked for identification.)

15 BY MR. MORRIS:

16 Q. Okay. So is -- let's just -- let me
17 say for the record that we're -- we've put up on
18 the screen a document bearing Bates number
19 ACL-025012. Do you see that, sir?

20 A. I do, yes.

21 Q. And is it your understanding that
22 Dave Klos prepared this document?

23 A. My understanding based on the email
24 that went from Dave to Mr. Waterhouse. But,
25 again, I'm making assumptions that the file was

1 NORRIS

2 sent from Dave to Frank. And my understanding is
3 Frank -- or Dave created this.

4 Q. Okay. Has -- your understanding is
5 who prepared this?

6 A. Dave. However, that's just based
7 on -- the discussions we had in December 2020,
8 where he said he had prepared analysis. I don't
9 know if this is it. I'm assuming this is it. It
10 matches the description. So we'll have to figure
11 out when Dave is deposed if he did in fact create
12 this.

13 Q. Did anybody other than Mr. Waterhouse
14 acting on behalf of the Advisors ever speak with
15 Mr. Klos about this document?

16 A. Myself and DC Sauter. Not the
17 individual line items, but Dave told us he had --
18 there had been an analysis done that showed
19 significant overpayment.

20 Q. Okay. Tell me everything that
21 Mr. Klos told you and Mr. Sauter about this
22 document that you can recall.

23 A. Yeah, it was -- we were going through
24 the numbers and it was very high level of there
25 was an analysis done, he was very guarded because

1 NORRIS

2 he was afraid of what he could or could not tell
3 us. And he told us there was an analysis done
4 that showed the overpayments. And so we asked
5 for that and it wasn't provided.

6 Q. Did he say anything else in this
7 conversation?

8 A. The conversation was related to
9 transition services. We were going through a
10 host of other things on how can we transition
11 agreements and a number of things. That was --
12 in regard to the overpayment, it was very
13 general.

14 Q. Was this a telephone conversation or
15 was it in person?

16 A. Pretty sure it was a telephone
17 conversation, but -- pretty sure it was
18 telephone.

19 Q. Do you remember when it took place?

20 A. It was early December. Early
21 December.

22 Q. Did he tell you why he had prepared
23 the analysis? Withdrawn.

24 Did he tell you that he personally
25 prepared the analysis?

1 NORRIS

2 A. I don't remember. I don't remember
3 him saying him personally, but -- my recollection
4 isn't perfect on that. I don't recall.

5 Q. Do you recall if he told you who did
6 prepare the analysis?

7 A. No.

8 And then I would note in discovery we
9 see, though, that it is a roll-forward -- this is
10 a roll-forward of the information prepared for
11 DSI and SCI last fall, which I would assume is
12 fall 2019. So there was obviously a calculation
13 in '19 prepared for DSI and SCI, but we don't
14 have an indication of who prepared that, but we
15 will be able to ask Mr. Klos.

16 Q. Did Highland at any time ever ask the
17 Advisors to extend the Shared Services Agreement
18 for any purpose other than completing an orderly
19 transition?

20 A. Did Highland ask to extend it? I'm
21 not aware of the discussions that went on. They
22 may have, but -- I don't know if that was
23 something on the preparation. It's not something
24 I prepared for in discussing the negotiation of
25 termination of shared services.

1 NORRIS

2 Q. You were involved in the process of
3 negotiating the transition of services, correct?

4 A. Correct.

5 Q. And during the conversations -- and
6 that process began in the summer of 2020, right?

7 A. Summer of 2020?

8 Q. July, August, September.

9 A. The second half of 2020, yes. My
10 involvement really started much later. And I
11 would say up until later 2020, the plan was that
12 a plan would actually work, that there would be a
13 negotiated agreement. And then once we realized
14 that really wasn't happening, we had to prepare
15 for Plan B and then Plan C and Plan D. But that
16 was late 2020, and my involvement started end of
17 November, beginning of December, and really in
18 earnest about mid-January.

19 Q. I'm going to ask you this question in
20 your personal capacity.

21 In your personal capacity are you
22 aware of any proposal by Highland to extend
23 either of the Shared Services Agreements?

24 A. A proposal to extend them?

25 Q. Uh-huh.

1 NORRIS

2 A. Any proposal to extend them?

3 Q. Correct, other than for the purpose
4 of completing the orderly transition, because
5 there were a couple of extensions in January and
6 February. I'm not talking about that.

7 A. Yeah. My understand of the
8 extensions was to complete the transition. But
9 there was a lot going on, and if you're asking in
10 my personal, I don't have any other recollection
11 or knowledge personally on that.

12 And, again, I wasn't involved in the
13 shared services negotiation prior to -- really
14 prior to receiving the notices. And then even
15 directly thereafter it was just helping
16 transition items in negotiations of the actual
17 transition.

18 Q. Do you know why this document was
19 prepared?

20 A. I don't.

21 Q. So Mr. Klos did not tell you during
22 your conversation why this document was prepared,
23 correct?

24 A. No. If I look at the emails that
25 Klos attached it, it obviously wasn't the first

NORRIS

1
2 time, it was a roll-forward. So why was it first
3 prepared in 2018 -- or, I'm sorry, 2019 with DSI
4 and SCI, I have no idea other. And we'll find
5 that out with Mr. Klos.

6 Q. But Mr. Klos -- your recollection is
7 that Mr. Klos specifically told you that an
8 analysis was done that showed overpayments; do I
9 have that right?

10 A. Yes. It was the amount that had been
11 profit were overpayments to Highland.

12 Q. Did he say "profits" or
13 "overpayments," if you remember?

14 A. I don't remember.

15 Q. It could have been either one of
16 those?

17 A. Well, profits would have resulted
18 from the overpayment. So it could have been
19 either of them. But, yeah, I don't remember
20 from --

21 Q. Okay.

22 A. -- the individual discussions.

23 Q. Just a little patience with me,
24 please. I'm asking you to put yourself back in
25 time and to try to remember the conversation that

1 NORRIS

2 you had with Mr. Klos. What did he say?

3 A. We definitely talked about
4 overpayments, that we were paying for employees
5 that were not there. So that was part of it.
6 And whether that created a profit.

7 He did say even by email -- there is
8 communication by email that there was a profit.
9 So I think it was both.

10 In the conversation we were talking
11 about paying more than we owed. And in the
12 email, it was written profit, right? He noted
13 that there was a significant profit to Highland
14 from those contracts. Which, again, is against
15 the intent of the agreement, which was a
16 reimbursement for actual costs.

17 MR. MORRIS: I'm going to move to
18 strike the last portion of your answer and again
19 just ask you respectfully to listen to my
20 question. I'm just asking you about the
21 conversation you had with Mr. Klos. I don't need
22 commentary. I don't want the commentary.

23 BY MR. MORRIS:

24 Q. Other than the one conversation --
25 withdrawn.

NORRIS

1
2 Do you recall anything else about
3 this particular conversation that you and
4 Mr. Sauter had concerning this document?

5 A. No.

6 Q. Do you know whether anybody acting on
7 behalf of the Advisors ever had any other
8 communication with Mr. Klos concerning this
9 document?

10 A. I know that DC continued to ask for
11 it. I continued to ask for it. I asked for it
12 in January from Mr. Klos. I asked for it from
13 DSI, DC and myself and Fred Caruso, and in
14 February maybe had a call with Pachulski on that
15 we talked to Brad Sharp.

16 And at this point I'm not even
17 certain what the analysis would include. But we
18 knew it existed and I continued to request it.
19 We requested it in a December 11th letter to your
20 firm from our counsel. And it -- so it was -- it
21 was requested many times, but there was not a lot
22 of information given.

23 Q. Okay. Can you share with me your
24 interpretation of this document? What do you
25 think this document reflects?

1 NORRIS

2 A. Yeah. So as we read through this,
3 you have at the top the actual allocations and
4 shared services and investment support, which is
5 payroll reimbursement, right? What is the front
6 office support that's being provided --

7 Q. I apologize. I'm going to interrupt.
8 Can you just be a little bit more specific like
9 where on the document you're looking at?

10 A. Yeah, so at the top section, the
11 summing number that sums the 3.3 million and
12 3.7 million.

13 Q. Yes. Thank you.

14 A. Yeah, so NPA allocation and HCMFA
15 allocation. You've got an allocation of
16 investment support and shared services. Just as
17 the agreement state, they will allocate and
18 charge us for actual cost, a cost at margin.
19 This is what they're showing here. He breaks it
20 out by line item. So legal and compliance, what
21 is the actual allocation of cost .2 and .3,
22 that's 200,000, 300,000.

23 So you take those same numbers down
24 to the bottom and you say, okay, now -- he did
25 basically a subtotal of front office, which is

1 NORRIS

2 also above incorporated in investment support.

3 And so the investment support group charge is

4 \$3 million. You can go and add up all the line

5 items for investment support and it equals three

6 dollars, or \$3 million for NPA allocation and

7 \$5 million for HCMFA allocation. So if you

8 recall we're paying for actual costs of these

9 services.

10 The investment support, this is the

11 charge, the 3 million and 5 million. We were

12 being charged 8 million a year and Highland was

13 receiving cash and utilizing that to pay their

14 operating expenses.

15 The investment support is what was

16 actually provided. And that adds up to a

17 profitable number, profitability, or overpayment

18 of 2.3 million for NexPoint and \$4.3 million for

19 HCMFA for a total of 6.6. You carry that down to

20 the next row. Unadjusted gain is \$6.6 million.

21 And --

22 Q. Hold on one second. So that 6.6 is

23 the 2.3 plus the 4.3?

24 A. 2.3 plus the 4.3, yeah.

25 Q. I'm going to stop you just for a

1 NORRIS

2 second and make sure I understand.

3 So above the line you have the annual
4 payments due under the NPA -- this is -- this is
5 the Payroll Reimbursement Agreement, right?

6 A. Correct.

7 Q. This has nothing to do with shared
8 services, right?

9 A. It does --

10 Q. At the bottom.

11 A. Once again, on front office payroll
12 reimbursement. Right?

13 Q. Okay. So the NPA Allocation column
14 is Highland's attempt to allocation among the
15 various services the payments that are due on an
16 annual basis under the NexPoint Payroll
17 Reimbursement Agreement, right? That's how you
18 get to \$3.3 million?

19 A. 3.3 and 3.7 are the actual charges.
20 So these were -- I'm assuming these are just
21 stagnant numbers or -- the stagnant numbers --
22 no, no, sorry. You're right. The 3.3 and 3.7
23 are the actual allocations of those actual costs.

24 Q. Okay. Do you know why the current
25 charges of \$3 million and \$5 million are

1 NORRIS

2 different?

3 A. Yes. Because there was a -- if you
4 go back to the Payroll Reimbursement Agreement,
5 the dollar amounts are based on the employee
6 services from Appendix A. Those current charges,
7 \$3 million, tie directly to the original amounts
8 that were being charged, which was \$252,000 for
9 NexPoint Advisors and \$416,000 for HCMFA as a
10 reimbursement for employees that were providing,
11 one, investment advisory services, and, two, were
12 dual employees.

13 So those are different because the
14 amount of services provided to each entity varied
15 when the contract was created and they continued
16 to roll forward the same exact billing and so you
17 see a three and a five. That's why they differ.

18 Q. Okay. So is it your understanding
19 that the difference between the current charge
20 and the profitability is the value of the
21 services actually provided? That's \$700,000 for
22 each -- that's shown as investment support.
23 That's the value of investment support that was
24 provided and so that's reduced from the current
25 charges to get the net profitability?

1 NORRIS

2 A. Yeah. And just as an independent
3 analysis, you can look at the numbers that we
4 used from Kristin using the actual payroll of the
5 employees that were employed during that time
6 period and it lines up pretty close.

7 Q. Okay. Okay.

8 Let's go to shared services and I may
9 come back to this. Can we scroll up a little bit
10 to make sure there's nothing below the line here?

11 So, shared services. Do you know
12 what "Current Charges" represent?

13 A. The current charges are the amounts
14 that are being invoiced. And my understanding is
15 that's at a constant rate and wasn't adjusted for
16 actual services provided, which is the next line
17 down, shared services.

18 Q. And do you have any idea how those
19 numbers are derived, the 2.6 million and the
20 3 million?

21 A. We would have to ask Mr. Klos, or
22 maybe you're, you know, additional support you
23 provide us will have that, but I'm making the
24 broad assumption here that it is for actual
25 services provided. And we would love to see the

1 NORRIS

2 support just to --

3 Q. Yeah, I do apologize, Mr. Norris.

4 It's my fault. Mr. Rukavina has asked me for it
5 a couple of times. I've responded to a number of
6 requests and that's just one that fell through
7 the cracks and I take responsibility for that.

8 Okay?

9 A. Yeah, no problem. I won't bring it
10 up again.

11 Q. I don't mind you bringing it up, but
12 I think you deserve an explanation.

13 And so then you get a net
14 profitability, that 400,000 and that 600,000, and
15 those are the numbers you extrapolated over the
16 entire postpetition period; do I have that right?

17 A. Yes. The million is just taken from
18 Klos's numbers.

19 Q. Yeah. Okay.

20 Do you know what's to the right
21 outside the box, the supplemental column?

22 A. I don't.

23 Q. Do you have an understanding of what
24 that is?

25 A. No, I don't. But I'm assuming -- I

1 NORRIS

2 can only make assumptions. Klos will know.

3 Q. Perhaps. I would assume that either
4 he or Waterhouse would.

5 And do you know what the last column
6 is: Total allocated costs less all entities?

7 A. It's the summation of the three
8 columns before, I believe: 7.5 plus 3.7 plus
9 3.3, I believe. Add those up, six, seven, plus
10 7.5. That adds up. So...

11 Q. Is it fair to say that the Advisors'
12 entire damage claim is the \$9.6 million at the
13 bottom of this page plus the \$425,000 for the two
14 employees that they were required to hire?

15 A. No. There's -- there's -- let's
16 point out the 9.6, there are two numbers in here
17 which aren't part of these agreements. One is an
18 offset that they have in there for Non-Debtor
19 Employees providing services to the Debtor. We
20 want to learn more about that. We aren't
21 including that number.

22 Our damage number is very simple.
23 One, you could take -- you have the shared
24 services number were taken directly from here,
25 and the payroll reimbursement would be a range

1 NORRIS

2 between our calculation and this, which actually
3 are approximately the same, \$6.6 million. If you
4 annualize -- that's an annual number. If you
5 take it for the 16 months and use the proration
6 for 16 months, it's \$8.8 million.

7 So 8.8 plus 1.3 million -- right --
8 gets you to -- nine point -- sorry. 8.8 plus
9 1.3 -- I'm -- 8.8 plus 1.3 gets you 10.1, plus
10 the 425,000, that's approximately 10 and a half
11 million between HCMFA and NPA.

12 If you go the -- using our
13 calculation that I provided to you, our estimate
14 of the payroll reimbursement amounts are not 6.6
15 times 16 months divided by 12 multiplied by 16 at
16 8.8, it's 7.6. And, you know, we can talk about
17 why there may be a difference, but we need the
18 backup. But 7.6 million plus the 1.3 plus the
19 425 gets you to approximately nine and a half
20 million dollars.

21 So whether you use the payroll
22 amounts from Dave Klos that gets you to
23 approximately ten and a half million, you use our
24 calculation without knowing full details, it
25 could be even more when we understand the

1 NORRIS

2 difference, nine and a half to ten and a half
3 million dollars.

4 Q. I just want to make sure there is no
5 dispute about this. The Advisors didn't pay any
6 amounts under any of the four agreements in
7 December or January in December 2020, correct?

8 A. That's my understanding, that there
9 was no payment in December or January.

10 Q. Okay. And payment was made in
11 February because that was part of the negotiation
12 for the extension of the termination notice,
13 correct?

14 A. It was payment. We don't -- we don't
15 admit or say that it was payment for shared
16 services that were provided. We reserved all
17 rights related to that.

18 And so, yeah, there was a payment
19 made and we were really forced into it. There
20 was no negotiation on moving that amount. It was
21 take it or leave it, we're cutting you off or you
22 pay it. So akin to extortion.

23 Q. Well, I mean, you're allowed to
24 negotiate and decide what terms you're willing to
25 accept; isn't that right? Do you have any

NORRIS

1
2 problem with that from a philosophical
3 perspective?

4 A. Yeah, the options were to cut the
5 services when we weren't expecting them to be cut
6 and could have had had detrimental impact. You
7 know, we could have handled it, but we did choose
8 to pay the amounts that were requested, but we
9 reserved all rights and continue to reserve those
10 rights.

11 Q. Did the Advisors contend that
12 Highland didn't give sufficient notice as
13 required under the various agreements?

14 A. There was notice given. And then we
15 were working towards a negotiated agreement with
16 a peaceful transition and we were waiting on a
17 term sheet -- I don't want to rehash it all, but
18 I think there was a good faith effort. And then
19 all of the sudden it was, "Pay it or we're
20 cutting," right?

21 We all thought we were moving towards
22 a peaceful resolution and we would get things
23 done. And then things changed and there was a
24 demand for payment or we're cutting you off. And
25 so, yeah, there was -- under the agreements you

1 NORRIS

2 provided the notice, but things, as they
3 progressed near the end of that changed.

4 Q. And you actually got to a complete
5 agreement that was acceptable to everybody, every
6 single term, except the Debtor refused to lest
7 Mr. Dondero back in the offices. That was the
8 only issue that stood between the parties,
9 correct?

10 A. If I recall correctly, yes. We
11 negotiated hundreds of points. We all worked
12 really hard. And the Debtor would not allow
13 Mr. Dondero to be in the office that we would be
14 leasing and perform his duties as the president
15 of the company. So that was -- that was the
16 sticking point for both sides. The Debtor didn't
17 allow it and Mr. Dondero required it and there
18 was no agreement.

19 Q. Let's -- let's see if we can finish
20 up.

21 MR. MORRIS: Can we put that other
22 document back up on the screen, please? La Asia,
23 I think it was Exhibit 51.

24 (Discussion off the record.)

25 (Exhibit 51 marked for identification.)

1 NORRIS

2 BY MR. MORRIS:

3 Q. Mr. Norris, is this the Advisors'
4 damage calculation relating to the alleged
5 overpayments under the Payroll Reimbursement
6 Agreements?

7 A. Based on the best information we have
8 at this time, yes.

9 Q. Okay. Did the Advisors ever seek
10 leave to file a prepetition claim arising from
11 any overpayments under the Payroll Reimbursement
12 Agreements?

13 A. I don't remember the specifics --
14 sorry, can you repeat the question? There are
15 legal terms that I want to make sure I get right.

16 Q. Sure. I don't mean to trick you at
17 all.

18 Do you understand that the damages
19 reflected on this page are called administrative
20 expenses because they allegedly arose after the
21 petition date?

22 A. Yeah. This is a postpetition claim
23 and we're only talking about postpetition
24 damages.

25 Q. Okay. Did the Advisors ever file a

1 NORRIS

2 prepetition claim?

3 A. I believe there were claims filed
4 more as placeholders, but not specifically
5 related to overpayments.

6 Q. Okay. So is it fair to say that to
7 the best of your knowledge the Advisors never
8 sought damages on account of prepetition claims
9 arising under the Shared Services or Payroll
10 Reimbursement Agreements?

11 A. Yeah, I think in one of our answers
12 that you asked do we have a prepetition claim, I
13 think the answer was -- it was under
14 interrogatories or responses, however we said it
15 there, and I would refer you there, but it was
16 something to the extent of, "We don't deny" --
17 "We don't say we didn't have damages," it was,
18 "There was never a claim admitted by the Court
19 related to that."

20 Q. Okay. Let me see if I can try and
21 characterize this document in a way that you
22 think is fair.

23 A. Uh-huh.

24 Q. The starting point for the Advisors
25 was to determine how much was paid under the

1 NORRIS

2 Payroll Reimbursement Agreements from the
3 petition date until the end of December 2020; is
4 that right?

5 A. Now, what we did is from the petition
6 date through February 19th, 2021. And I broke it
7 into three groups here until 11-30, because
8 that's largely the period where we had been
9 making payments or overpayments, the period of
10 the two months of December and January and then
11 the 19-day extension.

12 Q. Okay. So the first column is a
13 subtotal of the second two columns; do I have
14 that right?

15 A. Correct.

16 Q. And there's three pieces to it based
17 on three different periods of time?

18 A. Yes.

19 Q. And the first period of time, the
20 first line, the \$9 million number, that
21 represents the total amount paid from the
22 petition date until November 30th, 2020, correct?

23 A. The amount invoiced and paid by
24 Highland's employees on behalf of us.

25 Q. Okay. And then the \$1.336 million

NORRIS

1
2 number is the amount that was paid for the
3 two-month period December 1st, 2020, to
4 January 31st, 2021, correct?

5 A. It would have been the amount billed
6 or invoiced based on the previous amount. So
7 it's not the amount paid, it's the amount billed
8 based on the original employee.

9 Q. Did NPA or HCMFA pay any portion of
10 the \$1.336 million?

11 A. I don't believe there were any
12 payments in December and January. And that's...

13 Q. So that that \$1.336 million number is
14 different than the \$9 million number above
15 because it only represents what was invoiced as
16 opposed to what was paid, correct?

17 A. Yes.

18 Q. Okay. And is the same true for the
19 \$453,000 number near the bottom in the third
20 period, is that moneys that were actually paid or
21 is that moneys that were only invoiced?

22 A. Those were actually paid. That's the
23 amount paid for the extension -- along with the
24 extension period.

25 Q. Okay. And then from the amounts

1 NORRIS

2 invoiced and/or actually paid you deduct the
3 estimated actual cost with the appropriate
4 employees; do I have that right?

5 A. Yeah. I'm deducting the actual
6 employees because that's what should have been
7 billed. We should have reimbursed for actual
8 cost of employees that were, one, providing
9 investment advisory services and, two, that were
10 dual employees. So these are the list, and
11 you'll see the backup on the sheet that shows
12 each individual employee. But that's the amount
13 of their -- our estimate of their comp which
14 comes just directly from Ms. Hendrix' file that
15 you allowed us to use.

16 Q. Okay. So I'm looking at the total,
17 the \$7.649 million. Do you see that?

18 A. I do.

19 Q. And am I correct that that represents
20 the difference between the amounts invoiced and
21 what the Advisors contend should have been
22 invoiced based on the estimated actual cost for
23 the appropriate employees?

24 A. Yeah, that 7.6 million represents --
25 I'm sorry, the difference -- the second line is

1 NORRIS

2 what you're saying, the second row of each is the
3 amount that we should have been invoiced.

4 Q. Right. But the \$7.6 million at the
5 bottom -- right -- is total overbilling for
6 payroll reimbursement --

7 A. Yeah.

8 Q. -- from the bankruptcy filing until
9 February 19th, 2021, is \$7.649 million
10 approximately, correct?

11 A. That's right.

12 Q. And that number is derived by
13 subtracting from the totaled invoiced amount for
14 that period the estimated actual costs with
15 appropriate employees, that second line in each
16 period, correct?

17 A. Correct.

18 Q. Okay. But --

19 A. It's simple math.

20 Q. Right. That's all this is, is
21 arithmetic, right?

22 A. It is. It's here are the employees
23 using the data provided by Highland and adding up
24 what was paid, which is this stagnant amount, and
25 it's just -- so I'm not coming in here and we're

1 NORRIS

2 not -- this is not an expert analysis, it's
3 literally just arithmetic.

4 Q. Okay. And I appreciate that. That's
5 what I saw.

6 But that \$7.649 million is overstated
7 by the \$1.336 million in the middle piece because
8 that amount wasn't ever actually paid, right?

9 A. It wouldn't be overstated by the
10 1.33, it would be potentially the 264, which
11 would have been -- that we hadn't paid. Right?
12 So you're looking at the difference.

13 But your point is valid in that we
14 aren't denying that there was something incurred
15 in December and January, but we didn't pay
16 because we believed we had been far exceeding the
17 payments that were. And so -- yeah.

18 Q. Your damage calculation should be the
19 difference between what you paid and what you
20 think you should have paid; is that fair?

21 A. My understanding is you're demanding
22 or still demanding those other payments and so
23 that's part of the calculation.

24 Q. Okay. That's fair. But from your
25 perspective, because you don't think that

1 NORRIS

2 Highland is entitled to those payments, correct?

3 A. Not the amounts that are at the
4 constant rate based on 2018 employee count.

5 Q. Okay. So if I took \$6.2 million from
6 the first period and I added \$372,000, which is
7 the net of the third period, and I added --
8 withdrawn. That's okay. You know what...

9 When was this prepared?

10 A. I believe it was last week.

11 THE WITNESS: Davor, I don't know if
12 you have any other --

13 A. I believe it was last week.
14 Finalized last week.

15 MR. RUKAVINA: I can get you the
16 date, Mr. Morris, that he prepared it.

17 BY MR. MORRIS:

18 Q. Did you personally prepare it?

19 A. I did.

20 Q. And did you personally prepare it for
21 this litigation?

22 A. I did.

23 Q. Okay. What information did you rely
24 on to prepare this report?

25 A. I relied on the information that was

1 NORRIS

2 provided by -- in the file that Davor provided
3 you that has the payroll file that Ms. Hendrix'
4 prepared, and I confirmed that that is an export
5 from their payroll system. So that's the data.

6 There is one point I discussed with
7 Mr. Collins, Brian Collins, regarding employee
8 benefits. That's detailed in this support. So
9 it's really the actual documents that came from
10 the payroll system.

11 Q. And is everything behind this
12 document, can it fairly be characterized as
13 either the backup or the buildup to these
14 numbers?

15 A. Yeah. And we provided that. You
16 have it in other documents too.

17 Q. I think if we just scroll down to the
18 next page, for example, you've got the buildup
19 for each of the Advisors, right? You've got
20 this -- this the buildup for NPA on the Payroll
21 Reimbursement Agreement, correct?

22 A. Yeah, I guess if that's the word,
23 "buildup." This is just the actual data and now
24 it adds up to the front page. The front page is
25 just literally summing the individual months and

1 NORRIS

2 the period.

3 Q. Okay. That's what I mean by
4 "buildup." That number in the lower right-hand
5 corner, would we find that on the first page?

6 A. No. If you go to the next page I can
7 tell you how you get to the numbers on the first
8 page.

9 Q. Okay. Let's do that.

10 A. So the numbers at the top are --
11 sorry, the top orange numbers, this is HCMFA's.
12 If you add up just the periods I have, this is
13 the total monthly actual cost of these employees.
14 You add up those months, just literally sum those
15 up and they go to that time period on the front.

16 The next page is NexPoint Advisors.
17 And if you go to the actual payments paid, that's
18 the next to second orange row, 208,000, 416, 416.
19 Oh, now on next page. Same thing here where it
20 starts with 50,000, 100,000, 100,000 and goes
21 down. That is the actual employees. And that is
22 just calculated as arithmetic of what was their
23 total compensation times the percentage
24 allocation on Appendix B.

25 Q. Okay. Does this take into account

1 NORRIS

2 services that Highland provided -- withdrawn.

3 I think in your answers earlier you
4 acknowledge that some of the services provided by
5 departing employees were subsequently provided by
6 other Highland employees; is that generally fair?

7 A. I would say to a limited extent. We
8 don't believe that there was -- yeah, say here
9 provided by other Highland employees, yes, to a
10 limited extent, or by Advisors employees. There
11 is a number of things that departing individuals
12 that we took on in-house.

13 Q. Okay. But this analysis doesn't take
14 into account the value of any services that may
15 have been picked up by Highland employees
16 following the departure of the dual employees
17 that are subject to the Payroll Reimbursement
18 Agreements, correct?

19 A. Well, when you look at this, I think
20 it does, because most of those employees were
21 working -- were already listed here as front
22 office employees. To my understanding, there
23 were no front office employees hired from the
24 petition date through the end of the Shared
25 Services Agreement. We weren't hiring front

1 NORRIS

2 office employees that then were providing
3 services. So it's allocated these are the front
4 office employees.

5 So, you know, John Poglitsch picked
6 up and ran with Trey Parker's or, you know, other
7 people pitched in and started doing things when
8 someone had left.

9 Q. That happened or didn't happen?

10 A. It did happen. They would
11 allocate -- you know, simple example: John
12 Poglitsch who was the head of credit research
13 under Trey Parker, CIO. When Trey left there was
14 stuff that John did.

15 In addition, I mentioned earlier Joe
16 Sowin, who was the portfolio manager, was added
17 to the funds. He was an Advisor employee not an
18 HCMLP employee. But most everything was filled
19 with the existing front office employees.

20 Q. The front office employees of
21 Highland, right?

22 A. Highlands and the Advisors.

23 Q. Okay.

24 A. There were a number of things that we
25 had to begin doing on our own.

NORRIS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. Okay. But this analysis, I don't mean to wrestle with you, I think it's fairly simple based on what we're looking at here, this analysis doesn't take into account the services that were picked up by other Highland employees, does it?

A. Well, if those employees are listed on this list, it does, but if they're not, then that's where we say, "Hey, if there's someone else you said really started doing a true job that meets the degree of the agreement, we'd love to hear it. Right? We'd love to have good faith negotiation on what that looks like.

Q. Okay. And even for a guy like -- I'm going to mispronounce it -- Poglitsch, if he was allocated 29 percent under the agreement but now he's taking on some of Parker's role so that he's at 40 percent, this analysis wouldn't capture that, right?

A. We're using the percentages that were provided in the agreement. And, you know, maybe that's the difference between ours and Dave Klos's, he was adjusting the percentages, but -- but it does not have a change analysis.

1 NORRIS

2 MR. MORRIS: Okay. Let's take just a
3 short break. I may be done.

4 The time now is 5:24, let's come back
5 really in six minutes at 5:30.

6 (A break was taken from 4:24 p.m. to
7 4:31 p.m.)

8 MR. MORRIS: Mr. Norris, on behalf of
9 Ms. Winograd and myself, thank you for your time.
10 We have no further questions. And I do intend to
11 get you that backup document no later than
12 Monday.

13 THE WITNESS: Thank you.

14 (TIME NOTED: 4:31 p.m.)

15

16

17

18

19

20

21

22

23

24

25

1 ERRATA SHEET FOR THE TRANSCRIPT OF:

2 CASE NAME: In re: Highland Capital Management, LP

3 DEP. DATE: March 4, 2022

4 DEPONENT: DUSTIN NORRIS

5 CORRECTIONS:

6	Pg.	Ln.	Now Reads	Should Read	Reason
7	_____	_____	_____	_____	_____
8	_____	_____	_____	_____	_____
9	_____	_____	_____	_____	_____
10	_____	_____	_____	_____	_____
11	_____	_____	_____	_____	_____
12	_____	_____	_____	_____	_____
13	_____	_____	_____	_____	_____
14	_____	_____	_____	_____	_____
15	_____	_____	_____	_____	_____
16	_____	_____	_____	_____	_____
17	_____	_____	_____	_____	_____
18					
19				_____	

20 DUSTIN NORRIS

21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS _____ DAY OF _____, 2022.

23

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

EXHIBIT 2

From: John A. Morris
Sent: Tuesday, March 15, 2022 12:22 PM
To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>
Subject: Highland: HCMFA/HCMLP Claims Trial Issues

Davor,

I write concerning several issues related to the HCMFA/HCMLP claims litigation.

1. Schedule

Please confirm our agreement on the schedule below. Since none of the changes affect the Court, I am prepared to rely on this e-mail but please let me know if you'd prefer that we formally amend the Scheduling Order and, if so, please prepare a draft.

Deadline Current Proposed

Waterhouse deposition 3/15 3/29

File and serve W&E lists 3/22 3/31 (midnight)

Objections to Exhibits 3/29 4/4

JPT/trial brief, if any 4/5 4/5

Trial 4/12-13 4/12-13

2. Trial

You recently asked whether HCMLP would agree to have this trial conducted in person. After conferring with Mr. Seery, and assuming no meaningful changes in COVID protocol or infection rates, we're prepared to go forward live, subject to Court approval. Please let me know if we're authorized to reach out to Ms. Ellison to make the request with the Advisors' consent (copying you).

3. Witnesses for trial

Advisors' Witnesses. While it is still four weeks away and our plans are subject to change, please be advised that HCMLP currently intends to call Jim Dondero, Frank Waterhouse, and Dustin Norris on its case-in-chief. Please (a) confirm their availability, (b) let me know if they require trial subpoenas and, (c) if so, whether you will accept them on their behalf. We understand that Mr. Waterhouse remains an officer of the Advisors, but please let me know if I should speak with Dandeneau/Hartmann about Frank.

HCMLP's Witnesses. HCMLP also intends to call Jim Seery and David Klos on its case-in-chief. We will make them available for cross, but if you feel the need to serve trial subpoenas for them, I will accept them on their behalf.

Retail Board. The Retail Board is also being deposed. I would consider relying on the deposition transcript rather than calling the Retail Board live, but won't know for sure until after the deposition is completed. If the Advisors would object to HCMLP's reliance on the transcript because the Retail Board is subject to the Court's jurisdiction, that's fine – just let me know and I'll prepare a trial subpoena. If you want to wait until the deposition is over, that's fine, too.

4. Joint Pre-Trial Order

Given that HCMLP is the Plaintiff, Hayley and I are willing to take the lead in preparing the JPO. Since it is due on April 5, we hope to have a draft to you by March 29, a week before (it might slip a day because of the Waterhouse deposition, but's that our goal). We'll leave space in the initial draft for each party to add their narrative for claims/defenses, but otherwise expect that to be enough time to get that done.

5. Documents

- A. Legal Fees. As you noted during Mr. Seery's deposition, HCMLP is seeking to recover its costs and expenses in this litigation. Because the facts are dynamic (i.e., they change every day as additional time is spent), this is always a difficult exercise. Please be advised that we expect to produce our time records and related documents by April 1 so as to capture as much of the time and expenses as possible. If you feel the need to depose a witness on those documents, we'll make someone available the following week.
- B. Advisors' Post-Petition Payments to Highland Employees. We understand that the Advisors made direct, post-petition payments to certain HCMLP employees including, upon information and belief, Scott Ellington, Isaac, Leventon, Frank Waterhouse, Thomas Surgent, and JP Sevilla (the "Post-Petition Payments"). Please be advised that we expect to serve trial subpoenas on HCMFA and NexPoint for all documents and communications concerning any Post-Petition Payments. While we hope to serve the subpoenas before the end of next week, we wanted to provide the Advisors with advance notice of these issues.

That's all for now. We appreciate your prompt attention to these matters.

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

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

EXHIBIT 3

Attachments:

Document_2022-03-15_181551.pdf; Document_2022-03-15_181757.pdf

From: John A. Morris

Sent: Tuesday, March 15, 2022 6:30 PM

To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>

Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>

Subject: Highland: Trial Subpoenas for HCMFA and NexPoint

Davor,

Following up on my earlier e-mail, attached are trial subpoenas for HCMFA and NexPoint.

Please let me know if you are authorized to accept service of these subpoenas.

Regards,

John

John A. Morris

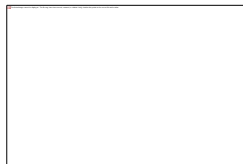
Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

jmorris@pszjlaw.com

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



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,
Defendants

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite 3800,
Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75242 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable): **SEE Exhibit A attached hereto**

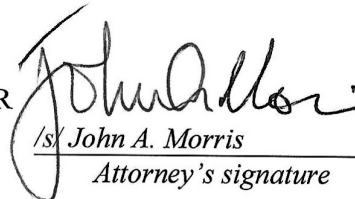
The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 15, 2022

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



/s/ John A. Morris
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
By e-mail to NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street,
Suite 3800, Dallas, Texas 75201-6659.

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A
INSTRUCTIONS

1. All Documents responsive to the Requests below should be delivered to John A. Morris, Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas 75242-1496 on **April 12, 2022 at 9:30 a.m. Central Time.**

2. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

3. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

4. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

5. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs, or other media to be mutually agreed by the parties.

6. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs, or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs, or other media to be mutually agreed by the parties or use an ftp site upload.

7. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

8. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

9. Unless otherwise noted, the requests for documents set forth herein seeks Documents and Communications created at any time during the Relevant Period (as defined below).

DEFINITIONS

1. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type, or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

3. “Document” means and includes all written, recorded, transcribed, or graphic matter of every nature, type, and kind, however and by whoever produced, reproduced, disseminated, or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies, or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion, or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

4. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

5. “HCMLP” refers to Highland Capital Management, L.P.

6. “HCMLP Employee” refers to any individual known by You to have been employed by HCMLP for any period of time during the Relevant Period.

7. “NexPoint” means NexPoint Advisors, L.P., and anyone acting on its behalf (including, but not limited to, James Dondero, Frank Waterhouse, and Dustin Norris).

8. “Petition Date” refers to October 16, 2019, the date on which HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. “Relevant Period” means the period commencing on the Petition Date and ending on March 1, 2021.

10. “You” or “Your” refers to NexPoint.

DOCUMENT REQUESTS

Request No. 1:

All Documents and Communications Concerning any payments made by You (or on Your behalf) during the Relevant Period to (or on behalf of) any Highland Employee, including but not limited to Scott Ellington, Isaac Leventon, Frank Waterhouse, Thomas Surgent, and John Paul Sevilla.

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff

Adv. Proc. No. 21-03010-sgj

v.

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.,

Defendants

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: Highland Capital Management Fund Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite 3800, Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE:

1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas 75242 (unless the Court determines otherwise)

COURTROOM

DATE AND TIME:

April 12, 2022 at 9:30 a.m. (CT)

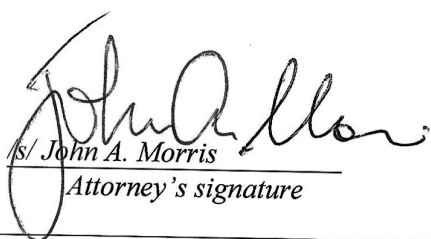
You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*: **SEE Exhibit A attached hereto**

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 15, 2022

CLERK OF COURT

OR


/s/ John A. Morris
Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
By e-mail to Highland Capital Management Fund Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr,
P.C., 500 N. Akard Street, Suite 3800, Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A
INSTRUCTIONS

1. All Documents responsive to the Requests below should be delivered to John A. Morris, Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas 75242-1496 on **April 12, 2022 at 9:30 a.m. Central Time.**
2. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.
3. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.
4. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.
5. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs, or other media to be mutually agreed by the parties.
6. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs, or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs, or other media to be mutually agreed by the parties or use an ftp site upload.

7. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

8. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

9. Unless otherwise noted, the requests for documents set forth herein seeks Documents and Communications created at any time during the Relevant Period (as defined below).

DEFINITIONS

1. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type, or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

3. “Document” means and includes all written, recorded, transcribed or graphic matter of every nature, type, and kind, however and by whoever produced, reproduced, disseminated, or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies, or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion, or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

4. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

5. “HCMFA” means Highland Capital Management Fund Advisors, L.P., and anyone acting on its behalf (including, but not limited to, James Dondero, Frank Waterhouse, and Dustin Norris).

6. “HCMLP” refers to Highland Capital Management, L.P.

7. “HCMLP Employee” refers to any individual known by You to have been employed by HCMLP for any period of time during the Relevant Period.

8. “Petition Date” refers to October 16, 2019, the date on which HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. “Relevant Period” means the period commencing on the Petition Date and ending on March 1, 2021.

10. “You” or “Your” refers to HCMFA.

DOCUMENT REQUESTS

Request No. 1:

All Documents and Communications Concerning any payments made by You (or on Your behalf) during the Relevant Period to (or on behalf of) any Highland Employee, including but not limited to Scott Ellington, Isaac Leventon, Frank Waterhouse, Thomas Surgent, and John Paul Sevilla.

EXHIBIT 4

From: John A. Morris
Sent: Thursday, March 17, 2022 9:42 AM
To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>
Subject: RE: Highland: HCMFA/HCMLP Claims Trial Issues

Davor,

I understand you were in court yesterday, but any answers you can provide to move this along and bring clarity are appreciated.

For example, since we now both want the hearing to be in person, can I reach out to Ms. Ellison about that today? Let me know. I think the sooner the better on that.

Thanks,

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



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

From: John A. Morris
Sent: Tuesday, March 15, 2022 12:22 PM
To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>
Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>
Subject: Highland: HCMFA/HCMLP Claims Trial Issues

Davor,

I write concerning several issues related to the HCMFA/HCMLP claims litigation.

1. Schedule

Please confirm our agreement on the schedule below. Since none of the changes affect the Court, I am prepared to rely on this e-mail but please let me know if you'd prefer that we formally amend the Scheduling Order and, if so, please prepare a draft.

Deadline Current Proposed

Waterhouse deposition 3/15 3/29

File and serve W&E lists 3/22 3/31 (midnight)

Objections to Exhibits 3/29 4/4

JPT/trial brief, if any 4/5 4/5

Trial 4/12-13 4/12-13

2. Trial

You recently asked whether HCMLP would agree to have this trial conducted in person. After conferring with Mr. Seery, and assuming no meaningful changes in COVID protocol or infection rates, we're prepared to go forward live, subject to Court approval. Please let me know if we're authorized to reach out to Ms. Ellison to make the request with the Advisors' consent (copying you).

3. Witnesses for trial

Advisors' Witnesses. While it is still four weeks away and our plans are subject to change, please be advised that HCMLP currently intends to call Jim Dondero, Frank Waterhouse, and Dustin Norris on its case-in-chief. Please (a) confirm their availability, (b) let me know if they require trial subpoenas and, (c) if so, whether you will accept them on their behalf. We understand that Mr. Waterhouse remains an officer of the Advisors, but please let me know if I should speak with Dandeneau/Hartmann about Frank.

HCMLP's Witnesses. HCMLP also intends to call Jim Seery and David Klos on its case-in-chief. We will make them available for cross, but if you feel the need to serve trial subpoenas for them, I will accept them on their behalf.

Retail Board. The Retail Board is also being deposed. I would consider relying on the deposition transcript rather than calling the Retail Board live, but won't know for sure until after the deposition is completed. If the Advisors would object to HCMLP's reliance on the transcript because the Retail Board is subject to the Court's jurisdiction, that's fine – just let me know and I'll prepare a trial subpoena. If you want to wait until the deposition is over, that's fine, too.

4. Joint Pre-Trial Order

Given that HCMLP is the Plaintiff, Hayley and I are willing to take the lead in preparing the JPO. Since it is due on April 5, we hope to have a draft to you by March 29, a week before (it might slip a day because of the Waterhouse deposition, but's that our goal). We'll leave space in the initial draft for each party to add their narrative for claims/defenses, but otherwise expect that to be enough time to get that done.

5. Documents

A. Legal Fees. As you noted during Mr. Seery's deposition, HCMLP is seeking to recover its costs and expenses in this litigation. Because the facts are dynamic (i.e., they change every day as additional time is spent), this is always a

difficult exercise. Please be advised that we expect to produce our time records and related documents by April 1 so as to capture as much of the time and expenses as possible. If you feel the need to depose a witness on those documents, we'll make someone available the following week.

- B. Advisors' Post-Petition Payments to Highland Employees. We understand that the Advisors made direct, post-petition payments to certain HCMLP employees including, upon information and belief, Scott Ellington, Isaac, Leventon, Frank Waterhouse, Thomas Surgent, and JP Sevilla (the "Post-Petition Payments"). Please be advised that we expect to serve trial subpoenas on HCMFA and NexPoint for all documents and communications concerning any Post-Petition Payments. While we hope to serve the subpoenas before the end of next week, we wanted to provide the Advisors with advance notice of these issues.

That's all for now. We appreciate your prompt attention to these matters.

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

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

Attachments:

Document_2022-03-22_122529.pdf; Document_2022-03-22_122403.pdf

From: John A. Morris

Sent: Tuesday, March 22, 2022 12:51 PM

To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>

Cc: Hayley R. Winograd <hwinograd@pszjlaw.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>

Subject: Highland: HCMFA/NPA Trial Subpoenas

Davor:

Attached are trial subpoenas for Mr. Dondero and Mr. Norris requiring their appearance at the trial scheduled to begin on April 12.

Please let me know if you are authorized to accept service of these subpoenas on their behalf or if there is another lawyer I should contact (e.g., Deborah or Clay).

Also, I reiterate my request that you let me know if you are authorized to accept service of the trial subpoenas for HCMFA and NexPoint that were e-mailed to you on March 15.

Please provide a substantive response to these matters by COB on Thursday or we'll effectuate service at times and places of Highland's choosing.

I hope all of that can be avoided and remain available to confer.

Regards,

John

John A. Morris

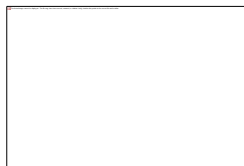
Pachulski Stang Ziehl & Jones LLP

Direct Dial: 212.561.7760

Tel: 212.561.7700 | Fax: 212.561.7777

jmorris@pszjlaw.com

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



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj11

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,
Defendants

SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: James Dondero, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street,
Suite 3800 / Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75424 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

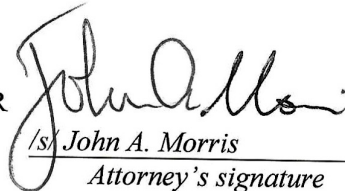
The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 22, 2022

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR


/s/ John A. Morris
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
James Dondero, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite
3800 / Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj11

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,
Defendants

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

Dustin Norris, Executive Vice President, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & To: Harr, P.C., 500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659
(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

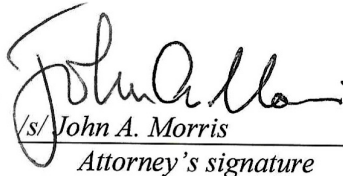
PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75424 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 22, 2022

CLERK OF COURT

OR 
/s/ John A. Morris
Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
Dustin Norris, Executive Vice President, NexPoint Advisors, L.P., Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N.
Akard Street, Suite 3800 / Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

(A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

Attachments: Document_2022-03-22_122529.pdf; Document_2022-03-22_122403.pdf; Document_2022-03-15_181551.pdf; Document_2022-03-15_181757.pdf

From: John A. Morris
Sent: Friday, March 25, 2022 7:58 AM
To: Rukavina, Davor (drukavina@munsch.com) <drukavina@munsch.com>
Cc: Hayley R. Winograd <hwinograd@pszilaw.com>; 'zannable@haywardfirm.com' <zannable@haywardfirm.com>; Berghman, Thomas (tberghman@munsch.com) <tberghman@munsch.com>
Subject: Highland: HCMFA/NPA Trial Subpoenas -- LAST CALL

Davor,

I have not received any response to my e-mails asking whether you will accept service of the attached trial subpoenas.

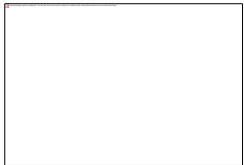
As a courtesy, we are asking one last time whether you are authorized to accept service of all or any of the attached subpoenas.

Please let me know by the end of the day, one way or the other, or we will assume that you are not authorized to accept service.

Regards,

John

John A. Morris
Pachulski Stang Ziehl & Jones LLP
Direct Dial: 212.561.7760
Tel: 212.561.7700 | Fax: 212.561.7777
jmorris@pszilaw.com
[vCard](#) | [Bio](#) | [LinkedIn](#)



Los Angeles | San Francisco | Wilmington, DE | New York | Houston

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,
Defendants

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

To: NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite 3800,
Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75242 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects (*leave blank if not applicable*): **SEE Exhibit A attached hereto**

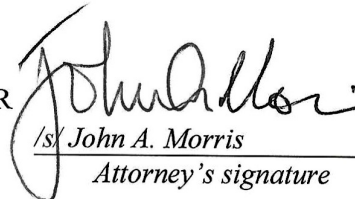
The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 15, 2022

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



/s/ John A. Morris
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
By e-mail to NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street,
Suite 3800, Dallas, Texas 75201-6659.

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A
INSTRUCTIONS

1. All Documents responsive to the Requests below should be delivered to John A. Morris, Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas 75242-1496 on **April 12, 2022 at 9:30 a.m. Central Time.**

2. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

3. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

4. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

5. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs, or other media to be mutually agreed by the parties.

6. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs, or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs, or other media to be mutually agreed by the parties or use an ftp site upload.

7. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

8. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

9. Unless otherwise noted, the requests for documents set forth herein seeks Documents and Communications created at any time during the Relevant Period (as defined below).

DEFINITIONS

1. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type, or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

3. “Document” means and includes all written, recorded, transcribed, or graphic matter of every nature, type, and kind, however and by whoever produced, reproduced, disseminated, or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies, or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion, or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

4. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

5. “HCMLP” refers to Highland Capital Management, L.P.

6. “HCMLP Employee” refers to any individual known by You to have been employed by HCMLP for any period of time during the Relevant Period.

7. “NexPoint” means NexPoint Advisors, L.P., and anyone acting on its behalf (including, but not limited to, James Dondero, Frank Waterhouse, and Dustin Norris).

8. “Petition Date” refers to October 16, 2019, the date on which HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. “Relevant Period” means the period commencing on the Petition Date and ending on March 1, 2021.

10. “You” or “Your” refers to NexPoint.

DOCUMENT REQUESTS

Request No. 1:

All Documents and Communications Concerning any payments made by You (or on Your behalf) during the Relevant Period to (or on behalf of) any Highland Employee, including but not limited to Scott Ellington, Isaac Leventon, Frank Waterhouse, Thomas Surgent, and John Paul Sevilla.

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
 Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff

Adv. Proc. No. 21-03010-sgj

v.

HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P. AND NEXPOINT ADVISORS, L.P.,

Defendants

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Highland Capital Management Fund Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite 3800, Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75242 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*: **SEE Exhibit A attached hereto**

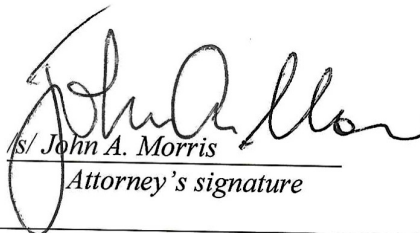
The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 15, 2022

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk


 s/ John A. Morris
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
By e-mail to Highland Capital Management Fund Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr,
P.C., 500 N. Akard Street, Suite 3800, Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A
INSTRUCTIONS

1. All Documents responsive to the Requests below should be delivered to John A. Morris, Pachulski Stang Ziehl & Jones LLP, counsel to Highland Capital Management, L.P., at the Earle Cabell Federal Building, 1100 Commerce Street, 14th Floor, Courtroom 1, Dallas, Texas 75242-1496 on **April 12, 2022 at 9:30 a.m. Central Time.**

2. For each Document (as defined below) withheld by reason of a claim of privilege, provide a privilege log identifying such Document together with: (a) the date of the Document; (b) the identity of the author or preparer; (c) the identity of each person who was sent or furnished with the Document or who received or had possession or custody of the Document; (d) a description of the Document, including identification of any attachments or appendices; (e) a statement of the basis of the claim of privilege; and (f) the paragraph of this request to which the Document is responsive. In the case of Documents concerning a meeting or conversation, identify all participants in the meeting or conversation.

3. Each Document shall be produced in a fashion that indicates clearly the file in which it was located.

4. If a Document cannot be produced in full, produce it to the extent possible, identify the portion that cannot be produced, and specify the reasons for Your (as defined below) inability to produce the remainder.

5. You are required to produce ESI (as defined below) in searchable form on DVDs, CD-ROMs, or other media to be mutually agreed by the parties.

6. Documents may be produced in paper format or electronically. If Documents are produced electronically, or if any ESI is produced, the following formatting should be used:

- Use .tif format for all Documents that were not originally in Excel format, in which case, use .xls or .xlsx format;
- If possible, without creating undue delay, please produce Documents in Summation-ready DVDs, CD-ROMs, or other media to be mutually agreed by the parties with .tif and text format, and with a Summation load file; and
- Transmit electronic Documents or ESI on DVDs, CD-ROMs, or other media to be mutually agreed by the parties or use an ftp site upload.

7. These Requests shall be deemed continuing and supplemental answers shall be required if You directly or indirectly obtain further information after Your initial response as required by Fed. R. Bank. P. 7026(e).

8. The use of either the singular or plural shall not be deemed a limitation. The use of the singular includes the plural, and vice versa.

9. Unless otherwise noted, the requests for documents set forth herein seeks Documents and Communications created at any time during the Relevant Period (as defined below).

DEFINITIONS

1. “Communications” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) and includes all oral and written communications of any nature, type, or kind including, but not limited to, any ESI (and any attachments thereto), Documents, telephone conversations, text messages, discussions, meetings, facsimiles, e-mails, pagers, memoranda, and any other medium through which any information is conveyed or transmitted.

2. “Concerning” means and includes relating to, constituting, defining, evidencing, mentioning, containing, describing, discussing, embodying, reflecting, edifying, analyzing, stating, referring to, dealing with, or in any way pertaining to the subject matter.

3. “Document” means and includes all written, recorded, transcribed or graphic matter of every nature, type, and kind, however and by whoever produced, reproduced, disseminated, or made. This includes, but is not limited to, Communications, ESI, “writings” as defined by Rule 1001 of the Federal Rules of Evidence, copies, or drafts, and any tangible or intangible thing or item that contains any information. Any Document that contains any comment, notation, addition, insertion, or marking of any type or kind which is not part of another Document, is to be considered a separate Document.

4. “ESI” has the meaning ascribed to it in Federal Rules of Civil Procedure 16, 26, and 34(a).

5. “HCMFA” means Highland Capital Management Fund Advisors, L.P., and anyone acting on its behalf (including, but not limited to, James Dondero, Frank Waterhouse, and Dustin Norris).

6. “HCMLP” refers to Highland Capital Management, L.P.

7. “HCMLP Employee” refers to any individual known by You to have been employed by HCMLP for any period of time during the Relevant Period.

8. “Petition Date” refers to October 16, 2019, the date on which HCMLP filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

9. “Relevant Period” means the period commencing on the Petition Date and ending on March 1, 2021.

10. “You” or “Your” refers to HCMFA.

DOCUMENT REQUESTS

Request No. 1:

All Documents and Communications Concerning any payments made by You (or on Your behalf) during the Relevant Period to (or on behalf of) any Highland Employee, including but not limited to Scott Ellington, Isaac Leventon, Frank Waterhouse, Thomas Surgent, and John Paul Sevilla.

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj11

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,
Defendants

Defendants

SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: James Dondero, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street,
Suite 3800 / Dallas, Texas 75201-6659

(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75424 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects *(leave blank if not applicable)*:

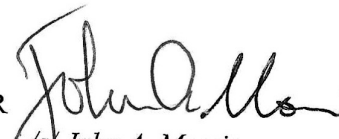
The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 22, 2022

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR


/s/ John A. Morris
Attorney's signature

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
James Dondero, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N. Akard Street, Suite
3800 / Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...
(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

UNITED STATES BANKRUPTCY COURT

NORTHERN District of TEXAS

In re HIGHLAND CAPITAL MANAGEMENT, L.P.,
Reorganized Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-34054-sgj11

Chapter 11

HIGHLAND CAPITAL MANAGEMENT, L.P.,
Plaintiff

Adv. Proc. No. 21-03010-sgj11

v.

HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P. AND NEXPOINT
ADVISORS, L.P.,

Defendants

**SUBPOENA TO APPEAR AND TESTIFY
AT A HEARING OR TRIAL IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)**

Dustin Norris, Executive Vice President, NexPoint Advisors, L.P., c/o Davor Rukavina, Munsch Hardt Kopf & To: Harr, P.C., 500 N. Akard Street, Suite 3800 / Dallas, Texas 75201-6659
(Name of person to whom the subpoena is directed)

YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a hearing or trial in this bankruptcy case (or adversary proceeding). When you arrive, you must remain at the court until the judge or a court official allows you to leave.

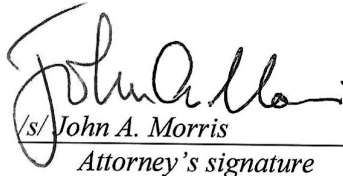
PLACE: 1100 Commerce Street, 14 th Floor, Courtroom 1, Dallas, Texas 75424 (unless the Court determines otherwise)	COURTROOM DATE AND TIME: April 12, 2022 at 9:30 a.m. (CT)
--	---

You must also bring with you the following documents, electronically stored information, or objects (leave blank if not applicable):

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: March 22, 2022

CLERK OF COURT

OR 
/s/ John A. Morris
Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, email address, and telephone number of the attorney representing Highland Capital Management, L.P., who issues or requests this subpoena, is:

John A. Morris, Esq., Pachulski Stang Ziehl & Jones LLP, 780 Third Ave., 34th Fl, New York, NY 10017

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
Dustin Norris, Executive Vice President, NexPoint Advisors, L.P., Davor Rukavina, Munsch Hardt Kopf & Harr, P.C., 500 N.
Akard Street, Suite 3800 / Dallas, Texas 75201-6659

_____ on *(date)* _____; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

/s/ _____
Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT 5

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

4	IN RE:)	
)	CHAPTER 11
5	HIGHLAND CAPITAL)	
	MANAGEMENT, L.P.,)	CASE NO.
6)	19-34054-sgj11
	Reorganized Debtor.)	
7	_____)	
)	
8	HIGHLAND CAPITAL)	
	MANAGEMENT, L.P.,)	
9)	
	Plaintiff,)	Adv. No.
10)	21-03010-sgj
	VS.)	
11)	
	HIGHLAND CAPITAL FUND)	
12	MANAGEMENT FUND ADVISORS,)	
	L.P. and NEXPOINT)	
13	ADVISORS, L.P.,)	
)	
14	Defendants.)	
15	_____)	

17 REMOTE ORAL DEPOSITION OF
18 FRANK WATERHOUSE
19 MONDAY, MARCH 28, 2022

20
21
22
23 REPORTED BY:
24 JANICE K. McMORAN, CSR, RDR, CRR, TCRR
25 JOB NO. 207406

Page 262

F. WATERHOUSE

1 A. That's what this projection denotes.

2 Q. Okay. Last few questions. There

3 came a time in Q4 2020 when the advisors

4 stopped making payments under the shared

5 services and the subadvisory agreements,

6 correct?

7

8 A. I'm sorry. I just want to go back to

9 the projected operating cash flows. Again, at

10 this time when this was prepared, there was

11 nothing that we were aware of could change

12 payment-wise for the shared services and

13 subadvisory expenses due to the stay.

14 Q. Okay. And when you use the word "we"

15 there, you're referring specifically to you,

16 Mr. Caruso, Mr. Ellington, Mr. Leventon, and

17 Mr. Klos. Do I have that correct?

18 A. Yes. Sorry. I use "we"

19 collectively. But it was out of those

20 discussions where I was told by Mr. Klos,

21 Mr. Ellington, and Mr. Leventon that nothing

22 could change, I mean, until -- and like I

23 testified earlier was nothing can change now,

24 deal with it at a later date. I didn't -- at

25 this time we didn't -- I didn't have an

Page 264

F. WATERHOUSE

1 A. I can't.

2 Q. Okay. Did you ever raise this issue

3 with me or any of my colleagues at Pachulski?

4 A. I did not.

5 Q. And you knew in December of 2019 and

6 January of 2020 that my firm was bankruptcy

7 counsel to the debtor, correct?

8 A. Yes.

9 Q. All right. So back to Q4 2020.

10 There came a time during that period when the

11 advisors stopped making any payments under the

12 shared services agreements or the payroll

13 reimbursement agreements, correct?

14 A. That is correct.

15 Q. Okay. Do you remember why that

16 happened?

17 A. Generally.

18 Q. Did Mr. Dondero instruct you not to

19 make any further payments of any kind to

20 Highland during the fourth quarter of 2020?

21 A. Yes.

22 Q. And is that the reason that --

23 withdrawn.

24 When you received that instruction

25

Page 263

F. WATERHOUSE

1 understanding, neither did Dave, what a later

2 date meant. Well, actually, take that back. I

3 didn't have an understanding about what a later

4 date meant, so if you're putting the other

5 projection at this time, I mean, that's the

6 best available information we have.

7

8 Q. You mentioned the later date. You

9 haven't said that all day today. Who mentioned

10 a later date?

11 A. I said that earlier. That was when

12 we were talking with Fred. You can go back.

13 Yeah, at a later date. He said you can deal

14 with it at a later time, a later date.

15 Q. So Fred told you that?

16 A. Yeah. I mean, there was -- there was

17 someone in this -- someone in this part of the

18 discussion said we will deal with it later.

19 Q. Can you identify the person who said

20 that?

21 A. I don't know. But someone -- someone

22 in this process said we will deal with it

23 later.

24 Q. Okay. But you can't identify the

25 person who said that, correct?

Page 265

F. WATERHOUSE

1 from Mr. Dondero, did you convey that to

2 Mr. Klos and Ms. Hendrix?

3 A. I remember telling Mrs. Hendrix. I

4 don't recall if I told Mr. Klos.

5

6 Q. Do you recall if you ever told

7 Mr. Seery about the direction that you received

8 from Mr. Dondero?

9 A. I -- I didn't -- I don't recall.

10 Q. Do you know if Highland continued to

11 provide services under the shared services

12 agreements and the payroll reimbursement

13 agreements during the periods that the advisors

14 made no payments to Highland?

15 A. Is your question did Highland provide

16 services under the shared services without

17 being -- yes.

18 Q. Okay. Are you aware of any specific

19 service under the shared services agreements

20 that Highland failed to provide at any time

21 from the petition date until they were

22 terminated in early 2021?

23 A. I'm not aware.

24 Q. Did you ever have any discussion with

25 anybody at any time about Highland's failure or

Page 266

1 F. WATERHOUSE
 2 alleged failure to provide any services under
 3 the shared services agreement at any time from
 4 the petition date until they were terminated in
 5 early 2021?
 6 A. Not that I recall.
 7 Q. After the petition date, did you
 8 receive any money from either NexPoint or
 9 HCMFA, you personally?
 10 MS. HARTMANN: I'm going to object to
 11 that as irrelevant. There's already been a
 12 settlement, John. We don't want to get into
 13 anything like that.
 14 MR. MORRIS: Okay. I appreciate
 15 that, and I'm really -- I promise you that I'm
 16 not asking this for any attempt to take
 17 discovery against Frank. But I have two
 18 entities here, HCMFA and NexPoint, who are
 19 claiming that they overpaid Highland because
 20 Highland didn't provide services that they were
 21 entitled to, and I think it's completely
 22 relevant to know whether or not those entities
 23 were also making payments to Highland's
 24 employees that were not disclosed.
 25 So I'll ask my question again, and if

Page 268

1 F. WATERHOUSE
 2 Highland's employ?
 3 A. From HCMFA, no.
 4 Q. Did you receive any payments from
 5 NexPoint at any time from the petition date
 6 until the day that you left Highland's employ?
 7 MS. HARTMANN: Objection on
 8 relevance.
 9 A. Yes.
 10 Q. (By Mr. Morris) Okay. How many
 11 payments did you receive from NexPoint after
 12 the petition date but before you left
 13 Highland's employ?
 14 MS. HARTMANN: Objection to form and
 15 relevance.
 16 A. One.
 17 Q. (By Mr. Morris) Okay. Do you
 18 remember the amount of that payment?
 19 A. Approximately.
 20 Q. And what's the approximate amount of
 21 that payment?
 22 MS. HARTMANN: Objection, form and
 23 relevance, and it's subject to a settlement
 24 already.
 25 A. \$90,000.

Page 267

1 F. WATERHOUSE
 2 you want to instruct him not to answer, that's
 3 certainly, you know, within your ability. But I
 4 think it's -- I think it's very relevant, and
 5 everybody should be, you know, aware that we're
 6 going to be raising this issue at the trial. So
 7 let me just ask one more time.
 8 Q. (By Mr. Morris) Mr. Waterhouse, I
 9 again --
 10 MS. HARTMANN: Break up the entities
 11 and please do ask whether they were disclosed
 12 to anyone.
 13 MR. MORRIS: Well, let me start --
 14 let me start my questions and then we'll see
 15 where we get.
 16 Q. (By Mr. Morris) Mr. Waterhouse, did
 17 you receive any payments of any kind after the
 18 petition date from HCMFA?
 19 MR. RUKAVINA: Through what date?
 20 He's a current employee.
 21 MR. MORRIS: Okay. Thank you,
 22 Mr. Rukavina.
 23 Q. (By Mr. Morris) Mr. Waterhouse, did
 24 you ever receive any payments from HCMFA from
 25 the petition date until the day you left

Page 269

1 F. WATERHOUSE
 2 Q. (By Mr. Morris) And do you know the
 3 circumstances under which that payment was made
 4 to you?
 5 MS. HARTMANN: Same objection.
 6 A. I guess I don't understand the
 7 question.
 8 Q. (By Mr. Morris) Do you know why
 9 NexPoint paid you \$90,000 after the petition
 10 date when you were an employee of Highland?
 11 MS. HARTMANN: Same objection.
 12 A. I don't know the specifics, but --
 13 Q. (By Mr. Morris) Did you have a
 14 conversation with anybody in the world about
 15 why you were paid \$90,000 from NexPoint after
 16 the petition date?
 17 MS. HARTMANN: Objection to form.
 18 And obviously, he's not asking you about
 19 lawyers.
 20 A. No. I was -- I was told by the
 21 director of HR that I was going to receive a
 22 payment.
 23 Q. (By Mr. Morris) And that director is
 24 Mr. Collins?
 25 A. Yes.

Page 270

1 F. WATERHOUSE

2 Q. And when did Mr. Collins tell you

3 that you would be receiving a payment from

4 NexPoint?

5 A. I don't recall the date.

6 Q. Did you ever discuss this payment --

7 excuse me, I'm sorry. Withdrawn.

8 Did you ever discuss this payment

9 with anybody other than Mr. Collins?

10 MS. HARTMANN: Same objection of

11 relevance and form, and don't reveal privilege.

12 A. I don't -- I mean, I don't -- I don't

13 remember.

14 Q. (By Mr. Morris) Did you ever discuss

15 this payment with Mr. Dondero?

16 MS. HARTMANN: Objection, relevance.

17 A. I don't recall.

18 Q. (By Mr. Morris) Did you ever discuss

19 this payment with anybody other than

20 Mr. Collins or your counsel that you can

21 recall?

22 MS. HARTMANN: Asked and answered.

23 A. I don't remember.

24 Q. (By Mr. Morris) Okay. As the

25 treasurer of NexPoint, are you aware of any

Page 272

1 F. WATERHOUSE

2 MS. HARTMANN: Objection, form.

3 A. Mr. Collins told me.

4 Q. (By Mr. Morris) I apologize, but

5 going back to the payment that you received

6 from NexPoint, did Mr. Collins give you any

7 explanation as to why NexPoint was making that

8 payment to you?

9 MS. HARTMANN: Objection to form.

10 A. Not that I recall.

11 Q. (By Mr. Morris) Do you recall if you

12 asked Mr. Collins why NexPoint was making that

13 payment to you?

14 MS. HARTMANN: Objection, form.

15 A. I don't -- I don't remember.

16 Q. (By Mr. Morris) Did Mr. Collins

17 explain to you why NexPoint was making a

18 post-petition payment to Mr. Ellington?

19 MS. HARTMANN: Objection, form.

20 A. I don't -- I don't recall.

21 Q. (By Mr. Morris) Did you ask

22 Mr. Ellington -- withdrawn.

23 Did you ask Mr. Collins why NexPoint was

24 making a post-petition payment to Mr. Ellington?

25 MS. HARTMANN: Objection, form.

Page 271

1 F. WATERHOUSE

2 payments that NexPoint made after the petition

3 date through the end of 2020 to Scott

4 Ellington?

5 MS. HARTMANN: Objection, form and

6 relevance.

7 A. Yes.

8 Q. (By Mr. Morris) Okay. Do you know

9 how many payments were made by NexPoint to

10 Mr. Ellington after the petition date but

11 before December 30th, 2020?

12 MS. HARTMANN: Objection, form.

13 A. I'm aware of one.

14 Q. (By Mr. Morris) Are you aware of the

15 approximate amount of that payment?

16 MS. HARTMANN: Objection, form.

17 A. I don't recall.

18 Q. (By Mr. Morris) Do you recall how

19 you became aware of that payment?

20 MS. HARTMANN: Objection to form.

21 A. Yes.

22 Q. (By Mr. Morris) How did you learn of

23 the payment by NexPoint to Mr. Ellington after

24 the petition date but before December 31st,

25 2020?

Page 273

1 F. WATERHOUSE

2 A. I don't remember having that

3 discussion.

4 Q. (By Mr. Morris) As the treasurer of

5 NexPoint, did you authorize the making of the

6 payments to you and to Mr. Ellington?

7 MS. HARTMANN: Objection, form.

8 A. No.

9 Q. (By Mr. Morris) Do you know who --

10 do you have any understanding as to who

11 authorized the payments to you and to

12 Mr. Ellington?

13 A. It was -- my understanding is it was

14 Mr. Dondero.

15 Q. Okay. Do you know if NexPoint made

16 any post-petition payments to Isaac Leventon?

17 MS. HARTMANN: Objection, form.

18 A. Yes.

19 Q. (By Mr. Morris) And how did you

20 learn that?

21 A. From Mr. Collins.

22 Q. Did Mr. Collins tell you how much

23 NexPoint had paid to Mr. Leventon?

24 MS. HARTMANN: Objection, form.

25 A. I don't remember.

Page 274

1 F. WATERHOUSE

2 Q. (By Mr. Morris) Did Mr. Collins

3 explain to you why NexPoint was paying money to

4 Mr. Leventon?

5 MS. HARTMANN: Objection to form.

6 A. I don't recall.

7 Q. (By Mr. Morris) Do you recall if you

8 asked Mr. Collins why NexPoint was paying money

9 to Mr. Leventon?

10 MS. HARTMANN: Objection, form.

11 A. Same as before. I don't -- I didn't

12 ask.

13 Q. (By Mr. Morris) Do you -- as the

14 treasurer of NexPoint, do you know if the

15 payments to you and to Mr. Waterhouse --

16 withdrawn.

17 As the treasurer of NexPoint, do you

18 know if the payments to you and Mr. Ellington and

19 Mr. Leventon are reflected on NexPoint's books

20 and records?

21 MS. HARTMANN: Objection, form.

22 A. Yes.

23 Q. (By Mr. Morris) And would they --

24 where in the books and records would the

25 payments be reflected?

Page 276

1 F. WATERHOUSE

2 meeting? By e-mail? How did he make you aware

3 of those payments?

4 MS. HARTMANN: Objection, form.

5 A. It was just a conversation.

6 Q. (By Mr. Morris) Okay. And was there

7 just one singular conversation that covered all

8 the payments to the four individuals that we've

9 identified, or was it more than one

10 conversation?

11 MS. HARTMANN: Objection to form.

12 A. I don't remember.

13 Q. (By Mr. Morris) Do you know if

14 NexPoint made one or more payments to

15 Mr. Surgent?

16 Are you thinking, Mr. Waterhouse? your

17 screen froze, at least for me.

18 MR. MORRIS: Is it frozen for anybody

19 else?

20 THE REPORTER: Yes.

21 (Off the record to resolve Zoom

22 issue.)

23 MS. HARTMANN: Here, I'm going to

24 give him my screen.

25 MR. MORRIS: Perfect.

Page 275

1 F. WATERHOUSE

2 MS. HARTMANN: Objection, form.

3 A. They would be on the P&L -- on the

4 income statement.

5 Q. (By Mr. Morris) Okay. After the

6 petition date, did NexPoint make any payments

7 to Thomas Surgent?

8 MS. HARTMANN: Objection, form.

9 A. Yes.

10 Q. (By Mr. Morris) And how did you

11 learn that NexPoint had made one or more

12 payments to Mr. Surgent after the petition

13 date?

14 MS. HARTMANN: Objection, form.

15 A. I talked with Mr. Collins.

16 MR. MORRIS: La Asia, you can take

17 down the exhibit.

18 Q. (By Mr. Morris) Mr. Waterhouse, so

19 you discussed the payments that were being made

20 by NexPoint to you and Mr. Leventon,

21 Mr. Ellington, and Mr. Surgent, correct?

22 MS. HARTMANN: Objection to form.

23 A. I was made aware of it.

24 Q. (By Mr. Morris) Okay. And did he

25 make you aware of them in a conversation? In a

Page 277

1 F. WATERHOUSE

2 THE WITNESS: Sorry.

3 MR. MORRIS: Thank you. No problem.

4 Q. (By Mr. Morris) Do you know whether

5 the payments that were made -- withdrawn.

6 Do you know whether NexPoint made any

7 payments to any Highland employee after the

8 petition date other than to the four people that

9 we've identified?

10 MS. HARTMANN: Objection to form.

11 A. I don't -- I don't know.

12 Q. (By Mr. Morris) You're not aware of

13 any?

14 A. I'm -- I don't know. I'm not aware.

15 Q. Okay. Do you know if anybody ever

16 informed Highland's board of independent

17 directors of any of these payments prior to

18 confirmation in early February 2021?

19 MS. HARTMANN: Objection to form.

20 A. I'm -- you know, that -- typically

21 things like this are -- our compliance group

22 does that, right? So I don't know -- I don't

23 know what Thomas did.

24 Q. (By Mr. Morris) Did you personally

25 ever tell any of the independent board members

Page 278

1 F. WATERHOUSE
 2 of the payments that -- the payment that you
 3 received?
 4 MS. HARTMANN: Objection to form.
 5 A. I did not.
 6 Q. (By Mr. Morris) Okay. Do you know
 7 if any recipient of any of the payments ever
 8 informed any member of the independent board
 9 about any of the payments that were made by
 10 NexPoint to the four individuals we've
 11 identified?
 12 A. I'm not aware.
 13 Q. Do you know if anybody ever informed
 14 me or anybody at my firm of any of the payments
 15 that we've described as having been made by
 16 NexPoint post-petition?
 17 MS. HARTMANN: Objection, form.
 18 A. I'm not aware.
 19 MR. MORRIS: I have no further
 20 questions.
 21 Mr. Waterhouse, thank you very much.
 22 I always appreciate your indulgence.
 23 MR. RUKAVINA: Let's take a 10-minute
 24 break, and I'll try to get done in 30, 45
 25 minutes.

Page 280

1 F. WATERHOUSE
 2 are laid out in the reimbursement agreement,
 3 NexPoint or HCMFA would pay that allocable
 4 cost.
 5 Q. (By Mr. Rukavina) And obviously
 6 you're a CPA, you're a highly sophisticated
 7 man. What do you understand the word
 8 reimbursement to mean?
 9 A. I mean, reimbursement is to, again,
 10 reimburse an entity or someone for, like I
 11 said, costs that have been incurred. So you're
 12 reimbursing them for, you know, those -- those
 13 costs -- I mean, for these agreements, it's
 14 those costs. So they're -- so the net effect
 15 is they're not out, you know, any dollars.
 16 It's like you get reimbursed, you know, if you
 17 have an employee expense and you get reimbursed
 18 for -- let's say you get paid -- your firm pays
 19 lunch, you get reimbursed for lunch, right?
 20 Something to that effect.
 21 Q. So was there an intent in these
 22 contracts when you signed them that Highland
 23 make a profit under these contracts, the two
 24 payroll reimbursement agreements?
 25 MR. MORRIS: Objection to the form of

Page 279

1 F. WATERHOUSE
 2 (Recess taken 4:52 p.m. - 5:06 p.m.)
 3 EXAMINATION
 4 BY MR. RUKAVINA:
 5 Q. Mr. Waterhouse, good afternoon.
 6 A. Good afternoon.
 7 Q. You were asked about the payroll
 8 reimbursement agreements.
 9 MR. RUKAVINA: Mr. Nguyen, why don't
 10 you just pull up my Number 3 just so that
 11 Mr. Waterhouse has it in front of him.
 12 Q. (By Mr. Rukavina) So obviously it's
 13 called a reimbursement agreement. It uses the
 14 word reimbursement repeatedly. It talks about
 15 reimbursement to Highland. How did you
 16 understand the word reimbursement to apply or
 17 what did it mean to you when you signed this
 18 agreement?
 19 MR. MORRIS: Objection to the form of
 20 the question.
 21 A. I think it's consistent with what I
 22 testified with Mr. Morris is that the purpose
 23 of the agreement was to reimburse Highland for
 24 costs that it incurred. So to the extent that
 25 costs were incurred for the individuals that

Page 281

1 F. WATERHOUSE
 2 the question.
 3 A. That was not my understanding.
 4 Q. (By Mr. Rukavina) That would be
 5 incompatible with your understanding of the
 6 word reimbursed, correct?
 7 A. Yes.
 8 Q. Was there an intent for these two
 9 payroll reimbursement agreements that Highland
 10 mark up its actual costs?
 11 MR. MORRIS: Objection to the form of
 12 the question.
 13 A. Not that I was aware of.
 14 Q. (By Mr. Rukavina) Again, that would
 15 be incompatible with your understanding of the
 16 word reimbursement?
 17 A. Yes.
 18 Q. Now, Mr. Morris took you through how
 19 the agreements talk about reimbursement, and
 20 then they set a monthly amount. Was it your
 21 understanding that the fundamental purpose of
 22 these two contracts was to provide for
 23 reimbursements or to pay those monthly amounts
 24 as set amounts, as set dollar amounts?
 25 MR. MORRIS: Objection to the form of