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*Counsel for UBS Securities LLC and UBS  
AG London Branch*

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

In re	§	Chapter 11
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., <sup>1</sup>	§	Case No. 19-34054-sgj11
	§	
Debtor.	§	
-----		
UBS SECURITIES LLC AND UBS AG	§	Adversary Proceeding
LONDON BRANCH,	§	
	§	No. 21-03020
Plaintiffs,	§	
	§	
vs.	§	
	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
	§	
Defendant.	§	

<sup>1</sup> 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.



**UBS'S WITNESS AND EXHIBIT LIST FOR AUGUST 8, 2022 HEARING**

UBS Securities LLC and UBS AG London Branch (together, "UBS"), by and through their undersigned counsel, submit the following witness and exhibit list for the hearing set for 9:30 am Central Time on August 8, 2022, in connection with *Highland Capital Management, L.P.'s Motion to Withdraw its Answer and Consent to Judgment for Permanent Injunctive Relief* [Adv. Dkt. No. 169].

**A. WITNESSES THAT UBS MAY CALL TO TESTIFY:**

1. James Seery, Jr.;
2. Any witness designated or called by any other party; and
3. Any witness necessary for impeachment or rebuttal.

**B. DOCUMENTS UBS MAY USE AS EXHIBITS:**

<b>Ex. No.</b>	<b>Exhibit</b>	<b>Offered</b>	<b>Admitted</b>
1	Legal Liability Insurance Policy between Sentinel Reinsurance, Ltd., Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company, and Highland Special Opportunities Holdings Company, effective August 1, 2017, as produced by Highland at UBSPROD1973053		
2	Purchase Agreement between Sentinel Reinsurance, Ltd., Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company, and Highland Special Opportunities Holdings Company, dated Aug. 7, 2017		
3	Email from Shawn Raver to Rick Swadley, dated September 12, 2018, attaching a June 30, 2018 memorandum entitled, "Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets," as produced by Highland at UBSPROD4837351		
4	Judgment on Phase I Trial, entered by the N.Y. Court on February 10, 2020 [NY Dkt. No. 646]		

Ex. No.	Exhibit	Offered	Admitted
5	Decision and Order on Summary Judgment Motions by the N.Y. Court, filed March 24, 2017 [NY Dkt. No. 411]		
6	Email from Beecher to JP Sevilla on June 8, 2017, with subject "ATE Actuary," as produced by Beecher at BC SEN0000744847		
7	Presentation titled "Settlement Analysis UBS v. H," as produced by Highland at HCMUBS005251		
8	Sentinel structure organizational chart, notarized by Sarah Bell on January 9, 2018, as produced by Beecher at BC SEN0000133744		
9	Email from Katie Irving on August 16, 2017, with subject "Financials" and attaching Sentinel's unaudited financial statements for year-end 2016, as produced by Highland at HCMUBS001066		
10	Email from Beecher to JP Sevilla on August 8, 2017, with subject "Draft ATE policy," as produced by Beecher at BC SEN0000745902		
11	Email attaching CIMA's Final Onsite Inspection Reports to Sentinel, as produced by Beecher at BC SEN0000078777		
12	Email from Beecher to JP Sevilla and Matt DiOrio on June 6, 2018, with subject "Sentinel," as produced by Beecher at BC SEN0000668753		
13	Email from Beecher to Matt DiOrio, among others, on June 8, 2018, with the subject "Sentinel ATE endorsement," as produced by Beecher at BC SEN0000707586		
14	Copy of the Legal Liability Insurance Policy with Endorsements Nos. 1 & 2, as produced by Matt DiOrio at MD_000010		
15	Asset Transfer Agreement, dated as of December 31, 2019, as produced by Highland at UBSPROD020567		
16	Emails between Isaac Leventon, Jim Seery, and Scott Ellington on August 5, 2020, with subject "UBS		

Ex. No.	Exhibit	Offered	Admitted
	Supplemental Information Request,” as produced by Highland at UBSPROD495884		
17	Email from Scott Ellington to Jim Seery and others on August 15, 2020, with subject “UB Diligence Requests: Highland Credit Opportunities CDO Ltd.,” as produced by Highland at UBSPROD1611114		
18	Email from Matt DiOrion on January 28, 2021, with subject “HCM - Greenbriar Pref Shares CDO Fund,” as produced by Highland at UBSPROD1660781		
19	Internal Beecher email on February 6, 2020, attaching Expense Reports for Scott Ellington, as produced by Beecher at BC SEN0000727319		
20	Email between Beecher employees on December 20, 2019, with subject “Ellington - Request Reimbursement,” as produced by Beecher at BC SEN0000663342		
21	CIBC Wire Transfer Debit Advice receipt for Sentinel’s payment of \$4,480,000.00, as produced by Beecher at BC SEN0000123498		
22	CIBC Wire Transfer Debit Advice receipt for Sentinel’s payment of \$1,920,000.00, as produced by Beecher at BC SEN0000004242		
23	Email attaching a letter from Sentinel to CIMA, dated April 26, 2021, with subject “Sentinel Reinsurance, Ltd. (“Sentinel”; License #642423) Notification – Dividend Payment,” as produced by Beecher at BC SEN0000083961		
24	[Omitted]		
25	Transcript of the Deposition of James Dondero (Part 1), dated 5/10/2021		
26	Transcript of the Deposition of James Dondero (Part 2), dated 5/12/2021		



Ex. No.	Exhibit	Offered	Admitted
27	Transcript of the Deposition of Jean Paul Sevilla, dated 7/21/2021		
28	Transcript of the Deposition of Isaac Leventon, dated 7/22/2021 (with redaction)		
29	Transcript of the Deposition of Matthew T. DiOrio, dated 7/23/2021 (with redaction)		
30	Transcript of the Deposition of Scott Ellington, dated 7/29/2021 (with redaction)		
31	Transcript of the Deposition of the 30(b)(6) Representative of Beecher Carlson (Thomas Adamczak), dated 4/12/2022		
32	Transcript of the Deposition of Clifford Stoops, dated April 27, 2021		
33	Transcript of the Deposition of Jeremy Ringheimer, dated April 30, 2021		
34	Highland's Second Amended Responses and Objections to UBS's Interrogatories, dated November 30, 2021		
35	Highland's Amedned Responses and Objections to UBS's Requests for Admission, dated September 3, 2021		
36	Settlement Agreement between Highland and UBS, among others, dated March 30, 2021 [Dkt. No. 2200-1]		
37	Original Complaint for Injunctive Relief [Adv. Dkt. No. 156]		
38	Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction [Adv. Dkt. No. 157]		
39	Appendix of Exhibits to Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction [Adv. Dkt. No. 158]		
40	Order Granting Plaintiffs' Motion for a Temporary Restraining Order, as entered on April 9, 2021 [Adv. Dkt. No. 21]		

Ex. No.	Exhibit	Offered	Admitted
41	Highland Capital Management, L.P.'s Motion to Withdraw its Answer and Consent to Judgment for Permanent Injunctive Relief [Adv. Dkt. No. 169]		
42	Declaration of Mr. James P. Seery, Jr. in Support of Highland Capital Management, L.P.'s Motion to Withdraw its Answer and Consent to Judgment for Permanent Injunctive Relief [Adv. Dkt. No. 170]		
43	All exhibits identified by or offered by any other party at the hearing		
44	All exhibits necessary for impeachment and/or rebuttal purposes		
45	Any pleadings, reports, or other documents entered or filed in the chapter 11 case or related adversary proceedings, including any exhibits thereto		

UBS reserves the right to amend or supplement this witness and exhibit list prior to the hearing.

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DATED this 4<sup>th</sup> day of August 2022.

Respectfully submitted,

**LATHAM & WATKINS LLP**

By /s/ Kathryn George

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**CERTIFICATE OF SERVICE**

I, Candice Carson, certify that *UBS's Witness and Exhibit List For August 8, 2022 Hearing* was filed electronically through the Court's ECF system, which provides notice to all parties of interest.

Dated: August 4, 2022.

/s/ Candice Carson

**From:** Isaac Leventon <ILeventon@HighlandCapital.com>

**To:** Chris Dunn <CDunn@HighlandCapital.com>

**Subject:** UBS - PRIVILEGED

**Date:** Thu, 26 Oct 2017 08:16:25 -0500

**Importance:** Normal

**Attachments:** UBS\_ATE.PDF

**Inline-Images:** image001.jpg

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Please see attached. Please label all communications related to this project as Privileged as all documents are being drafted at the request of the Legal Team.

Thanks,

ISAAC LEVENTON | ASSISTANT GENERAL COUNSEL



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UBSPROD1973053

## Legal Liability Insurance Policy

00753351-1

UBSPROD1973054

## 1. Our agreement in general

### 1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

### 1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

### 1.3 Policy Structure

1.3.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if a **limit of indemnity** is shown in the **schedule**. Where the **limit of indemnity** in respect of any item in the **schedule** is shown as 'n/a', 'not applicable' or 'not insured' then no cover applies for that item. Where the **insured** comprises more than one person, the **limit of indemnity** for all **claims** made by all persons comprising the **insured** shall apply but as there is no sub-limit of indemnity in relation to each individual person, one or more of those persons will not receive payment of a **claim** if the limit of indemnity has already been met as a result of the payment of other **claims**.

1.3.2 Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.

1.3.3 The following general terms apply to each **insured section**, clauses and endorsements:

- a) General exclusions and limitations
- b) Duties in the event of a claim or potential claim;
- c) General terms and conditions; and
- d) General definitions and interpretation.

### 1.4 Policy period and premium

1.4.1 This **policy** will provide insurance as described herein for the **period of insurance** provided the **premium** (and **deposit premium** if applicable) and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the **premium**. The **premium** is deemed paid and accepted by the **insurer** on receipt by the **insurer** or the intermediary appointed to place this insurance with the **insurer**.

1.4.2 If any **premium** (or **deposit premium** if applicable) is not paid and accepted by the **insurer** on or before its payment date as set out in this **policy** then the **insurer** may, in its sole discretion, give written notice to the **insured** at its address shown in the **schedule** cancelling this **policy** from seven (7) days after the date of service of the notice of cancellation. Cancellation will be prevented from taking effect and the **policy** will continue

in force if the outstanding **premium** (or **deposit premium** if applicable) is paid and accepted before cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed served on the fifth (5<sup>th</sup>) day after being posted if sent by pre-paid airmail letter properly addressed.

- 1.4.3 In consideration of the payment of the **premium** (and **deposit premium** if applicable) by the **insured** to the **insurer** the **insurer** agrees to provide the insurance as described in 'Legal liability' **insured section**.

## **2. Insured section – Legal liability**

### **2.1 Legal liability cover**

The **insurer** agrees to indemnify the **insured** in respect of any **legal liability** occurring during the **period of insurance** up to and including but not exceeding the **limit of indemnity** provided that either:

- 2.1.1 the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) makes an order of liability relating to the **legal action** against the **insured**; or
- 2.1.2 the **legal action** is (with the prior written agreement of the **insured**, the **appointed representative** and the **insurer**) settled on terms that provide for payment by the **insured** to the **opponent**.

## **3. General exclusions and limitations**

This **policy** excludes and the **insurer** shall not be liable to indemnify the **insured** in any of the following circumstances:

### **3.1 Absence of the insurer's prior consent**

where the **insurer's** written consent has not been obtained pursuant to the 'Written consent' clause below;

### **3.2 Failure to notify**

where the **insured** has failed to notify the **insurer** pursuant to the 'Claim notification' clause below;

### **3.3 Insured's conduct**

- 3.3.1 where the **legal action** is settled or the court makes an order of liability relating to the **legal action** against the **insured** as a result of the dishonesty of the **Insured**; or
- 3.3.2 where the **insured** fails to act in accordance with the advice of the **appointed representative** or to provide full instructions promptly to the **appointed representative** or to co-operate with the **appointed representative** or to comply with any order made by the **court** or any **court rule**;

### **3.4 Failure to mitigate**

where **legal liability** is incurred or increased as a result of a failure on part of the **insured** or the **appointed representative** to mitigate such a liability;



**3.5 Non-disclosure**

where the **insured** or the **appointed representative** has failed to disclose material facts;

**3.6 Unnecessary costs because of delay etc.**

where the **opponent's costs** arise from

3.6.1 any unreasonable delay or negligence or wilful act or omission by the **insured** or the **appointed representative**;

3.6.2 any unreasonable failure on part of the **insured** or the **appointed representative** to attend a hearing or other appointment;

**3.7 Amended pleadings**

Where **legal liability** is incurred or increased as a result of any unreasonable amendment to the **insured's** pleadings or any failure to comply with any court directions, pre-action protocols or any other rule, regulation or statutory provision;

**3.8 Fraud**

where the **insured** or the **appointed representative** has made any fraudulent, false or misleading representation;

**3.9 Legal action outside the territorial limits**

where **legal liability** is incurred or increased as a result of the **legal action** being pursued, issued, brought or transferred outside the **territorial limits**;

**3.10 Non-contribution**

where but for the existence of this **policy** the **insured** would be entitled to indemnity under another insurance policy;

**3.11 Quote disclosed prior to inception of the policy**

where the existence of any offer of insurance made by the **insurer** to the **insured** in respect of the **legal action** was disclosed to any third party other than those third parties to whom the **insurer** has offered its consent for such quote to be disclosed;

**3.12 Sums due under other policies of insurance**

where any premium has fallen due to be paid by the **insured** to the **insurer** pursuant to the terms of any other policy of insurance issued by the **insurer** to the **insured** but remains unpaid (whether in full or in part) at the date of a **claim** under this **policy**.

**4. Other terms and conditions relating to cover**

**4.1 Set-off**

In the event that a **claim** is made under this **policy** and the **insured** has obtained a **recovery** in the **legal action** then the **insurer** shall only be liable to indemnify the **insured** for the net sum (if any) after deduction of the amount of the **recovery**. This is irrespective of whether or not payment is actually made to the **insured**.

**4.2 Appeal**

- 4.2.1 In the event that the **legal action** is subject to **appeal** then at the end of the appeal's process this **policy** will be construed as if the **court** had reached the same decision as the appellate court.
- 4.2.2 In the event that any sums of money are paid by the **insurer** pursuant to the terms of this **policy** and the judgment of the **court** is amended following an **appeal** (such that the **insurer** would not have made the payment had the amended judgment been the judgment of the **court**) then the **insured** shall reimburse the **insurer** for any such sums of money already paid together with interest at 2% above the United States Dollar prime lending rate in the Cayman Islands from time to time.

## **5. Conduct of the legal action**

### **5.1 Written consent**

The **insured** must obtain, and irrevocably instructs the **appointed representative** to obtain, written consent from the **insurer** prior to:

- 5.1.1 the settlement of the **legal action** in the **opponent's** favour;
- 5.1.2 the rejection (whether explicitly or by conduct) of an **opponent's** offer to settle the **legal action**;
- 5.1.3 the rejection of any offer of alternative dispute resolution (including mediation) from the **opponent**;
- 5.1.4 any change of the **appointed representative**.

The **insurer** will not unreasonably withhold consent to the **insured** taking any of the steps referred to in this clause and will, in making a decision as to whether to provide consent pursuant to this clause, consider whether a reasonably prudent uninsured litigant would pursue the course of action for which the **insurer's** consent is sought.

### **5.2 Notification**

The **insured** must notify, and irrevocably instructs the **appointed representative** to notify, the **insurer** immediately:

- 5.2.1 on receipt of any offer of settlement of the **legal action**;
- 5.2.2 on receipt of any offer of alternative dispute resolution (including mediation) from the **opponent**;
- 5.2.3 in the event of any development in the **legal action** material to the prospects of succeeding in the **legal action**;
- 5.2.4 if the **insured** is no longer more likely than not to succeed in the **legal action**, assuming that it is determined at trial; and
- 5.2.5 after any period of 6 months during which there has been no requirement to request the **insurer's** consent or notify the **insurer** in order to confirm the current status of the **legal action**.

### **5.3 Monies to be held on account**

The **insured** irrevocably instructs the **appointed representative** to hold any monies (whether costs, interest or damages) received from the **opponent** until the **premium** is paid in full, any **claim** under this **policy** has been submitted and all terms and conditions of this **policy** have been fully complied with.

#### **5.4 Co-operation by the insured and appointed representative**

The **insured** must:

- 5.4.1 provide, and instruct the **appointed representative** to provide, the **insurer** with full and prompt co-operation to include providing such **information** as is requested by the **insurer** from time to time; and
- 5.4.2 co-operate, and instruct the **appointed representative** to co-operate, with any request by the **insurer** to audit **information** pursuant to the 'Audit' clause.

#### **5.5 Prosecution of the legal action**

The **insured** agrees to:

- 5.5.1 prosecute the **legal action** promptly;
- 5.5.2 provide any instructions to the **appointed representative** as are necessary or desirable in order to prosecute the **legal action** in the best manner;
- 5.5.3 act as a reasonably prudent uninsured litigant with the objective of achieving the best outcome in the **legal action** (and any subsequent costs assessment proceedings); and
- 5.5.4 comply with any order of the **court** and any **court** rules and in all respects conduct the **legal action** in a reasonable manner in order to minimise costs.

#### **5.6 Territorial limits**

The **insured** agrees to prosecute the **legal action** in the **court** within the **territorial limits** and warrants that the **legal action** will be governed by the laws of the **territorial limits**.

### **6. Bond**

#### **6.1 Payment under bond forms part of indemnity**

In the event that the **insurer** is obliged to make any payment pursuant to the terms of a **bond** issued in conjunction with this **policy** then such payment shall contribute to and form part of the indemnity provided by this **policy** and shall erode both the **limit of indemnity** stated in the **schedule**.

#### **6.2 Recovery of sums paid pursuant to bond**

In the event that the **insurer** makes any payment whatsoever pursuant to the terms of a **bond** in circumstances in which the **insurer** would not have been obliged to make such payment pursuant to the terms of this **policy** then the **insured** shall indemnify the **insurer** in respect of such payment and the **insurer** shall be entitled to recover such payment from the **insured**.

### **7. Duties in the event of a claim or potential claim**

The due observance and fulfilment of the provisions of 'Claim notification' and 'Insured's duties and insurer's rights' are condition precedents to the **insurer's liability** for any **claim**

under this **policy**. The 'Termination by the insurer' clause sets out the consequences of a failure to comply with conditions precedent or **policy** provisions.

## **7.1 Claim notification**

- 7.1.1 The **insured** shall give the **insurer** written notice as soon as practicable of any **claim** or any circumstance which might reasonably be expected to give rise to a **claim**.
- 7.1.2 Notice to the **insurer** of a **claim** under this policy must be given to the claims notification address specified in the **schedule**.

## **7.2 Insured's duties and insurer's rights**

- 7.2.1 A **claim** form must be completed with full particulars.
- 7.2.2 The **insured** shall provide to the **insurer** and the **appointed representative** all **information** and, in addition, shall provide all necessary assistance (notwithstanding the right for the **insurer** to audit pursuant to the 'Audit' clause) to enable the **insurer** or its agents to investigate and/or defend any **claim** under this **policy** and/or to enable the **insurer** to determine its liability under this **policy**.
- 7.2.3 Neither the **insured** nor its **appointed representative** shall make any admission with respect to liability in relation to the **legal action** or attempt to settle the **legal action** without the **insurer's** prior written consent.
- 7.2.4 The **insured** will promptly provide the **insurer** with full details of **legal liability** and shall, if requested by the **insurer**, have such **legal liability** assessed by the appropriate body.
- 7.2.5 The **insurer** will be entitled (but not obliged) to conduct any costs assessment or review and the **insured** will provide (and hereby gives irrevocable instructions to the **appointed representative** to provide) such assistance as the **insurer** requires.

## **7.3 Subrogated claims**

In the event of the **insurer** making any payment under this **policy**:

- 7.3.1 the **insurer** shall be subrogated to all the **insured's** rights or causes of action related to or arising out of the **legal action** against any other party to the extent that these rights or causes of action are pertinent to a loss being suffered by the **insured** and the **insured** undertakes to provide the **insurer** with all assistance which may be required to pursue these rights; and
- 7.3.2 any entitlement to a recovery from the **opponent** by the exercise of such rights or otherwise will, until received, be set off against any **claim** comprised of **legal liability** and when received be applied, in order of priority, to repay and extinguish any payment made by the **insurer** under this **policy**, any **insurer's** costs, any interest due on such payment and costs and finally any **insured's** losses.

# **8. General terms and conditions**

## **8.1 Audit**

The **insurer** has the right to audit all **information** within the possession or control of the **insured** or the **appointed representative** whether held in physical or electronic format.

## 8.2 **Applicable law**

This **policy** will be governed by and interpreted in accordance with the laws of the Cayman Islands and subject to the exclusive jurisdiction of the courts in the Cayman Islands.

## 8.3 **Assignment**

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

## 8.4 **Confidentiality**

The **insurer** agrees that any **information** given by the **insured** or the **appointed representative** is received in confidence and will not be disclosed to any other party.

## 8.5 **The Contracts (Rights of Third Parties) Law, 2014**

This insurance does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Law, 2014 of the Cayman Islands or any amending or subsequent legislation by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

## 8.6 **Disclosure**

8.6.1 The **insurer** will follow appropriate security procedures in the storage and disclosure of data provided by the **insured** or its appointed representative to prevent unauthorised access or loss of such data. The **insurer** may find it necessary to pass such data to other firms or businesses that supply products and services associated with this **policy**.

The **insurer** collects non-public personal information about the **insured** from the following sources:

- a. information the **insurer** receives from the **insured** on applications or other forms;
- b. information about the **insured's** transactions with the **insurer**, its subsidiary, parent and/or other group companies or others;
- c. information the **insurer** receives from consumer reporting agencies.

8.6.2 The **insurer** does not disclose any non-public personal information relating to the **insured** to anyone except as is necessary in order to provide its products or services to the **insured** or otherwise as it is required or permitted by law (e.g. a subpoena, fraud investigation, regulatory reporting, etc.).

8.6.3 Further, by accessing and updating various databases, the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected, this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to are available on request.

## 8.7 Dispute resolution

- 8.7.1 Any matters in dispute between the **insurer** and the **insured** arising out of or in connection with this insurance will be referred to a mediator to be agreed by the **insurer** and the **insured** within ten (10) working days of a written notice served on one of them by the other of them requesting such an agreement. If a mediator is not agreed then either the **insurer** or the **insured** may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The **insurer** and the **insured** agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.
- 8.7.2 The **insurer** and the **insured** agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.
- 8.7.3 If any such dispute is not resolved by mediation or the **insurer** and the **insured**
- 8.7.4 cannot agree upon the appointment of a mediator or the form that the mediation will take, the dispute will be referred by either of them to courts, subject to the law and jurisdiction set down in the 'Applicable law' clause above.

## 8.8 Observance

- 8.8.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.
- 8.8.2 Further, where an indemnity is provided to any other party, the **insured** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply provided always that the other party complies with the terms of 'Duties in the event of a claim or potential claim'.
- 8.8.3 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.
- 8.8.4 In the event of a breach of any condition precedent in the **policy** and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach and continue the **policy** on such terms as the **insurer** may determine and, if any payment on account of any such **claim** has already been made, the **insured** will repay forthwith all payments on account to the **insurer**.

## 8.9 Payment of premium

The **insured** agrees to pay the **premium** stated in the **schedule** on the **due date** as specified in the **schedule**. If the **insurer** agrees that some or all of the premium may be satisfied otherwise than in cash (e.g. by the transfer by the **insured** to the **insurer** of an investment portfolio), the **insured** shall take all necessary steps to satisfy the **insurer's** due diligence requirements in relation to the assets proposed to be transferred and that

their net realisable value is equal to or greater than the **premium** or that part of the **premium** which is to be satisfied otherwise than in cash. If the **insurer** agrees to accept such assets in satisfaction of all or part of the **premium**, the insured shall on the **due date** ensure that the insurer becomes the beneficial owner of such assets, free from any charge, lien or encumbrance.

8.9.1 Taxes, levies and other relevant fiscal charges are payable in addition to the **premium** Where there is more than one **insured**, each **insured** shall be jointly and severally liable for the **premium**.

8.9.2 Should the **premium** (or any part thereof) remain unpaid after seven (7) days after the **due date** then interest shall accrue on the **premium** (or the unpaid part) at a rate of 2% (two percent) above the United States Dollar prime lending rate in the Cayman Islands as calculated at the time of the **due date** until the actual date of payment.

#### 8.10 **Records**

The **insurer** may hold documents relating to this insurance and any **claims** under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

#### 8.11 **Rights surviving end of period of insurance**

All rights and obligations on the part of the **insured** and the **insurer** pursuant to this **policy** shall continue until such time as the **insured's** and the **insurer's** liabilities under this **policy** have been finally determined.

#### 8.12 **Termination by the insured**

The **insured** may terminate this **policy** at any time whereupon the **premium** (if unpaid) becomes immediately payable and the **insurer** will not be liable for any **claim** under this **policy**. Where the **insured** comprises more than one person, this termination right may only be exercised if each such person consents in writing.

#### 8.13 **Termination by the insurer**

8.13.1 The **insurer** may terminate this **policy** immediately:

- a. if the **insured**, or where the **insured** comprises more than one person, any such person, fails to observe all the terms and conditions of this **policy** including, for the avoidance of doubt, the terms relating to the payment of the **premium**;
- b. if the **insured**, or where the **insured** comprises more than one person, any such person, becomes bankrupt or insolvent during the **period of insurance**. The **insured** or any such person shall be deemed insolvent upon the appointment of a liquidator in circumstances where it is insolvent.

8.13.2 In the event of termination by the **insurer** then the **insurer** will not be liable for any **claim** under this **policy**.

**8.14 Sanction limitation and exclusion clause**

The insurer shall not provide cover nor be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the insurer or any member of the insurer's group to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction.

**8.15 Joint and several obligations**

Where the insured comprises two or more persons, all duties and obligations of such persons under this policy shall be joint and several.



## 9. General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in bold type-face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 9.1 Appeal

Appeal means an appeal against the judgment of the **court** to any appellate court.

### 9.2 Appointed representative

Appointed representative means a firm of attorneys which has been accepted by the **insurer** to act for the **insured** in accordance with the terms of this **policy**.

### 9.3 Bond

Bond means any deed of indemnity issued by the **insurer** in respect of the **legal action** for the purpose of providing security for costs in the **legal action** on behalf of the **insured**.

### 9.4 Claim

Claim means a request by the **insured** under the terms of this **policy** for payment in respect of **legal liability**. Any claim or series of claims arising out of the same **legal action** shall be regarded as one claim.

### 9.5 Court

Court means any judge, arbitrator or any other tribunal that hears the **legal action** at first instance within the **territorial limits**.

### 9.6 Deposit premium

Deposit premium means the amount, if any, specified as deposit premium in the **schedule**.

### 9.7 Due date

Due date means the date for payment of the premium as specified in the **schedule**.

### 9.8 Information

Information means any information within the possession control or knowledge of the **insured** or the **appointed representative**, both before and after the inception of this **policy**, that is relevant to or relates to the **legal action**, whether privileged or not (which privilege the **insured** irrevocably waives), and extends to the **appointed representative's** file on the **insured's legal action**.

### 9.9 Insured

Insured means the person or persons named in the **schedule** as declared to and accepted by the **insurer** and where the **insured** comprises more than one person, the expression **insured** where used in this **policy** shall be construed, unless the context otherwise requires, so as to refer to each person named as the **insured** in the **schedule**.

**9.10 Insured section**

Insured section means all or any individually numbered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured section' in the heading to the section.

**9.11 Insurer**

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers.

**9.12 Legal action**

Legal action means the action described in the **schedule**.

**9.13 Legal liability**

Legal liability means either:-

9.13.1 the aggregate of (a) the total sum (including any opponent's costs) ordered by the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) to be paid by the **insured** to the **opponent** in the **legal action** and (b) **own costs**; or

9.13.2 the aggregate of (a) the total sum (including any opponent's costs) to be paid by the **insured** to the **opponent** pursuant to a settlement of the **legal action** reached between the **insured** and the **opponent** (with the prior written agreement of the **insured**, the **appointed representative** and the **insurer**) and (b) **own costs**.

**9.14 Limit of indemnity**

Limit of indemnity means:

- 9.14.1 the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability under this **policy** regardless of the number of:
- a. **insureds** or other insured parties;
  - b. persons or organisations bringing claims or suits; or
  - c. claims against the **insured** or series of claims against the **insured** or claims or series of claims made by the **insured**;

9.14.2 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**;

where indemnity may be provided under two (2) or more **insured sections** of this **policy**, then the combined single limit stated in the **schedule** is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination.

**9.15 Opponent**

Opponent means the party or parties who are named in the **schedule** and with whom the **insured** is in dispute in the **legal action**.

**9.16 Opponent's costs**

Opponent's costs mean all costs and expenses that have been reasonably incurred by the **opponent** in the **legal action**.

**9.17 Own costs**

Own costs means all costs and expenses of the Representative and other service providers in the normal course, including related tax, which are incurred during the conduct of the legal action on behalf of the insured.

**9.18 Period of insurance**

Period of insurance means the period which commences from the date shown on the **schedule** and ceases upon the occurrence of any of the following events:

9.18.1 the **legal action** is concluded by a final judgment or order of the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) which also deals finally with the amount of any costs payable by the parties to the **legal action**;

9.18.2 the **legal action** is settled on terms which also deals with the amount of any costs payable by the parties to the **legal action**;

9.18.3 the **legal action** is transferred outside of the **territorial limits**;

9.18.4 the retainer between the **insured** and the **appointed representative** ceases; or

9.18.5 this **policy** is terminated or cancelled in accordance with the terms and conditions of the **policy**.

**9.19 Policy**

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

**9.20 Premium**

Premium means the amount specified as premium in the **schedule**.

**9.21 Recovery**

Recovery means any sum (inclusive of costs) ordered by the **court** or any appellate court to be paid by the **opponent** to the **insured** in the **legal action** or any amount (inclusive of costs) agreed to be paid by the **opponent** to the **insured** in settlement of the **legal action** (irrespective of whether or not payment is actually made).

**9.22 Schedule**

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured**. Schedules may be re-issued from time to time where each successor overrides the earlier document.

**9.23 Territorial limits**

Territorial limits means the territory or territories specified in the **schedule**.

**INSURER:**

**Sentinel Reinsurance, Ltd.**

**By:** \_\_\_\_\_  
**Name:**  
**Title:**

**INSUREDS:**

**Highland CDO Opportunity Master Fund, L.P.**

**By:** Highland CDO Opportunity Fund GP, L.P., its general partner  
**By:** Highland CDO Opportunity GP, LLC, its general partner  
**By:** Highland Capital Management, L.P., its sole member  
**By:** Strand Advisors, Inc., its general partner

**By:**  
**Name:**  
**Title:**

**Highland CDO Holding Company**

**By:**  
**Name:** James Dondero  
**Title:** Director

**Highland Special Opportunities Holdings Company**

**By:**  
**Name:** James Dondero  
**Title:** Director

**SCHEDULE**

**Insurer:** Sentinel Reinsurance, Ltd.

**Insured:**

- Highland CDO Opportunity Master Fund, LP
- Highland CDO Holding Company; and
- Highland Special Opportunities Holding Company

**Appointed Representative:** Paul Lackey  
Lackey Hershman, LLP  
3102 Oak Lawn Avenue  
Suite 777  
Dallas, Texas 75219

**Date of commencement of Period of Insurance:** August 1, 2017

**Legal Action:** UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009

**Court:** Supreme Court of the State of New York, County of New York

**Opponent:** UBS Securities LLC and UBS AG, London Branch

**Territorial Limits:** State of New York


**Limit of Indemnity:** US\$100,000,000 (One Hundred Million United States Dollars) in aggregate

**Payment Date for Premium:** August 31, 2017

**Premium:** US\$25,000,000 (Twenty Five Million United States Dollars)


**INSURER:**

**Sentinel Reinsurance, Ltd.**


By:   
Name:  
Title: **Andrew Dean**  
**Director**

**INSURED:**

- Highland CDO Opportunity Master Fund, L.P.**
- By: Highland CDO Opportunity Fund GP, L.P., its general partner
- By: Highland CDO Opportunity GP, LLC, its general partner
- By: Highland Capital Management, L.P., its sole member
- By: Strand Advisors, Inc., its general partner

By:   
Name: James Dondero  
Title: President

**Highland CDO Holding Company**

By:   
Name: James Dondero  
Title: Director

**Highland Special Opportunities Holdings Company**

By:   
Name: James Dondero  
Title: Director

## PURCHASE AGREEMENT

This Purchase Agreement (the “*Agreement*”) dated as of August 7, 2017 (the “*Effective Date*”), is entered into by and among Sentinel Reinsurance, Ltd. (“*Purchaser*”) and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company and Highland Special Opportunities Holdings Company (together, “*Sellers*”).

### RECITALS

WHEREAS, Sellers are each party in a lawsuit styled UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009 (the “*Lawsuit*”);

WHEREAS, Sellers desire to purchase a Legal Liability Insurance Policy relating to Sellers’ potential liability in the Lawsuit in form substantially as set forth in Exhibit A hereto (the “*Policy*”); and

WHEREAS, Purchaser is an insurance company that is able to provide Sellers insurance coverage pursuant to the terms of the requested Policy, and Purchaser desires to provide Policy coverage to Sellers pursuant to the terms herein and therein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties hereto agree as follows:

1. Payment of Premium. Purchaser agrees to accept the assets listed in Schedule A hereto as 100% payment of the Premium, including any as yet unpaid or contingent financial proceeds or other benefits related thereto, with the explicit undertaking that if anything of value is received by the Sellers, such cash or other item of value shall be held in trust for the Purchaser and promptly remitted thereto (the “*Transferred Interests*”). Sellers undertake that immediately following signing this Agreement, they will each take all such steps and execute all such documents to vest legal and beneficial ownership free from liens or encumbrances (as hereinafter defined) in all the Transferred Interests in the Purchaser.

2. Entire Agreement. This Agreement and the Schedule and Exhibit attached hereto embody the entire agreement and understanding among the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings relating to such subject matter.

3. Amendments and Waivers. This Agreement may be amended only by an agreement in writing signed by each party hereto, and no waiver or compliance with any provision or condition hereof and no consent provided for herein shall be effective unless evidenced by an instrument in writing duly executed by the party hereto sought to be charged with such waiver or consent.

4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

5. Headings. The headings contained in this Agreement are for convenience only and do not constitute a part of this Agreement.

6. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

**Exhibit #**

**Deposition Exhibit 02**

4/27/20

exhibitsicker.com



7. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the substantive laws of the Cayman Islands without giving effect to any conflict of laws rule or principle thereof that might result in the application of the laws of another jurisdiction, and the courts of the Cayman Islands shall have exclusive jurisdiction to determine any dispute.

8. Further Assurances. Each party to this Agreement hereby covenants and agrees, without the necessity of any further consideration, to execute and deliver any and all further documents and to perform such other acts as may be necessary to carry out the intent and purposes of this Agreement and to consummate the transactions contemplated hereby.

*[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]*

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

**SELLER**

**Highland CDO Opportunity Master Fund, L.P.**

By: Highland CDO Opportunity Fund GP, L.P., its  
general partner

By: Highland CDO Opportunity GP, LLC, its general  
partner

By: Highland Capital Management, L.P., its sole  
member

By: Strand Advisors Inc., its general partner

By: 

Name: James Dondero

Title: President

**Highland CDO Opportunity Fund, Ltd.**

By: 

Name: James Dondero

Title: Director


**Highland CDO Holding Company**

By: 

Name: James Dondero

Title: Director


**Highland Special Opportunities Holdings Company**

By: 


Name: James Dondero

Title: Director

**Highland Financial Corp.**

By:   
Name: James Dondero  
Title: President

**Highland Financial Partnership, L.P.**

By:   
Name: James Dondero  
Title: Chief Executive Officer

PURCHASER

SENTINEL REINSURANCE, LTD.

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

Name: **Andrew Dean** \_\_\_\_\_

Title: Director

SCHEDULE A**HIGHLAND CDO OPPORTUTNITY MASTER FUND, L.P.**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	12,000,000.00
KY84427P2029	SOUTHFORK CLO LTD CUM PFD 144A	10,000.00
KYG829101032	SOUTHFORK CLO LTD PFD	9,000.00
US00306M3007	ABERDEEN LN FDG LTD PFD	5,000.00
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	16,000.00
US39364P2011	GREENBRIAR CLO LTD PFD 144A	16,250.00
US43009L2034	HIGHLAND FINL PARTNERS LP	615,733.00
US43009L9898	HIGHLAND FINL PARTNERS LP NPV	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	3,000.00
US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	100.00
US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A	48,500,000.00
	FRN	42,868,390.80
US8729623038	TOUSA INC 8.0 PFD 144A	1,337.00
US91914QAA40	VALHALLA CLO LTD 0.0 01AUG23	6,000,000.00
	144A	6,000,000.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	6,000,000.00
	144A	6,000,000.00
N/A	HIGHLAND CREDIT OPPORTUNITIES CDO LTD. PARTNERSHIP INTEREST	24,313.00
	\$2,157,088 PROMISSORY NOTE (GOVERNANCE RE, LTD. AS MAKER) AND CASH OF \$539,272 – RE: NEXPOINT MULTIFAMILY CAPITAL TRUST INTEREST	269,636.00
N/A	NEXPOINT REAL ESTATE STRAT – Z	97,257.00
N/A	HIGHLAND GEMINI PROGRAM (POLLUX) \$2,399,996 PROMISSORY NOTE (THE DUGABOY INVESTMENT TRUST AS MAKER) AND CASH	65,314.00
N/A	OF \$599,999 – RE: SURVIOS INTEREST	2,999,995.00
BCC0MVTX4	CAMBR 5X FLOATING – 12/2045	19,350,000.00
N/A	CASH	\$7,779,722.00

**HIGHLAND CDO OPPORTUTNITY FUND, LTD.**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
N/A	CASH	\$2,349,436.00

**HIGHLAND CDO HOLDINGS COMPANY**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
US404185AD22	HFT REAL EST 3.33867 25NOV51 144A F	750,000.00 750,000.00
US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	165,395.00
US65341D1028	NEXPOINT R COM USD0.001 'WI'	220,527.00
US86280AAE73	STRATFORD CL 3.16956 01NOV21 144A F	300,000.00 300,000.00
USG44392AF82	HIGHLAND PARK C 4.93867 25NOV51 FRN	17,000,000.00 24,076,296.18
N/A	PROMISSORY NOTE – CLO HOLDCO, LTD. AS MAKER – 12/23/2025	\$32,801,593.00
N/A	CASH	\$539,641.00
N/A	DIVIDENDS RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	\$136,598.00

**HIGHLAND SPECIAL OPPORTUNITIES HOLDINGS COMPANY**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
US247126AC93	DELPHI CORP DEL 7.125 01MAY29	1,500,000.00
US247126AD76	DELPHI CORP DEL 6.55 15JUN06 USD	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	1,570.00
US8729623038	TOUSA INC 8.0 PFD 144A	5,349.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46 144A	5,000,000.00 5,000,000.00
N/A	CASH	\$295,136.00

**HIGHLAND FINANCIAL CORP.**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
N/A	CASH	\$80,144.00
N/A	TAX REFUND RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	\$477,637.00

**HIGHLAND FINANCIAL PARTNERS, L.P.**

<b>ISIN</b>	<b>Description</b>	<b>Traded Shares/Par</b>
N/A	CASH	\$29,252.00

**From:** Shawn Raver <SRaver@HighlandCapital.com>  
**To:** Rick Swadley <RSwadley@HighlandCapital.com>  
**Subject:** RE: policy  
**Date:** Wed, 12 Sep 2018 16:13:36 -0500  
**Importance:** Normal  
**Attachments:** Tax\_Compliance\_Memo\_(2017)\_-\_Sale\_of\_Assets\_to\_Sentinel.docx

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Mark pointed out a couple of minor drafting errors in the memo that I fixed.

**From:** Shawn Raver  
**Sent:** Wednesday, September 12, 2018 3:28 PM  
**To:** Rick Swadley  
**Subject:** policy

Shawn E. Raver

Attorney

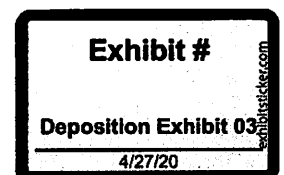
Highland Capital Management, L.P.

300 Crescent Court, Suite 700

Dallas, TX 75201

[sraver@highlandcapital.com](mailto:sraver@highlandcapital.com)

(972) 419-4479



UBSPROD4837351



## MEMORANDUM

FROM: Shawn Raver  
 TO: Tax Files  
 DATE: June 30, 2018  
 RE: Tax Consequences of Sentinel Acquisition of HFP/CDO Opportunity Assets

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**Facts**

On March 14, 2008, UBS Securities, LLC and certain affiliates ("UBS"), Highland Capital Management, L.P. ("HCM"), Highland CDO Opportunity Master Fund, L.P. ("CDO"), and Highland Special Opportunities Holding Corporation ("SOHC") entered into a series of agreements as part of a collateralized debt obligation transaction (the "Transaction").<sup>1</sup> One such agreement included a Cash Warehouse Agreement.<sup>2</sup> The Cash Warehouse Agreement governed the parties' rights and obligations concerning the accumulation, warehousing, sale and/or liquidation of certain collateral obligations ("Collateral Obligations") in connection with the Transaction. It was UBS's obligation to accumulate and warehouse certain Collateral Obligations pursuant to the Cash Warehouse Agreement.<sup>3</sup>

The Engagement Letter required CDO Fund and SOHC to bear 100% of the losses experienced by the CDO Securities (51% borne by CDO Fund and 49% by SOHC).<sup>4</sup> In order to secure the obligations of CDO Fund and SOHC, each was required to transfer cash or certain securities as collateral.<sup>5</sup> In addition, upon each \$100 million increment of mark to market losses on the CDO Securities, UBS could make margin calls on CDO Fund and SOHC requesting additional collateral.<sup>6</sup>

As the value of the warehoused assets declined, UBS began to make margin calls upon HCM, CDO Fund and SOHC.<sup>7</sup> The first margin call was issued on September 17, 2008 and requested \$10 million from each of CDO Fund and SOHC.<sup>8</sup> On or about October 21, 2008, UBS issued a second margin call, again requesting \$10 million from each of CDO Fund and SOHC.<sup>9</sup> The second margin call was satisfied by CDO Fund and SOHC posting assets with a fair market value of approximately \$20 million (the assets had an aggregate notional value of \$49.97

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<sup>1</sup> See Exhibit 1 (structure chart of Highland CDO Opportunity Master Fund, L.P. and Highland Special Opportunities Holding Company).

<sup>2</sup> See Exhibit 2 (Cash Warehouse Agreement)

<sup>3</sup> See Exhibit 2, section 2(A); Exhibit 3 (Amended Answer and Counterclaims of Highland Capital Management, L.P.), paragraph 65.

<sup>4</sup> *Id.* at paragraph 19.

<sup>5</sup> *Id.* at paragraph 24.

<sup>6</sup> See Exhibit 2, section 12(C).

<sup>7</sup> *Id.* at paragraph 25.

<sup>8</sup> See Exhibit 5 (Letter from UBS).

<sup>9</sup> See Exhibit 6 (Letter from UBS).





million).<sup>10</sup> On or about November 7, 2008, UBS issued a third margin call requesting another \$10 million.<sup>11</sup> The Defendants offered to post certain securities with a fair market value of approximately \$10 million, all of which were rejected by UBS.<sup>12</sup>

Thereafter, UBS sued CDO and SOHC. The allegation against CDO Fund and SOHC is that each breached the Cash Warehouse Agreement and the Synthetic Warehouse Agreement. Specifically, by not bearing 100% of UBS's risk of loss under both Agreements (\$157,949,885.47 of alleged losses with respect to the Cash Warehouse Agreement and \$587,357,060.59 of alleged losses with respect to the Synthetic Warehouse Agreement).<sup>13</sup> After some initial discovery, UBS amended its complaint to add Highland Financial Partners, L.P. ("HFP") as a defendant. SOHC is a wholly-owned subsidiary of HFP. The allegation against HFP was that it was the alter ego of SOHC and therefore should be held responsible and liable for SOHC's breach of the Synthetic Warehouse Agreement and Cash Warehouse Agreement.<sup>14</sup>

To reduce risk surrounding the UBS litigation, CDO and SOHC acquired a Legal Liability Insurance Policy (the "Policy") from Sentinel Reinsurance, Ltd. ("Insurer"). In consideration for a premium payment of \$25,000,000, the Insurer agreed to indemnify the Insured (defined below) in respect of any legal liability up to a \$100,000,000 limit if either: (a) a court in the UBS litigation makes an order of liability regarding the UBS litigation against the Insured, or (b) the UBS litigation is settled on terms that provide for a payment by the Insured to UBS. The collective "Insured" under the Policy consists of CDO, SOHC and Highland CDO Holding Company.

On \_\_\_\_\_, 2017, [Sentinel Holdings Ltd. ("Sentinel")] paid \$25,000,000 to acquire certain assets (the "Assets") of the following entities: (a) CDO, (b) Highland CDO Opportunity Fund, Ltd. ("CDO Offshore"), (c) Highland CDO Holding Company ("CDO Holdco"), (d) SOHC, (e) Highland Financial Corporation ("HFC"), and (f) Highland Financial Partners, L.P. ("HFP") (the "Transaction"). CDO, CDO Offshore, CDO Holdco, SOHC, HFC and HFP are individually referred to herein as a "Seller Entity" and collectively referred to herein as the "Seller Entities." A full listing of the Assets by each Seller Entity, plus the fair market value of each Asset on the date of Transaction, is set forth on Schedule A.

The aggregate purchase price paid by Sentinel for the Assets was \$25,000,000. The aggregate fair market value of the assets on the date of the Transaction was \$105,647,679. The document effectuating the Transaction did not allocate the purchase price among the Assets acquired by Sentinel. The Seller Entities intend to allocate the purchase price among the Assets sold as follows:

A) First, to the full balance of all cash acquired;<sup>15</sup> and

<sup>10</sup> See Exhibit 7 (Second Amended Complaint), paragraph 92.

<sup>11</sup> See Exhibit 8 (Letter from UBS); Exhibit 4, paragraph 27.

<sup>12</sup> See Exhibit 4, paragraph 27.

<sup>13</sup> *Id.* at paragraphs 32, 35.

<sup>14</sup> See Exhibit 7, paragraph 194.

<sup>15</sup> The total cash held by the Seller Entities was \$11,073,331 as of the Transaction date.



B) Then, pro rata among the remaining Assets based on their respective fair market value.

### **Questions Presented**

Will the form of the Transactions between Sentinel (and affiliates) and the Seller Entities, including the allocation of the gross proceeds and the Policy, be respected for federal income tax purposes?

### **Short Answer**

The Transaction should be respected for federal income tax purposes. That is, the form of the Transaction and the allocation of the gross proceeds among the Assets should be respected. Further, the Policy should be respected as a legitimate legal liability insurance policy and the Seller Entities who pay the premium for such Policy should receive a deduction.

### **Legal Discussion**

#### ***Tax Consequences of Transaction.***

A transaction which is entered solely for the purpose of obtaining tax benefits and which are without economic substance are considered shams for federal income tax purposes and will not be given effect.<sup>16</sup> The economic substance of a transaction, not its form, is controlling.<sup>17</sup> A transaction is a “sham in substance” if “the expedient of drawing up papers to characterize transactions contrary to objective economic realities and which have no economic significance beyond expected tax benefits.”<sup>18</sup> For example, the Tax Court found a purported purchase of real property a sham, after taking into consideration the absence of indicia of arm’s-length dealing, drastically inflated sales prices, and a complete disregard of contractual terms.<sup>19</sup> “[W]here ... there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax independent considerations, and is not shaped by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation.”<sup>20</sup>

The IRS may attempt to characterize the Transaction as a “sham.” The focus of this argument would be on the fact the Seller Entities sold assets with a fair market value of \$105,647,679 for a purchase price of \$25,000,000. And this was done solely to fund the \$25,000,000 premium required by the Policy. The obvious question would be why sell all the Assets if all was required was \$25,000,000. For example, the Seller Entities held over \$11 million

<sup>16</sup> *Knetsch v. United States*, 364 U.S. 361 (1960); *Falsetti v. Commissioner*, 85 T.C. 332 (1985).

<sup>17</sup> *Gregory v. Helvering*, 293 U.S. 465 (1935).

<sup>18</sup> *Falsetti*, 85 T.C. at 347.

<sup>19</sup> *Id.*

<sup>20</sup> *Frank Lyon Co. v. United States*, 435 U.S. 561, 583-84 (1978); see also *Holladay v. Commissioner*, 649 F.2d 1176, 1179 (5<sup>th</sup> Cir. 1981) (existence of a tax benefit from a transaction does not automatically mean it is a sham so long as it is imbued with tax-independent considerations).



in cash, marketable securities with a value of approximately \$9 million, and a \$32 million note that is secured by over \$200 million in assets held by the debtor.

However, the Transaction is imbued with business purposes. The Policy provides the Insureds with indemnification for the first \$100,000,000 of any judgment or settlement with respect to the UBS litigation. While the sales price for the Assets was substantially below their aggregate fair market value, there may not have been a market for the sale of only a portion of the Assets. Further, finding a buyer for all their Assets will allow the Seller Entities to wind down much quicker once the UBS litigation is concluded. Finally, there is no tax rule that would re-characterize a transaction that may amount to a bad business decision by one party in a transaction amongst unrelated parties.

Another potential theory the IRS could invoke to re-characterize the Transaction is a substance over form argument. In this argument, the IRS would likely argue that in substance the transaction was not a sale of assets followed by the purchase of the Policy. Rather, the Seller Entities sold the Assets in exchange for the \$100,000,000 indemnification from Insurer with respect to the UBS litigation. That is, the gross proceeds for the Assets is \$100,000,000 and there is no premium payment.

While courts exult substance over form, the form of a transaction is not ignored and courts review several factors to determine if the form of a transaction should govern.<sup>21</sup> Agreements that are intended to have economic substance, as opposed to mere tax avoidance, should be given effect for tax purposes.<sup>22</sup> The first factor investigates whether there is a legitimate non-tax business reason for the form of the transaction (*i.e.*, were the parties motivated at least in part by reasons other than taxes). Second, courts look to whether the agreements at issue have non-tax economic substance.<sup>23</sup> This has been construed to determine whether there was a change in the economic interests of the relevant parties.<sup>24</sup> A third factor is the relationship of the parties to the agreement. Are they independent of each and did they deal at arm's length?<sup>25</sup> Finally, courts assess whether or not the parties disregarded the form of the agreement.<sup>26</sup>

It is clear the Transaction had economic substance as it allowed CDO and SOHC to obtain legal liability insurance with respect to the UBS litigation. CDO and SOHC are at significant risk of being held liable to UBS. Furthermore, the transaction no doubt changes the economic interests of the parties involved. There is a transfer of assets and acquisition of an insurance policy that provides \$100,000,000 of liability protection. In addition, Sentinel is not related to the Seller Entities and each side to the Transaction was independent of the other. There are no facts to indicate the Transaction was not the result of arm's length negotiations. Finally, the parties to the Transaction have not in any way disregarded the form of the Transaction. Based on the foregoing,

<sup>21</sup> *Newman v. Commissioner*, 902 F.2d 159 (2<sup>nd</sup> Cir. 1990).

<sup>22</sup> *Frank Lyon Co. v. U.S.*, at 583-84.

<sup>23</sup> *Id.* at 583.

<sup>24</sup> *Rosenfeld v. Commissioner*, 706 F.2d 1277, 1282 (2<sup>nd</sup> Cir. 1983).

<sup>25</sup> *Frank Lyon Co. v. U.S.*, at 580.

<sup>26</sup> *Id.* at 582-83.



the form of the Transaction should be respected for federal income tax purposes and not re-characterized in any manner.

***Will the Allocation by the Seller Entities be Respected?***

Code section 1060 should not apply to the allocation of the \$25,000,000 among the Assets. Code section 1060 sets forth specific rules for allocating the purchase price to an “applicable asset acquisition.” An “applicable asset acquisition” is an active trade or business that includes active and substantial management and operational functions that the taxpayer performs itself, not through independent contractors.<sup>27</sup> Alternatively, even if the “active trade or business” requirement is not met, a group of assets is a trade or business if its “character is such that goodwill or going concern value could under any circumstances attach to such group.”<sup>28</sup> Under either test, the Assets sold by the Seller Entities should not constitute an “applicable asset acquisition.” Further, the holding of land, stock, securities, or other properties for investment does not constitute an active conduct of a trade or business.<sup>29</sup> Accordingly, Sentinel and the Seller Entities will not be required to use the residual method to allocate the purchase price pursuant to Code section 1060.

Free from the specific requirements of Code section 1060, the purchase price allocation used by the Seller Entities (as described above) should be respected for federal income tax purposes.

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<sup>27</sup> Treas. Reg. § 1.355-3(b)(2)(iii).

<sup>28</sup> Treas. Reg. § 1.1060-1(b)(2)(i).

<sup>29</sup> Treas. Reg. § 1.335-3(b)(2)(iv).

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

UBS SECURITIES LLC and  
UBS AG, LONDON BRANCH,

Plaintiffs;

- against -

HIGHLAND CAPITAL MANAGEMENT, L.P.,  
HIGHLAND CDO OPPORTUNITY MASTER  
FUND, L.P., HIGHLAND SPECIAL  
OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND FINANCIAL PARTNERS, L.P.,  
HIGHLAND CREDIT STRATEGIES MASTER  
FUND, L.P., HIGHLAND CRUSADER  
OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and  
STRAND ADVISORS, INC.,

Defendants.

Index No.: 650097/2009

**FILED**

Hon. Marcy S. Friedman  
IAS Part 60

**FEB 10 2020**

**COUNTY CLERK'S OFFICE  
NEW YORK**

~~PROPOSED~~ JUDGMENT

Plaintiffs UBS Securities LLC and UBS AG, London Branch, having filed a Complaint against Defendants Highland Capital Management, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Special Opportunities Holding Company on February 24, 2009;

NOW, Plaintiffs UBS Securities LLC and UBS AG, London Branch having filed their Second Amended Complaint against Defendants Highland Special Opportunities Holding Company ("SOHC"), Highland CDO Opportunity Master Fund, L.P. ("CDO Fund," and together with SOHC, the "Fund Counterparties"), Highland Financial Partners, L.P., Highland Credit Strategies Master Fund, L.P., Highland Crusader Offshore Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., which was consolidated with the claims set forth in Plaintiffs' June 28, 2010 Complaint against Defendant Highland Capital Management, L.P. (Index. No. 650752/2010);

NOW, the Court having held trial from July 9, 2018 through July 27, 2018, on (1) Plaintiffs' third and fourth causes of action against the Fund Counterparties, and (2) Defendant Highland Capital Management, L.P.'s counterclaims against Plaintiffs;

AND the Court having rendered a final Decision and Order after Trial on November 14, 2019, in which it found in favor of Plaintiffs UBS Securities LLC and UBS AG, London Branch on their third and fourth causes of action against the Fund Counterparties, and dismissed Defendant Highland Capital Management, L.P.'s counterclaims with prejudice;

IT IS NOW HEREBY ORDERED AND ADJUDGED that Plaintiffs UBS Securities LLC with an address of 677 Washington Blvd, Stamford, Connecticut, and 299 Park Avenue, New York, New York and UBS AG, London Branch with an address of Finsbury Avenue, London United Kingdom are granted a judgment of \$519,374,149 and entitled to prejudgment interest in the amount of 9% simple interest per year from the date of the breach, which the Court has determined is December 5, 2008, for an overall judgment as of January 22, 2020 of **\$1,039,957,799.44**, with additional interest per day thereafter of \$128,065 until entry of judgment, to be apportioned among Defendants as follows:

- (i) \$264,880,815.99 against Defendant Highland CDO Opportunity Master Fund, L.P. with an address of 52 Reid Street, Hamilton, Bermuda, plus \$265,497,661.73 in prejudgment interest, for a total judgment against Defendant Highland CDO Opportunity Master Fund, L.P. as of January 22, 2020 of **\$530,378,477.72** with additional prejudgment interest per day thereafter of \$65,313.08 until entry of judgment in the total amount, <sup>the sum of \$1,240,948.52, for</sup> and it is ordered that Plaintiffs shall have execution <sup>of \$531,619,426.24</sup> thereof, provided that enforcement shall be stayed as to \$35,955,000 (51% of \$70.5 million); and

(ii) \$254,493,333.01 against Defendant Highland Special Opportunities Holding Company with an address of Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, plus \$255,085,988.72 in prejudgment interest, for a total judgment against Defendant Highland Special Opportunities Holding Company as of January 22, 2020 of \$509,579,321.73 with additional prejudgment interest per day thereafter of \$62,751.78 until entry of judgment in the total amount, and it is ordered that Plaintiffs shall have execution thereof, provided that enforcement shall be stayed as to \$34,545,000 (49% of \$70.5 million).

*the sum of \$1,192,285.62, for  
of \$510,771,605.55 X*

Dated: New York, New York  
January 22, 2020

ENTER:

*Marcy Friedman*  
HON. MARCY S. FRIEDMAN, J.S.C.

*Milton A. Taylor*  
CLERK

**FILED**  
**FEB 10 2020**  
**COUNTY CLERK'S OFFICE**  
**NEW YORK**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

INDEX # 650097/2009

*UBS Securities LLC, UBS AG, London Branch*

Plaintiff(s)/Petitioner(s)

Against

*Highland Capital Management, L.P., Highland CDO  
Opportunity Master Fund, L.P., Highland Special  
Opportunities Holding Company, Highland Financial  
Partners, L.P., Highland Credit Strategies Fund,  
Highland Crusader Offshore Partners, L.P., Highland  
Credit Opportunities CDO, L.P., Strand Advisors Inc.*

Defendant(s)/Respondent(s)

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**JUDGMENT**

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*Attorney for the Prevailing Party*

Latham & Watkins LLP  
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(212) 906-1200

Kirkland & Ellis LLP  
601 Lexington Ave  
New York, NY 10022  
(212) 446-4800

2-2  
**FILED AND  
DOCKETED**

FEB 10 2020

AT 10:20 AM  
N.Y., CO. CLK'S OFFICE



**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT:** MARCY S. FRIEDMAN **PART** 60  
*Justice*

UBS SECURITIES LLC, INDEX NO. 650097/2009  
 -against- MOTION DATE \_\_\_\_\_  
HIGHLAND CAPITAL MANAGEMENT, L.P., et al., MOTION SEQ. NO. 026, 027

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... No (s). \_\_\_\_\_  
 Answering Affidavits — Exhibits \_\_\_\_\_ No (s). \_\_\_\_\_  
 Replying Affidavits \_\_\_\_\_ No (s). \_\_\_\_\_

**Cross-Motion:**  Yes  No

Upon the foregoing papers, it is ordered that this motion

It is hereby ORDERED that these motions for summary judgment are decided in accordance with the attached decision and order of today's date.

Dated: 3-13-17  J.S.C.  
**MARCY S. FRIEDMAN, J.S.C.**

1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION  
 2. Check as appropriate:.....Motion is:  GRANTED  DENIED  GRANTED IN PART  OTHER  
 3. Check if appropriate:.....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 60

-----X  
UBS SECURITIES LLC and UBS AG, LONDON BRANCH,

Plaintiffs,

Index No. 650097/09

-against-

HIGHLAND CAPITAL MANAGEMENT, L.P., HIGHLAND  
SPECIAL OPPORTUNITIES HOLDING COMPANY,  
HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.,  
HIGHLAND FINANCIAL PARTNERS, L.P., HIGHLAND  
CREDIT STRATEGIES MASTER FUND, L.P., HIGHLAND  
CRUSADER OFFSHORE PARTNERS, L.P., HIGHLAND  
CREDIT OPPORTUNITIES CDO, L.P., and STRAND  
ADVISORS, INC.,

Defendants.

-----X  
**FRIEDMAN, J:**

This action arises out of a failed restructured transaction for securitization of collateralized loan obligations (CLOs) and credit default swaps (CDSs). Plaintiffs UBS Securities LLC (UBSS) and UBS AG, London Branch (UBS AG) (together, UBS) seek damages of \$686 million in investment losses from the following affiliated defendants: Highland Capital Management, L.P. (Highland Capital); Highland Financial Partners, L.P. (Highland Financial); Highland Special Opportunities Holding Company (SOHC); Highland CDO Opportunity Master Fund, L.P. (CDO Fund); Highland Credit Strategies Master Fund, L.P. (Credit Strategies), Highland Crusader Offshore Partners, L.P. (Crusader Fund), Highland Credit Opportunities CDO, L.P. (Credit Opp Fund); and Strand Advisors, Inc. (Strand).<sup>1</sup>

The second amended complaint (complaint) asserts causes of action for fraud against the Fund Counterparties (first and second causes of action), breach of contract against the Fund

<sup>1</sup> SOHC and CDO Fund are referred to as the Fund Counterparties. Credit Strategies, Crusader Fund, and Credit Opp Fund are referred to as the Affiliated Transferee defendants.

Counterparties (third and fourth causes of action), fraudulent conveyance against all defendants (fifth cause of action), tortious interference with contractual relations against the Affiliated Transferee defendants (sixth cause of action), declaratory judgment for general partner liability against Strand (seventh cause of action), and declaratory judgment for alter ego liability against Highland Financial (eighth cause of action).<sup>2</sup>

The instant action was consolidated with another action commenced by UBS only against Highland Capital. (UBS Secs. LLC v Highland Capital Mgt. L.P., Sup Ct, NY County, Nov. 1, 2010, Fried, J., index No. 650752/10.) The complaint in that action asserts causes of action against Highland Capital for fraud (first and second causes of action), breach of the covenant of good faith and fair dealing (third cause of action), fraudulent conveyance (fourth cause of action), and tortious interference with contractual relations (fifth cause of action).

Highland Capital, Highland Financial, Strand, and the Affiliated Transferee defendants move for summary judgment dismissing all causes of action against them. By separate motion, the Fund Counterparties seek summary judgment dismissing all causes of action against them.<sup>3</sup>

#### Factual Background

It is undisputed that the transaction at issue (Transaction), known as the Knox Warehouse, called for UBS to finance the purchase of CLOs and related CDSs and to hold them as “warehouse assets” for the benefit of Highland Capital, which was to sponsor the securitization. (Compl., ¶¶ 4, 35.) As pleaded in the complaint, Highland Capital was the

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<sup>2</sup> The second and sixth causes of action are purportedly pleaded solely to preserve them for appeal.

<sup>3</sup> After service of the motion, UBS settled its claims in this action against defendants Credit Strategies and Crusader Fund, two of the Affiliated Transferee defendants. (See Kirkland & Ellis Letter dated Jan. 7, 2016.)

investment manager of Highland Financial, and these two entities allegedly owned and/or controlled the Fund Counterparties and the Affiliated Transferee defendants. (Id., ¶¶ 22, 25.) Strand was Highland Capital's general partner. (Id., ¶ 23.) Nonparty James Dondero was the president, founder, and owner of Highland Capital, and allegedly controlled all of the Highland entities through Highland Capital. (Id., ¶¶ 22, 25.)

#### The Cash and Synthetic Warehouse Agreements

The parties' dispute arises out of the following three agreements, all of which are dated as of March 14, 2008: an Engagement Letter, entered into between UBSS and Highland Capital (Corcoran Aff., Ex. 13); a "Synthetic Warehouse Agreement," entered into among UBS AG, the Fund Counterparties, and Highland Capital (Corcoran Aff., Ex. 14); and a "Cash Warehouse Agreement," entered into among UBSS, the Fund Counterparties, and Highland Capital (Corcoran Aff., Ex. 15). In the Engagement Letter, UBSS agreed to act "as the financial arranger and placement agent in connection with a proposed collateralized debt obligations transaction with an anticipated aggregate issuance size of approximately U.S.\$818 million in securities . . . (the 'Transaction')." The Transaction contemplated the "formation and capitalization of a special purpose vehicle or vehicles (collectively, the 'Issuer') . . . that will acquire an investment portfolio" comprised of CLOs and CDSs that reference CLOs, to be managed by Highland Capital as "Servicer." (Id., § 1, 3 [a].) In the Engagement Letter, UBSS and Highland Capital "agree[d] that the CDO Fund and SOHC will in aggregate bear 100% of the risk of the Warehouse Facility in accordance with their respective Allocation Percentages (as defined in the Warehouse Documents) and otherwise in accordance with the terms of the Warehouse Documents . . . ." (Id., § 3 [c].)

Section 5 (B) of the Synthetic Warehouse Agreement opens with the clause “On the Closing Date:” and provides, among other things, for compensation to UBS by the Fund Counterparties for CDS Losses. Subsection 5 (B) (2) provides that “[a]n amount equal to the excess, if any,” of CDS Losses over CDS Gains

“shall collectively be paid by each of the CDO Fund and SOHC after notice from UBS of the amount due, by wire transfer in immediately available funds (i) on the Termination Date in the case of a Termination Date occurring on (a) March 14, 2009, (b) March 14, 2010 or (c) the Closing Date or (ii) three Business Days after the Termination Date in the case of any other Termination Date. Such CDS Loss shall be allocated among the CDO Fund and SOHC on the basis of their respective Allocation Percentages.”

Section 5 (B) (2) defines CDS Losses as follows:

“(x) the sum of (1) the aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS with respect to all of the Credit Default Swaps as to which a Floating Amount Event or a Credit Event occurred under the terms thereof, *plus* (2) the aggregate amount of Net Hedging Payments made by UBS with respect to all Hedging Transactions related to the Credit Default Swaps, *plus* (3) the aggregate Replacement Losses determined with respect to all of the Credit Default Swaps and the related Hedging Transactions that were terminated or novated or as to which the exposure was retained by UBS, in each case upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security (such amount in this clause (x), the ‘CDS Losses’) . . . .”

(emphasis in original.) Ineligible Security is defined as: “any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date as a result of the failure of such Reference Obligation to conform to the Eligibility Criteria as it exists at such time of determination. . . .” (Synthetic Warehouse Agreement, Ex. A-2.) This definition further states: “Each of the following is an ‘Ineligible Security’: a Defaulted Security, a Designated Security and a Written Down Security.” (*Id.*) Closing Date is defined as “the date

of the closing of the Transaction and the issuance of the CDO Securities.” (Id., Ex. A-1.)

Section 5 of the Synthetic Warehouse Agreement further provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.”

Section 6 (C), in turn, provides:

“To the extent there are any CDS Losses, the CDO Fund and SOHC shall collectively be responsible for 100% of any such CDS Losses. Such CDS Losses shall be allocated between the CDO Fund and SOHC on the basis of their respective Allocation Percentages. Each of the CDO Fund and SOHC shall, after notice of the amount due from UBS, remit such amounts by wire transfer in immediately available funds to UBS within three Business Days after the Termination Date.”

The Cash Warehouse Agreement, section 5 (A), provides that, in the event that “the Closing Date fails to occur on or prior to the Termination Date, . . . UBS shall be authorized (but not required) to sell each Collateral Obligation then in the Warehouse Account in accordance with the Liquidation Procedures.” This section further provides: “Following the completion of such liquidation of the Collateral Obligations, any Aggregate Collateral Loss shall be allocated to the CDO Fund and to SOHC on the basis of their respective Allocation Percentages” and shall be paid to UBS.

#### UBS Margin Calls and Termination of Agreements

Section 12 (C) of the Synthetic Warehouse Agreement required the Fund Counterparties to transfer an additional deposit of \$10 million in cash or eligible securities into a “Deposit Account” in the event that the “Deposit Threshold Exposure Amount is greater than or equal to U.S. \$100,000,000.” On September 16, 2008, UBS made a “margin call” under section 12 (C) of the Synthetic Warehouse Agreement, demanding additional collateral of \$10 million from

each of the Fund Counterparties. (Compl., ¶ 77.) The Fund Counterparties satisfied this margin call on September 19, 2008. (Id., ¶ 79.) On October 21, 2008 UBS made a second margin call under section 12 (C) of the Synthetic Warehouse agreement, which the Fund Counterparties satisfied on October 24 by posting assets with a notional value of \$49.97 million. (Id., ¶¶ 90, 91.) On November 7, 2008, UBS made a third margin call. Highland Capital and the Fund Counterparties allegedly offered to post various securities to satisfy this margin call. (Id., ¶ 94-95.) On November 13, UBS rejected the securities and requested cash or cash equivalent collateral. (Id., ¶ 96.)

On December 3, 2008, UBS terminated the parties' agreements based on the Fund Counterparties' failure to post the requested collateral. (Id., ¶¶ 99-100.) Shortly thereafter, UBS demanded payment for its losses under the Cash and Synthetic Warehouse Agreements. (Id., ¶¶ 103, 105.) On January 5, 2009, UBS notified Highland Capital and the Fund Counterparties of the failure to pay UBS's losses, and commenced unwinding the warehouse facility. (Id., ¶ 106.) On January 16, 2009, UBS conducted an auction of the warehoused assets, as contemplated under the parties' agreements, and on March 19, 2009, UBS notified Highland Capital and the Fund Counterparties of UBS's final accounting, and asserted that these entities owed UBS \$686,853,290.26. (Id., ¶¶ 106-107.)<sup>4</sup>

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<sup>4</sup> The parties' claims and the procedural history of this action and two related actions are further discussed in several previous decisions of the Appellate Division and of this court, familiarity with which is presumed. (See UBS Secs. LLC v Highland Capital Mgt., L.P., 93 AD3d 489 [1st Dept 2012]; 86 AD3d 469 [1st Dept 2011]; 70 AD3d 526 [1st Dept 2010]; 42 Misc 3d 580 [Sup Ct, NY County 2013]; 30 Misc 3d 1230 [A], 2011 NY Slip Op 50297 [U] [Sup Ct, NY County 2011]; 25 Misc 3d 1243 [A], 2009 NY Slip Op 52565 [U] [Sup Ct, NY County 2009].) To the extent that additional facts are necessary to resolve the instant motions, they are discussed in the legal analysis that follows.

I. SOHC and CDO Fund's Summary Judgment Motion (mot seq 027)

The Fund Counterparties seek summary judgment dismissing all of the causes of action of the complaint, on four principal grounds: UBS cannot show that it suffered any damages. UBS committed prior material breaches of the parties' Agreements that excused the Fund Counterparties' performance. UBS did not justifiably rely on any misrepresentation that would support its fraud claim. UBS's claim against them as fraudulent transferors must be dismissed because New York does not recognize such a claim.

Limitation of Liability and UBS's Damages

The Fund Counterparties argue that UBS suffered no damages with respect to the Credit Default Swaps, which accounted for most of the warehoused assets. This argument is based upon defendants' interpretation of "CDS Losses," as defined in section 5 (B) (2) (x) of the Synthetic Warehouse Agreement. In particular, defendants argue that this definition "largely limited compensation [with respect to Credit Default Swaps] to realized losses"; that "an unrealized loss could become a 'CDS Loss' only 'upon the designation of the Reference Obligation relating to such Credit Default Swap as an Ineligible Security'; and that UBS's failure to designate any such Obligation as an Ineligible Security precludes it from recovering damages. (Fund Counterparties' Memo. In Supp. at 12-13.)

It is well settled that "agreements are construed in accord with the parties' intent," and a "written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms." (Greenfield v Philles Records, 98 NY2d 562, 569 [2002].) The court's "aim is a practical interpretation of the expressions of the parties to the end that there be a 'realization of [their] reasonable expectations.'" (Brown Bros. Elec. Contrs.,



Inc. v Beam Constr. Corp., 41 NY2d 397, 400 [1977] [internal citation omitted]; Matter of Lipper Holdings, LLC v Trident Holdings, LLC, 1 AD3d 170, 171 [1st Dept 2003] [a “contract should not be interpreted to produce a result that is absurd, commercially unreasonable or contrary to the reasonable expectations of the parties” [internal citations omitted].) “A contract is unambiguous if the language it uses has ‘a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion.’” (Greenfield, 98 NY2d at 569 [internal citation omitted].) It is further settled that “[e]xtrinsic evidence of the parties’ intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide.” (Id.)

It is undisputed that the Warehouse Agreements were terminated prior to securitization and therefore prior to a Closing Date. As provided in section 5 of the Synthetic Warehouse Agreement (quoted supra at 5), section 6 governs the determination of CDS Losses in the event a closing fails to occur. Thus, the issue is whether any CDS Losses arose under section 6.

The definition of CDS Losses specifies three separate components of such Losses: (1) “aggregate Floating Amount payments and Physical Settlement Amount payments made by UBS”; (2) “aggregate amount of Net Hedging Payments made by UBS”; and (3) “aggregate Replacement Losses.” (Synthetic Warehouse Agreement, § 5 [B] [2] [x] [quoted in full, supra at 4.]) The requirement that a Reference Obligation be designated an Ineligible Security is set forth in the last clause of subdivision (3) of the definition of CDS Losses. Subdivision (3) concerns the Replacement Losses component of CDS Losses. The inclusion of the Ineligible Security designation requirement in subdivision (3) unambiguously requires compliance with that requirement in order to claim Replacement Losses, as a component of CDS Losses, under

section 5 of the Synthetic Warehouse Agreement.

As attested by Phillip Braner, Managing Director of Structured Products for Highland Capital and previous Chief Operating Officer of Highland Financial, “[t]he UBS-affiliated entities . . . did not designate any of the credit default swaps held in the synthetic warehouse as ineligible securities.” (Braner Aff., ¶¶ 1-2.) The Fund Counterparties contend that UBS is therefore barred from claiming Replacement Losses under section 6 of the Synthetic Warehouse Agreement. In support of this contention, they claim that CDS Losses are calculated in the same manner under both sections 5 and 6, because section 6 uses the defined term CDS Losses from section 5.

In arguing that UBS did not sustain any damages, however, the Fund Counterparties do not claim merely that UBS failed to designate Ineligible Securities pursuant to section 5 (B) (2) (x). Rather, they argue that the Synthetic Warehouse Agreement “expressly limited damages to realized losses” and that “[t]he designation of such securities as ‘Ineligible’ in order to recover unrealized market losses, is clearly required by the definition of ‘CDS Losses.’” (Fund Counterparties’ Memo. In Supp. at 4, 13.)<sup>5</sup>

The definition of CDS Losses does not by its terms distinguish between realized and unrealized losses and, indeed, does not use those terms. Although the Fund Counterparties

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<sup>5</sup> The Fund Counterparties at times state, without qualification, that under the Synthetic Warehouse Agreement, the Fund Counterparties “were responsible for realized losses, but not unrealized losses.” (Fund Counterparties’ Memo. In Supp. at 16; see also *id.* at 4, 6, 15.) At other times, they acknowledge that unrealized losses are recoverable against them under the Synthetic Warehouse Agreement, but only upon the designation of an Ineligible Security. (*Id.* at 13.)

The Fund Counterparties also argue that while the Synthetic Warehouse Agreement made them liable only for “actual, realized losses on documented CDS assets” (Fund Counterparties’ Memo. In Supp. at 6), they were liable for “market losses on cash assets” under the Cash Warehouse Agreement. (*Id.* at 6, 15.)

assert that the terms of the Synthetic Warehouse Agreement are unambiguous (Fund Counterparties' Reply Memo. at 3), they resort to parol evidence from their expert to support their claim that, under the Synthetic Warehouse Agreement, in order for unrealized losses to be included within the definition of CDS Losses, UBS must designate Ineligible Securities. (Corcoron Aff., Exs. 39, 39-A [Aff. of Adam Warren, ¶ 5; Warren Expert Report at 15].)

In response, UBS does not dispute that it did not designate Ineligible Securities. Rather, it argues that "securities can only be designated 'Ineligible' if and when the Knox Warehouse is securitized and sold to the market on a Closing Date." (UBS Memo. In Opp. at 8.) UBS asserts that where, as here, the Agreement was terminated prior to securitization, the Ineligible designation "could not have been required for UBS to recover losses because UBS could not have done so [i.e., could not have made the Ineligible designation] under the clear contractual terms." (Id. [emphasis in original].) According to UBS, "[t]his is why the contract expressly distinguishes the calculation of CDS Losses upon securitization and Closing (in which case Ineligible Securities must be designated as such and removed from the securitization pool) from the calculation of CDS Losses if the agreement is terminated before securitization (in which case securities cannot be designated Ineligible, and the Fund Counterparties are responsible for all Replacement Losses, including unrealized losses, on the CDS assets)." (Id. at 8-9.)

UBS's contention that securities could only have been designated Ineligible in the event of a closing appears to be highly questionable. As discussed above, Ineligible Security is defined to mean "any Reference Obligation in the CDS Portfolio which has become ineligible for sale to the Issuer on the Closing Date. . . ." (Synthetic Warehouse Agreement, Ex. A-2.) Other provisions of the Synthetic Warehouse Agreement address designation of Ineligible Securities

prior to Closing. Thus, section 5 (A) provides for the Servicer to “notify UBS promptly if at any time during the term of this Agreement it becomes aware that a Reference Obligation or the related Credit Default Swap does not conform to the Eligibility Criteria.” This section then sets forth procedures for UBS to designate Reference Obligations as Ineligible Securities. In the event UBS terminates the related CDSs or retains exposure, section (A) also sets forth procedures for UBS to calculate Replacement Loss and Replacement Gain “following the designation of such Reference Obligations as Ineligible Securities or otherwise pursuant to Section 6. . . .”

The court nevertheless concludes that the Fund Counterparties do not on this record demonstrate as a matter of law that, under these circumstances in which the Agreement was terminated without a closing having occurred, the Synthetic Warehouse Agreement unambiguously provides that the Fund Counterparties are responsible for unrealized losses only upon designation of the Reference Obligations relating to the CDSs as Ineligible Securities.

The parties submit sharply conflicting expert reports on the items to be included in calculating UBS’s damages, including the propriety of including unrealized losses in calculating CDS Losses. (See Corcoran Aff., Ex. 39 A [Report of Defs.’ Expert Adam Warren]; Corcoran Aff., Ex. 33 [Report of UBS’s Expert Louis Dudley].) To the extent that the determination of UBS’s damages will involve assessment of the credibility of the parties’ experts, the determination is not properly made on a motion for summary judgment. (See generally Bradley v Soundview Healthcenter, 4 AD3d 194, 194 [1st Dept 2004] [“Conflicting expert affidavits raise issues of fact and credibility that cannot be resolved on a motion for summary judgment”]; accord Manswell v Montefiore Med. Ctr., 144 AD3d 564 [1st Dept 2016].)

Significantly also, the Synthetic Warehouse Agreement contains separate provisions—sections 5 and 6, respectively—for calculation of CDS Losses at closing and in the event closing does not occur. Section 5 expressly provides: “To the extent the Closing Date fails to occur, allocation of CDS Losses, CDS Gains and any other amounts payable hereunder will be determined in accordance with the provisions of Section 6 hereof.” Section 6, however, employs the defined term for CDS Losses from section 5. On this record, it is unclear whether it is reasonably possible, consistent with settled precepts of contract interpretation, to read section 6 so that it is not rendered meaningless. (See generally Beal Sav. Bank v Sommer, 8 NY3d 318, 324-25 [2007].)<sup>6</sup> Put another way, it is unclear what independent purpose section 6 serves if the calculation of CDS Losses is the same as that under section 5.

The parties must also address whether, in construing the Synthetic Warehouse Agreement, the court should read that Agreement together with the contemporaneous Engagement Letter and Cash Warehouse Agreement. (See Brax Capital Group, LLC v WinWin Gaming, Inc., 83 AD3d 591, 592 [1st Dept 2011] [contemporaneous documents governing the same transaction should generally be read together]; Gulf Ins. Co. v Transatlantic Reins. Co., 69 AD3d 71, 81 [1st Dept 2009] [same].) For example, the parties must address whether the differing terms of the Cash Warehouse Agreement regarding the Fund

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<sup>6</sup> As held in Beal, a court presented with a contractual interpretation issue should “construe the [contract] so as to give full meaning and effect to the material provisions. A reading of the contract should not render any portion meaningless. Further, a contract should be read as a whole, and every part will be interpreted with reference to the whole; and if possible it will be so interpreted as to give effect to its general purpose.” (8 NY3d at 325-325 [internal quotation marks and citations omitted]. )

Counterparties' liability in the event of failure to close are relevant to, or instructive regarding, the interpretation of the definition of CDS Losses in the Synthetic Warehouse Agreement.

In sum, the court cannot find as a matter of law on this record that UBS is not entitled to recover unrealized losses. Determination as to whether the Synthetic Warehouse Agreement is ambiguous in this regard must await further clarification by the parties at trial.<sup>7</sup>

The court turns to the Fund Counterparties' further contentions that UBS received hedging gains of approximately \$128 million following the Fund Counterparties' alleged December 2008 breach, and that, if these gains are offset against any losses, UBS sustained no damages. (Fund Counterparties' Memo. In Supp. at 6-7, 19.)<sup>8</sup> Determination of the effect of UBS's hedging on its damages claim can only be determined on a record that is fully factually

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<sup>7</sup> UBS relies on what it characterizes as defendants' "contemporaneous business records" showing that "the parties intended and expected that unrealized CDS losses would be included in Defendants' liability in the event of Termination." (UBS Memo. In Opp. at 9.) These documents include the following: "Cash Forecast" from September 2008, showing a "Transaction Amount" of "(50,000,000)" on March 20, 2009, which was noted to be "[b]ased on total unrealized losses of \$100mm" (Landis Aff., Ex. 27); SOHC's Income Statement, which noted a "[c]hange in unrealized losses of \$(53.9)m" (*id.*, Ex. 28 at 3.) In addition, UBS submits a document titled "Review Knox Transaction and contract ammendment [sic] (Interim Audit Procedures)," prepared by Highland Financial's accountant for the period ending March 31, 2008. (*id.*, Ex. 29.) This document contained a statement that "[u]nrealized gains/losses are included in the warehouse economics that are absorbed by SOHC and CDO Fund." (*id.* at PWC-HCM00011538.) It further stated that, "[i]f the transaction does not take place (i.e. CDO securities are not issued), then CDO Fund and SOHC will share economics (both gain and loss) of the warehouse period based on a 51% (CDO Fund) and 49% (SOHC) split." (*id.* at PWC-HCM00011539.)

The court declines to consider this evidence prior to determination of whether the Synthetic Warehouse Agreement is ambiguous as to the Fund Counterparties' liability for unrealized losses related to CDSs. (See generally *Greenfield*, 98 NY2d at 569.)

<sup>8</sup> Although the Fund Counterparties contend that unrealized losses are not recoverable, they calculate realized losses of approximately \$20-21 million. (Fund Counterparties' Memo. In Supp. at 16.)

developed as to the types of hedging transactions as well as the relationship between the Fund Counterparties' alleged breaches, the losses on the warehouse assets, and the gains on the hedges. Moreover, as noted above, the parties submit sharply conflicting expert reports on the items to be included in calculating UBS's damages. These reports dispute not only the Fund Counterparties' liability for unrealized losses, but also the extent of required offsets, including offsets for UBS's hedging gains. (See Corcoran Aff., Ex. 39 A [Report of Defs.' Expert Adam Warren]; Corcoran Aff., Ex. 33 [Report of UBS's Expert Louis Dudney].) To the extent that expert testimony is required on the offset issue, its assessment will require credibility determinations that are not properly made on this motion.

The branch of the Fund Counterparties' motion for summary judgment, based on UBS's inability to prove damages, will accordingly be denied.

#### Prior Material Breaches by UBS

The Fund Counterparties argue that, prior to their alleged breach, UBS had already breached the parties' agreements by, among other things, miscalculating losses using "undocumented 'Dummy Swaps'" to inflate losses and "refusing to pay CDS Gains." (Fund Counterparties' Memo. In Supp. at 22.) The Fund Counterparties claim that UBS also recorded changes in exposure attributable to swaps involving Lehman Brothers, even after Lehman Brothers' bankruptcy filing caused the CDS agreements to terminate. (*Id.* at 22-23.) According to the Fund Counterparties, these improper calculations ultimately resulted in unfounded margin calls by UBS, and UBS's premature termination of the parties' agreements when the Fund Counterparties failed to satisfy the third margin call. (*Id.* at 23.) The Fund Counterparties claim that these breaches by UBS were material and excused the Fund

Counterparties' performance under the parties' agreements (*id.* at 19-20), thereby warranting dismissal of UBS's third and fourth causes of action for breach of the Cash and Synthetic Warehouse Agreements, respectively.

A material breach of a contract may excuse a non-breaching party's performance. (See Grace v Nappa, 46 NY2d 560, 567 [1979].) The court assumes, without deciding, that this doctrine is applicable under these circumstances in which defendants did not repudiate the contract—an issue the parties have not addressed. The court holds, however, that the Fund Counterparties fail to make a prima facie showing that UBS's conduct was impermissible under the Warehouse Agreements. As discussed above, the parties submit conflicting affidavits and evidence concerning the propriety of UBS's damages calculation, which resulted in the underlying margin calls. With each party "cast[ing] the other party in the role of the primary contract offender," issues of fact preclude summary judgment. (See Boston Concessions Group, Inc. v Criterion Ctr. Corp., 200 AD2d 543, 545 [1st Dept 1994]; W. E. Blume, Inc. v City of New York, 78 AD2d 608, 608 [1st Dept 1980].) Moreover, a factual issue exists as to whether any breach was material. (See generally Garofalo Elec. Co. Inc. v New York Univ., 300 AD2d 186, 189 [1st Dept 2002] ["The question of whether there has been substantial performance—or a breach—is to be determined, whenever there is any doubt, by the trier of fact"]; WILJEFF, LLC v United Realty Mgt. Corp., 82 AD3d 1616, 1617 [4th Dept 2011] ["Generally, the question whether a breach is material is for the finder of fact," unless "the evidence concerning the materiality is clear and substantially uncontradicted" (internal quotation marks and citation omitted)].) Accordingly, the branch of the Fund Counterparties' motion for summary judgment, based upon UBS's purported prior material breaches, will also be denied.



UBS's Reliance Upon Omissions or Misrepresentations

The Fund Counterparties also seek dismissal of UBS's first and second causes of action for fraud, on the ground that UBS cannot establish the justifiable reliance element of a fraud claim.

"The elements of a cause of action for fraud require a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages." (Eurycleia Partners, LP v Seward & Kissel, LLP, 12 NY3d 553, 559 [2009]; Lama Holding Co. v Smith Barney, 88 NY2d 413, 421 [1996].) A fraud claim must be pleaded with particularity pursuant to CPLR 3016 (b).

In New York, sophisticated parties have an affirmative duty to protect themselves from misrepresentations made in arm's length business transactions by undertaking a reasonable investigation of the details of the transactions. (ACA Fin. Guar. Corp. v Goldman, Sachs & Co., 25 NY3d 1043, 1044 [2015] [ACA]; DDJ Mgt., LLC v Rhone Group L.L.C., 15 NY3d 147, 154 [2010] [DDJ].) "Moreover, 'when the party to whom a misrepresentation is made has hints of its falsity, a heightened degree of diligence is required of it. It cannot reasonably rely on such representations without making additional inquiry to determine their accuracy.'" (ACA, 25 NY3d at 1044-1045, quoting Centro Empresarial Cempresa S.A. v America Movil, S.A.B. de C.V., 17 NY3d 269, 279 [2011] [Centro].) Thus, where a plaintiff is aware that it has not been provided with financial information to which it is entitled, its duty to perform a "heightened degree of diligence" is triggered. (ACA, 25 NY3d at 1045 [internal quotation marks and citations omitted].) As the Court of Appeals has emphasized, "the question of what constitutes reasonable reliance is not generally a question to be resolved as a matter of law on a motion to

dismiss.” (ACA, 25 NY3d at 1045; DDJ, 15 NY3d at 155 [“The question of what constitutes reasonable reliance is always nettlesome because it is so fact-intensive” (internal quotation marks and citation omitted)].)

In support of their contention that UBS cannot prove justifiable reliance, the Fund Counterparties argue that UBS assessed their credit rating as “D3, the lowest available rating for a party not already in default, when it entered into the Restructured Transaction.” (Fund Counterparties’ Memo. In Supp. at 24, 3, citing, e.g., Corcoran Aff., Ex. 7 [Dep. of UBS’s David Bawden at 163, 256 [characterizing Fund Counterparties as “weak counterparties”].)

According to the Fund Counterparties, “UBS mandated a hedging strategy and the booking of a full reserve as conditions for internal approval, because it did not deem the Fund Counterparties as being capable of paying what UBS believed it would be owed upon execution of the contracts.” (Fund Counterparties’ Memo. In Supp. at 24, 3, citing, e.g., Corcoran Aff., Ex. 11 [Dep. of Michael Threadgold at 55] [conditioning approval on “appropriate hedging for counterparty risk”].) The Fund Counterparties conclude that, because UBS knew of their financial strength (or lack thereof), UBS could not have justifiably relied upon any misrepresentations or omissions regarding their creditworthiness or assets. (Fund Counterparties’ Memo. In Supp. at 24.)

In opposing the Fund Counterparties’ motion, UBS submits the affidavit of a former employee who was a member of the UBS team that worked on the Highland Capital engagement, stating that Highland Capital’s Philip Braner explained that Highland Capital “could (was willing to) exercise its control over the various Highland-affiliated funds to move assets between and among the affiliated funds, thereby making assets available to UBS from Highland-affiliated

funds other than the Fund Counterparties.” (Landis Aff., Ex. 58 [Aff. of Timothy LeRoux, ¶¶ 46, 47.]) UBS also relies on the testimony of various employees as to their reliance upon the Fund Counterparties’ misrepresentations concerning their finances and assets when deciding whether to enter into the Warehouse Agreements. (See e.g. Landis Aff., Ex. 58 [Aff. of Timothy LeRoux, ¶¶ 5-6, 12-20, 30-48] [attesting, among other things, to alleged misrepresentations as to the Fund Counterparties’ ownership of assets posted as initial restructuring collateral]; *id.*, Ex. 59 [Dep. of Peter Chudy at 126-127]; *id.*, Ex. 60 [Dep. of David Bawden at 227-228]; *id.*, Ex. 61 [Dep. of Steve Marotta at 55-56] [depositions of UBS employees arguably supporting inference of reliance on financial information provided to UBS by defendants].)<sup>9</sup> The reasonableness of that reliance is not subject to summary disposition, as it requires development of the factual record as to the information provided to UBS and assessment of the UBS employees’ review of the information.

The branch of the Fund Counterparties’ motion for summary judgment dismissing UBS’s fraud claims will accordingly be denied.

#### Fraudulent Conveyance & Fraudulent Transferor Claims

The Fund Counterparties argue that because UBS suffered no damages it is therefore not a creditor with standing to assert a fraudulent conveyance claim. (Fund Counterparties’ Memo. In Supp. at 25.) Given this court’s finding that factual issues exist concerning the extent of UBS’s damages, this basis for dismissal of the claim must fail.

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<sup>9</sup> This court advisedly uses the word “arguably.” Plaintiff and defendants support their factual claims on the instant motions with selected excerpts of deposition testimony, generally without describing the positions of the deponents and without the surrounding context. The meaning and import of the testimony therefore cannot be adequately evaluated on this record.

The Fund Counterparties further argue that New York does not recognize a cause of action for fraudulent conveyance against an alleged fraudulent transferor. (*Id.*) The Fund Counterparties' reliance on Federal Deposit Ins. Corp. v Porco (75 NY2d 840, 842 [1990]), in support of this argument, is misplaced. There, the Court held that the Debtor and Creditor Law "cannot fairly be read as creating a remedy against nontransferees who . . . are not alleged to have dominion or control over [the debtor's] assets or to have benefited in any way from the conveyance." In the instant action, in contrast, UBS does not allege that the Fund Counterparties assisted another debtor in transferring property but, rather, that "cash and assets" were transferred from Highland Financial, SOHC's alter ego, or from the Fund Counterparties themselves. (Complaint, ¶¶ 168, 18.) The Fund Counterparties do not cite any authority that a fraudulent conveyance claim is not maintainable under these circumstances.

II. Motion of Highland Capital, Highland Financial, Crusader Fund, Credit Strategies, Credit Opp Fund, and Strand for Summary Judgment (mot seq 026)

Highland Capital, Highland Financial, Strand, and the Affiliated Transferee defendants (together, moving defendants) seek summary judgment dismissing all of the causes of action asserted against them.<sup>10</sup> UBS pleads claims, in the fifth cause of action of the complaint, against all moving defendants for fraudulent conveyance. In addition, UBS seeks to hold Highland Financial liable, under the eighth cause of action, as SOHC's alter ego, for SOHC's alleged fraudulent conveyances and breaches of the Warehouse Agreements.

UBS claims that, as a result of its first margin call in September 2008, the Highland entities began commingling assets to generate short-term liquidity for the Fund Counterparties.

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<sup>10</sup> As noted above, this motion was brought before UBS settled its claims against Credit Strategies and Crusader Fund.

(Id., ¶ 80.) The complaint alleges that, in the fall of 2008, Highland Capital caused Highland Financial to take on additional debt in exchange for cash-generating assets that were to be used by SOHC to satisfy obligations that SOHC had to nonparty Barclays Bank. (Compl., ¶ 82.) In September 2008, Highland Financial acquired \$321 million in “risky” CLO assets and life settlement insurance contracts from the Affiliated Transferee defendants in exchange for senior secured notes in a principal amount of \$316 million with a maturity date of 2018. (Id., ¶ 83.) This note offering (the September 2008 Note Offering) required Highland Financial to make amortized quarterly payments of \$15 million to the Affiliated Transferee defendants, starting in February 2009. (Id.) Highland Financial was also required to transfer a security interest to the Affiliated Transferee defendants in the shares of two wholly owned subsidiaries into which Highland Financial transferred the newly acquired assets. (Id.)

In October 2008, Highland Capital allegedly proposed, and Highland Financial undertook, an additional note offering on the same terms as the September 2008 Note Offering, with Highland Financial issuing an additional \$55,488,000 of secured notes, also due in 2018, to Crusader Fund. This note offering (the October 2008 Note Offering) brought Highland Financial’s debt obligation to the Affiliated Transferee defendants to approximately \$371 million. (Id., ¶ 85.) UBS claims that the granting of these security interests and related asset transfers constituted fraudulent conveyances, and made it impossible for the Fund Counterparties and Highland Financial to satisfy their obligations to UBS. (Id., ¶¶ 84, 85.)

UBS maintains that, at the time of the September and October 2008 Note Offerings (together, Fall 2008 Note Offerings), Highland Financial, as SOHC’s alter ego, owed UBS hundreds of millions of dollars that it could not pay. (Id., ¶ 84.) Highland Capital allegedly

caused “Highland Financial and SOHC to use the assets that they acquired to pay down a substantial portion of SOHC’s debt to Barclays [Bank] to the detriment of UBS.” (Id., ¶ 86.) These payments to Barclays Bank were made at a time when SOHC and Highland Financial were allegedly insolvent or within the zone of insolvency, and constituted fraudulent conveyances. (Id., ¶ 88.) UBS also claims that CDO Fund used the notes it received to satisfy obligations to Citibank, NA at a time when CDO Fund was insolvent, thereby also making a fraudulent conveyance. (Id., ¶ 89.)

UBS further claims that in December 2008, after UBS terminated the restructured Transaction, Highland Capital ensured that Highland Financial and SOHC were insolvent by transferring assets to the Affiliated Transferee defendants, and then sought to hide these conveyances by tying them to the cancellation of the notes issued in the Fall 2008 Note Offerings. (Id., ¶¶ 108-109.)

UBS commenced the instant action on February 24, 2009. According to the complaint, on March 17, 2009, Highland Capital caused SOHC’s parent and alleged alter ego, Highland Financial, to transfer all of its and SOHC’s assets to Highland Capital and the Affiliated Transferee defendants. These assets were allegedly valued at \$239 million and included assets of two of Highland Financial’s subsidiaries that had no obligations to the Affiliated Transferee defendants. (Id., ¶ 111.) As a result of the transfer, these funds were unavailable to SOHC to satisfy the debt owed to UBS under the parties’ agreements. (Id., ¶ 113.) UBS refers to this transfer as the “March 2009 Fraudulent Conveyance.” (Id., ¶ 111.)

Moving defendants sharply dispute that the transfer of assets in March 2009 was a fraudulent conveyance. In an affidavit submitted by moving defendants, Phillip Braner states

that toward the end of 2008, the assets that secured the notes issued in fall 2008 were subject to significant credit downgrades. According to Mr. Braner, these downgrades had a negative impact on the cash flows available to Highland Financial as dividends, and the decreased cash flows made it unlikely that Highland Financial would be able to meet its debt service obligations under the notes, or its obligation to pay premiums on the life settlement contracts it had acquired. (Braner Aff., ¶ 13.) As a result, Highland Financial assertedly approved the unwinding of the notes to relieve it of these obligations (*id.*), and “transferred the collateral securing the Secured Notes back to the Funds.” (Moving Defs.’ Memo. In Supp. at 5.) Mr. Braner claims that the decision to unwind the notes was not related to debts owed by SOHC. (Braner Aff., ¶ 13.)

The Fall 2008 notes were terminated and the collateral was transferred pursuant to a “Termination, Settlement and Release Agreement,” dated March 20, 2009, between Highland Financial, HFP Asset Funding II, Ltd., and HFP Asset Funding III, Ltd., as Issuers, and various Noteholders, including Credit Strategies, Crusader Fund, a successor to the note purchased by Credit Opp Fund, and Highland Capital. (Landis Aff., Ex. 65.) Moving defendants refer to the March 2009 transaction as the March 2009 Note Termination. (Moving Defs.’ Memo. In Supp. at 5.)

Moving defendants argue that UBS’s inability to establish damages precludes any claims against them. They further argue that UBS cannot establish Highland Financial’s alter ego liability and that, in any event, the March 2009 Note Termination was not a fraudulent conveyance. Finally, they contend that UBS’s claim against Highland Capital for breach of the covenant of good faith and fair dealing is without merit.

Lack of Damages

In support of their claim that UBS cannot establish damages, moving defendants rely on the Fund Counterparties' damages argument. As the Fund Counterparties' motion for summary judgment based on lack of damages has been denied, moving defendants' argument likewise fails.

Alter Ego Liability

Moving defendants argue that because claims arising before the commencement of this action on February 24, 2009 are barred by res judicata, the only remaining claim against them is based on the March 2009 Note Termination—a transaction that involved SOHC's shareholder, Highland Financial, not SOHC itself. Moving defendants further argue that because UBS cannot establish that Highland Financial is SOHC's alter ego, the fraudulent conveyance claim involving this Note Termination must be dismissed. (Moving Defs.' Memo. In Supp. at 11-12, 16.)

The standards for liability under an alter ego or veil piercing theory are well settled:

“ . . . [P]iercing the corporate veil requires a showing that: (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury.

While complete domination of the corporation is the key to piercing the corporate veil, especially when the owners use the corporation as a mere device to further their personal rather than the corporate business, such domination, standing alone, is not enough; some showing of a wrongful or unjust act toward plaintiff is required. The party seeking to pierce the corporate veil must establish that the owners, through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene.”

(Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 141-142 [1993])



[internal citations omitted].)

As a threshold matter, the court notes that the Appellate Division determined that UBS's substantially similar allegations in an earlier complaint in this action were sufficient to plead a claim for alter ego liability. (UBS Secs. LLC, 93 AD3d at 490.) This court previously held that UBS's alter ego claim in the second amended complaint in this action is based on substantially similar allegations to those upheld by the Appellate Division. These allegations include not only general allegations as to Highland Capital's commingling of the Highland entities' funds and disregard of corporate formalities, but also Highland Capital's pre-February 2009 conduct, in connection with the Fall 2008 Note Offerings, in causing Highland Financial to acquire Credit Strategies' and Crusader's assets, which were later the subject of the alleged March 2009 fraudulent conveyance. (UBS Secs. LLC, 42 Misc 3d at 587-588.)

Moving defendants contend that UBS's alter ego claim is barred by res judicata based on the Appellate Division's decision in this and a subsequent related action, holding that UBS's claims against Highland Capital were barred by res judicata to the extent they "implicate events alleged to have taken place before the filing of the original complaint" (i.e., the filing on February 24, 2009 of the complaint in the instant action). (UBS Secs. LLC, 86 AD 3d at 474; see Moving Defs.' Memo. In Supp. at 9-10.) Moving defendants also rely on a subsequent decision of the Appellate Division which dismissed claims for fraudulent conveyance "arising before February 2009" against Highland Financial and other Highland entities, on the ground that these entities were in privity with Highland Capital. (UBS Secs. LLC, 93 AD3d at 490.)

Citing these decisions, moving defendants assert that the March 2009 Note Termination is the only alleged wrongdoing on which the fraudulent conveyance claim can be based.

(Moving Defs.' Memo. In Supp. at 11.) They also assert that UBS cannot establish that Highland Financial is SOHC's alter ego because "the only allegations UBS makes regarding the relationship between HFP and SOHC concern events alleged to have occurred before February 24, 2009." (Id. at 12, 12 n 55 [citing UBS's allegations as to pre-February 2009 encumbrances and commingling of Highland entities' assets].)

This court previously rejected the contention, advanced by moving defendants here, that UBS cannot rely on events or conduct occurring before February 2009 to support its alter ego and fraudulent conveyance claims. As held in the prior decision, the Appellate Division decisions preclude any fraudulent conveyance claims arising before February 24, 2009. They therefore preclude UBS from recovering for any alleged fraudulent conveyances made before that date. However, proof of pre-February 24, 2009 transfers, and of other conduct involving the operation of the Highland entities, is not prohibited to the extent necessary to prove UBS's claims for post-February 24, 2009 fraudulent conveyances, which are maintainable under the Appellate Division decisions on an alter ego theory. (UBS Secs. LLC, 42 Misc 3d at 587.) The court adheres to this decision here.<sup>11</sup>

In upholding UBS's alter ego claim, the court also rejects moving defendants' contention that "UBS was not harmed by any alleged fraud of SOHC caused by HFP's purported domination, because . . . UBS did not rely on any alleged misrepresentations by SOHC." (Moving Defs.' Memo. In Supp. at 16.) This contention rests, in turn, on moving defendants' claim that UBS "assumed the risk of doing business with the Fund Counterparties," and

---

<sup>11</sup> It is noted that moving defendants' briefing on these motions was largely completed before issuance of the decision.

“bargained for SOHC as a counterparty with its eyes wide open as to SOHC’s lack of creditworthiness.” (Id. at 17-18.) Moving defendants fails to establish this claim as a matter of law, for the reasons discussed above in connection with the Fund Counterparties’ motion. (See supra at 16-18.)

Favour Mind Ltd. v Pacific Shores, Inc. (2004 WL 97649, 2004 US Dist LEXIS 637 [SD NY 2004]), on which moving defendants rely, is not to the contrary. There, the Court applied the doctrine that “[w]here a party is aware of the risks of dealing with a corporation, that party has assumed the risk of such dealings.” (2004 WL 97649, at \* 7.) The Court rejected the plaintiff’s alter ego claim, based on the findings that the plaintiff knew, when it decided to do business with the defendant, of the defendant’s poor credit ranking, its losses, and its limited initial capital investment; that the plaintiff continued to do business with the defendant after issues arose regarding payment of bills; and that there was no evidence that the plaintiff “ever had any reasonable expectation that [the party sought to be held] would be personally liable for payment.” (Id.) Here, in contrast, as discussed above (supra at 16-18), factual issues exist as to the extent to which UBS assigned value to the Fund Counterparties and concluded that they had the ability to meet obligations upon a default, and as to the reasonableness of UBS’s reliance on information provided to it by the Highland entities in connection with the Transaction.

Moreover, a factual issue exists on this record as to whether SOHC, through Highland Financial as alter ego, perpetrated a wrong against UBS. UBS submits evidence that Highland Financial and SOHC engaged in various transfers, shifting funds from SOHC to other Highland entities. (See e.g. Landis Aff., Ex. 26 [Dep. of Highland Financial’s Todd Travers at 182, acknowledging that Highland Financial and SOHC were treated interchangeably for purposes of

borrowing money or repaying debts]; Landis Aff., Ex. 87 at PWC-HCM00017088 [accounting report for Highland Financial, stating that “sales activity in SOHC is driven by cash needs at [the Highland Financial] level for the closing of new CDOs”]; Landis Aff., Ex. 88 [Dep. of Gene McQwown at 446-447, stating that, at the time of the September 2008 Notes Offering, Highland Financial was undercapitalized and that it would not have been possible to issue these notes on the same terms with unaffiliated entities].) As discussed above (supra at 17-18), Highland Capital’s Braner also allegedly made representations to UBS regarding Highland Capital’s willingness to make assets available from various Highland entities to satisfy the Fund Counterparties’ obligations. Evaluation of this testimonial evidence involves credibility determinations, which are not properly made on a motion for summary judgment.

Moving defendants next argue that “over the life of the Restructured Transaction . . . , [Highland Financial] contributed more to SOHC than it received from SOHC,” and therefore that “[t]he net balance of these transactions was to UBS’ benefit, not detriment.” (Moving Defs.’ Memo. In Supp. at 18; Aff. of Clifford Stoops [Highland Capital’s Chief Accounting Officer and Highland Financial’s Interim Chief Financial Officer], ¶ 5.) However, as set forth in UBS’s expert report, UBS disputes moving defendants’ methodology for reviewing transfers, claiming that defendants improperly considered the transfers at an “aggregate, net level rather than analyzing individual transfers at the transactional level and separately evaluating whether fair consideration was exchanged.” (Landis Aff., Ex. 36 [Report of Louis Dudney at 23-24].) The parties also dispute whether cash transfers and loan repayments by SOHC to Highland Capital and Highland Financial in fact exceeded Highland Financial’s contributions to SOHC. (See UBS’s Memo. In Opp. at 17.)

Moving defendants thus fail to demonstrate as a matter of law that Highland Financial is not the alter ego of SOHC.

Fraudulent Conveyance

Moving defendants seek dismissal of UBS’s constructive fraudulent conveyance claim on the ground that the March 2009 Note Termination was made for “fair consideration” under section 273 of the Debtor and Creditor Law, and was therefore not a fraudulent conveyance.

(Moving Defs.’ Memo. In Supp. at 19.) Specifically, they argue that the underlying notes were “secured debt” (*id.* at 20-23), and that the March 2009 Note Termination “repaid antecedent secured debt to non-insiders,” and therefore constituted fair consideration under New York law.

(*Id.* at 23.) They also argue that, even if certain Affiliated Transferee defendants were “insiders,” the payments to these noteholders were for fair consideration because the payments “satisfied secured debt.” (*Id.* at 24.)

Moving defendants fail to demonstrate entitlement to judgment as a matter of law with respect to UBS’s allegations of constructive fraud. Debtor and Creditor Law (DCL) sections 273, 273-a, 274, and 275, which govern constructive fraud, all require a showing that fair consideration was lacking.

Under section 272 of the DCL:

- “Fair consideration is given for property, or obligation,
  - a. When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or
  - b. When such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.”

As the Court of Appeals has explained, “[i]t is well settled that an evaluation of whether fair consideration is given for property under Debtor and Creditor Law § 272 must be determined upon the facts and circumstances of each particular case.” (Commodity Futures Trading Commn. v Walsh, 17 NY3d 162, 175 [2011] [internal quotation marks and citation omitted].) “Good faith is required of both the transferor and the transferee, and it is lacking when there is a failure to deal honestly, fairly, and openly. Transfers to a controlling shareholder, officer or director of an insolvent corporation are deemed to be lacking in good faith and are presumptively fraudulent.” (Matter of CIT Group/Commercial Servs., Inc. v 160-09 Jamaica Ave. Ltd. Partnership, 25 AD3d 301, 303 [1st Dept 2006] [internal quotation marks and citations omitted].)

Here, the parties dispute whether the transfers were made to “insiders,” and, therefore, whether the “presumptively fraudulent” standard was triggered. (Moving Defs.’ Memo. In Supp. at 23-24; UBS’s Memo. In Opp. at 19-20.) According to Mr. Braner, CDO Fund and Crusader Fund held 9.71% and 9.07% limited partner interests in Highland Financial, respectively, at the time of the Fall 2008 Note Offerings. (Braner Aff., ¶ 5.) Mr. Braner also admitted that Highland Capital held a 20.96% limited partner interest in Highland Financial, and Highland Capital’s president, James Dondero (Dondero), held a 0.15% limited partner interest in Highland Financial. (Id., ¶ 8; Landis Aff., Ex. 103 [chart showing ownership interests in Highland entities].) UBS submits deposition testimony and an ownership chart prepared by defendants, showing that Mr. Dondero also owned approximately 70% of Highland Capital. (Landis Aff., Ex. 78 [Dondero Dep. at 15-16]; id., Ex. 136 [Dep. of Mark Okada at 9-10]; id., Ex. 137 [chart entitled “Highland Equity Ownership”].) Moreover, UBS submits an “Amended and Restated Management Agreement,” and several “Investment Management Agreements,”

executed by the Highland defendants, by which Highland Capital was designated “Manager” of Highland Financial, SOHC, CDO Fund, Crusader Fund, Credit Strategies, and Credit Opp Fund, with discretion and authority to manage the assets and operations of these entities. (Landis Aff., Exs. 81, 105-108.)

In addition, Mr. Dondero signed the original “Note Purchase Agreement,” dated September 26, 2008, on behalf of Highland Capital, CDO Fund, the Affiliated Transferee defendants and Highland Capital as their sole member, Strand, and HFP Asset Funding II and III, Ltd. (Stoops Aff., Ex. 42.) UBS also relies on the “Termination, Settlement and Release Agreement,” discussed above, which effectuated the March 20, 2009 Note Termination by extinguishing the parties’ obligations under the fall 2008 notes and transferring the assets back to the noteholders. The Agreement was signed by Mr. Dondero on behalf of Highland Financial, Highland Capital, HFP Asset Funding II and III, Ltd., CDO Fund, Credit Strategies, Crusader Fund, “Highland Credit Opportunities CDO, Ltd.,” and Strand, among other entities.<sup>12</sup> (Id., Ex. 44; Landis Aff., Ex. 26 [Dep. of Todd Travers at 228-229, stating that Mr. Dondero negotiated on behalf of all parties to the Note Purchase Agreement with respect to the retirement of the notes].)

On this record, moving defendants fail to demonstrate as a matter of law that the termination of the fall 2008 notes repaid debt to “non-insiders.” At a minimum, whether Mr. Dondero, through Highland Capital, managed and controlled Highland Financial, the Fund Counterparties, and the Affiliated Transferee defendants, thereby placing himself, Highland

<sup>12</sup> If Highland Credit Opportunities CDO, Ltd. is in fact the same entity as Highland Credit Opportunities CDO, L.P., Mr. Dondero would have signed on behalf of all Affiliated Transferee defendants.

Capital, and Highland Financial on “both sides” of the Fall 2008 Note Offerings and the March 2009 Note Termination, raises a factual issue as to whether the transaction “was effected in good faith.” (See Farm Stores, Inc. v School Feeding Corp., 102 AD2d 249, 254 [2d Dept 1984], affd in part 64 NY2d 1065 [1985] [rejecting argument that shareholder was an “outside lender” with no control, where “he exercised his influence as a shareholder in decisions which directly affected his investments,” and it was “undisputed that [he] gave his consent to all distributions of funds collected . . . , including those distributions challenged as fraudulent”]; PalmOne, Inc. v R.C.S. Computer Experience, L.L.C., 15 Misc 3d 1127 [A], 2007 NY Slip Op 50873 [U], \*7 [Sup Ct, NY County 2007] [finding that factual issue existed concerning transferee’s good faith, where “transferee [was] controlled by a person who is also an insider of, and/or has control over, the transferor”].)

Moving defendants rely upon Matter of Dreier LLP v Westford Asset Mgt. LLC (462 BR 474 [Bankr SD NY 2011]) in support of their argument that “transfers to a group of affiliated funds, their agents, and managers for the repayment of principal investment could not be a fraudulent conveyance because they were not insiders.” (Moving Defs.’ Memo. In Supp. at 23.) However, Dreier LLP involved investments by a third-party group of affiliated hedge funds in a Ponzi scheme by the principal of Dreier LLP. (462 BR at 479.) Here, in contrast, the transfers were made by an affiliated transferor to affiliated transferees, and therefore raise issues, which are not resolved on this record, as to the “good faith” of the transferees. (See id. at 488.)

Moving defendants further argue that, even if the noteholders were insiders, the transfers were for fair consideration because they repaid secured debt. (Moving Defs.’ Memo. In Supp. at 24.) In support of this argument, moving defendants rely upon Matter of Northstar Dev.



Corp. v Buchheit (465 BR 6 [Bankr WD NY 2012]), in which the Court applied the New York Debtor and Creditor Law. The Court held that this law “allows the avoidance of preferential transfers to directors, officers and shareholders of insolvent corporations.” (Id. at 13, quoting Farm Stores, Inc. v School Feeding Corp., 102 AD2d at 254.) The Court further explained: “As a general rule, however, no preference occurs upon the payment of a secured debt. For a preference to arise, a creditor must realize some improvement in position.” (Id. at 13-14.)

In Matter of Northstar Dev. Corp., the Court held that payment to discharge mortgages held by an insider of the debtor satisfied the good faith element of fair consideration, for purposes of a constructive fraud claim under the Debtor and Creditor Law. (Id. at 14-15.) In the instant action, the parties dispute whether the March 2009 Note Termination involved secured debt. Even assuming that a security interest was created, the Highland entities initiated the disputed transaction only five to six months before terminating it. In Matter of Northstar Dev. Corp., in contrast, the secured debt was created many years before the disputed transaction by which it was discharged.

Although the fraudulent conveyance claim here arose upon the March 2009 Note Termination, the Fall 2008 Note Offerings are integrally related. Assessment of the fraudulent conveyance claim will therefore require factual development of the record as to the circumstances under which the Fall 2008 Note Offerings were made. Even in the face of a claim by a transferee that it was a secured creditor, a court considering a constructive fraud claim must evaluate whether the transfer was made for fair consideration—that is, for a fair equivalent and in good faith. (See e.g. Farm Stores, 102 AD2d at 251-252 [finding transfers fraudulent even though transferees contended “that they were secured investing or lending shareholder-

creditors”]; Northpark Assoc., L.P. v S.H.C. Mergers, Inc., 8 AD3d 642, 643-644 [2d Dept 2004] [finding question of fact as to whether transfer by the defendant judgment debtor to defendant’s parent company and sole shareholder was made in good faith, although parent company contended that it was a secured creditor and that the transfer was made in payment of an antecedent debt].) On this record, moving defendants do not demonstrate as a matter of law that the good faith element of a constructive fraud claim cannot be satisfied.

Finally, moving defendants argue that UBS cannot establish a fraudulent conveyance claim based on actual fraud. (Moving Defs.’ Reply Memo. at 6-9.) Even assuming that the court may entertain this argument, which was made for the first time on the reply (but see Ritt v Lenox Hill Hosp., 182 AD2d 560, 562 [1st Dept 1982]), moving defendants fail to demonstrate as a matter of law that UBS cannot establish that Highland Financial acted with actual intent to defraud in effectuating the March 2009 Note Termination. The assertion of Highland Capital’s Braner that the Termination was made for legitimate business reasons (see Braner Aff., ¶ 13) must be evaluated on a fully developed record.

The branch of moving defendants’ motion for summary judgment dismissing UBS’s fraudulent conveyance claims will accordingly be denied.

#### Good Faith and Fair Dealing

Highland Capital seeks summary judgment dismissing UBS’s claim for breach of the covenant of good faith and fair dealing (third cause of action), asserted in the action under Index Number 650752/10. This claim is based upon allegations that Highland Capital used its control over the Fund Counterparties to orchestrate the transfer of Highland Financial’s assets to Highland Capital and the Affiliated Transferee defendants, as part of the March 2009 Note

Termination. (Complaint under Index Number 650752/10, ¶¶ 158-166; UBS’s Memo. In Opp. at 7-8, 25.)

Highland Capital argues that it cannot be liable for this conduct unless Highland Financial is the alter ego of SOHC. As moving defendants’ motion for summary judgment dismissing UBS’s alter ego claim has been denied, this basis for dismissal of the implied covenant claim fails.

Highland Capital also argues that UBS terminated the parties’ agreements months before the acts that allegedly breached the covenant of good faith and fair dealing, thereby ending Highland Capital’s obligations. The court agrees. The implied covenant of good faith and fair dealing “embraces a pledge that ‘neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract,’” and it “encompass[es] ‘any promises which a reasonable person in the position of the promisee would be justified in understanding were included.’” (511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 153 [2002] [internal citations omitted].)

Here, UBS concedes that it terminated the parties’ agreements in December 2008 (Compl., ¶ 99), and its cause of action is based upon the March 2009 Note Termination several months later. UBS cannot state a claim for breach of the implied obligation of good faith absent an existing contract. (See e.g. Levine v Yokell, 258 AD2d 296, 296-297 [1st Dept 1999]; American-European Art Assocs., Inc. v Trend Galleries, Inc., 227 AD2d 170, 171 [1st Dept 1996] Lakeville Pace Mech., Inc. v Elmar Realty Corp., 276 AD2d 673, 676 [2d Dept 2000]; Beninati v Federal Deposit Ins. Corp., 55 F Supp 2d 141, 149 [ED NY 1999] [implied duty of good faith and fair dealing does not “extend beyond the termination of the contract”].)

Highland Capital's motion for summary judgment dismissing UBS's third cause of action for breach of the covenant of good faith and fair dealing, in the pleading under Index Number 650752/10, will therefore be granted.

It is accordingly hereby


ORDERED that the motion for summary judgment of defendants Highland Capital Management, L.P., Highland Financial Partners, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc. (motion sequence number 026) is granted to the extent that the third cause of action in the complaint under Index Number 650752/10 is dismissed, and the motion is otherwise denied; and it is further

ORDERED that the motion for summary judgment of defendants Highland Special Opportunities Holding Company and Highland CDO Opportunity Master Fund, L.P. (motion sequence number 027) is denied.

This constitutes the decision and order of the court.

Dated: New York, New York  
March 13, 2017

ENTER:

  
MARCY FRIEDMAN, J.S.C.

**To:** JP Sevilla (jsevilla@sasmgt.com)[jsevilla@sasmgt.com]  
**From:** Pete Kranz [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA905CD66ECE4CF2BA1CB543082D8644-PETE KRANZ]  
**Sent:** Thur 6/8/2017 6:21:59 PM Coordinated Universal Time  
**Subject:** FW: ATE Actuary  
**Attachment:** First Amended Complaint against Highland Entities (unredacted).pdf

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Can I have your permission to share below and attached with Randall & Quilter to get an indication of 3<sup>rd</sup> party pricing? They've agreed to provide as a favor to me, knowing they won't get any business.

---

**From:** JP Sevilla [mailto:jsevilla@sasmgt.com]  
**Sent:** Thursday, June 08, 2017 2:06 PM  
**To:** Kranz, Pete; Jason Stubbs  
**Subject:** FW: ATE Actuary

Please see below and attached

---

**From:** Isaac Leventon  
**Sent:** Thursday, June 8, 2017 12:50 PM  
**To:** JP Sevilla  
**Subject:** RE: ATE Actuary

1. Trial is set for September 2017.
2. Claims against CDO Fund and HFP and affiliates are very strong. They are guarantee claims. The defendants' primary response will be to contest the amount of damages.
3. \$686 million from Feb. 21, 2009, accumulating 9% simple interest per annum. CDO Fund is a 49% guarantor of the damages amount, and HFP/Affiliates are 51% guarantors.
4. Please see attached for case name, parties, and details. This is the live complaint in the case.
5. Please see No. 4 above.
6. We will provide additional key pleadings shortly.

Thanks, Isaac

---

**From:** JP Sevilla  
**Sent:** Thursday, June 8, 2017 10:25 AM  
**To:** Isaac Leventon <[ileventon@sasmgt.com](mailto:ileventon@sasmgt.com)>  
**Subject:** FW: ATE Actuary

Need this for actuary - please chime in

---

**From:** Kranz, Pete <[pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com)>  
**Sent:** Thursday, June 8, 2017 10:14 AM  
**To:** Jason Stubbs; JP Sevilla; Isaac Leventon  
**Cc:** Adamczak, Tom  
**Subject:** RE: ATE Actuary

Hi JP and Isaac:

**BC SEN0000744847**  
**12/14/21**  
**Highly Confidential**

Any luck with the information below?

Thanks!

Pete

---

**From:** Kranz, Pete  
**Sent:** Wednesday, June 07, 2017 9:50 AM  
**To:** Jason Stubbs; JP Sevilla; Isaac Leventon  
**Cc:** Adamczak, Tom  
**Subject:** RE: ATE Actuary

If we can get the following (consolidated Jason's and my items), I can look at getting additional support via indicative pricing from a 3<sup>rd</sup> party:

1. Expected time to resolution
2. Confidence in the case
3. An idea of the amount at risk
4. Name of the litigated event
5. Parties to the litigated event
6. Anything else you think would be helpful

I would need by mid-day tomorrow.

Thanks!

Pete

**Peter A. Kranz, CPA**  
*Managing Director*  
*Captive Group Leader - Sales*  
T 802.658.7834 | M 802.598.6039  
156 College Street, Suite 301  
Burlington | VT | 05401  
[www.beechercarlson.com](http://www.beechercarlson.com)



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**From:** Jason Stubbs [<mailto:Jasons@bartlettactuarialgroup.com>]  
**Sent:** Tuesday, June 06, 2017 4:27 PM  
**To:** JP Sevilla; Kranz, Pete; Isaac Leventon  
**Cc:** Adamczak, Tom  
**Subject:** RE: ATE Actuary

JP, Isaac,

As far as facts, I would want to know how long the case has been going on.

I would also want to know:

1. Expected time to resolution,
2. Confidence in the case, and
3. An idea of the amount at risk.

**BC SEN0000744848**  
**12/14/21**  
**Highly Confidential**

But these are all conjectures we can discuss on Friday.

Jason

Jason D. Stubbs, ACAS, MAAA  
(cell) 802-777-9797

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**From:** JP Sevilla [<mailto:jsevilla@sasmgt.com>]  
**Sent:** Tuesday, June 06, 2017 4:19 PM  
**To:** Kranz, Pete <[pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com)>; Isaac Leventon <[ileventon@sasmgt.com](mailto:ileventon@sasmgt.com)>  
**Cc:** Jason Stubbs <[Jasons@bartlettactuarialgroup.com](mailto:Jasons@bartlettactuarialgroup.com)>; Adamczak, Tom <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Subject:** Re: ATE Actuary

Thanks - copying my colleague Isaac Leventon - Isaac, please confirm the below.

On Jun 6, 2017, at 15:18, Kranz, Pete <[pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com)> wrote:

Hi JP,

I've gotten ahold of Mr. Stubbs, our actuary. Can we do a call with legal counsel on Friday? Also, we need the following in advance of that call – ideally ASAP:

- Name of the litigated event
- Parties to the litigated event

Jason – anything else?

Thanks!

Pete

**Peter A. Kranz, CPA**  
*Managing Director*  
*Captive Group Leader - Sales*  
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156 College Street, Suite 301  
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<image001.png>  
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<image002.png>

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**12/14/21**  
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**From:** Isaac Leventon <ILeventon@HighlandCapital.com>  
**To:** JP Sevilla <JSevilla@HighlandCapital.com>  
**Subject:** UBS Settlement Structure (9).pptx  
**Date:** Wed, 19 Apr 2017 14:06:01 -0500  
**Importance:** Normal  
**Attachments:** UBS\_Settlement\_Structure\_(9).pptx

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# Settlement Analysis



UBS

vs.



## *If Highland does not settle...*

### **AND UBS WINS:**

1. Highland loses all assets in HFP/CDO Fund (HFP assets include \$32m DAF Note Payable) (see Slide 9 and Appendix 1); AND
2. Highland faces years of fraudulent transfer claims throughout Highland structure (see Slide 9); AND
3. HCMLP faces clawback of \$9m and liability to backstop HFP/CDO Fund for up to \$1.2b (\$686m principal + \$511m interest back to 2009) (see Slide 9); AND
4. Giant PR hit (see Slide 7).

### **OR HIGHLAND WINS:**

1. HFP is solvent = reverses 2008's \$257m tax write-off by HCMLP (resulting in \$50m+ in taxes due from HCMLP's partners) (see Slides 3); AND
2. UBS appeals, so issue is left unresolved for years (see Slide 4); AND
3. Citi has \$34m claim against CDO Fund assets (see Slides 5, 9); AND
4. If CDO Fund can't pay Citi \$34m, then HCMLP has to pay the balance (see Slides 5, 9).

**BOTTOM LINE: There is no upside to going to trial in either matter.**

## *Taxes: If Highland Wins... it Loses*

- If Lackey wins at trial = HFP has positive value
  - Result: Reverses 2008 HFP tax-write off from 2008
  - Resulting Tax Liability:
    - Dondero: \$50m+
    - \*Crusader: \$20m+
    - \*Goldman: \$15m+
    - Scott Kavanaugh: \$1.4m
    - \*Todd Travers: \$1m
    - John Honis: \$212k
    - \*Pat Daugherty: \$167k
    - Davis Deadman: \$110k
    - Also: Plumer, Paul Kauffman,  
Borud, Okada, Joe Dougherty,  
John Morgan
  - Everyone who suffers tax consequences has a litigation claim for mismanagement against HCMLP and Dondero (as decision maker for HFP)
- \*Red, most likely to assert claims

## ***If Highland does not settle: UBS Appeals***

- UBS appeals in NY State Court
- Average time to outcome is 2 years
- \$5m additional legal expenses
- Can be remanded back to trial court to start all over; OR
- Can be reversed and HCM loses

## ***If Highland does not settle: Citi***

- Trial in late 2017 or 2018
- Additional PR issues
- Delay repairing trading relationship
- Incur \$3-4m in Lackey fees through trial
- Have to pay for Citi's legal fees under the terms of the contract
- \$24m principal liability + \$10m in Citi's legal fees
- CDO Fund pays, but if it can't, then HCMLP has to pay balance

## *If Highland Settles...*

1. Sentinel controls HFP/CDO Fund assets (currently \$94m) (see Slide 10); AND
2. Sentinel and HCMLP can use HFP/CDO Fund assets to generate cash to pay UBS settlement, Citi, and outstanding legal fees (see Slides 12-16); AND
3. HCMLP's \$50m+ tax liability is avoided (see Slides 3, 9); AND
4. Residual assets (up to \$50m) stay at Sentinel (see Slide 16); AND
5. Potential to repair UBS distribution/relationship (see Slide 7); AND
6. PR issues resolved (see Slide 7); AND
7. Crusader Redeemer Committee remains the stand-alone target (see Slide 7).

***BOTTOM LINE: Even if UBS and Citi are awarded ZERO damages, settlement still nets \$100m (Avoids \$50m tax liability + keeps \$50m in net HFP/CDO Fund assets)***

## *If Highland Settles: PR*

- Amicably and **privately** resolve:
  - Credit Strat
  - UBS
  - Citi
- No more defensive bank-counterparty lawsuits
  - Credit Suisse “offense” is the only remaining story
- Final “Crisis” issue is Crusader (Committee is alone on an island)



## UBS Settlement: Structure Summary

Step 1: HFP/CDO Fund buy \$100m ATE policy from Sentinel

*ATE premium = all assets in HFP/CDO Fund*

Step 2: Negotiate settlement amount with UBS

Step 3: Sentinel generates cash from HFP/CDO Fund Assets

Step 4: Sentinel pays settlement amount to UBS

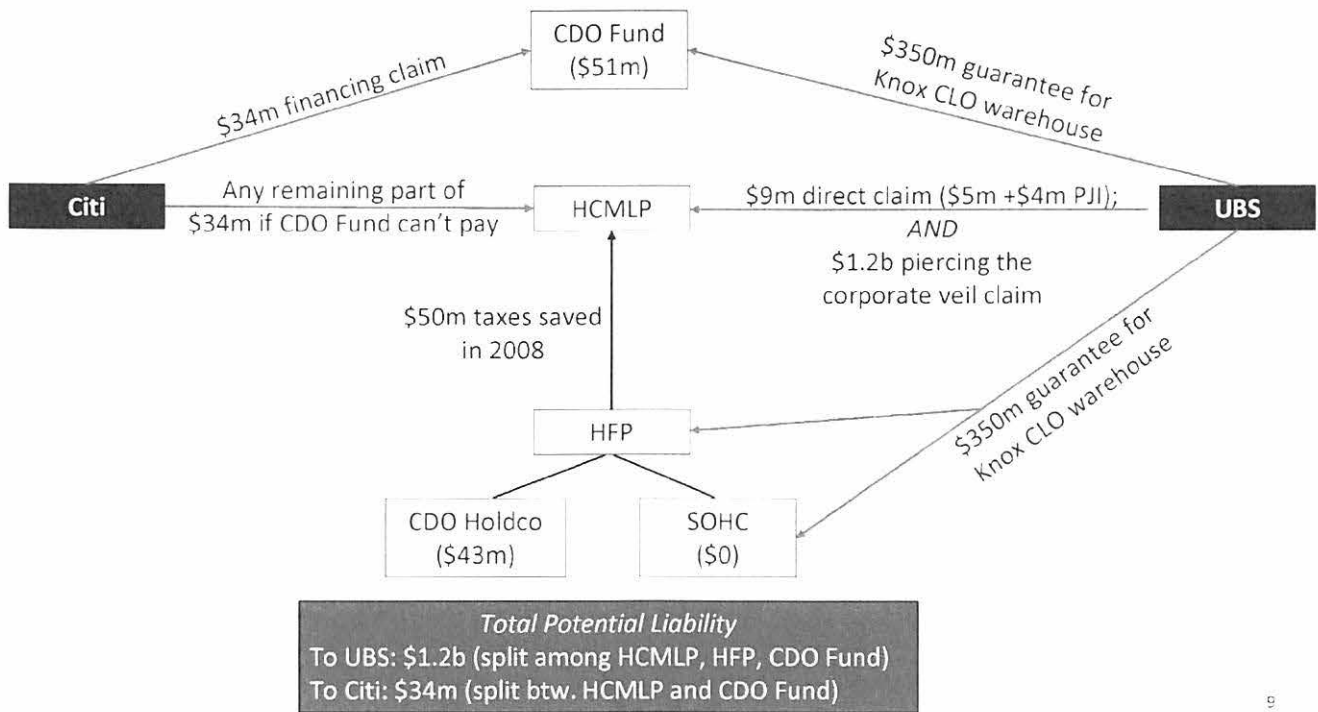
Step 5: Sentinel pays Lackey legal bills

Step 6: HCMLP (or designee) or Sentinel pay Citi

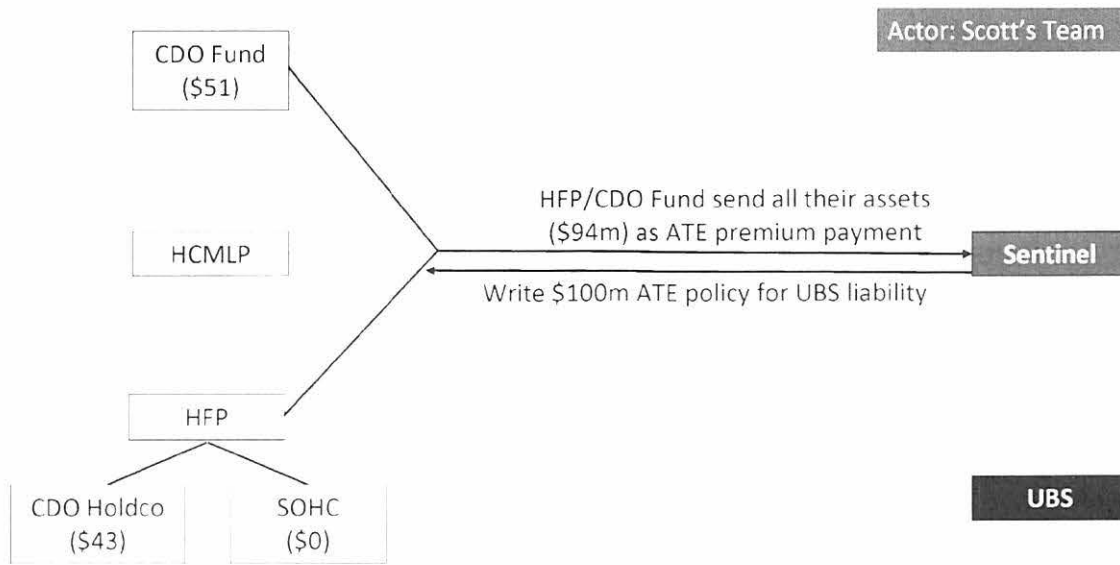
Conclusion: Sentinel keeps net assets (could be up to \$50 million)

*Here is why we should settle...*

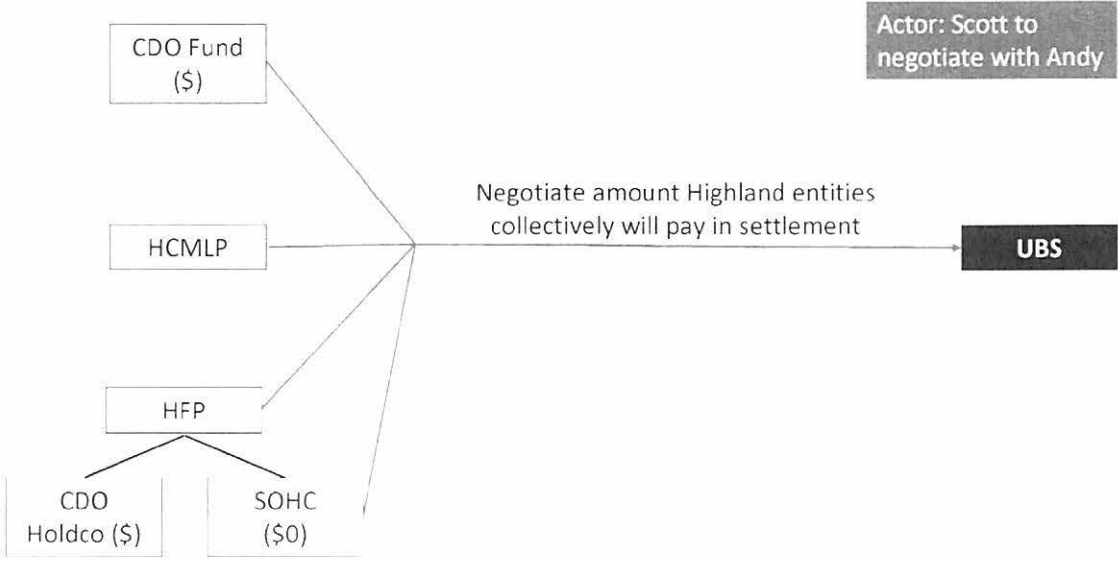
UBS Settlement: Assets and Liabilities



### UBS Settlement: Step 1 – ATE Policy

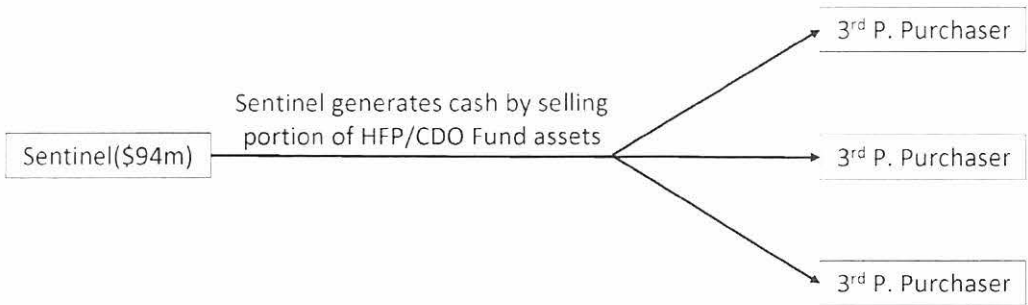


UBS Settlement: Step 2 – Negotiate Settlement Amount



UBS Settlement: Step 3 – Generate Cash

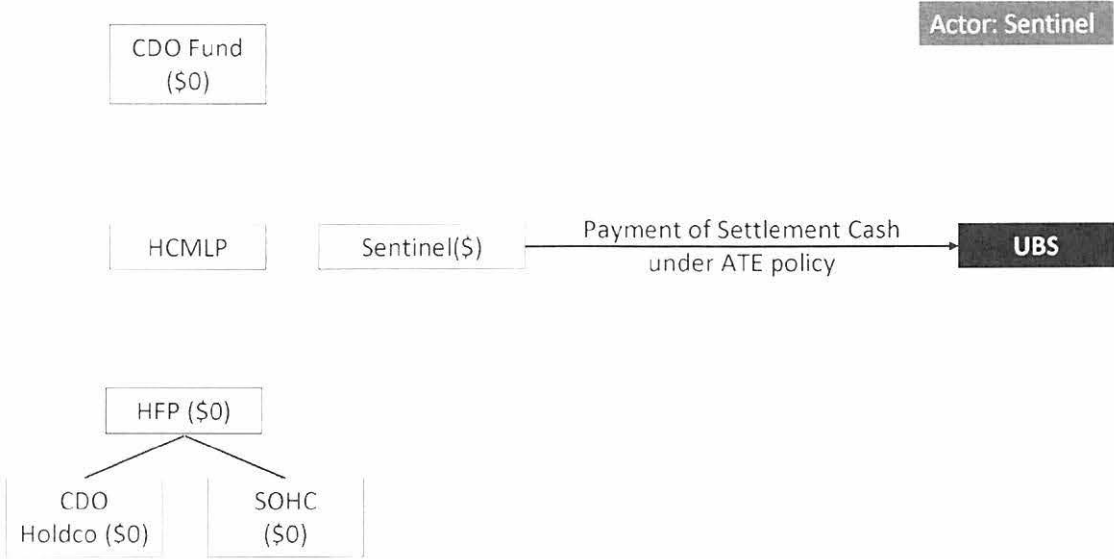
Actor: Sentinel



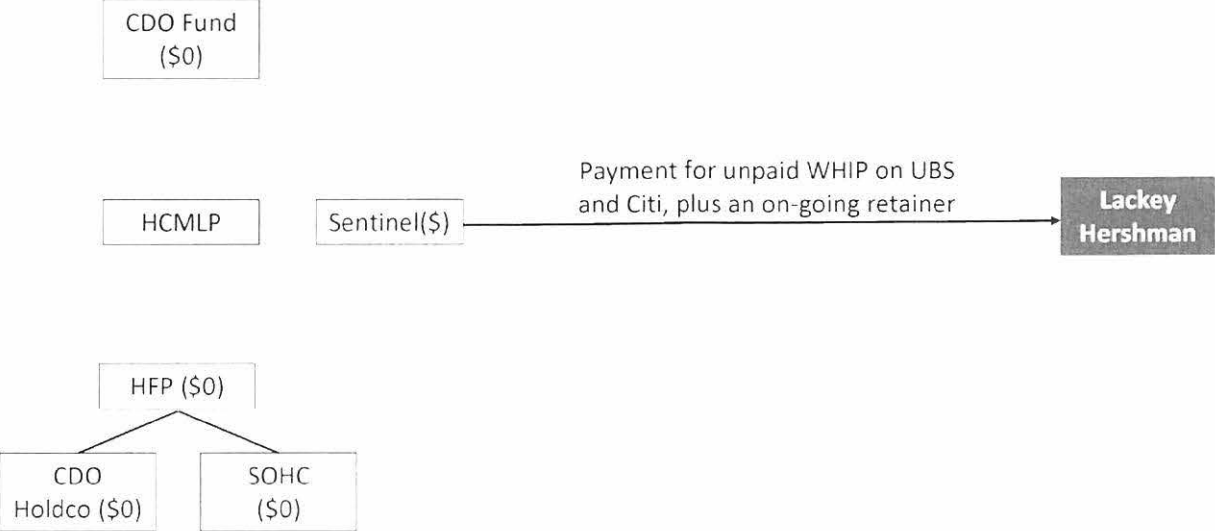
UBS

*TBD: How / how much of HFP/CDO Fund assets to sell for cash*

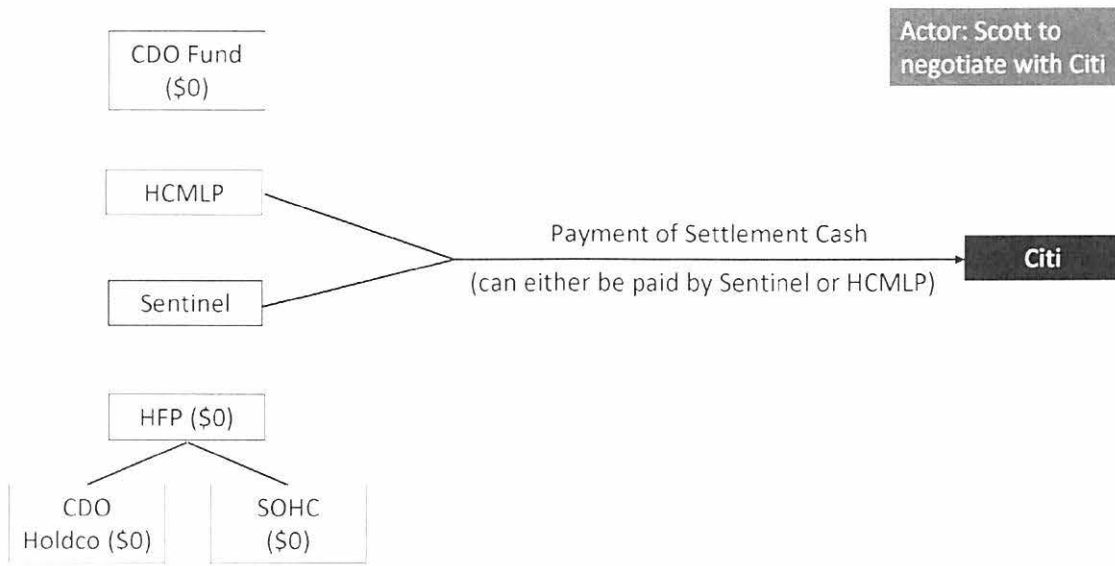
UBS Settlement: Step 4 – Pay UBS



UBS Settlement: Step 5 – Pay Lackey



### UBS Settlement: Step 6 – Pay Citi



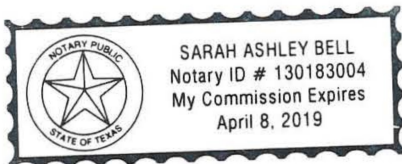
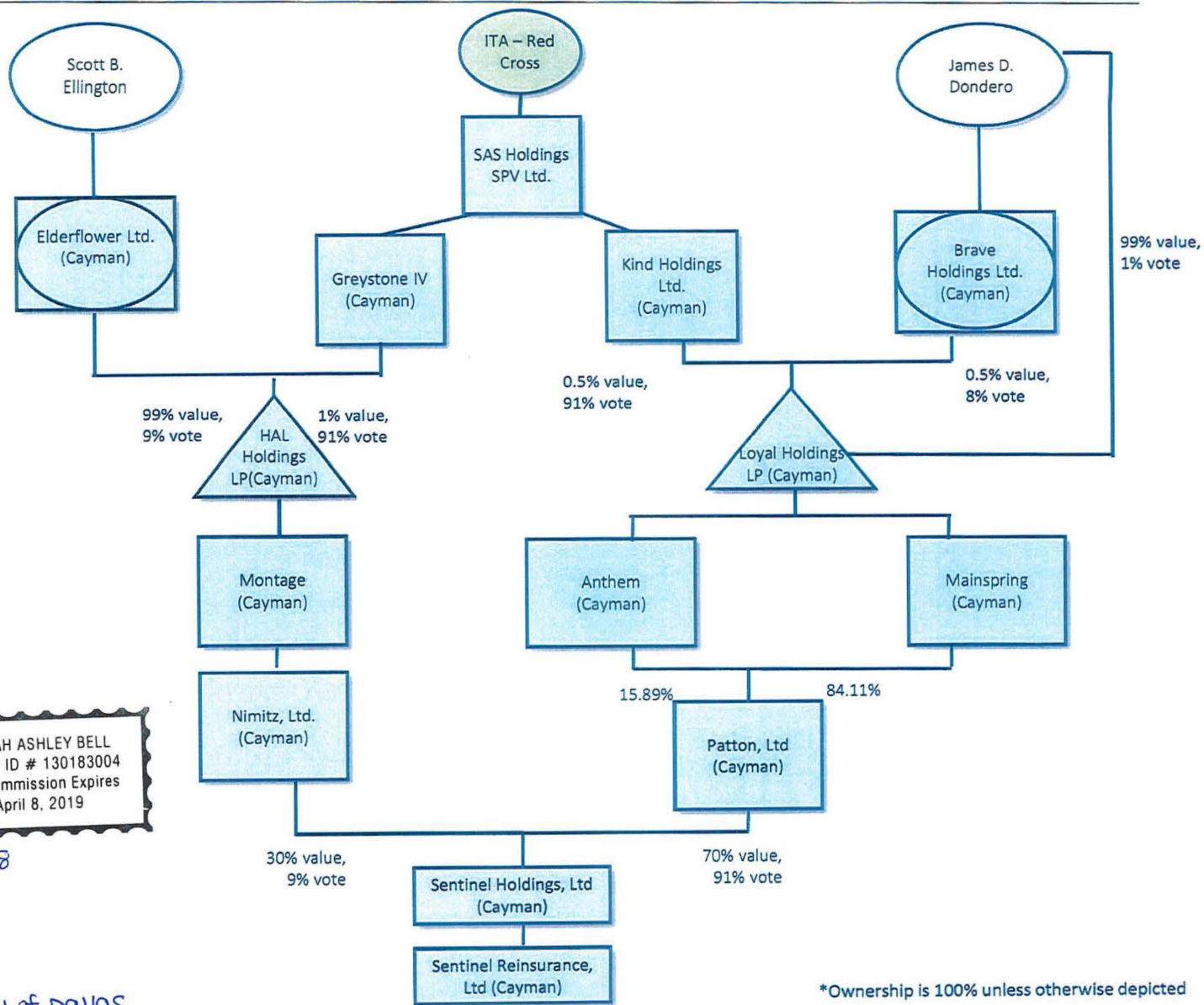


UBS Settlement: Step 7 – Remainder



# Appendix 1

ORIGINAL STRUCTURE



01/09/2018

*Sarah Bell*  
 Sarah Bell  
 State of Texas, County of DALLAS

\*Ownership is 100% unless otherwise depicted

**From:** Katie Irving <KIrving@HighlandCapital.com>

**To:** Abbie Stonecypher <AStonecypher@HighlandCapital.com>

**Cc:** JP Sevilla <JSevilla@HighlandCapital.com>

**Subject:** Financials

**Date:** Wed, 16 Aug 2017 15:13:57 -0500

**Importance:** Normal

**Attachments:** Sentinel\_Related\_Entities\_1612\_Financial\_Statements.pdf;  
SEN\_1612\_Revised\_Unaudited\_Financial\_Statements.pdf

**Inline-Images:** image001.jpg

---

Hi Abbie – financials are attached.

KATIE IRVING, CPA | DIRECTOR, BUSINESS DEVELOPMENT



300 Crescent Court | Suite 700 | Dallas, Texas 75201

D: 972.419.2566 | O: 972.628.4100 | F: 972.628.4147

[KIrving@hcmllp.com](mailto:KIrving@hcmllp.com) | [www.hcmllp.com](http://www.hcmllp.com)

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HCMUBS001066

# Sentinel Reinsurance, LTD

VIA EMAIL

August 16, 2017

Mr. J.P. Sevilla, Esq.  
SAS Asset Recovery Ltd.  
Grand Pavilion Commercial Centre  
802 West Bay Road  
Grand Cayman KY1-1102

Dear J.P.:

Enclosed please find the revised unaudited financial statements of Sentinel Reinsurance, Ltd. as of, and for the year-ended, December 31, 2016. The Management Discussion and Analysis within provides the net income as well as other relevant financial highlights.

Please feel free to contact me at 802.658.7834, or via email at [pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com), with any questions that you have regarding these financial statements.

Sincerely,



Peter A. Kranz, CPA  
Beecher Carlson Insurance Services, LLC  
*As Managers for Sentinel Reinsurance, Ltd.*

enclosures

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156 College Street, Suite 301  
Burlington, VT 05401

Phone: 802.658.7831  
Fax: 770.870.3059

HCMUBS001067

**SENTINEL REINSURANCE, LTD****TABLE OF CONTENTS****December 31, 2016**

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**SENTINEL REINSURANCE, LTD**  
**MANAGEMENT DISCUSSION AND ANALYSIS**  
**December 31, 2016**

**Overall**

For the twelve months-ended December 31, 2016 and 2015, Sentinel Reinsurance, Ltd. ("Sentinel") had pre-tax income of \$4.2 million and \$5.1 million, respectively.

Capital and surplus at December 31, 2016 and 2015 was \$17.6 million and \$24.0 million, respectively.

**Balance Sheet**

At December 31, 2016, cash and investments totaled \$5.9 million. Loss reserves were \$361 thousand and unearned premium was \$1.2 million at December 31, 2016. Unearned premium represents the premium related to the unexpired portion of the D&O policies written during the year.

**Income Statement**

Through December 31, 2016, Sentinel had premiums earned of \$2.6 million and losses incurred resulted in an \$89 thousand gain, representing an overall decrease in loss reserves for the year-ended December 31, 2016. The underwriting profit for the twelve months ended December 31, 2016 was \$2.7 million.

General and administrative expenses totaled \$164 thousand through December 31, 2016, mainly consisting of captive management, audit, actuarial, legal fees, tax professional fees and license fees.

Net investment income was \$1.7 million for the year ended December 31, 2016, which includes the impairment charge against the CLO's of \$603 thousand.

**SENTINEL REINSURANCE, LTD**  
**FINANCIAL STATEMENTS**

**December 31, 2016**

**HCMUBS001070**



**SENTINEL REINSURANCE, LTD  
BALANCE SHEETS**

As Of

	<u>December 2016</u>	<u>December 2015</u>
<b>ASSETS</b>		
Cash - operating account	\$4,630,345.65	\$3,579,212.26
Cash - investment account	<u>1,256,400.74</u>	<u>1,439,568.64</u>
Total cash & cash equivalents	5,886,746.39	5,018,780.90
Investments at fair market value [Pg. 10]	12,818,303.90	10,992,340.56
Intercompany receivable [Pg. 11]	114,235.16	6,843,735.16
Accrued investment income	346,732.90	2,853,722.07
Insurance balances receivable	0.00	0.00
Prepaid expenses and other assets [Pg. 4]	<u>27,804.88</u>	<u>22,453.66</u>
<b>Total Assets</b>	<b><u>\$19,193,823.23</u></b>	<b><u>\$25,731,032.35</u></b>
<b>LIABILITIES</b>		
IBNR reserves	\$360,724.00	\$449,447.00
Unearned premium reserves	1,228,001.80	1,187,930.66
Other liabilities [Pg. 4]	<u>33,641.00</u>	<u>111,821.98</u>
<b>Total Liabilities</b>	<b><u>1,622,366.80</u></b>	<b><u>1,749,199.64</u></b>
<b>SHAREHOLDERS' EQUITY</b>		
Contributed surplus	20,564,738.89	25,828,055.00
Unrealized loss	(3,902,077.10)	(6,130,859.44)
Retained earnings	8,284,637.15	3,188,228.69
Dividends declared and paid	(11,566,683.89)	(4,000,000.00)
Year-to-date net income	<u>4,190,841.38</u>	<u>5,096,408.46</u>
<b>Total Shareholders' Equity</b>	<b><u>17,571,456.43</u></b>	<b><u>23,981,832.71</u></b>
<b>Total Liabilities and Shareholders' Equity</b>	<b><u>\$19,193,823.23</u></b>	<b><u>\$25,731,032.35</u></b>

HCMUBS001071

**SENTINEL REINSURANCE, LTD**  
**INCOME STATEMENTS**

For the Period Ending

	2016		2015	
	December	Year-to-Date	December	Year-to-Date
<b>Underwriting Income</b>				
Premiums written	\$688,773.36	\$2,631,100.44	\$539,459.00	\$2,858,526.66
Change in unearned premiums	(50,792.12)	(40,071.14)	111,729.00	(832,944.66)
<b>Net Premiums Earned</b>	<u>637,981.24</u>	<u>2,591,029.30</u>	<u>651,188.00</u>	<u>2,025,582.00</u>
<b>Loss and Loss Expense</b>				
Change in IBNR	(910,452.64)	(88,723.00)	(704,961.00)	264,447.00
Losses incurred	(910,452.64)	(88,723.00)	(704,961.00)	264,447.00
<b>Underwriting Profit</b>	<u>1,548,433.88</u>	<u>2,679,752.30</u>	<u>1,356,149.00</u>	<u>1,761,135.00</u>
General and administrative expenses [Pg. 5]	(33,927.56)	(163,704.60)	(117,425.19)	(237,240.57)
Net investment income	(157,982.32)	1,674,793.68	2,190,013.79	3,572,514.03
Net income before income taxes	1,356,524.00	4,190,841.38	3,428,737.60	5,096,408.46
Provision for income taxes	0.00	0.00	0.00	0.00
<b>Net Income</b>	<u>\$1,356,524.00</u>	<u>\$4,190,841.38</u>	<u>\$3,428,737.60</u>	<u>\$5,096,408.46</u>

**SENTINEL REINSURANCE, LTD  
STATEMENTS OF CASH FLOW**

For the Period Ending

	2016		2015	
	December	Year-to-Date	December	Year-to-Date
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net income	\$1,356,524.00	\$4,190,841.38	\$3,428,737.60	\$5,096,408.46
Adjustment to reconcile net income to net cash provided by (used in) operating activities:				
Intercompany receivable	0.00	6,729,500.00	(6,759,814.64)	(6,780,483.15)
Micellaneous receivable	(7,522.03)	2,506,989.17	(2,336,997.65)	(844,227.19)
Insurance balances receivable	1,942,327.08	0.00	2,319,067.66	135,000.00
Prepaid expenses and other assets	(3,864.59)	(5,351.22)	(14,249.99)	(2,462.66)
IBNR reserves	(910,452.64)	(88,723.00)	(704,961.00)	264,447.00
Unearned premium reserves	50,792.12	40,071.14	(111,729.00)	832,944.66
Other liabilities	2,951.00	(78,180.98)	52,771.98	83,921.98
Net cash (used in) provided by operating activities	<u>2,430,754.94</u>	<u>13,295,146.49</u>	<u>(4,127,175.04)</u>	<u>(1,214,450.90)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Net sale (purchase) of investment	<u>602,819.00</u>	<u>402,819.00</u>	<u>8,586,623.18</u>	<u>6,796,184.85</u>
Net cash provided by (used in) investing activities	<u>602,819.00</u>	<u>402,819.00</u>	<u>8,586,623.18</u>	<u>6,796,184.85</u>
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Dividends paid	(1,480,000.00)	(7,566,683.89)	(4,000,000.00)	(4,000,000.00)
Contributed surplus	<u>0.00</u>	<u>(5,263,316.11)</u>	<u>0.00</u>	<u>0.00</u>
Net cash (used in) provided by financing activities	<u>(1,480,000.00)</u>	<u>(12,830,000.00)</u>	<u>(4,000,000.00)</u>	<u>(4,000,000.00)</u>
Net increase (decrease) in cash and cash equivalents	1,553,573.94	867,965.49	459,448.14	1,581,733.95
Cash balance at beginning of period	<u>4,333,172.45</u>	<u>5,018,780.90</u>	<u>4,559,332.76</u>	<u>3,437,046.95</u>
Cash balance at end of period	<u><u>\$5,886,746.39</u></u>	<u><u>\$5,886,746.39</u></u>	<u><u>\$5,018,780.90</u></u>	<u><u>\$5,018,780.90</u></u>

**SENTINEL REINSURANCE, LTD**  
**SUPPLEMENTAL SCHEDULES**

**December 31, 2016**

**HCMUBS001074**

**SENTINEL REINSURANCE, LTD**  
**PREPAID EXPENSES AND OTHER LIABILITIES**

As of

	<u>December 2016</u>	<u>December 2015</u>
<b>Prepaid Expenses and Other Assets</b>		
Prepaid management fees	\$15,000.00	\$20,000.00
Prepaid license fees	12,804.88	0.00
Prepaid director fees	<u>0.00</u>	<u>2,453.66</u>
<b>Total Prepaid Expenses and Other Assets</b>	<b><u><u>\$27,804.88</u></u></b>	<b><u><u>\$22,453.66</u></u></b>
 <b>Other Liabilities</b>		
Accrued investment fees	\$3,641.00	\$0.00
Accrued audit fees	22,500.00	25,920.00
Accrued other professional fees	0.00	78,401.98
Accrued actuarial fees	<u>7,500.00</u>	<u>7,500.00</u>
<b>Total Other Liabilities</b>	<b><u><u>\$33,641.00</u></u></b>	<b><u><u>\$111,821.98</u></u></b>

**SENTINEL REINSURANCE, LTD  
GENERAL AND ADMINISTRATIVE EXPENSES**

**For the Period Ending**

	<u>2016</u>		<u>2015</u>	
	<u>December</u>	<u>Year-to-Date</u>	<u>December</u>	<u>Year-to-Date</u>
Director fees	\$5,738.41	\$22,953.67	\$5,001.79	\$38,616.14
Management fees	16,000.00	66,000.00	15,000.00	60,000.00
Other Professional fees	0.00	0.00	78,401.98	78,401.98
Audit fees	3,060.00	22,500.00	9,720.00	27,120.00
Legal fees	0.00	17,051.00	0.00	0.00
Actuarial fees	3,750.00	15,000.00	3,750.00	15,000.00
License fees	5,031.15	16,463.42	5,031.25	17,073.28
Miscellaneous expenses	0.00	2,745.51	0.65	0.65
Bank charges	348.00	991.00	519.52	1,028.52
<b>Total General and Administrative Expenses</b>	<b><u>\$33,927.56</u></b>	<b><u>\$163,704.60</u></b>	<b><u>\$117,425.19</u></b>	<b><u>\$237,240.57</u></b>

**SENTINEL REINSURANCE, LTD**  
**STATEMENTS OF UNDERWRITING INCOME**  
**SUMMARY OF ALL UNITS**

	<u>Period Ending December 2016</u>	<u>Year-to-Date December 2016</u>	<u>Inception- to-Date</u>
<b>Underwriting Income</b>			
Premiums written	\$688,773.36	\$2,631,100.44	\$6,239,627.10
Change in unearned premiums	<u>(50,792.12)</u>	<u>(40,071.14)</u>	<u>(1,228,001.80)</u>
Net Premiums Earned	<u>637,981.24</u>	<u>2,591,029.30</u>	<u>5,011,625.30</u>
<b>Losses and Underwriting Expenses</b>			
Change in IBNR	<u>(910,452.64)</u>	<u>(88,723.00)</u>	<u>360,724.00</u>
Losses incurred	<u>(910,452.64)</u>	<u>(88,723.00)</u>	<u>360,724.00</u>
<b>Underwriting Profit (Loss)</b>	<b><u>\$1,548,433.88</u></b>	<b><u>\$2,679,752.30</u></b>	<b><u>\$4,650,901.30</u></b>
Insurance balances receivable		\$0.00	
IBNR		\$360,724.00	
Unearned premium reserves		\$1,228,001.80	

**SENTINEL REINSURANCE, LTD**  
**STATEMENTS OF UNDERWRITING INCOME**  
**POLICY YEAR 15/16 (D&O DIRECT)**

	<u>Period Ending December 2016</u>	<u>Year-to-Date December 2016</u>	<u>Inception- to-Date</u>
<b>Underwriting Income</b>			
Premiums written	\$0.00	\$0.00	\$2,858,526.66
Change in unearned premiums	<u>89,909.83</u>	<u>1,187,930.66</u>	<u>0.00</u>
Net Premiums Earned	<u>89,909.83</u>	<u>1,187,930.66</u>	<u>2,858,526.66</u>
<b>Losses and Underwriting Expenses</b>			
Change in IBNR	<u>(416,149.44)</u>	<u>(449,447.00)</u>	<u>(254,217.00)</u>
Losses incurred	<u>(416,149.44)</u>	<u>(449,447.00)</u>	<u>(254,217.00)</u>
<b>Underwriting Profit (Loss)</b>	<u><b>\$506,059.27</b></u>	<u><b>\$1,637,377.66</b></u>	<u><b>\$3,112,743.66</b></u>
Insurance balances receivable		\$0.00	
IBNR		\$0.00	
Unearned premium reserves		\$0.00	



**SENTINEL REINSURANCE, LTD**  
**STATEMENTS OF UNDERWRITING INCOME**  
**POLICY YEAR 16/17 (D&O DIRECT)**

	<u>Period Ending December 2016</u>	<u>Year-to-Date December 2016</u>	<u>Inception- to-Date</u>
<b>Underwriting Income</b>			
Premiums written	\$688,773.36	\$2,631,100.44	\$2,631,100.44
Change in unearned premiums	<u>(140,701.95)</u>	<u>(1,228,001.80)</u>	<u>(1,228,001.80)</u>
Net Premiums Earned	<u>548,071.41</u>	<u>1,403,098.64</u>	<u>1,403,098.64</u>
<b>Losses and Underwriting Expenses</b>			
Change in IBNR	<u>(494,303.20)</u>	<u>360,724.00</u>	<u>360,724.00</u>
Losses incurred	<u>(494,303.20)</u>	<u>360,724.00</u>	<u>360,724.00</u>
<b>Underwriting Profit (Loss)</b>	<b><u>\$1,042,374.61</u></b>	<b><u>\$1,042,374.64</u></b>	<b><u>\$1,042,374.64</u></b>
Insurance balances receivable		\$0.00	
IBNR		\$360,724.00	
Unearned premium reserves		\$1,228,001.80	

**SENTINEL REINSURANCE, LTD**  
**SUPPORTING SCHEDULES**

**December 31, 2016**

SENTINEL REINSURANCE, LTD  
 DETAILED INVESTMENT SCHEDULE  
 12/31/2016

Type of	Security Description of	CUSIP	Date of Acquisition	Maturity	Units / Shares	Price	Market Value	Adjusted Cost RRP / Price	Unrealized Gain (Loss)	Market Value
CLOs	Grayco CLO LTD 144A (GCLO 0)	389688302	12/30/13		5,000.00	344.59	1,722,925.00	2,645,236.00	(922,311.00)	1,722,925.00
CLOs	Greenstar CLO LTD (GRNER 0)	39364F300	01/07/14		3,000.00	472.30	1,417,900.00	2,069,887.00	(652,387.00)	1,417,900.00
CLOs	Stratford CLO LTD 144A (STRAPD 0)	86280C301	01/07/14		4,000.00	503.39	2,013,540.00	2,505,097.00	(491,557.00)	2,013,540.00
CLOs	Eastland CLO LTD II	27734A600	01/20/14		4,000.00	353.60	1,413,600.00	2,300,161.00	(886,561.00)	1,413,600.00
<b>Total CLOs</b>							<b>6,567,565.00</b>	<b>9,520,381.00</b>	<b>(2,952,816.00)</b>	<b>6,567,565.00</b>
	Class B Preference Shares of Sequoia Diversified Growth Fund						190,732.00	200,000.00	(9,268.00)	190,732.00
Investment at Cost	SS Holdings						<b>6,059,986.90</b>	<b>7,000,000.00</b>	<b>(940,013.10)</b>	<b>6,059,986.90</b>
<b>Total Investments</b>							<b>12,818,303.90</b>	<b>16,720,381.00</b>	<b>(3,902,077.10)</b>	<b>12,818,303.90</b>

HCMUBS001081

**SENTINEL REINSURANCE, LTD**  
**Intercompany Receivable: 22107-0000-0000**  
**December 31, 2016**

	<u>Transaction Date</u>	<u>Transaction Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>	<u>Balance</u>
Maples and Calder Registerd Office Fee - Nimitz	11/24/2014	2,457.26			2,457.26
Maples and Calder Registerd Office Fee - Patton	11/24/2014	2,456.06			2,456.06
Maples and Calder Registerd Office Fee - Sen Re	11/24/2014	2,453.66			2,453.66
Maples and Calder Registerd Office Fee - SS Holdgs	11/24/2014	2,492.66			2,492.66
Maples and Calder Registerd Office Fee - Sen Re	9/18/2014	23,338.05			23,338.05
Maples and Calder Registerd Office Fee - Nimitz	9/18/2014	425.98			425.98
Caledonian Directors Services Fee - Nimitz	12/17/2014	4,166.46			4,166.46
Caledonian Directors Services Fee - Patton	12/17/2014	4,066.46			4,066.46
Caledonian Directors Services Fee - Sen Re	12/17/2014	4,066.46			4,066.46
Caledonian Directors Services Fee - SS Holdgs	12/17/2014	17,066.46			17,066.46
Caledonian Directors Services Fee - Sen Re	6/10/2014	162.50			162.50
Caledonian Directors Services Fee - Nimitz	6/10/2014	100.00			100.00
MaplesFS Directors Services Fee - Patton	8/4/2015	3,689.73			3,689.73
MaplesFS Directors Services Fee - Nimitz	8/4/2015	3,689.73			3,689.73
MaplesFS Directors Services Fee - Sen Re	8/4/2015	3,689.73			3,689.73
MaplesFS Directors Services Fee - SS Holdings	8/4/2015	9,599.32			9,599.32
MaplesFS Directors Services Fee - Patton	12/11/2015	2,453.66			2,453.66
MaplesFS Directors Services Fee - Nimitz	12/11/2015	2,453.66			2,453.66
MaplesFS Directors Services Fee - Sen Re	12/11/2015	2,453.66			2,453.66
MaplesFS Directors Services Fee - SS Holdings	12/11/2015	2,453.66			2,453.66
MaplesFS Directors Services Fee - Patton	7/5/2016	3,500.00			3,500.00
MaplesFS Directors Services Fee - Nimitz	7/5/2016	3,500.00			3,500.00
MaplesFS Directors Services Fee - Sen Re	7/5/2016	3,500.00			3,500.00
MaplesFS Directors Services Fee - SS Holdings	7/5/2016	10,000.00			10,000.00
<b>Total InterCompany Receivable (Payable)</b>		<u>114,235.16</u>		<u>-</u>	<u>114,235.16</u>
<b>Nimitz, Ltd.</b>		16,793.09			
<b>Patton, Ltd.</b>		16,165.91			
<b>Sentinel Re Holdings, Ltd.</b>		39,664.06			
<b>SS Holdings, Ltd.</b>		<u>41,612.10</u>			
<b>Total amount due:</b>		<u>114,235.16</u>			

HCMUBS001082

# Sentinel Reinsurance, LTD

VIA EMAIL

June 20, 2017

Mr. J.P. Sevilla, Esq.  
SAS Asset Recovery Ltd.  
Grand Pavilion Commercial Centre  
802 West Bay Road  
Grand Cayman KY1-1102

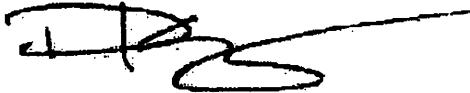
Dear J.P.:

Enclosed please find the unaudited financial statements as of, and for the year-ended, December 31, 2016 for the following entities:

- Nimitz, Ltd.
- Patton, Ltd.
- Sentinel Re Holdings, Ltd.
- SS Holdings, Ltd.

Please feel free to contact me at 802.658.7834, or via email at [pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com), with any questions that you have regarding these financial statements.

Sincerely,



Peter A. Kranz, CPA  
Beecher Carlson Insurance Services, LLC

enclosures

---

156 College Street, Suite 301  
Burlington, VT 05401

Phone: 802.658.7831  
Fax: 770.870.3059

HCMUBS001083

**NIMITZ, LTD.**  
**FINANCIAL STATEMENTS**

**DECEMBER 31, 2016**

**NIMITZ, LTD.  
BALANCE SHEETS**

As Of

	<u>December 2016</u>	<u>December 2015</u>
<b>ASSETS</b>		
Investments at cost	\$3,098,416.50	\$3,098,416.50
Prepaid expenses and other assets	<u>25,705.10</u>	<u>31,871.62</u>
<b>Total Assets</b>	<u><u>\$3,124,121.60</u></u>	<u><u>\$3,130,288.12</u></u>
<b>LIABILITIES</b>		
Intercompany payable	<u>\$16,793.09</u>	<u>\$13,293.09</u>
<b>Total Liabilities</b>	<u>16,793.09</u>	<u>13,293.09</u>
<b>SHAREHOLDERS' EQUITY</b>		
Contributed surplus	3,173,550.75	3,145,508.82
Retained earnings (deficit)	629,741.46	(1,567.60)
Dividends declared and paid	(1,415,248.83)	(658,255.25)
Year-to-date net income (loss)	<u>719,285.13</u>	<u>631,309.06</u>
<b>Total Shareholders' Equity</b>	<u>3,107,328.51</u>	<u>3,116,995.03</u>
<b>Total Liabilities and Shareholders' Equity</b>	<u><u>\$3,124,121.60</u></u>	<u><u>\$3,130,288.12</u></u>

**NDMITZ, LTD.**  
**INCOME STATEMENTS**

For the Period Ending

	<u>2016</u>		<u>2015</u>	
	<u>December</u>	<u>Year-to-Date</u>	<u>December</u>	<u>Year-to-Date</u>
<b>Underwriting Income</b>				
Premiums written	\$.00	\$.00	\$.00	\$.00
Change in unearned premiums	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Premiums Earned</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Loss and Loss Expense</b>				
Change in IBNR	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
Losses incurred	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Underwriting Profit (Loss)</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>General and administrative expenses</b>	(11,798.95)	(37,708.45)	(6,174.72)	(26,946.19)
<b>Net investment income</b>	<u>.00</u>	<u>756,993.58</u>	<u>658,255.25</u>	<u>658,255.25</u>
<b>Net income (loss) before income taxes</b>	(11,798.95)	719,285.13	652,080.53	631,309.06
<b>Provision for income taxes</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Income (Loss)</b>	<u>(\$11,798.95)</u>	<u>\$719,285.13</u>	<u>\$652,080.53</u>	<u>\$631,309.06</u>



**PATTON, LTD.**  
**FINANCIAL STATEMENTS**

**DECEMBER 31, 2016**

**PATTON, LTD.**  
**BALANCE SHEETS**

As Of

	<u>December 2016</u>	<u>December 2015</u>
<b>ASSETS</b>		
Investments at cost	\$22,729,638.50	\$22,729,638.50
Prepaid expenses and other assets	<u>25,705.10</u>	<u>31,871.62</u>
<b>Total Assets</b>	<u><u>\$22,755,343.60</u></u>	<u><u>\$22,761,510.12</u></u>
<b>LIABILITIES</b>		
Intercompany payable	<u>\$16,165.91</u>	<u>\$12,665.91</u>
<b>Total Liabilities</b>	<u><u>16,165.91</u></u>	<u><u>12,665.91</u></u>
<b>SHAREHOLDERS' EQUITY</b>		
Contributed surplus	22,804,772.75	22,776,730.82
Retained earnings (deficit)	3,313,858.14	(1,016.62)
Dividends declared and paid	(7,184,751.17)	(3,341,744.75)
Year-to-date net income (loss)	<u>3,805,297.97</u>	<u>3,314,874.76</u>
<b>Total Shareholders' Equity</b>	<u><u>22,739,177.69</u></u>	<u><u>22,748,844.21</u></u>
<b>Total Liabilities and Shareholders' Equity</b>	<u><u>\$22,755,343.60</u></u>	<u><u>\$22,761,510.12</u></u>

**PATTON, LTD.**  
**INCOME STATEMENTS**

For the Period Ending

	<u>2016</u>		<u>2015</u>	
	<u>December</u>	<u>Year-to-Date</u>	<u>December</u>	<u>Year-to-Date</u>
<b>Underwriting Income</b>				
Premiums written	\$ .00	\$ .00	\$ .00	\$ .00
Change in unearned premiums	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Premiums Earned</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Loss and Loss Expense</b>				
Change in IBNR	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
Losses incurred	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Underwriting Profit (Loss)</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
General and administrative expenses	(11,798.95)	(37,708.45)	(6,174.72)	(26,869.99)
Net investment income	<u>.00</u>	<u>3,843,006.42</u>	<u>3,341,744.75</u>	<u>3,341,744.75</u>
Net income (loss) before income taxes	(11,798.95)	3,805,297.97	3,335,570.03	3,314,874.76
Provision for income taxes	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Income (Loss)</b>	<u><u>(\$11,798.95)</u></u>	<u><u>\$3,805,297.97</u></u>	<u><u>\$3,335,570.03</u></u>	<u><u>\$3,314,874.76</u></u>

**SENTINEL RE HOLDINGS, LTD.**

**FINANCIAL STATEMENTS**

**DECEMBER 31, 2016**

**SENTINEL RE HOLDINGS, LTD.**  
**BALANCE SHEETS**

As Of

	<u>December 2016</u>	<u>December 2015</u>
<b>ASSETS</b>		
Cash - operating account	\$683,931.55	\$.00
Investments at cost	20,564,738.89	25,828,055.00
Investments at market	7,052,026.65	6,750,000.00
Prepaid expenses and other assets	<u>25,705.10</u>	<u>31,871.62</u>
<b>Total Assets</b>	<u><u>\$28,326,402.19</u></u>	<u><u>\$32,609,926.62</u></u>
<b>LIABILITIES</b>		
Intercompany payable	<u>39,664.06</u>	<u>6,786,164.06</u>
<b>Total Liabilities</b>	<u><u>39,664.06</u></u>	<u><u>6,786,164.06</u></u>
<b>SHAREHOLDERS' EQUITY</b>		
Contributed surplus	25,903,189.25	25,875,147.32
Retained earnings (deficit)	3,948,615.24	(24,517.17)
Unrealized gain (loss)	985,958.20	.00
Dividends declared and paid	(8,600,000.00)	(4,000,000.00)
Year-to-date net income (loss)	<u>6,048,975.44</u>	<u>3,973,132.41</u>
<b>Total Shareholders' Equity</b>	<u><u>28,286,738.13</u></u>	<u><u>25,823,762.56</u></u>
<b>Total Liabilities and Shareholders' Equity</b>	<u><u>\$28,326,402.19</u></u>	<u><u>\$32,609,926.62</u></u>

**SENTINEL RE HOLDINGS, LTD.**  
**INCOME STATEMENTS**

For the Period Ending

	<u>2016</u>		<u>2015</u>	
	<u>December</u>	<u>Year-to-Date</u>	<u>December</u>	<u>Year-to-Date</u>
<b>Underwriting Income</b>				
Premiums written	\$.00	\$.00	\$.00	\$.00
Change in unearned premiums	.00	.00	.00	.00
<b>Net Premiums Earned</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Loss and Loss Expense</b>				
Change in IBNR	.00	.00	.00	.00
Losses incurred	.00	.00	.00	.00
<b>Underwriting Profit (Loss)</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
General and administrative expenses	(11,798.95)	(37,708.45)	(6,174.72)	(26,867.59)
Net investment income	<u>.00</u>	<u>6,086,683.89</u>	<u>4,000,000.00</u>	<u>4,000,000.00</u>
Net income (loss) before income taxes	(11,798.95)	6,048,975.44	3,993,825.28	3,973,132.41
Provision for income taxes	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Income (Loss)</b>	<u><u>(\$11,798.95)</u></u>	<u><u>\$6,048,975.44</u></u>	<u><u>\$3,993,825.28</u></u>	<u><u>\$3,973,132.41</u></u>

**SS HOLDINGS, LTD.**  
**FINANCIAL STATEMENTS**

**DECEMBER 31, 2016**

**SS HOLDINGS, LTD.  
BALANCE SHEETS**

As Of

	<u>December 2016</u>	<u>December 2015</u>
<b>ASSETS</b>		
Investments at fair market value	\$6,101,599.00	\$4,450,149.00
Prepaid expenses and other assets	<u>.00</u>	<u>2,453.66</u>
<b>Total Assets</b>	<u><u>\$6,101,599.00</u></u>	<u><u>\$4,452,602.66</u></u>
<b>LIABILITIES</b>		
Intercompany payable	<u>\$41,612.10</u>	<u>\$31,612.10</u>
<b>Total Liabilities</b>	<u>41,612.10</u>	<u>31,612.10</u>
<b>SHAREHOLDERS' EQUITY</b>		
Contributed surplus	7,000,000.00	7,000,000.00
Unrealized loss on investments	(889,725.00)	(2,541,175.00)
Retained deficit	(37,834.44)	(12,942.62)
Year-to-date net loss	<u>(12,453.66)</u>	<u>(24,891.82)</u>
<b>Total Shareholders' Equity</b>	<u>6,059,986.90</u>	<u>4,420,990.56</u>
<b>Total Liabilities and Shareholders' Equity</b>	<u><u>\$6,101,599.00</u></u>	<u><u>\$4,452,602.66</u></u>



**SS HOLDINGS, LTD.**  
**INCOME STATEMENTS**

For the Period Ending

	<u>2016</u>		<u>2015</u>	
	<u>December</u>	<u>Year-to-Date</u>	<u>December</u>	<u>Year-to-Date</u>
<b>Underwriting Income</b>				
Premiums written	\$0.00	\$0.00	\$0.00	\$0.00
Change in unearned premiums	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Premiums Earned</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Loss and Loss Expense</b>				
Change in IBNR	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
Losses incurred	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Underwriting Profit (Loss)</b>	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
General and administrative expenses	(10,613.41)	(12,453.66)	(2,500.89)	(24,891.82)
Net investment income	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
Net loss before income taxes	(10,613.41)	(12,453.66)	(2,500.89)	(24,891.82)
Provision for income taxes	<u>.00</u>	<u>.00</u>	<u>.00</u>	<u>.00</u>
<b>Net Loss</b>	<u><u>(\$10,613.41)</u></u>	<u><u>(\$12,453.66)</u></u>	<u><u>(\$2,500.89)</u></u>	<u><u>(\$24,891.82)</u></u>

**To:** JP Sevilla[jsevilla@sasmgt.com]; 'Paul Scrivener'[PScrivener@solomonharris.com]  
**Cc:** Tom Adamczak[tadamczak@beechercarlson.com]  
**From:** Pete Kranz[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FA905CD66ECE4CF2BA1CB543082D8644-PETE KRANZ]  
**Sent:** Tue 8/8/2017 10:16:53 PM Coordinated Universal Time  
**Subject:** RE: Draft ATE policy

---

I see no issues with one policy.

---

**From:** JP Sevilla [mailto:jsevilla@sasmgt.com]  
**Sent:** Tuesday, August 08, 2017 3:45 PM  
**To:** 'Paul Scrivener'  
**Cc:** Kranz, Pete  
**Subject:** RE: Draft ATE policy

Paul,

1. We would like to consolidate the policies into one policy, with three insureds, all of whom are co-defendants with equal liability – do you see any issue in doing so? The policy limit \$120m, and the premium will be \$30m. The three insureds are listed below. Please tweak the operative provisions as necessary.
2. Need to tweak the own costs to be a bit more broad – please use “costs and expenses of the Representative and other service providers in the normal course, including related tax, which are incurred during the conduct of the legal action on behalf of the insured.”
3. Finally, please remove the clause that says in Section 3 that it’s an exclusion if insured does not have funds to prosecute the action. Thank you.

Insureds:  
Highland CDO Opportunity Master Fund, LP  
Highland CDO Holding Company  
Highland Special Opportunities Holding Company

Pete, please weigh in if you see any problem with having one policy cover all three defendants.

Thank you,

JP

---

**From:** Paul Scrivener [mailto:PScrivener@solomonharris.com]  
**Sent:** Monday, August 7, 2017 7:12 AM  
**To:** JP Sevilla <jsevilla@sasmgt.com>  
**Cc:** 'Kranz, Pete' <pkranz@beechercarlson.com>  
**Subject:** RE: Draft ATE policy

JP

Thank you for your emails of Friday.

I attach for your use final drafts of the two policies – one for Highland CDO Opportunity Fund, Ltd. and the other for Highland CDO Holding Company - based upon the draft that I sent to you on 2 June. Apart from tidying up/formatting etc. the only changes are as follows:-

1. I removed the Contents page as there seems to be a flaw in the document with the auto-renumbering and also it would not let me manually re-number for some reason.
2. In 19.13.1 and 19.3.2, further to your email immediately below, I have provided that “own costs” are now also

included in the coverage. As you will see, I have achieved this by providing that "legal liability" is now A + B where A = court awarded sum or settlement sum, as the case may be, (including other party's legal costs in each case) and B = insured's own legal costs.

3. Inclusion of signature page.

As you mention below, I will leave you to add the signature blocks on the signature page and complete the Schedule to each policy.

Obviously, in the usual way, you will need to organize authorizing board resolutions of Sentinel and will want to inspect authorizing board resolutions of the two insureds.

I will revert to you separately with any comments on the draft APA that you provided.

Kind regards

Paul

Paul Scrivener  
Independent Consultant



Grand Cayman, Cayman Islands | Zurich, Switzerland

FirstCaribbean House, 3rd Floor, PO Box 1990, Grand Cayman KY1-1104, Cayman Islands  
T: 1 345-949-0488 F: 1 345-949-0364 W: [www.solomonharris.com](http://www.solomonharris.com)

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**From:** JP Sevilla [<mailto:jsevilla@sasmgt.com>]  
**Sent:** Friday, August 04, 2017 5:33 PM  
**To:** Paul Scrivener <[PScrivener@solomonharris.com](mailto:PScrivener@solomonharris.com)>  
**Cc:** 'Kranz, Pete' <[pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com)>  
**Subject:** RE: Draft ATE policy

One more point, Paul – can you please add language into the policies that specifies that the insurance policies WILL cover the insureds own costs and expenses as of the effective date? Thank you.

---

**From:** JP Sevilla  
**Sent:** Friday, August 4, 2017 4:34 PM  
**To:** 'Paul Scrivener' <[PScrivener@solomonharris.com](mailto:PScrivener@solomonharris.com)>  
**Cc:** Kranz, Pete <[pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com)>  
**Subject:** RE: Draft ATE policy

Paul, we are ready to move forward with these. Can you please give a final review and add signature pages and any other final cleanups – we will enter the correct signature blocks. Below are the names of the insureds – there will be two separate policies, one for each of the below entities. We will handle filling out the schedule and final numbers.

**BC SEN0000745903**  
**12/14/21**  
**Highly Confidential**

- Highland CDO Opportunity Fund, Ltd.
- Highland CDO Holding Company

Thank you.

---

**From:** Paul Scrivener [<mailto:PScrivener@solomonharris.com>]  
**Sent:** Monday, June 12, 2017 7:11 AM  
**To:** Neil Horner <[Neil.Horner@aswlaw.com](mailto:Neil.Horner@aswlaw.com)>  
**Cc:** JP Sevilla <[jsevilla@sasmgt.com](mailto:jsevilla@sasmgt.com)>; [pkranz@beechercarlson.com](mailto:pkranz@beechercarlson.com); Robert Humphries <[RHumphries@solomonharris.com](mailto:RHumphries@solomonharris.com)>  
**Subject:** Draft ATE policy

Dear Neil

I hope all is well. It will be good to be working with you and your team again.

Please see attached my mark up of the template policy provided by the client and below my covering email of 2 June which attached the mark up.

The insurer here, Sentinel Reinsurance, Ltd (“Sentinel”), is a Cayman licensed insurer and is affiliated with both a litigation funding business and a US hedge fund management company. Sentinel and the litigation funding business are existing clients of Solomon Harris. I understand that this policy will be the first third party business written by Sentinel, with Sentinel initially set up to insure or reinsure certain group risks.

The insureds under this policy will be Cayman and Bermuda hedge funds (the “Funds”) that are currently embroiled in well-advanced litigation as defendants. The matter is set down for trial in August/September this year. The total potential exposure in the litigation is in the order of US\$500 million and the total assets of the Funds have an NAV of around US\$100 million. There is scope for a settlement still. The deal that Sentinel has reached with the Funds is that for a premium of US\$20 million, Sentinel will provide cover of up to US\$85 million on either (1) judgment against the Funds or (2) settlement being reached. Cover includes any legal costs payable to the plaintiffs but not the Funds’ own legal costs. The US\$20 million premium will be satisfied in kind by the Funds transferring their investment portfolios to Sentinel. There will be an actuarial assessment of the portfolio assets. The client has confirmed that they have CIMA approval to accept in kind premium.

I believe that broadly summarises the deal but by copy of this email I am inviting JP Sevilla from the client and Pete Kranz of Beecher Carlson, Sentinel’s insurance manager, to add anything material that I may have missed or be unaware of. Obviously, please let us know if you have any questions or anything is unclear.

The client has requested a Bermuda law review to see if any of the provisions in the policy might be problematic from a Bermuda law or regulatory perspective having regard to the fact that there is a Bermuda insured under the policy.

As you are aware, the absolute deadline for comments is this Friday but I know that JP and Pete would appreciate comments earlier than that if at all possible.

Many thanks

Kind regards

Paul

Paul Scrivener



Grand Cayman, Cayman Islands | Zurich, Switzerland

FirstCaribbean House, 3rd Floor, PO Box 1990, Grand Cayman KY1-1104, Cayman Islands  
T: 1 345-949-0488 F: 1 345-949-0364 W: [www.solomonharris.com](http://www.solomonharris.com)

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**From:** Paul Scrivener  
**Sent:** Friday, June 02, 2017 9:33 AM  
**To:** 'JP Sevilla'  
**Cc:** Kranz, Pete; Robert Humphries  
**Subject:** RE: Draft ATE policy

JP

I am pleased to attach a marked up copy of the policy for your consideration. I have amended as necessary to ensure compliance with Cayman law and regulation. I have also removed any provisions that would not typically be included in a policy governed by Cayman law in order to shorten and simplify the document e.g. removal of complaints section.

In addition, I have made some drafting changes and changes with a view to meeting the commercial objectives of the policy as you described on the phone the other day. Obviously, these latter changes are somewhat beyond the scope of my engagement and so please do review carefully to ensure that I have properly captured what is intended.

Please note the following:-

1. Please consider my definition of "legal liability" carefully. As you will see this covers the other party's costs as well as the judgment amount or settlement amount. It does not cover the insured's own costs which I assume is the intention. The limit of indemnity obviously applies.
2. I have left in the provisions dealing with the possibility of the insurer providing a bond but these can be removed if not applicable.
3. I have assumed that cover also extends to any appeal and does not terminate on judgment of the first instance court.

By the way, I was thinking further about the idea that the premium will be satisfied by the transfer of the hedge funds' investment portfolios. Has any thought been given as to the legal validity of such a transfer bearing in mind that these assets will then be put beyond the reach of the plaintiffs in the US litigation against the funds? Obviously, the last thing that you want to find is that the "premium" has to be returned or is set aside as some unlawful preference or similar. Obviously, an issue for US counsel but just thought that I should raise it.

I look forward to hearing from you further once you have had an opportunity to review the draft.

Kind regards

Paul

Paul Scrivener



Grand Cayman, Cayman Islands | Zurich, Switzerland

**BC SEN0000745905**  
**12/14/21**  
**Highly Confidential**

FirstCaribbean House, 3rd Floor, PO Box 1990, Grand Cayman KY1-1104, Cayman Islands  
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Cc: Jayasekera, Ruwan[R.Jayasekera@cimoney.com.ky]; Busari, Razaak[R.Busari@cimoney.com.ky]; Inyangala, Silvanous[S.Inyangala@cimoney.com.ky]; Tom Adamczak[tadamczak@beechercarlson.com]

From: Dube, Sehliselo[S.Dube@cimoney.com.ky]

Sent: Mon 5/6/2019 3:55:53 PM Coordinated Universal Time

Subject: Sentinel Reinsurance, Ltd. - Final Inspection Reports

Attachment: Sentinel Reinsurance Ltd. - Cover Letter - Two Final Inspection Reports.pdf

Attachment: Sentinel Reinsurance Ltd. - Final Onsite Inspection Report - Prudential Specific Report.pdf

Attachment: Sentinel Reinsurance Ltd. Final Onsite Inspection Report - AML Specific Report.pdf

Attachment: Sentinel Reinsurance, Ltd - Acknowledgement Signature Sheet- Two reports.pdf

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Dear Clayton,

Please find attached the cover letter, final inspection reports and acknowledgement signatures sheets for the board of directors to sign as confirmation of receipt of the attached final inspection reports for Sentinel Reinsurance, Ltd.

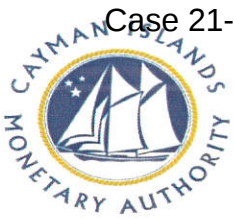
Thanks and Best Regards,  
Sehli

**Sehliselo Dube**

Chief Analyst | Insurance Supervision Division

Cayman Islands Monetary Authority  
Direct: (345) 244-1603 | Main: (345) 949-7089  
Email: S.Dube@cimoney.com.ky  
[www.cima.ky](http://www.cima.ky) | [LinkedIn](#)





## CAYMAN ISLANDS MONETARY AUTHORITY

The Directors  
Sentinel Reinsurance, Ltd.  
c/o Beecher Carlson Cayman, Ltd.  
P.O. Box 10193  
Grand Cayman KY1-1002  
Cayman Islands

6 May 2019

Attention: **Mr. Clayton Price**

Ref: SD/SI/642423/2

### **By Email**

Dear Sirs,

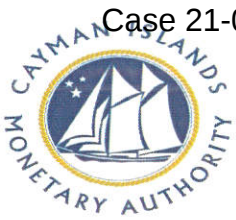
### **SUBJECT: Sentinel Reinsurance, Ltd.: Final Inspection Reports**

The Cayman Islands Monetary Authority (the "Authority") acknowledges receipt of Mr. Clayton Price's emails dated 19 April 2019 and 22 April 2019 in response to the Draft Inspection Reports for Sentinel Reinsurance, Ltd. (the "Licensee"). The comments have been duly noted and, where applicable, the Authority's reports amended accordingly.

The inspection was conducted pursuant to *the Monetary Authority Law (2018 Revision)*, *the Insurance Law 2010 (as amended)*, *the Proceeds of Crime Law (2019 Revision)*, and *the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, December 2017*. The On-site Inspection was carried out in order to assess the Licensee's current financial position, corporate governance structure operational structure, strategic plan, and compliance with internal policies, legislation and regulatory requirements.

The Authority has enclosed its final inspection reports, which are for the Licensee's use only, and should not be distributed to third parties without the Authority's prior written consent. The Licensee's attention is drawn to the requirements' implementation timeframes contained therein which the Licensee must strictly adhere to. In addition, the Authority requires remediation progress reports on a monthly basis to be furnished to the Authority on the **first day** of every month beginning **1 June 2019** until all the requirements have been met. Non-adherence to these timeframes may result in regulatory action being taken against the Licensee and those charged with governance. Please note that the monthly remediation progress reports and any responses to requirements should be sent to Sehliselo Dube at [s.dube@cimoney.com.ky](mailto:s.dube@cimoney.com.ky)





## CAYMAN ISLANDS MONETARY AUTHORITY

The Authority has also attached an Acknowledgement Signature Sheet for the Board of Directors to sign confirming that they have received copies of the 6 May 2019 Final Inspection Reports. The Authority asks that the Licensee kindly return a signed copy for its records no later than close of business on **20 May 2019**.

The Authority would like to extend its thanks to the management and staff of the Licensee for their co-operation and assistance throughout the inspection.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Sehlielo Dube', enclosed in a blue oval.

**Sehlielo Dube**

Chief Analyst – Insurance Division

Tel. (345) 244 - 1603

Fax. (345) 946 - 5611

Email. [s.dube@cimoney.com.ky](mailto:s.dube@cimoney.com.ky)

CC. Razaak Busari, Deputy Head – Insurance Division  
Silvanous Inyangala, Senior Analyst – Insurance Division



FINAL PRUDENTIAL INSPECTION REPORT FOR:

**SENTINEL REINSURANCE, LTD.**

Conducted on:

4 March 2019 to 11 March 2019

Issued on:

6 May 2019

**PREPARED BY:**

INSURANCE SUPERVISION DIVISION

This Prudential Inspection Report ("Report") and its contents are the property of the Cayman Islands Monetary Authority (the "Authority"). This Report and its contents may not be shared with any other person other than those persons named in the front of this report and the Licensee's external auditors without the prior written consent of the Cayman Islands Monetary Authority. Copyright 2019.

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**1. EXECUTIVE SUMMARY**

- 1.1 The Cayman Islands Monetary Authority (the "Authority") conducted an on-site inspection (the "On-site Inspection") at the offices of Sentinel Reinsurance, Ltd. (the "Licensee") from 4 March 2019 to 11 March 2019.
- 1.2 The objective of the On-site Inspection was to assess the policies and procedures, corporate governance structure and internal control environment of the Licensee.
- 1.3 Results from the On-site Inspection revealed deficiencies in:
  - (1) Corporate governance;
  - (2) Business plan;
  - (3) Outsourcing;
  - (4) Risk management framework;
  - (5) Solvency and accounting policies;
  - (6) Nature, accessibility and retention of records; and
  - (7) Internal Controls, policies and procedures.

Please see Appendix 1 of this Report for a listing of the requirements arising from the On-site Inspection.

- 1.4 As a result, the Authority has concerns regarding the oversight of the Licensee's operations. The requirements cited in this Report are to be addressed urgently in order to rectify instances where the Authority has identified deficiencies of a regulatory or statutory nature. In addition, the requirements specified in this Report are intended to strengthen the policies, procedures and internal controls of the Licensee and to ensure they are operating in accordance with the regulatory framework of the Cayman Islands. The requirements also enable the directors and management of the Licensee to focus on matters warranting corrective attention.
- 1.5 The requirements should be implemented within the time frames specified. The Authority further requires monthly update reports from the Licensee until the requirements have been fully implemented.

**2 THE AUTHORITY AND PURPOSE OF THE ON-SITE INSPECTION**

- 2.1 The On-site Inspection was conducted in accordance with the Authority's powers and duties provided under section 6(1)(b) of the *Monetary Authority Law (2018 Revision)* (the "MAL") and section 22(1)(b) of the *Insurance Law 2010* (the "Law"). The On-site Inspection was carried out in order to assess the Licensee's current financial position; corporate governance structure and operational structure; assess their strategic plan; and assess internal controls. In particular compliance with the following laws, regulations, rules and guidance notes was assessed:
  - (1) the MAL;
  - (2) the Law;
  - (3) the Proceeds of Crime Law (2018 Revision) ("POCL");
  - (4) the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, December 2017 ("the AML Guidance Notes");

- (5) the Rule on Corporate Governance ("RCG");
- (6) the Statement of Guidance on Corporate Governance ("SOG CG");
- (7) the Rule on Risk Management for Insurers ("RRM");
- (8) the Statement of Guidance on Outsourcing Regulated Entities ("SOG Outsourcing");
- (9) the Rule on Internal Controls - General for all Licensees ("RIC");
- (10) the Statement of Guidance on Internal Controls – Insurance ("SOG IC");
- (11) the Statement of Guidance on Business Continuity Management All Licensees ("SOG BCM");
- (12) the Statement of Guidance on Nature, Accessibility and Retention of Records ("SOG NARR");and
- (13) the Statement of Guidance on Asset Management & Investment Strategy For Insurance Companies ("SOG AMI").

### 3 **SCOPE STATEMENT**

- 3.1 The objectives of the On-site Inspection were to assess the Licensee's compliance with applicable laws, regulations, rules, statement of principles of the Authority as well as compliance with its own policies, procedures, corporate governance structure, and internal control environment. Analysis of these areas allowed the Authority to gain a better understanding of the Licensee's operations, from within the Cayman Islands and to determine whether it is in compliance with the laws, regulations, rules and guidance notes set out at 2.1 above.
- 3.2 The On-site Inspection was not intended to be a financial audit. The Authority relies on the work of the external auditors, with respect to the fairness of the financial statements.
- 3.3 The On-site Inspection was conducted for regulatory purposes only.

### 4 **METHOD OF ASSESSMENT**

- 4.1 The On-site Inspection was conducted by reviewing the Licensee's policies and procedures to ensure consistency with the applicable laws, regulations, regulatory rules and/or statements of guidance.
- 4.2 The On-site Inspection included a review of items provided to the Authority by the Licensee. Please see Appendix 2 for a list of the items received and reviewed.
- 4.3 Additionally, interviews were conducted with the following representatives:
  - (1) Mr. Clayton Price, General Manager at Beecher Carlson Cayman Ltd., 8 March 2019
  - (2) Mr. Thomas Adamczak, Beecher Carlson Cayman Ltd., 7 March 2019
  - (3) Mr. Damien Austin, Independent Director, Sentinel Reinsurance, Ltd., 8 March 2019
  - (4) Mr. Matthew DiOrio, Executive Director, Sentinel Reinsurance, Ltd., 8 March & 12 March 2019

5 **INSPECTION FINDINGS**

5.1 **INTRODUCTION TO FINDINGS**

5.1.1 The paragraphs below detail a number of findings. The corrective actions required for each finding are classified as requirements. The requirements and corresponding priority levels cited in this report arise where there is regulatory or statutory concern. Matters Requiring Immediate Attention ("MRIA") in the Report are structured as "High Priority" and Matters Requiring Attention ("MRA) are identified as "Medium Priority" or "Low Priority". The requirements that are set out below must be adopted and implemented by the Licensee within the time frames specified under each requirement or if no timeframe is stipulated, within three (3) months of receipt of the final prudential inspection report. The requirements are intended to assist the Licensee in strengthening its internal controls and policies and procedures. The Authority also requires monthly update reports from the Licensee until the requirements have been fully implemented. The monthly update reports should indicate the status of the requirements, the remedial actions taken by the Licensee and the estimated completion date. If the implementation of any requirements is delayed beyond the dates stipulated in this Report, it should be brought to the attention of the Authority and highlighted in the monthly report.

5.2 **CORPORATE GOVERNANCE**

5.2.1 **Organization structure**

Finding

5.2.1.1 On May 9, 2017, the Authority approved the transfer of 91% of voting rights and 0.65% of non-voting shareholding interest (together, "change in shareholding") in the Licensee from Wyvern Management Ltd. to SAS Holdings SPV Ltd. On processing the initial application for change in shareholding, the Authority objected to the Licensee's corporate structure in a letter dated November 30, 2016 on the basis that the proposed corporate structure was too complex such that it impeded the Authority's ability to effectively carry out regulatory oversight of the Company. In the same letter of November 30, 2016 referenced above, the Authority invited the Licensee to propose and apply for approval of an updated corporate structure for the Licensee that meets the criteria set out in Section 7.1.3 of the Regulatory Policy: Criteria for Approving Changes in Ownership and Control. In a letter dated February 3, 2017, Solomon Harris, acting for the Licensee, inter alia informed the Authority that the Licensee had offered to make certain structural changes to its corporate structure with the view to achieve simplicity and transparency of ownership and control of the Licensee. Among other things proposed in the letter by Solomon Harris to the Authority was the removal of five entities from the organization structure.

The entities that were to be removed from the organization structure included: Nimitz, Ltd, Patton Ltd., Elderflower Ltd., Brave Holdings Ltd. and Sentinel Re Holdings Ltd. The removal of the five entities was expected to eliminate three layers of ownership levels from the organization structure. In an email communication to Solomon Harris, Beecher Carlson and those charged with the Licensee's governance, dated July 14, 2017, the Authority reiterated the fact that the approval of the change in shareholding granted on May 9, 2017 had been based in part on the Authority's belief that the restructuring plan submitted to the Authority on February 3, 2017 would be implemented immediately. As per the organization structure provided to the Authority as part of the information requested for the purpose of the onsite inspection, the said five entities are still part of the Licensee's organization structure. During an interview with those charged with the Licensee's governance, the Authority was informed that the Licensee had decided to hold off the reorganization detailed above on the account of changes in the tax laws of United States of America whose impact on the entity could not be

ascertained immediately. The Authority considers this explanation to be untruthful as the changes in the tax laws of the United States of America took effect in December 2017 whereas the Licensee was expected to have effected the changes in its organization structure in or about May 2017. In any case, there was no communication to the Authority in relation to the Licensee's decision to retain the organization structure that was explicitly objected to by the Authority.

This gives an impression that the information provided to the Authority at the time of application for approval of the change in shareholding was either factually inaccurate or intentionally misleading or the Licensee has deliberately refused to comply with the Authority's requirement that the Licensee's organization structure be simplified. It further reflects adversely on the level of honesty, integrity, reputation and general probity of those charged with governance in executing their duties.

Conclusion:

5.2.1.2 The Licensee is in breach of Section 8 (1)(a) of the Law for failure to conduct business in accordance of the information supplied in the application for the change in shareholding of the Licensee and as approved by the Authority, and for failing to operate according to the organization structure as approved by the Authority.

In the annual returns filing for the year ended December 31, 2017, the Licensee breached Section 9 (1)(d) of the Law by misrepresenting to the Authority that the information set out in the application for the licence and as modified by subsequent changes approved by the Authority, remained correct.

In addition, the Licensee is in breach of Sections 5.6.1 (a) and (b) of the RCG for failure by those charged with governance to ensure that the Authority is promptly notified of significant matters affecting the Licensee, and for the failure to ensure that the business of the Licensee is conducted in compliance with the laws and other requirements in force in the Cayman Islands.

Further, the Licensee is in breach of Section 5.13.2 of the RCG for the failure of those charged with governance to develop, implement and maintain systems and controls to ensure promotion of appropriate, timely and effective communications with the Authority by the Licensee.

Requirement (High Priority – MRIA):

5.2.1.3 The authority requires the Licensee to immediately remove the following entities from its organizational structure: Nimitz, Ltd, Patton Ltd., Elderflower Ltd., Brave Holdings Ltd. and Sentinel Re Holdings Ltd. and provide the Authority with a written confirmation that the five entities have been removed from the organizational structure of the Licensee.

In addition, the Authority requires the Licensee to provide the Authority with a written commitment that on an ongoing basis the Licensee will communicate with the Authority in an open, honest and cooperative manner, including but not limited to promptly notifying the Authority of breaches of requirements and expected standards of behavior and material changes in a timely manner.

The above written confirmations must be presented to the Authority within **one month** from the date of the Final Inspection Report.

In addition, the Authority, pursuant to Section 23(1) of the Law, is directing that the Licensee must **cease and desist** from transacting any insurance business until such a time that the Authority has satisfied itself that the Licensee has complied with the above requirements.

Management comment

5.2.1.4 The Licensee acknowledges receipt of correspondence from the Authority of July 14, 2017 and May 9, 2017 regarding the approval of the restructuring plan, which was not completed.

On behalf of the Licensee, as of April 18, 2019, we have filed for the merger of (i) Nimitz, Ltd. with and into Montage Holdings, Ltd., (ii) Anthem, Ltd. with and into Mainspring, Ltd., and (iii) Patton, Ltd. with and into Mainspring, Ltd. Each such merger has an effective date of April 18, 2019. By operation of law, from the effective date, the separate corporate existence of each of Nimitz, Ltd., Anthem, Ltd. and Patton, Ltd. will cease and they will each have been removed from the ownership structure.

As of April 18, 2019, we have instructed KPMG to act as the voluntary liquidator of each of Elderflower Ltd. and Brave Holdings Ltd. and expect those liquidations to commence imminently. We have been advised that the liquidations will proceed in the ordinary manner and along the timelines provided in the Companies Law. As such, we are expecting the filing of the liquidator's final return with the Registrar of Companies approximately 60 days from the date hereof and, in any event, prior to June 30, 2019.

We propose removing Sentinel Re Holdings Ltd. from the structure by merging it with and into Sentinel Reinsurance Ltd. In order to effect this merger, we will require the consent of the Authority. If you are agreeable to this method of removal of Sentinel Re Holdings Ltd., we will formally approach you for such consent in a form capable of filing with the Registrar of Companies as part of the merger filing.

Upon completion of the liquidations and the proposed merger in respect of Sentinel Re Holdings Ltd., we will have removed all of the requested entities, along with Anthem, Ltd., from the ownership structure of the group.

There was certainly no intention on the part of the Licensee to mislead or be untruthful with our intentions. The honesty, integrity, reputation, and general probity of those charged with governance is of significant importance and the Licensee will ensure it conveys those qualities on any future dealings with the Authority.

The Licensee notes the breaches committed. We have removed Nimitz, Ltd., Patton, Ltd. and Anthem, Ltd. from the group as of April 18, 2019 and we expect to complete the reorganization per the steps and timeline as noted above.

The Licensee acknowledges the Authority's request and thus provide this written commitment that on an ongoing basis, the Licensee and its representatives, will communicate with the Authority in an open, honest, and cooperative manner, including but not limited to promptly notifying the Authority of breaches of requirements and expected standards of behavior and material changes in a timely manner.

Authority's response

5.2.1.5 The Authority acknowledges the Licensee's comments above and reiterates that the Licensee must provide the Authority with **monthly** updates on the progress of restructuring the Licensee's group. Regarding the merger of Sentinel Re Holdings Ltd. with and into Sentinel Reinsurance Ltd., the Authority requires that the Licensee makes a formal application for approval of the merger to the Authority **immediately**. The application will be considered based on the merit of the information provided to the Authority alongside the application. Further, pursuant to Section 23(1) of the Law, the Licensee must **cease and desist** from transacting any insurance business until such a time that the Authority has satisfied itself that the Licensee has effected the changes described above.



## 5.2.2 Inconsistent representations and inaccurate documentation

### Finding

5.2.2.1 From the review of the Licensee's Corporate Governance Framework ("CGF"), the Authority noted the following factual inaccuracies and inconsistencies:

- a) The Risk Management Framework ("RMG") and the CGF, both dated December 17, 2018, state the date of incorporation of the Licensee as January 23, 2013. In a separate and unrelated instance, the Authority also noted that the actuarial report dated July 13, 2018 ("the actuarial report") also inaccurately made reference to the date of incorporation of the Licensee as March 1, 2014. In fact, the Licensee was incorporated on December 10, 2012.
- b) In addition, the CGF states that the Licensee does not have a directors' remuneration policy on the basis that the Licensee's directors are not compensated for their services. The Authority noted that the Licensee has two independent directors. The independent directors are contractually engaged through service level agreements that stipulate among other things the directors' remuneration.
- c) The CGF states in part that "*The Board believes there is no current relationship between any Director and the Company that would be construed to prevent any Board member from being designated as independent.*" Considering that the Licensee's Board comprises two executive directors, this assertion is conceptually inaccurate. The assertion appears to confuse the concept of independence and that of objectivity. It is the Authority's position that objectivity does not equal independence. And whereas the Authority does not set forth to determine the directors' objectivity in dispensing their duties to the Licensee, the Authority acknowledges that by virtue of their positions as executive directors, such directors are precluded from designation as independent.
- d) Also, the CGF references to the Insurance (Amendment) Law, 2017 as the law that defines the statutory obligations of the Licensee. In fact, the legal regime applicable to the Licensee is enshrined in the Insurance Law, 2010 as amended.
- e) In the introductory remarks, the actuarial report asserts that the Licensee is owned by SAS Asset Recovery, Ltd. and its affiliated entities (collectively "SAS"). SAS is not part of the Licensee's organization structure.
- f) The Licensee's audited financial statements and actuarial report for the year ended December 31, 2017 state that the Licensee provides D&O coverage to SAS Asset Recovery Structure and its subsidiaries ("SAS"). As per the Licensee's business plan, the Licensee was approved to provide D&O coverage to entities within the SAS Asset Recovery structure/ Sentinel structure. According to the Authority's records, SAS and Sentinel Structures are not in the same organization structure. The following entities which are part of the Sentinel Structure have D&O policies issued by the Licensee; Montage Holdings, Ltd., Greystone IV Ltd., Kind Holdings Ltd., Brave Holdings Ltd., Loyal Holdings L.P., Anthem Ltd., Mainspring Ltd., HAL Holdings L.P., Nimitz Ltd., Patton Ltd. There is a clear contradiction between the information on the business plan and that on the audited financial statements and actuarial report for the year ended December 31, 2017.
- g) Furthermore, while describing the Licensee's coverage lines, retention limits and policy triggers, the Licensee's actuary stated in the actuarial report that on August 1, 2017, the Licensee wrote an after the event ("ATE") policy for a related entity in relation to a lawsuit that was filed against the related entity in 2009. The policy has an aggregate limit of \$91 million. The trial date for the case had been set for September 2017, but has been placed

on hold indefinitely. During an interview with those charged with the Licensee's governance, the Authority was informed that the case has never been indefinitely postponed. In fact the Authority was informed that the case had been scheduled for mentioning on September 2018, which happened, and further updates regarding the case had been provided by the Supreme Court of the State of New York in December 2018. During an interview with Crowe Horwath Cayman Ltd. (the "auditor"), the Licensee's auditor for the year ended December 31, 2017, the auditor informed the Authority that at the time of preparation of the Licensee's financial statements for the year ended December 31, 2017, the Licensee's lawyers familiar with the legal case to which the ATE policy relates gave the auditors assurance that the legal case was expected to be concluded within two years from the date of inception of the ATE policy. Those charged with governance could not establish immediately the source of the actuary's information and under what circumstances the actuary could have made such an assertion.

- h) Moreover, the schedule of all policies issued by the Licensee provided to the Authority as part of the documents requested for the purpose of the onsite inspection stated the aggregate limit for the ATE coverage as US\$100 million; the correct limit of liability for the ATE cover is US\$91 million.

The inaccuracies described above are indicative of hastily compiled documents without thorough consideration of purpose and internal consistency. Or else, those charged with the Licensee's governance have failed in their duty to review and approve the Licensee's policies and procedures to ensure quality and accuracy. It also gives the impression that those charged with the Licensee's governance accept reports produced by third parties without thoroughly reviewing such reports for accuracy and reasonableness of the basis for conclusions.

Conclusion:

5.2.2.2 The Licensee is not in compliance with Section 4.6 of the SOG NARR for failure to make reasonable effort to maintain complete and up-to-date records.

Furthermore, the Licensee is not in compliance with Section 4.7 of the SOG NARR which requires that for an entity to accept and rely on records supplied by a third party, such records must be or be capable of being reconciled with records held by the entity. The actuarial report falls short of this requirement.

In addition, the Licensee is out of compliance with Section 5.11 of the SOG CG for failure to develop, implement and maintain a remuneration policy for those charged with governance.

Requirement (High Priority – MRIA):

5.2.2.3 Within **three months** following the date of the Final Inspection Report, the Authority requires the Licensee to appropriately amend its CGF and RMF to correct the inaccuracies listed above and to ensure that it is compliant with SOG CG and the RRMI respectively.

Further, the Authority requires the Licensee, through those charged with governance, to provide the Authority with a written commitment that on an ongoing basis, they will sufficiently review reports generated by third party service providers to ensure that such reports can be reconciled to the records of the Licensee and that matters of fact contained in such reports are accurate while matters of belief are reasonable.

Also, the Authority requires the Licensee to develop, implement and maintain internal controls to ensure accurate recording of all policyholder information, including details about the policies written such as premiums and limits of liability etc.

In addition, the Authority requires the Licensee to develop, implement and maintain a remuneration policy in conformity with Section 5.11 of the SOG CG.

Copies of the internal controls policies and procedures and the remuneration policy should be provided to the Authority within **three months** following the date of the Final Inspection Report.

#### Management comments

##### 5.2.2.4

- a) The Licensee acknowledges the inaccuracies within its Risk Management Framework (RMF), its Corporate Governance Framework (CGF), and the actuarial report regarding the incorporation date of the Licensee and has made appropriate corrections to be approved and accepted at the next Board meeting.
- b) The Authority has accurately reflected that the two independent directors are not directly compensated by the Licensee for their services as they are employees of their director services firms: Mr. Jan Neveril of Compass OFM Limited and Mr. Damian Austin of International Management Services Ltd. The copies of the directorship services agreements were provided to the Authority via its web portal prior to the onsite inspection. The Licensee acknowledges that it does not have a "directors' remuneration policy and will develop, implement and maintain a remuneration policy for those charged with governance in accordance with Section 5.11 of the SOG CG.
- c) The Licensee acknowledges and agrees with the Authority's comment regarding the independence of the executive directors and is correcting the statement in the CGF.
- d) The Licensee acknowledges the inaccuracy within CGF of the legal regime and has made the appropriate correction to be approved and accepted at its next Board meeting.
- e) The Licensee acknowledges the inaccuracy within the actuarial report regarding the structure and has requested the appropriate correction within the actuary's 2018 report.
- f) The Licensee acknowledges the Authority's comment related to the confusion pertaining to the Sentinel Structure versus the SAS Structure as both are different, although affiliated under common ownership. Going forward, the Licensee will ensure it scrutinizes the descriptions related to its business within the actuarial report, audited financial statements, and any other third party reports, to ensure accuracy.
- g) The Licensee acknowledges the language describing the matter covered by the ATE policy was inaccurate and has requested the appropriate correction within the actuary's 2018 report.
- h) The Licensee acknowledges that the schedule of all policies issued by the Licensee provided to the Authority as part of the documents requested was an outdated version. The Licensee also recognizes that the Authority has previously received schedules accurately reflecting all policies issued by the Licensee as part of the current business plan provided to the Authority as part of the documents requested on January 31, 2019 as well as with the 2017 Annual Filing.

The Licensee recognizes its need to update and maintain current and accurate records. Those charged with governance as well as the insurance manager are tasked with reviewing all third party records and reports to ensure they meet the requirements of Sections 4.6 and 4.7 of the SOG NARR. As noted in 5.2.2.1 b above, the Licensee will develop a remuneration policy for the independent directors.

The Licensee will within three months of the date of the Final Inspection Report, amend its CGF and RMF to correct inaccuracies as listed in 5.2.2.1 and ensure it is compliant with the SOG CG and RRMI, respectively. The Board of Directors, being those charged with corporate governance, will provide the Authority a written commitment that on an ongoing basis they will sufficiently review reports generated by third party service providers to ensure that such

reports resonate to the records of the Licensee and that matters of fact contained in such reports are accurate while matters of belief are reasonable. The Licensee will develop, implement and maintain internal controls to ensure accurate recording of all policyholder information including details about the policies written, including premiums and limits of liability. As noted in 5.2.2.2, the Licensee will develop and maintain a remuneration policy in conformity with Section 5.11 of the SOG CG. Copies of these internal controls and procedures will be provided to the Authority within three months of the date of the Final Inspection Report.

#### Authority's response

5.2.2.5 The Authority acknowledges the Licensee's comments above and expects the Licensee to comply with the requirements stated at paragraph 5.2.2.3 within the timelines therein.

#### **5.2.3 Inadequate oversight**

##### Finding:

5.2.3.1 From the review of Board meeting minutes and other documentation provided to the Authority and interviews with those charged with the Licensee's governance during the onsite inspection, the Authority noted the following inadequacies relating to the oversight of the affairs and operations of the Licensee:

- a) On various instances, those charged with governance stated that they relied heavily on the insurance manager for various functions of the Licensee. On some instances, some of the directors did not appear to know the product lines the Company provided; in some cases some directors were oblivious of the fact that the Licensee provided P&I cover in addition to the D&O and ATE covers. Instead of standing as an independent force overseeing the activities of management with rigor and professional skepticism, the board appears to be relegated to a passive affiliate of management.
- b) The Licensee's CGF does not specify the minimum number of times the directors are expected to meet and deliberate on the affairs of the Licensee. During interviews with those charged with governance of the Licensee, the Authority was informed that the corporate culture of the group to which the Licensee belongs is such that matters are handled on an ad hoc basis and that preference is not given to structured approaches. Also, those charged with the Licensee's governance, informed the Authority that the directors were under the impression that they were required to meet semi-annually. From interviews with the insurance manager, the Authority was informed that the infrequent nature of the Licensee's Board meetings was in part due to unavailability of information relating to valuation of the Licensee's investments which is necessary for the preparation of financial records for the directors to review. Although the directors stated that they were under the impression that they should be meeting semi-annually, the Authority was provided with Board meeting minutes for only one meeting per year from 2016 to 2018.
- c) Further, for the times when they have held board meetings, those charged with governance were provided with board information packets including financial records of the Licensee and other updates on the affairs of the Licensee less than one week in advance of the meetings. Viewed in the context of infrequent intervals of the board meetings and the directors' hands-off approach to management of the Licensee's operations, it is the Authority's position that those charged with the Licensee's governance are not demonstrating that they are dedicating sufficient time to the affairs of the Licensee.

- d) As per the Authority's records, the Licensee changed its auditor in the year 2016. From the review of the Board meeting minutes, the Authority did not obtain any evidence of the Board approving the change of auditor.
- e) Interviews with those charged with governance revealed that the Licensee has not established a compliance team or alternative mechanism for compliance with a direct reporting channel to the Board. Board meeting minutes do not reveal any material discussions at board level regarding compliance.

Conclusion:

5.2.3.2 The Licensee is in breach of Section 8.1(g) on the Law for failure to maintain an effective system of governance.

The Licensee is in breach of Section 5.1.1 of the RCG for failure to establish, implement, and maintain a corporate governance framework which provides for sound and prudent management and oversight of the insurer's business.

Further, the Licensee is not in compliance with Section 5.4 (g) of the SOG CG for failure to establish an appropriately skilled compliance committee or person to report directly and regularly to the board on all compliance matters relating to the Licensee.

Requirement (High Priority – MRIA):

5.2.3.3 Within **two months** from the date of the Final Inspection Report, the Authority requires the Licensee to review and amend the CGF in accordance with the SOG CG. The Authority expects the updated CGF among other things to:

- i. clearly define and document the roles and responsibilities allocated to the Board and Management in a manner that clearly promotes an appropriate separation of the oversight function from management responsibilities.
- ii. establish a framework for the Board to oversee management and to set appropriate quantifiable performance standards for management and ensure that management is managing the affairs of the Licensee in accordance with the strategies and policies set by the Board.
- iii. clearly define the minimum frequency of Board meetings to deliberate the affairs of the Licensee including how much time in advance of the meeting should the Board members be provided the agenda and other related materials and information to be considered during the meeting.
- iv. In addition, no later than **two months** following the date of the Final Inspection Report, the Authority requires the Licensee to establish an appropriately skilled compliance committee or person to report directly and regularly to the board on all compliance matters relating to the Licensee and to ensure that there is proper documentation of discussions surrounding compliance.

Management comments

5.2.3.4

- a.) The Licensee acknowledges the Authority's comments regarding the Board's reliance on the Insurance Manager for many functions and roles. This is due to the Board, as currently constituted, is still relatively new to the Licensee. The Licensee affirms that going forward, the Board will be more actively involved with all facets of governance.
- b.) The Licensee has never established a requirement or an expectation of two board meetings per year. As the Licensee redrafts the CGF, consideration will be given to specifying the minimum number of times per year the directors are expected to meet and deliberate on the affairs of the Licensee.
- c.) As the Directors are regularly involved with the regular day to day activities of the Licensee (approving all invoices, releasing all payments, involved in all matters related to investments and insurance, signing all policies, etc.), providing board meeting materials

within one week of the board meeting is not a concern and the information contained within is certainly not surprising or new. As a result, the Licensee disagrees with the Authority's position that those charged with governance are not demonstrating that they are dedicating sufficient time to the affairs of the Licensee.

- d.) Although the Licensee's board minutes did not reflect discussion of the change in auditor for the 2016 year, the Board was fully aware and approved the change via the director's signing of the auditor engagement letter.
- e.) Recognizing the Licensee (although licensed as a Class B (iii)), is currently only insuring related parties within its Financial Group and the same Ultimate Beneficial Ownership hence the Licensee is actually operating as a Class B (i) with a common risk management program. Therefore the nature being proportional to its scope, the Licensee does not believe a "compliance team" is warranted. The Licensee does, however, accept the Authority's direction to assign the compliance responsibilities to a designated director to provide a direct channel to the Board and will make such appointment to fulfill the obligations as set forth in Section 5.4 (g) of the SOG CG.

The Licensee accepts the Authority's direction and will establish, implement, and maintain a corporate governance framework to provide for sound and prudent management and oversight of its business to comply with Section 5.1.1 of the RCG.

Within two months from the date of the Final Inspection Report, the Licensee will review and amend its CGF in accordance with the SOG and as noted in 5.2.2.2 above and incorporate the Authority's recommendations in 5.2.3.3 i), ii), iii), and iv).

#### Authority's response

5.2.3.5 The Authority reiterates its position that those charged with the Licensee's governance are required to dedicate demonstrable sufficient amounts of time to the affairs of the Licensee. In so doing, those charged with governance are expected to distinguish their responsibilities at strategic level from those at the tactical and operational levels of the Licensee. Therefore, the Authority maintains its position that within **two months** from the date of this report, the Authority requires the Licensee to review and amend the CGF as detailed in the requirement at paragraph 5.2.3.3. In addition, no later than **two months** following the date of this report, the Authority requires the Licensee to confirm the identity of the director that is responsible for the compliance matters of the Licensee. Further, on a continuous basis, the Authority requires the Licensee to demonstrate that the director responsible for the compliance matters of the Licensee is sufficiently acquainted and that he/she reports regularly on such matters to those charged with the Licensee's governance in connection therewith.

#### 5.2.4 **Non-compliance with the CGF**

##### Finding:

5.2.4.1 From the review of the Licensee's CGF and other documents provided to the Authority for the purpose of the Onsite Inspection, the Authority noted the following areas of non-compliance with the Licensee's own CGF:

- a) The Licensee's CGF states that the independence of those charged with governance will be reviewed annually by the board of directors. There was no evidence in the board meeting minutes of such review being done.
- b) The Licensee's CGF states that the Board believes it is appropriate to periodically review its own effectiveness, including its corporate governance policies and practices. The Licensee's CGF contemplates such a review to occur on an annual basis. From the interviews with those charged with the Licensee's governance and the review of Board meeting minutes, there was no evidence of such reviews being done.
- c) As per the Licensee's CGF, the Board reviews the Licensee's strategic plan and financial performance annually. From the review of the Board meeting minutes, there was no

evidence of the Board discussing the financial performance of the Licensee for the years 2016, 2017 and 2018.

Conclusion:

5.2.4.2 The Licensee is in breach of Section 5.1.1 of the RCG for failure to implement its own established corporate governance framework to enable those charged with governance to provide sound and prudent oversight of the Licensee's business. Furthermore, the Licensee is in breach of Section 5.6.2 of the RCG for failure to undertake self-assessments of its performance and governance practices to enable the Board to remedy any deficiencies identified.

Requirement (High Priority – MRIA):

5.2.4.3 Within **one month** from the date of the Final Inspection report, the Board should develop, implement and maintain guidelines for assessing its own effectiveness with regards achieving the Licensee's objectives. The guidelines should be documented and a copy provided to the Authority. The Board should provide the Authority with a written commitment that going forward, the Board will adhere to the guidelines described in this paragraph.

Management response

5.2.4.4

- a.) Although the minutes did not reflect a discussion regarding independence, a discussion did take place to draft a conflict of interest policy and circulate for approval. The policy was finalized and approved via unanimous written consent in January 2019.
- b.) The Licensee will implement a process as part of its corporate governance policies and procedures for its board members to conduct a self-assessment periodically (i.e. annually at its AGM) to review board members' effectiveness.
- c.) Although the Board has reviewed the Licensee's strategic plan and financial performance at its board meetings, there was no documentation in the minutes. The Licensee will ensure that these discussions are held annually as well as ensure the discussions are documented within the board meeting minutes.

To be in compliance with Sections 5.1.1 and 5.6.2 of the RCG, the Licensee will ensure the sound and prudent oversight of its business and the Board will undertake self-assessments of its performance and governance practices on an annual basis.

Within one month's time of receipt of the Final Inspection Report, the Board will develop, implement and maintain guidelines for assessing its own effectiveness and documentation. A copy of the document will be provided to the Authority accompanied by a written commitment that going forward the Board will adhere to these guidelines.

Authority's response

5.2.4.5 The Authority has noted the comments by management and requires the Licensee to comply with the requirements and within the timelines stated in paragraph 5.2.4.3.

5.2.5 **Succession planning**

Finding:

5.2.5.1 The Licensee has a board comprising of four directors. Of the four directors, only one director has direct insurance business expertise and experience. However, the Authority observed that the Licensee's CGF does not only lack a criteria for appointment of directors and balancing of skills and experience on the Board, but it also does not entail a succession plan for those currently serving as directors. Should the single director with insurance industry experience be incapacitated, the Board will not have sufficient expertise to adequately provide oversight of management and the Licensee's affairs.

Conclusion

5.2.5.2 The Licensee is not in compliance with Section 5.3.1 of the SOG CG for failure to clearly define the composition and structure of its Board. In addition the Licensee is in breach of Section 5.4.1 (f) of the Rule on CG for failure to establish a succession plan for directors.

Requirement (Medium Priority – MRA):

5.2.5.3 The Licensee is required to review and approve a CGF that is in conformity with the Rule on CG and the SOG CG. A copy of the revised CGF should be provided to the Authority within **three months** following the date of the Final Inspection Report.

Management response

5.2.5.4 The Licensee's board is composed of four directors, however the Licensee has two, not one, directors with direct insurance business expertise and experience, Jan Neveril and Damien Austin, rendering the statement inaccurate that Licensee would be left with insufficient expertise to adequately provide oversight of management and the licensee's affairs. Furthermore, the Licensee has contracted with the firms Compass OFM and International Management Services to provide the directors with direct insurance business expertise and experience, so should one of the directors with insurance industry experience become incapacitated, it will be incumbent upon Compass OFM or International Management Services to replace the incapacitated director.

As described in 5.2.5.1 above, the Licensee does not fully believe it is out of compliance with Section 5.3.1 of the SOG CG. The Licensee does, however, acknowledge that a more clearly defined successorship plan should be adopted to comply with section 5.4.1 (f) of the Rule on CG.

The Licensee acknowledges the authority's requirement to review and approve a CGF that is in conformity with the Rule on CG and the SOG CG and to be provided to the Authority within three months following the date of the Final Inspection Report.

Authority's response

5.2.5.5 The assertion that Mr. Jan Neveril has direct insurance experience does not appear accurate on two fronts; first, the fact that the Licensee has only one director with direct insurance experience was confirmed during interviews with those charged with the Licensee's governance. It would therefore appear contradictory for management to state otherwise. And second, Mr. Jan Neveril's curriculum vitae filed with the Authority as part of the application for approval as director of the licensee does not bring out his direct experience in the insurance industry. The Authority therefore reiterates its position that the Licensee must comply with the requirement and within the timelines stated in paragraph 5.2.5.3.

5.2.6 **Inadequate documentation of Board meeting minutes**

Finding:

5.2.6.1 The meeting minutes by those charged with governance are inadequately documented. The details of the matters discussed, and resolutions reached are scanty. For example, the meeting minutes by the members of the Licensee's Advisory Committee for the meetings conducted in 2017 and 2018 do not contain any details beyond a list of what appears to be the items that were on the agenda.

In addition, the Authority noted that unanimous written resolutions of the board since October 27, 2014 were all approved on August 4, 2016. It is not clear why board resolutions for multiple successive periods remained unapproved for so long.

In some instances, the board meeting minutes referenced attachments which were said to form part of the meeting minutes, but such attachments were not included with the meeting minutes.



Conclusion

5.2.6.2 The Licensee is in breach of Section 5.8.4 of the RCG for failure to fully record, accurately and clearly all material decisions and considerations taken during board meetings. Furthermore, the Licensee is in breach of Section 5.8.5 (a) of the RCG for failure to properly maintain records of meetings including the agenda items and circulated documents.

Requirement (High Priority – MRIA):

5.2.6.3 Within **one month** of the date of the Final Inspection Report, the Licensee is required to provide written confirmation that going forward meeting minutes will be documented in detail capturing material decisions and considerations taken during board meetings. In addition, meeting agendas and pertinent documentation will be saved with the corresponding meeting minutes.

Management response

5.2.6.4 Although the Licensee agrees that the Board meeting discussion could be better documented within the board meeting minutes, the minutes are far from considered "scanty." However, the Licensee's Advisory Committee minutes are agreed to be "scanty." The Licensee acknowledges that future Advisory Committee meetings will have more detailed minutes accurately depicting the nature of the discussions.

The Licensee acknowledges that the unanimous written resolutions from October 27, 2014 through August 4, 2016 were reviewed, discussed and approved at a meeting of the directors on August 4, 2016. However, given the nature of the resolutions being "Unanimous", the resolutions were hardly unapproved. In fact, given the resolutions were executed by all then current board members, there is no need for further approval as the unanimous written resolutions stand on their own.

The Licensee acknowledges that certain minutes may not have included referenced attachments as part of the final minutes and with the plan to update and maintain current and accurate records, will ensure this deficiencies is not repeated.

The Licensee acknowledges the Authority's conclusion that all decisions and considerations discussed in the board meetings could be better documented. However, the Licensee disagrees that it is in breach of Section 5.8.5(a) of the RCG for failure to properly maintain records of meetings such as the agenda items and circulated documents. Attached as Exhibit 1, please find copies of emails providing both notice and agenda of meeting as well as board meeting materials.

The Licensee acknowledges the Authority's request and thus provide this written confirmation that going forward, meeting minutes will be documented in detail capturing material decisions and considerations taken during board meetings. In addition, meeting agendas and pertinent documentation will be saved with the corresponding meeting minutes.

Authority's response

5.2.6.5 When documents are provided to the Authority, it is the Authority's position that such documents constitute the entirety of the documents. Where reference is made to other documents, it is the duty of the Licensee to make such other referenced document available. In the course of the inspection, the Licensee did not make the item noted in paragraph 5.2.6.3 available alongside the minutes of the Board. The Authority reiterates its position this amounts to failure to maintain proper records of meetings which is a breach of Section 5.8.5 (a) of the RCG.

## 5.2.7 **Conflicts of interest policy**

### Finding

5.2.7.1 Through the review of the documents provided for the purpose of the on-site inspection, there were no documented policies and procedures in relation to the declaration of conflicts of interest by the board or senior management. Furthermore, on review of the board meeting minutes, the Authority did not reveal evidence of the declaration of conflicts of interest by board members during board meetings. Interviews held with those charged with governance revealed that there was no conflicts of interest policy in place and that there had been no declaration of conflicts of interest by board members during board meeting.

### Conclusion

5.2.7.2 The Licensee is in breach of Section 5.10 of the RCF for failure to establish, document and implement a conflict of interest policy.

### Requirement (High Priority – MRIA):

5.2.7.3 Within **one month** from the date of the Final Inspection Report, the Licensee is required establish and document a conflicts of interest policy. The Authority should be provided with a copy of the Licensee’s conflicts of interest policy.

### Management response

5.2.7.4 The Licensee acknowledges that the board meeting minutes did not reveal evidence of the declaration of conflicts of interest by directors during the meeting, however the discussion was made to draft a formal conflicts of interest policy which was finalized and approved via unanimous written consent in January 2019. Formal conflicts of interest declarations were disclosed by each director after approval of the policy.

Furthermore, on behalf of the Authority, Ms. S. Dube acknowledged receipt of the Licensee’s Conflict of Interest Policy and Conflict of Interest Statements that had been signed by the four Board members as provided by Mr. Tom Adamczak on March 5th, 2019.

### Authority’s response

5.2.7.5 Upon review of the documents provided by Mr. Tom Adamczak by e-mail dated March 4, 2019, the Authority found that the document labeled as a “Conflict of Interest Policy” was in fact a bank conflicts of interest declaration template and the second attachment was a signed copy of the same. There was no conflicts of interest policy included in the e-mail. Therefore, the statement that Ms. Sehliselo Dube was provided with a conflicts of interest policy at any time during the course of the inspection is factually inaccurate. It is imperative that the Licensee distinguishes between a conflicts of interest statement/declaration and a conflicts of interest policy. The Authority reiterates its position that the Licensee is expected to comply with the requirements as detailed in paragraph 5.2.7.4 within the timelines stipulated therein.

## 5.3 **BUSINESS PLAN**

### 5.3.1 **Insurance program**

#### Finding

5.3.1.1 As per the updated business plan provided to the Authority for the purpose of the onsite inspection, the Licensee was approved to write directors and officers liability (“D&O”), Industry Loss Warranty Catastrophe Excess of Loss (“ILW”), and ATE coverages. Currently, the Licensee issues D&O and ATE policies only. The Authority noted the following violations of the Licensee’s business plan regarding the Licensee’s insurance programs:

- a) At the point of approval of the current ATE cover, the Licensee represented to the Authority that it initially expected to write up to 10 policies per year at an average premium of \$500,000 per policy. As per the Audited financial statements for year ended December 31, 2017 (“the financial statements”), the Licensee has only written one ATE policy at a premium of US\$59 million. Those charged with governance could not explain how a product line that was initially intended to generate circa US\$5 million per year from ten policies ended up generating US\$59 million from only one policy. As per the financial

statements, the ATE cover accounts for US\$59 million of the US\$60 million written; being 98% of the business transacted that year. This gives the impression that deliberately misleading information in terms of the number and magnitude of expected transactions relating to the ATE coverage was provided to the Authority at the time of approval; only for the single transaction in that line of business to be ballooned a hundred and eighteen (118) times after approval.

- b) Based on the D&O policies that were provided to the Authority as part of the on-site inspection process, the Authority noted that part one of the "D&O" policies covers Professional Indemnity and Fidelity (collectively "P&I") and part two of the "D&O" policies covers D&O. This is inconsistent with both the information presented to the Authority at licensing and the Licensee's approved business plan. During interviews with the Authority, the Licensee's management, stated that they were not aware that P&I coverage was included in the D&O policies. The Authority considers the nature of the risk involved in P&I cover to be significantly different from that involved in the D&O and ATE covers and as such P&I covers are a separate line of business.

During separate interviews, those charged with governance of the Licensee revealed that the Licensee relies heavily on the insurance manager including drafting of the policy wording and reviewing issued policies. On the other hand, from the interviews with the insurance manager, the Authority was informed that those charged with governance were responsible for underwriting including policy wording. The Authority could therefore not establish who was responsible for the underwriting process of the Licensee; an indicator of a significant lapse in the Licensee's internal controls and processes.

- c) Also the D&O policy does not name the insurer, the ATE policy makes reference to a claims notification address as shown on the policy schedule; there is no such address indicated on the policy schedule. All the endorsements on the ATE policy are undated and the date they were executed is not indicated. The insuring clause on the D&O policies under item (iv) of the P&I cover references to proposal forms. In an e-mail correspondence dated March 15, 2019, the Insurance Manager confirmed that no such proposal forms are completed by the policyholders.

### Conclusion

5.3.1.2 The Licensee is in breach of Section 8 (1) (a) of the Law for failure to carry out insurance business only in accordance with the information given in its approved license application and business plan and for amending its business plan without prior written approval of the Authority.

### Requirement (High Priority – MRIA):

5.3.1.3 Within **two weeks** from the date of the Final Inspection Report, the Licensee is required to apply to the Authority for amendment to the Licensee's business plan to reflect the actual lines of business underwritten by the Licensee; including expected number of ATE policies per year together with the attendant average premiums per ATE policy. The approval of the business plan is at the Authority's discretion.

Within **two weeks** from the date of the Final Inspection Report, the Authority requires those charged with governance of the Licensee to provide the Authority with a detailed description of the economic substance and business purpose of the ATE cover. The Description must among other things include the circumstances leading to the amendment of the cover's premium from US\$25 million to US\$68.3 million and then to US\$59.3 million while maintaining the same coverage limit.

The Authority requires that the Licensee provides the Authority with a written confirmation that the Licensee has developed and implemented and has instituted procedures to maintain a system of proper controls to ensure sufficient periodic review of the Licensee's business plan to ensure that at all times the business plan reflects the true operations of the Licensee as

approved by the Authority. A copy of the internal control policies and procedures must be provided to the Authority within **two months** from the date of the Final Onsite Inspection.

Management response

5.3.1.4

- a.) The Licensee acknowledges the current and only ATE policy issued to date is much larger than the initial estimate of what was to be written. The business plan approved by the Authority on March 21, 2016, stated the initial expectation was to write up to ten policies per year at an average premium of \$500,000 per policy, however, and this is the key, "if more cases are presented which the company wishes to pursue, it expects to do so, so long as all regulatory and internal capital and surplus and investment policy requirements are met – capital will be contributed if necessary." The approval from the Authority was not presumed to be contingent upon never exceeding the estimates in the business plan. All requirements including capital contributions, minimum cash considerations, and investment compliance, have all been met. The fact is that the current ATE policy with the higher premium was never contemplated from the beginning, but rather presented itself as a business opportunity after the fact. The initial intent was true and to say that the Authority was deliberately misled is incorrect.
- b.) The Licensee acknowledges that the D&O policies have always contained both D&O as well as PI coverage. Furthermore it is customary, especially with Lloyds, for D&O policies to also have PI as well. This was not meant to be a circumvention, simply an oversight. The Licensee acknowledges the oversight in its original filing with the Authority seeking approval on D&O coverage and sincerely apologized for this oversight.
- c.) The Licensee acknowledges these deficiencies within the policies and is currently updating our policy forms to ensure accurate information is included on future issued policies. Beecher Carlson Cayman, Ltd will conduct either a Lexis/Nexis check/World-Check or Google and document in the Licensee's files representing that such check has been conducted on the proposed insureds prior to issuance of future policies

The Licensee acknowledges the need to file an amended business plan for its current insurance business which will be done within two weeks from the date of the Final Inspection Report. The Licensee will not carry out any future transactions requiring the approval of the Authority without first seeking approval from the Authority.

The Licensee acknowledges the need to file an amended business plan for its current insurance business which will be done within two weeks from the date of the Final Inspection Report.

Those charged with governance of the Licensee will provide to the Authority within two weeks of the date of the Final Inspection Report, a detailed description of the economic substance and business purpose of the ATE coverage, which shall include the circumstances leading to the ATE policy endorsements.

The Licensee will, within two months from date of the Final Inspection Report, confirm they have developed, implemented, and instituted procedures to maintain a system of proper controls to ensure sufficient review of the Licensee's business plan to ensure at all times the business plan reflects the true operations as approved by the Authority.

Authority's response

- 5.3.1.5 The Authority has noted management's response and expects the Licensee to meet the requirements as detailed in paragraph 5.3.1.3 within the timeline specified therein.

### 5.3.2 Investment policy

#### Finding

5.3.2.1 The Licensee's investment policy limits the investment in alternative investments to a range of from 0% to 50% of the total portfolio. It also limits investment in equity securities to a range of from 0% to 50% of the total portfolio. As per the audited financial statements as at December 31, 2017, the Licensee held approximately US\$98 million in investments and cash and cash equivalents. Of the US\$98 million, approximately US\$69 million was invested in alternative investment; accounting for circa 70% of the Licensee's total portfolio. This is a deviation from the Licensee's own investment portfolio without obtaining approval from the Authority. In addition, the investment policy states that the Licensee can maintain 0% to 100% of its investments in the form of cash and cash equivalents. It further states that cash and equivalents must be maintained at a minimum of US\$100,000. This is a contradiction because by maintaining a minimum of US\$100,000 in cash and cash equivalents, then it is not possible keep a range of 0% to 100%. The above matters raise concerns as to whether those charged with governance ever reviewed this investment policy statement and the Licensee's investment portfolio to satisfy themselves that management was operating within the expected confines.

#### Conclusion:

5.3.2.2 The Licensee is in breach of Section 8 (1)(a) of the Law for failure to carry on business in accordance to its approved business plan as it relates to the level of investments held as alternative investments.

#### Requirement (High Priority – MRIA):

5.3.2.3 The Licensee is required to immediately rebalance its investment portfolio such that it is compliant with the Licensee's investment policy approved by the Authority. Within **one month** from the date of the Final Inspection Report, the Licensee is required to provide the Authority with a written confirmation together with supporting documentation that the Licensee's investment portfolio has been rebalanced to comply with the Authority's approved investment policy. Furthermore, the Authority requires the Licensee to commit in writing that on an ongoing basis the Licensee will monitor its investment portfolio on a sufficiently regular basis to ensure the portfolio is compliant with its investment policy as approved by the Authority.

#### Management comment

5.3.2.4 The Licensee agrees with the Authority that according to its investment policy, the Licensee may invest in alternative investments to a range of from 0% to 50% of the total portfolio as well as investing in equity securities to a range of from 0% to 50% of the total portfolio. However, the Licensee respectfully disagrees with the Authority's statement that it has deviated from its own investment policy, as approved by the Authority on October 4, 2018. As stated in section 3.3 of the Authority-approved investment policy, CLOs are classified within the category of "fixed income." As such, the approximately \$31 million of CLOs are not included with alternative and equity investments for purposes of calculating investment policy compliance. The investment policy, as part of the business plan filed with the Authority, had previously been approved by the Authority on November 15, 2013 and also included CLO's classified within the "fixed income" category. The fact is that there now appears to be a differing view on classification of CLOs, and if the Authority would prefer the Licensee to use the Authority's current definitions for investment classification, the Licensee will comply. If any rebalancing of the portfolio is required, it would occur within a reasonable period of time so as to not force the sale of investments with an adverse result on their return.

Furthermore, the licensee agrees with the Authority that according to its investment policy, cash must be maintained at a minimum of \$100,000 while keeping within a range of from 0% to 100% of the total portfolio. This is not viewed by the Licensee as being contradictory as it is possible with investible assets of \$100 million and cash of the minimum required \$100,000 to be at .1%, which when rounded is essentially 0% of the portfolio.

The investment policy was discussed and revised by the Board as evidenced by the unanimous written consent signed by all directors on September 8, 2018 and attached here as Exhibit 2.

For reasons outlined above in 5.3.2.1, the Licensee respectfully disagrees with the Authority's position that the Licensee is in breach of Section 8 (1)(a) of the Law for failure to carry on business in accordance to its approved business plan as it relates to the level of investments held as alternative investments, as the Licensee is operating in accordance with the investment policy as approved by the Authority on October 4, 2018.

Furthermore as a matter of conservatism, the Licensee included within its investment policy, a provision that cash will be maintained to a level at least equal to the carried loss reserves. This ultra-conservative measure was done for the purpose of being able to invest excess assets as the Licensee sees fit under the rest of the investment policy. Considering the loss reserve provision, the investment policy is very conservative and should not be over-looked!

#### Authority's response

5.3.2.5 As per the Insurance (Capital And Solvency)(Classes B, C And D Insurers) Regulations (2018 Revision) CLO's would be classified as "Class 8" being an investment in "Other Loans". On the other hand, ordinary debt instruments would be classified higher. To lump together CLOs with other fixed income instruments is definitely misleading in terms of the level of risk involved. The Authority has not changed its philosophy regarding the classification of such instruments. By all intent and purposes, CLOs are alternative investments. In addition, regarding management's comment on the proportion of cash and cash equivalents as a percentage of investments, the Authority does not make its assessments based on hypotheticals. The Authority expects that documents that guide the Licensee's decisions should be written precisely and such documents should not lend themselves to ambiguous language capable of multiple interpretations. The Authority therefore expects the Licensee to comply with the requirements as stated in paragraph 5.3.2.3.

## 5.4 **OUTSOURCING**

### 5.4.1 **Weaknesses in the outsourcing arrangements**

#### Finding:

5.4.1.1 From the review of the documents provided to the Authority for the purpose of the Onsite Inspection, the Authority noted the following areas of weakness regarding the Licensee's outsourced arrangements:

- a) The Licensee has outsourced management and other key services to third parties. The CGF requires those charged with the Licensee's governance to maintain oversight of the functions carried out by each service provider at all times. Those charged with governance are required to conduct regular (not less than annual) reviews of the services provided by each such service provider. Review of documents provided for the purpose of the onsite inspection and interviews held with the Licensee did not reveal evidence of such reviews being conducted.
- b) The Licensee does not have in place a sufficient outsourcing policy commensurate to nature, scale and complexity of its operations. Some aspects of the Licensee's outsourcing are referenced in the CGF. In the instances where reference is made to the outsourcing aspects of the Licensee in the CGF, the details are mere duplications of the Authority's *Statement of Guidance: Outsourcing Regulated Entities* as opposed to a thought-out policy tailored to the peculiar circumstances of the Licensee.
- c) The Licensee has no contingency plan in place to guard against unexpected instances of the parties to which it has outsourced significant functions being unable to deliver.

- d) On December 8, 2017, the Licensee engaged Valuation Research Corporation ("VRC") to undertake valuation of certain investments held by the Licensee. The Authority was not provided with any evidence of due diligence performed on VRC prior to engagement. During interviews with those charged with the Licensee's governance, the Authority was informed that the engagement was based on a referral from the Insurance Manager. Further, the Insurance Manager informed the Authority that they had only known VRC through referral from the Licensee's auditor.

#### Conclusion

5.4.1.2 Considering the above listed weaknesses regarding the Licensee's outsourced arrangements, the Authority has determined that:

- a) The Licensee is not in compliance with Section 7.1 c), d), e) of the SOG Outsourcing for failure to:
- i. establish and document an adequate risk management framework, systems, policies and processes to assess, control and monitor its material outsourcing arrangements;
  - ii. establish clear responsibility for monitoring the conduct of the service providers for outsourced material functions or activities and for the delivery of respective reports to the Board;
  - iii. establish feasible contingency plans in the event that the outsourcing fails.
- b) Furthermore, the Licensee is not in compliance with Section 8.1 of SOG Outsourcing for failure to:
- i. perform, document and maintain records of due diligence assessment of VCR prior to outsourcing valuation services them. Such assessment is essential to determining that the service provider is fit and proper and can effectively perform the outsourced function, and that high ethical and professional standards are upheld by the third party.
  - ii. regularly, at least annually, perform, document and maintain records of due diligence assessment of all third party service providers.

#### Requirement (Medium Priority – MRIA):

5.4.1.3 The Authority requires the Licensee to update its outsourcing policy in accordance with the SOG Outsourcing. The revised policy should address but not limited to the following; contingency plans in the event outsourcing fails and responsibility for and frequency of monitoring effectiveness of the outsourced service providers. A copy of the revised outsourcing policy should be submitted to the Authority within **three months** from the date of the Final Inspection Report.

Also, the Authority requires the Licensee to immediately conduct an assessment of the outsourced service providers of material outsourced functions and provide a copy of the assessment results to the Authority within **three months** from the date of the Final Inspection Report.

#### Management comments

5.4.1.4 The Licensee acknowledges the Authority's comments related to its outsourcing policy and with respect of the Licensee's due diligence related to outsourcing arrangements. The Licensee is currently working to expeditiously resolve to satisfy the Authority's recommendations and requests.

- a.) The Licensee will update its Outsourcing policy in accordance with the SOG outsourcing to include contingency plans in the event the outsourcing fails and responsibility for the frequency of monitoring of the outsourced service providers. Within three months of the date of the Final Inspection Report, a copy of the report will be provided to the Authority. The Licensee will also immediately undertake an assessment of its outsourced service providers of material outsourced functions and provide a copy of the assessment results to the Authority within three months of the date of the Final Inspection Report.

- b.) The Licensee acknowledges that an Outsourcing policy will be developed and implemented to comply with Sections 7.1 c), d), e) and 8.1 of the SOG Outsourcing and as recommended by the authority in 5.4.1.2 a) i, ii and iii, and b) i and ii.

As noted above, the Licensee will provide a copy of the policy to the Authority within three months of the Final Inspection Report. The Licensee will also conduct an assessment of its outsourced providers of material outsourced functions and provide a copy of the assessment results to the Authority within three months from the Final Inspection Report.

Authority's response

5.4.1.5 The Authority has noted management's comments and expects the Licensee to comply with the requirements stated at paragraph 5.4.1.3 within the timelines therein.

**5.5 RISK MANAGEMENT FRAMEWORK ("RMF")**

**5.5.1 Deficiencies within the Licensee's RMF**

Finding:

5.5.1.1 A review of the Licensee's RMF revealed the following deficiencies:

i. Credit Risk

The RMF identifies Credit Risk as a significant risk that the Company is exposed to due to its investment in Collateralized Loan Obligations. The RMF indicates that the impact of the credit risk due to potential subsequent impairment of the value of the investments is mitigated by the significant interest and distributions received each quarter. Furthermore, the RMF states that Licensee is well-capitalized such that credit loss-related impairments would not be expected to have a significant impact on the Licensee. The Authority does not consider this to address the risk.

ii. Insurance Risk

The Licensee's RMF identifies the primary components of underwriting risk as: (a) the risk of underpricing (premiums) and (b) the risk of adverse development of losses from expected ultimate losses (including the risk of under-reserving). The RMF states that the Licensee mitigates the risk of underpricing of premiums, through annual reviews of the Licensee's historical loss experience in development of any given year's premium pricing and then periodically, validates the Licensee's premium pricing against the cost of placing such coverage in the traditional insurance market. The Authority noted that the Licensee has not reported any claims from inception to date. The Authority therefore questions how it possible to use historical loss development as a basis for premium pricing when there is no loss history.

iii. Investment risk

The RMF identifies investment risk as one of the significant risks to which the Licensee is exposed. It further asserts that the investment risk is sufficiently mitigated through compliance with the investment policy. It is the Authority's position that compliance with the Licensee's investment policy does not sufficiently mitigate and control the Licensee's investment risk. As detailed in the preceding paragraphs the Licensee does not comply with its own investment policy and in the event it were to comply, the investment policy allows the Company to invest 100% in one class of assets which will still expose the Company to concentration risk.

The RMF states that on a regular basis, the Licensee will monitor the Portfolio's compliance with the Investment Policy and will ensure the asset allocations are appropriate given liquidity needs, investment returns and market conditions. In addition, as per the RMF, the Licensee is expected to periodically produce and distribute to the board of directors a report detailing the trading activity, investment performance, risk attributes and



compliance of the investment portfolio with the investment policy. The Authority was not provided with any evidence of such reviews being conducted. In addition, the Authority noted that a minimum interval for reviews to be conducted has not been established. From the interviews with those charged with governance, the directors did not appear to understand the Authority's expectations regarding the characteristics of the various classes of investments. For instance, those charged with governance appeared misguided that CLOs were fixed income investments instead of alternative investments.

iv. Compliance risk

The RMF also identifies compliance risk as considered a material risk attendant to the Licensee. The RMF further proposes that this risk is mitigated and controlled by compliance with the Licensee's various guidelines, procedures, and controls and continuous monitoring by the Board and Management as well as communications with the Authority. The Authority does not consider this as adequate mitigation against compliance risk. As a matter of fact, on multiple instances the Authority has found the Licensee not to have policies and procedures in place and where they exist, the Authority has found such policies and procedures wanting.

v. Operational risk

The Licensee's RMF states that most of the Licensee's operational matters are outsourced and that the Board and Management have discussed the procedures and controls in place for the key service providers with those services providers; the Board is satisfied that the operational controls in place with such service providers are adequate to mitigate the limited operational risk inherent in the Licensee's captive insurance business. The Authority was not provided with any evidence of review of the effectiveness of the parties to which various functions have been outsourced by those charged with governance.

The above matters cast significant doubt as to whether those charged with governance really understand the nature of the risks attendant to the Licensee and whether they have capacity to develop, implement and maintain a system of internal controls sufficient to mitigate such risk.

Conclusion

5.5.1.2 The Licensee is in breach of Section 5.1.1 of the RRM for failure to establish and implement a RMF that adequately identifies and properly measures, assesses and monitors sources of risks that could have a material impact on the Licensee's operations.

The Licensee is in breach of Section 5.1.3 c) of the RRM for failure to establish a RMF that clearly identifies managerial responsibilities and controls, designed to ensure that the policies and procedures established for risk management are adhered to at all times.

The Licensee is in breach of section 5.3.4 of the RRM for failure to include within its established RMF a "feedback loop" to enable the board and senior management to take appropriate action in response to the changes in the risk profile of the Licensee. The meeting minutes provided by the Licensee for the purposes of the inspection did not reveal any discussions surrounding the risk management framework and how decisions made by the board and senior management are implemented and how their effects monitored to determine whether they are in fact appropriate.

The Licensee is not compliant with Section 7.3 of the SOG AMIS for failure to produce and maintain investment activity reports. Furthermore, the Licensee is not in compliance with its own established RMF as it relates to the distribution of reports detailing trading activity, investment performance, risk attributes and compliance of the investment portfolio with the investment policy, to its board.

Requirement (Medium Priority – MRA):

5.5.1.3 Within **three months** from the date of the Final Inspection report, the Licensee is required to review and approve its RMF in conformity with the RRMF. Among the salient features details of such a RMF should include but not limited to measures that adequately mitigate the identified risks attendant to the Licensee having regard to the nature, scale and complexity of the Licensee's operations. A copy of the updated RMF should be submitted to the Authority within three months from the date of the Final Inspection Report.

The Licensee is required to undertake a comprehensive review of its RMF and provide the Authority with the results of such review within **three months** from the date of the Final Inspection Report.

Within **three months** from the date of the Final Inspection Report, those charged with corporate governance should provide the Authority with a written commitment that on an on-going basis they will conduct periodic reviews of the Licensee's RMF to ensure that it adequately contemplates the risks faced by the Licensee at all times and such review to be documented and records maintained.

Management comments

5.5.1.4 The Licensee acknowledges the Authority's comments regarding the RMF and is working to revise the RMF to be in accordance with the requirements.

The Licensee, however, respectfully disagrees with the comments regarding investment risk and pertaining to the Licensee being out of compliance with its own investment policy.

The Licensee acknowledges the Authority's comments regarding its breach of the RRM and is working to revise the RMF to be in accordance with the requirements.

The Licensee also acknowledges the Authority's comment regarding compliance with Section 7.3 of the SOG AMIS. Going forward, the Licensee notes that Mr. DiOrio will be tasked with producing and disseminating investment activity reports for the board to review and discuss periodically, but not less than at least annually.

Authority's response

5.5.1.5 The Authority has noted the management's comments. However the Authority maintains its position that compliance with the Licensee's investment policy does not sufficiently mitigate and control the Licensee's investment risk. As detailed in the preceding paragraphs, the Licensee does not comply with its own investment policy and in the event it were to comply, the investment policy allows the Company to invest 100% in one class of assets which will still expose the Company to concentration risk. The Authority therefore expects the Licensee to comply with the requirements stated at paragraph 5.5.1.3 within the timelines stated therein.

**5.6 SOLVENCY AND ACCOUNTING POLICIES**

**5.6.1 Investments valuation and accounting policies**

Finding

5.6.1.1 Upon review of the audited financial statements of the Licensee as at December 31, 2017, the Authority noted the following:

- a) Cumulatively, as per the audited financial statements for the year ended December 31, 2017, approximately US\$41 million in investments could not be valued. The Licensee's equity as at December 31, 2017 is approximately US\$39.4 million. A review of the management letter issued by the Licensee's auditors indicated that the Auditors could find sufficient appropriate evidence as to independently confirm the value of the investments. Those charged with governance could not immediately explain why necessary information could not be accessed by the Licensee's auditors to enable them independently confirm

the valuation of the investments. In the event that the unvalued investments were to be declared worthless, the Licensee would be rendered insolvent.

- b) The ATE policy has the inception date of August 1, 2017 but has no definite expiration date. During an interview with those charged with governance, the Authority was informed that the policy covers two years. The director's assertion is not consistent with the definition of the "period of insurance" as stated under Section 9.18 of the ATE policy as follows:

*Period of insurance means the period which commences from the date shown on the schedule and ceases upon the occurrence of any of the following events:*

- *the legal action is concluded by a final judgment or order of the court (or any appellate court to which the court's judgment in the legal action is appealed) which also deals finally with the amount of any costs payable by the parties to the legal action;*
- *the legal action is settled on terms which also deals with the amount of any costs payable by the parties to the legal action;*
- *the legal action is transferred outside of the territorial limits;*
- *the retainer between the insured and the appointed representative ceases; or*
- *this policy is terminated or cancelled in accordance with the terms and conditions of the policy.*

It is clear from the ATE policy wording that the director's assertion that the ATE policy is for a two year period is contradictory. In addition, as per the accounting policies detailed in the audited financial statements for the year ended December 31, 2017, premiums written are recognized as earned on a pro-rata basis over the term of the policies. Based on the ATE policy definition of "period of insurance" it is the Authority's position that it is not possible to allocate policy premiums over an undefined policy period.

The above matters cast significant doubt on the existence and valuation of the above mentioned investments. In addition, it casts doubt on the reasonableness of the Licensee in determining the method of accounting for the premiums relating to the ATE coverage.

#### Conclusion

5.6.1.2 The Licensee is in breach of Section 9(1) of the Law for filing with the Authority, as part of the Licensee's annual returns, financial statements that do not conform to an internationally recognized accounting framework; impeding the Authority's ability to assess the Licensee's financial soundness.

#### Requirement (Medium Priority – MRA):

5.6.1.3 The Authority requires that Licensee to undertake valuation of all its investments and maintain record of the valuation including but not limited to the method of valuation, inputs in the valuation model and the assumptions made in the valuation process. The valuation of the investments must be verified by the Licensee's auditor as part of the audit process for the financial statements for year ended December 31, 2018 and the resultant financial statements filed with the Authority in a timely manner. In addition, the financial statements for the period ended December 31, 2018 must reflect an amended and reasonable accounting policy for the premiums relating to the ATE cover.

Management comments

5.6.1.4

- a.) The Licensee acknowledges that the audit opinion for its 2017 audited financial statements was qualified for a number of valuations that could not be verified by the auditors. The majority of those securities were valued at zero by the Licensee on account of them being worthless, so there is zero risk of the securities being overvalued. There was only one investment for which the auditors could obtain evidence to value the security differently than the Licensee had. Contrary to the statement made by the Authority, this security was actually valued approximately \$6.7 million higher by the auditors. The Licensee disagreed with the approach of the auditors to value the security higher and chose to have the additional valuation qualification in the audit report rather than post an adjustment management felt to be misleading of the value. Regardless, if the adjustment were posted, the surplus position would be even higher than the amount reported in the audited financial statements with only \$6 million in unvalued investments, further illustrating the point held to by the Licensee that it is far from insolvent. The approach taken by the Licensee with its financial reporting, was to be more conservative so as to not overstate income or surplus.
- b) The ATE policy is intentionally silent regarding a definitive expiration date. This is due to the fact that the risk period is unknown for this type of coverage. As opposed to a liability policy that is renewed on an annual basis, the ATE policy covers the unfavorable outcome of a specific litigated matter. As there is no way to know when the outcome will be reached (whether by judgement, settlement, etc.), we researched accounting issues and consulted with accounting experts in order to determine an appropriate accounting period for earning the premium. In the end the estimated risk period (determined to be 24 months), based on the information known at the inception of the policy, was determined to be the appropriate accounting period over which to earn the premium. The difference between "policy period" and "accounting period", should not be confused, for the policy period will continue until such a time as noted in the policy language. So the response by those charged with governance was correct, it was merely describing the accounting period.

If anything, the financial statements need to be modified to reflect an accounting policy that describes that the ATE premium would be earned on a pro-rata basis over originally determined risk period. The current statement in the 2017 audited financial statements is however correct, as it relates to the D&O policies.

The Licensee respectfully disagrees with the Authority's statement that it has issued financial statements that do not conform to an internationally recognized accounting framework as the financial statements are prepared in accordance with accounting principles generally accepted in the United States of America.

The Licensee does not agree with the Authority that all of the Licensee's assets need to undertake a valuation, especially as this would cause a delay in the financial audit being completed in a timely manner, but also given the difficulty with which to value certain assets. However, the Licensee is willing to work with the Authority to agree on specific investments, which are in excess of its loss reserves, that the Authority requires the Licensee to obtain valuation on.

Authority's response

5.6.1.5 From the telephone interview with Mr. Shane L. Newell of Valuation Research Corporation, the Authority was informed that the Licensee's investments that could not be valued were unlikely to recover any value. This is contradictory to the management's assertion above.

Further, the Authority disagrees with management's assertion that the Authority maybe confusing the concept of policy period and that of accounting period. The Authority reiterates its position that in estimating the accounting period over which to allocate premiums from the ATE coverage, the Licensee has to be reasonable. The reasonability test is generally based on

how closely the determined accounting period approximates the policy period. With an indefinite policy period, the reasonableness of the accounting period cannot be assessed.

The authority therefore maintains its position that the Licensee must comply with the requirements stated at paragraph 5.6.1.3.

## 5.7 **POLICIES AND PROCEDURES MANUALS**

### 5.7.1 **No documented policies and procedures manuals**

#### Finding:

5.7.1.1 Interviews with the Licensee's management revealed that the Licensee has not implemented and maintained operating policies and procedures manuals commensurate to the nature, scale and complexity of its operations. The Authority could therefore not establish the Licensee's internal processes and procedures for carrying out significant functions including but not limited to underwriting, claims process etc. In the absence of such operating policies and procedure manuals, it is not possible to effectively segregate incompatible functions and assign roles and responsibilities within the Licensee. As an example, the Authority could not establish who is responsible for the completion of proposal forms even though the D&O insurance policies written by the Licensee made reference to such proposal forms. Interviews with those charged with governance revealed that the Licensee's directors are under the impression that the proposal forms are the responsibility of management; management informed the Authority that there are no proposal forms completed as part of the underwriting process.

#### Conclusion:

5.7.1.2 The Licensee is in breach of Section 4.1, 4.2, and 4.3 of the RIC for failing to establish, implement and maintain internal controls, strategies, policies and procedures appropriate for the nature, scale and complexity of its operations.

#### Requirement (Low Priority – MRA):

5.7.1.3 The Licensee is required to establish written operating policies and procedures commensurate to the nature, scale and complexity of its operations. The policies and procedures adopted by the Licensee should be submitted to the Authority **within six months** from the date of the Final Inspection Report.

#### Management comments

5.7.1.4 The Licensee agrees to establish written operating policies and procedures commensurate to the nature, scale and complexity of its operations to comply with Sections 4.1, 4.2 and 4.3 of the RIC. A copy will be submitted to the Authority within six months from the date of the Final Inspection Report.

The Licensee agrees to establish written operating policies and procedures commensurate to the nature, scale and complexity of its operations to comply with Sections 4.1, 4.2 and 4.3 of the RIC. A copy will be submitted to the Authority within six months from the date of the Final Inspection Report.

The Licensee agrees to establish written operating policies and procedures commensurate to the nature, scale and complexity of its operations to comply with Sections 4.1, 4.2 and 4.3 of the RIC. A copy will be submitted to the Authority within six months from the date of the Final Inspection Report.

The Licensee agrees to establish written operating policies and procedures commensurate to the nature, scale and complexity of its operations to comply with Sections 4.1, 4.2 and 4.3 of the RIC. A copy will be submitted to the Authority within six months from the date of the Final Inspection Report.

#### Authority's response

The Authority has noted the management's comments and expects the Licensee to comply with the requirements stated at paragraph 5.7.1.3.

6 **CONCLUSION**

- 6.1 As detailed in the preceding paragraphs, 14 MRIs and 7 MRAs were generated from the On-site Inspection's findings, based on the review of the documentation provided and the interviews conducted.
  
- 6.2 The requirements as noted in this Report are instances where the Authority has identified deficiencies of a regulatory or statutory nature and may result in a formal directive being issued by the Authority for corrective actions. The requirements as noted are intended to assist management in its efforts to strengthen the policies, procedures and internal controls of the Licensee and to ensure it is operating in accordance with the regulatory framework of the Cayman Islands. In the event they are not rectified within the specified timeframe, it may result in the Authority taking enforcement action.

7 **Appendix 1 –Table of Requirements**

7.1 The below Table sets out the requirements from the On-Site Inspection.

<b>Sentinel Reinsurance, Ltd.</b>	
The Authority requires that:	
1.	The Licensee immediately removes the following entities from its organizational structure: Nimitz, Ltd., Patton Ltd., Elderflower Ltd., Brave Holdings Ltd. and Sentinel Re Holdings Ltd. In addition, the Authority requires that the Licensee provides the Authority with written commitment that on an ongoing basis the Licensee will communicate the Authority in an open, honest and cooperative manner, including but not limited to promptly notifying the Authority of breaches of requirements and expected standards of behavior and material changes in a timely manner. The written confirmation that the above requirements have been met must be presented to the Authority <b>within one month</b> from the date of the Final Inspection Report. The Authority directs, pursuant to Section 23(1) of the Law, that the Licensee must <b>cease and desist</b> from transacting any insurance business until such a time that the Authority has satisfied itself that the Licensee has complied with the above requirements.
2.	Within <b>three months</b> following the date of the Final Inspection Report the Licensee appropriately amends its CGF and RMF to correct the inaccuracies on these documents and to ensure that it is compliant with SOG CG and the RRMI respectively.
3.	Within <b>three months</b> following the date of the Final Inspection Report the Licensee provides the Authority with a written commitment that on an ongoing basis, the Licensee will sufficiently review reports generated by third party service providers to ensure that such reports can be reconciled to the records of the Licensee and that matters of fact contained in such reports are accurate while matters of belief are reasonable.
4.	The Licensee develops, implements and maintains internal controls to ensure accurate recording of all policyholder information, including details about the policies written such as premiums and limits of liability etc. and that copies of the internal controls policies and procedures be provided to the Authority <b>within three months</b> following the date of the Final Inspection Report.
5.	The Licensee develops, implements and maintains a remuneration policy in conformity with Section 5.11 of the SOG CG and that copies of the remuneration policy be provided to the Authority within three months following the date of the Final Inspection Report.
6.	<b>Within two months</b> from the date of the Final Inspection Report, the Licensee reviews and amends its CGF in accordance with the SOG CG. The Authority expects the updated CGF among other things to: <ul style="list-style-type: none"> <li>i. clearly define and document the roles and responsibilities allocated to the Board and Management in manner that clearly promotes an appropriate separation of the oversight function from management responsibilities.</li> <li>ii. establish a framework for the Board to oversee management and to set appropriate quantifiable performance standards for management and ensure that management is managing the affairs of the Licensee in accordance with the strategies and policies set by the Board.</li> <li>iii. clearly define the minimum frequency of Board meetings to deliberate the affairs of</li> </ul>

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the Licensee including how much time in advance of the meeting should the Board members be provided the agenda and other related materials and information to be considered during the meeting.

- iv. In addition, no later than **two months** following the date of the Final Inspection Report, the Authority requires the Licensee to establish an appropriately skilled compliance committee or person to report directly and regularly to the board on all compliance matters relating to the Licensee and to ensure that there is proper documentation of discussions surrounding compliance.
7. **Within one month** from the date of the Final Inspection report, the Board develops implements and maintains guidelines for assessing its own effectiveness with regards achieving the Licensee's objectives. The guidelines should be documented and a copy provided to the Authority. In addition the Board should provide the Authority with a written commitment that going forward; the Board will adhere to the guidelines described in this paragraph.
8. The Licensee reviews and approves a CGF that is in conformity with the Rule on CG and the SOG CG. A copy of the revised CGF should be provided to the Authority **within three months** following the date of the Final Inspection report.
9. **Within one month** of the date of the Final Inspection Report, the Licensee provides written confirmation that going forward meeting minutes will be documented in detail capturing material decisions and considerations taken during board meetings and that meeting agendas and pertinent documentation will be saved with the corresponding meeting minutes.
10. **Within one month** from the date of the Final Inspection Report, the Licensee establishes and documents a conflicts of interest policy and a copy of the Licensee's conflicts of interest policy provided to the Authority.
11. Within two weeks from the date of the Final Inspection Report, the Licensee applies to the Authority for approval, at the Authority's discretion, for amendment to the Licensee's business plan to reflect the actual lines of business underwritten by the Licensee; including expected number of ATE policies per year together with the attendant average premiums per ATE policy.
12. **Within two weeks** from the date of the Final Inspection Report, the Authority requires those charged with governance of the Licensee to provide the Authority with a detailed description of the economic substance and business purpose of the ATE cover. The Description must among other things include the circumstances leading to the amendment of the cover's premium from US\$25 million to US\$68.3 million and then to US\$59.3 million while maintaining the same coverage limit.
13. **Within two months** the date of the Final Onsite Inspection the Licensee provides the Authority with a written confirmation that the Licensee has developed and implemented and has instituted procedures to maintain a system of proper controls to ensure sufficient periodic review of the Licensee's business plan and to ensure that at all times the business plan reflects the true operations of the Licensee as approved by the Authority; and to provide a copy of the internal control policies and procedures to the Authority.
14. The Licensee immediately rebalances its investment portfolio such that it is compliant with the Licensee's investment policy approved by the Authority. **Within one month** from the date of the Final Inspection Report, the Licensee is required to provide the



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Authority with a written confirmation together with supporting documentation that the Licensee's investment portfolio has been rebalanced to comply with the Authority's approved investment policy. Furthermore, the Authority requires the Licensee to commit in writing that on an ongoing basis the Licensee will monitor its investment portfolio on a sufficiently regular basis to ensure the portfolio is compliant with its investment policy as approved by the Authority.

15. The Licensee to update its outsourcing policy in accordance with the SOG Outsourcing. The revised policy should address but not limited to the following; contingency plans in the event outsourcing fails and responsibility for and frequency of monitoring effectiveness of the outsourced service providers. A copy of the revised outsourcing policy should be submitted to the Authority within **three months** from the date of the Final Inspection Report.
16. The Licensee is required to immediately conduct an assessment of the outsourced service providers of material outsourced functions and provide a copy of the assessment results to the Authority within **three months** from the date of the Final Inspection Report.
17. **Within three months** from the date of the Final Inspection Report, the Licensee reviews and approves its RMF in conformity with the RRMF. Among the salient features details of such a RMF should include but not limited to measures that adequately mitigate the identified risks attendant to the Licensee having regard to the nature, scale and complexity of the Licensee's operations. A copy of the updated RMF should be submitted to the Authority **within three months** from the date of the Final Inspection Report.
18. The Licensee undertakes a comprehensive review of its RMF and provides the Authority with the results of such review **within three months** from the date of the Final Inspection Report.
19. **Within three months** from the date of the Final Inspection Report, those charged with corporate governance provide the Authority with a written commitment that on an on-going basis they will conduct periodic reviews of the Licensee's RMF to ensure that it adequately contemplates the risks faced by the Licensee at all times and such review to be documented and records maintained.
20. The Licensee undertakes valuation of all its investments and maintains records of the valuation including but not limited to the method of valuation, inputs in the valuation model and the assumptions made in the valuation process. The valuation of the investments must be verified by the Licensee's auditor as part of the audit process for the financial statements for year ended December 31, 2018 and the resultant financial statements filed with the Authority in a timely manner. In addition, the financial statements for the period ended December 31, 2018 must reflect an amended and reasonable accounting policy for the premiums relating to the ATE cover.
21. The Licensee establishes written operating policies and procedures commensurate to the nature, scale and complexity of its operations. The policies and procedures adopted by the Licensee should be submitted to the Authority **within six months** from the date of the Final Inspection Report.

8 **Appendix 2 Summary of Documents Reviewed**

8.1 The below Table sets out the items of the Licensee reviewed as part of the On-site Inspection:

<b>Sentinel Reinsurance, Ltd.</b>	
<b>Document Title</b>	<b>Date Received</b>
1. Notarized Organization Chart	31 January 2019
2. Register of Director and Officers	31 January 2019
3. Unaudited Financial Statements	31 January 2019
4. Consolidated Trial Balance	31 January 2019
5. Inception-to-Date Policy Summary	31 January 2019
6. Updated Business Plan	31 January 2019
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10. Board of Director Minutes 151110	31 January 2019
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46. ATE Policy document 2017-2019	4 March 2019
47. Revised Organizational Chart	27 February 2019
48. SARS Log	11 March 2019



FINAL AML/CFT AND SANCTIONS INSPECTION REPORT FOR:

**SENTINEL REINSURANCE, LTD.**

Conducted on:

4 March 2019 to 11 March 2019

Issued on:

6 May 2019

**PREPARED BY:**

INSURANCE SUPERVISION DIVISION

This AML/CFT and Sanctions Inspection Report ("Report") and its contents are the property of the Cayman Islands Monetary Authority (the "Authority"). This Report and its contents may not be shared with any other person other than those persons named in the front of this report and the Licensee's external auditors without the prior written consent of the Cayman Islands Monetary Authority. Copyright 2019.

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## **1. EXECUTIVE SUMMARY**

- 1.1 The Cayman Islands Monetary Authority (the "Authority") conducted an on-site inspection (the "On-site Inspection") at the offices of Sentinel Reinsurance, Ltd. (the "Licensee") from 4 March 2019 to 11 March 2019.
- 1.2 The objective of the On-site Inspection was to assess the AML/CFT and Sanctions internal control systems, policies and procedures and any other applicable AML/CFT and Sanctions risk areas.
- 1.3 Results from the On-site Inspection revealed deficiencies in:
  - (1) On-going monitoring of clients;
  - (2) Risk rating of clients; and
  - (3) Establishment of source of funds for premium payments.

Please see the Appendix 1 of this Report for a listing of the requirements arising from the On-site Inspection.

- 1.4 The requirements cited in this Report are to be addressed urgently in order to rectify instances where the Authority has identified deficiencies of a regulatory or statutory nature. In addition, the requirements specified in this Report are intended to strengthen the policies, procedures and internal controls of the Licensee and to ensure they are operating in accordance with the regulatory framework of the Cayman Islands. The requirements also enable the directors and management of the Licensee to focus on matters warranting corrective attention.
- 1.5 The requirements should be implemented within the time frames specified. The Authority further requires monthly update reports from the Licensee until the requirements have been fully implemented.

## **2 THE AUTHORITY AND PURPOSE OF THE ON-SITE INSPECTION**

- 2.1 The On-site Inspection was conducted in accordance with the Authority's powers and duties provided under section 6(1)(b) of the Monetary Authority Law (2018 Revision) (the "MAL") and section 22(1)(b) of *the Insurance Law 2010 (the "Law")*. The On-site Inspection was carried out in order to assess the Licensee's AML/CFT and Sanctions internal control systems, policies and procedures and any other applicable AML/CFT and Sanctions risk areas. In particular compliance with the following laws, regulations, rules and guidance notes was assessed:
  - (1) the MAL;
  - (2) the Law;
  - (3) the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands, December 2017 (the "AML Guidance Notes"); and
  - (4) the Proceeds of Crime Law, (2019 Revision) ("POCL")

3 **SCOPE STATEMENT**

- 3.1 The objectives of the On-site Inspection were to assess the Licensee's AML/CFT and Sanctions internal control systems, policies and procedures and any other applicable AML/CFT and Sanctions risk areas. Analysis of these areas allowed the Authority to gain a better understanding of the Licensee's operations, from within the Cayman Islands and to determine whether it is in compliance with the laws, regulations, rules and guidance notes set out at 2.1 above.
- 3.2 The On-site Inspection was not intended to be a financial audit. The Authority relies on the work of the external auditors, with respect to the fairness of the financial statements.
- 3.3 The On-site Inspection was conducted for regulatory purposes only.

4 **METHOD OF ASSESSMENT**

- 4.1 The On-site Inspection was conducted by reviewing the Licensee's policies and procedures to ensure consistency with the applicable laws, regulations, regulatory rules and/or statements of guidance.
- 4.2 The On-site Inspection included a review of items provided to the Authority by the Licensee. Please see Appendix 2 for a list of the items received and reviewed.
- 4.3 Additionally, interviews were conducted with the following representatives:
- (1) Mr. Clayton Price, General Manager at Beecher Carlson Cayman Ltd., 8 March 2019
  - (2) Mr. Thomas Adamczak, Beecher Carlson Cayman Ltd., 7 March 2019
  - (3) Mr. Damien Austin, Independent Director, Sentinel Reinsurance, Ltd., 8 March 2019
  - (4) Mr. Matthew DiOrio, Executive Director, Sentinel Reinsurance, Ltd., 8 March and 12 March 2019

5 **INSPECTION FINDINGS**

5.1 **INTRODUCTION TO FINDINGS**

- 5.1.1 The paragraphs below detail a number of findings. The corrective actions required for each finding are classified as requirements. The requirements and corresponding priority levels cited in this report arise where there is regulatory or statutory concern. Matters Requiring Immediate Attention ("MRIA") in the Report are structured as "High Priority" and Matters Requiring Attention ("MRA") are identified as "Medium Priority" or "Low Priority". The requirements that are set out below must be adopted and implemented by the Licensee within the time frames specified under each requirement or if no timeframe is stipulated, within three (3) months of receipt of the final inspection report. The requirements are intended to assist the Licensee in strengthening its internal controls and policies and procedures. The Authority also requires monthly update report from the Licensee until the requirements have been fully implemented. The monthly update report should indicate the status of the requirements, the remedial actions taken by the Licensee and the estimated completion date. If the implementation of any requirements is delayed beyond the dates stipulated in this Report, it should be brought to the attention of the Authority and highlighted in the monthly report.



## 5.2 **AML FINDINGS**

### 5.2.1 **Source of Funds**

#### Finding

5.2.1.1 On August 1, 2017, the Licensee entered into an insurance contract to provide ATE cover to Highland CDO Opportunity Master Fund, LP, Highland CDO Holding Company and Highland Special Opportunities Holding Company; all affiliates of SAS Asset Recovery. The premium for the coverage was initially set at US\$25 million with an indemnity limit of US\$100 million. Subsequently an undated endorsement was effected adjusting the premium for the coverage to US\$68.3 million consisting of US\$11 million in cash, US\$1.8 million in miscellaneous receivables and US\$55.5 million in investment portfolio. Further, subsequently, another undated endorsement was effected reducing the premium for the coverage and the indemnity limit to US\$59.3 million and US\$91 million respectively. US\$9 million was set aside as prepaid fund to cover risk mitigation costs including but limited to legal defense costs for a then ongoing case. Those charged with governance could not explain why the premium was adjusted from US\$25 million to US\$68.3 million without a commensurate adjustment to the indemnity limit provided or why the initial pricing for the policy was subsequently deemed not sufficient.

The US\$68.3 million stemming from the transaction described above increased the Licensee's investment portfolio from US\$12 million as December 31, 2016 to US\$86 million as at December 31, 2017. Included in the US\$86 million is approximately US\$37 million being funds invested in Highland Multi-Strategy Credit Fund, Ltd., a hedge fund affiliated to Highland Capital Management, L.P. The US\$37 million is part of the US\$55.5 million transferred to the Licensee in part fulfilment of the premium payment for the ATE cover. The audit opinion on the financial statements for the year ended December 31, 2017, was qualified partly on the basis that the investment in Highland Multi-Strategy Credit Fund, Ltd. could not be valued. Those charged with the Licensee's governance, could not explain the basis upon which the investments had been valued on or about August 1, 2017 for the purpose of premium settlement. Also, they could not explain the reason why the information that was relied on to value the investments for the purpose of premium settlement could not be readily provided to the auditors upon request considering that the policy inception and the financial statements audit were only a few months apart.

In addition, those charged with governance could not explain where the ownership in the US\$68.3 million in investments and cash vested prior to being transferred to the Licensee for settlement of the ATE coverage premium.

The above matters cast significant doubt on the economic substance and business purpose of the transactions relating to the ATE coverage.

#### Conclusion:

5.2.1.2 The Licensee is not compliant with Section 1(c)(3) of the AML Guidance Notes for failure to demonstrate understanding of the source of funds and for failure to explain the ownership of the premium prior to being transferred to the Licensee for settlement of the ATE coverage premium.

Requirement (High Priority – MRIA):

5.2.1.3 **Within two weeks** from the date of the Final Inspection Report, the Authority requires the Licensee to provide the Authority with a written explanation of the ownership of the US\$68.3 million used in settlement of the ATE policy premiums prior to being transferred to the Licensee. The explanation should be supported by evidence of ownership of the investments and cash prior to transfer to the Licensee and the basis of valuation at the point of transferring the assets to the Licensee.

Management comments

5.2.1.4 At the time the ATE policy was drafted, premium had been established at \$25 million based on a pricing study conducted by the Licensee’s actuary. The insureds did not have sufficient cash to pay the \$25 million in premium without having to dispose of certain investments held. It was determined that as consideration for the premium receivable, the insureds would transfer all assets: cash, securities, and miscellaneous receivables, to the Licensee. The market value of the assets transferred was unknown at the time of transfer, but could potentially exceed the \$25 million of receivable owed on the ATE policy. The decision to accept the assets as full payment of premium receivable was largely due to the nature of the securities. As there exists a limited market for the securities, the need for a quick sale would be considered a distressed sale and would likely result in a below market return for the securities. From the Licensee’s standpoint, they could in turn, hold the securities and find a more optimal time to dispose of the securities, such that the proceeds would more accurately reflect a market return. As the value of the total assets received was unknown, the policy premium was finalized at \$25 million. The Licensee, on the recommendation of the Insurance Manager, Beecher Carlson, would engage an independent investment valuation expert should the ATE policy be executed and the investments be transferred.

Once the assets were transferred to the Licensee, Valuation Research Corp (VRC) was engaged to value the assets. The CLOs were determined to be assets with value that neither generated its own Net Asset Value (NAV), nor were traded on a stock exchange. The remaining transferred assets were determined to be worthless and would be carried at \$0 on the Licensee’s books. Once valuations were completed, the final value of the transferred assets was determined to be approximately \$68.3 million, which was higher than the original \$25 million ATE premium. Financial statements had initially been prepared assuming and transferred asset value in excess or below the original \$25 million of premium would be recorded as a gain or loss on the transaction in the Licensee’s books. It was at the recommendation of the auditors that the proper way to record the transfer was to record the premium for the full value of the transferred assets and correspondingly amend the policy.

Premium was being earned over the appropriate risk period with IBNR being accrued over the same period toward the actuarially determined ultimate loss pick. During testing of the loss activity, the auditors raised the issue of needing to record the full actuarially determined ultimate loss up front, instead of over the appropriate risk period. This was due to the fact that there had been payments made on the ATE policy related to defense of the litigated matter, and under GAAP, payment of claims expenses triggered the “loss event”, requiring the full loss to be recognized. During discussions with the client, it came into light that the ATE coverage is to provide protection against an unfavorable outcome of a particular litigated matter and any payments made prior to that outcome (settlement, decision, etc.), are simply risk-mitigation costs (costs incurred to prevent a loss event). As

a result, the estimated risk mitigation costs were removed from the indemnity limit and recorded separately as Pre-funded Risk Mitigation costs. The policy was subsequently amended to reflect this adjustment.

Initial pricing was not deemed to be insufficient though any of these transactions. Discussions were held with the actuary to determine if this posed any problems from the standpoint of risk transfer and it was determined that there still was a sufficient chance of a full limit loss.

### **Highland Multi-Strategy Credit Fund, Ltd**

Highland Multi-Strategy Credit Fund, Ltd. (the Fund) is a security held by the Licensee, a portion of which was transferred in as premium on the ATE policy. As part of the inter-workings of the Fund, once the Licensee took ownership of the Fund shares, the expense rate tied to the shares went from one of no fees assessed, one that charges fees. In the process, the shares were essentially revalued at \$1000 per share NAV with the corresponding change in value increasing the number shares held. This resulted in no net change to the Licensee's holding value. What it did do though, was cause the holdings to have a lower NAV than all other shares within the Fund. This caused a disconnect as the auditors, in their valuation testing utilizing the audited financial statements of the Fund, calculated a holding to the Licensee of an amount approximately \$6.7 million higher than the Licensee's actual holding. As the Licensee believes its holding is correct (while conservatively lower than the auditor's calculation), chose not to post an adjustment to artificially inflate the value. The result was part of the qualification to the auditor's report for valuation.

As explained above, the basis for the valuation of the transferred assets on or about August 1, 2017 is due to valuations obtained from VRC for investments that neither generate their own NAV, nor are traded on a stock exchange. As the Fund generates its own NAV, it was not one the securities valued by VRC.

Furthermore, the information relied on by the Licensee to value the holdings of the securities transferred to the Licensee as settlement of premium receivable, including the Fund, were provided to the auditors. The auditors were unable to rely on the information as their calculation utilizing the audited financial statements of the Fund yielded a materially different result, albeit a much larger result.

### **Prior ownership of transferred assets**

The entire portfolio of assets, consisting of cash, securities, and miscellaneous receivables transferred to the Licensee in lieu of cash for payment of premiums, were previously owned by Highland CDO Opportunity Master Fund, L.P.; Highland CDO Opportunity Fund, Ltd.; Highland CDO Holdings Company; Highland Special Opportunities Holding Company; Highland Financial Corp.; and Highland Financial Partners, L.P. (the ATE Insureds).

We will provide a formal response regarding the ownership of the assets prior to transfer to the Licensee as well as provide documents supporting that ownership.

The Licensee acknowledges that it had not undertaken documenting the ownership of premiums prior to being transferred to the Licensee for settlement of the ATE program. Furthermore the Licensee does not agree that it is out of compliance with Section 1(c)(3) of the AML Guidance Notes as the policyholder is within a common Financial Group as the insured is controlled by an individual who is also an ultimate beneficial owner of the

Licensee. Furthermore it should be noted that the premium was for a policy that is not Long Term business being general insurance. Additionally, the insurance manager has reviewed the payment transaction with a view of whether any triggers exist for a SARs report and has filed that "no suspicious activities have occurred" with the insurance manager's AMLRO (ref item 28, page 10 of the Draft AML/CFT and Sanctions Inspection Report). However, for the embracement of best practices, the insurance manager of the Licensee in future will conduct reviews such as Lexis/Nexis and maintain such documentation of these reviews on the policyholders on file.

The Licensee will within two weeks from the date of the Final Inspection Report, provide to the Authority, a written explanation of the ownership of the \$68.3 million used as settlement of the ATE policy premiums which will be supported by evidence of ownership of the cash and investments prior to transfer to the Licensee, as well as the basis of the valuation at the point of transfer to the Licensee.

#### Authority's response

5.2.1.4 On April 4, 2019, the Authority held a telephone interview with Mr. Jason D. Stubbs of Risk International; the Licensee's actuary. During the interview, Mr. Stubbs informed the Authority that he was not involved in the determination of premium pricing for the Licensee to any extent at all, but rather his role was limited to technical reserving. He added that his involvement arose after premium decisions had been finalized by the Licensee. The Authority notes with concern that the management's assertion that the ATE policy premium of US\$25 million was established based on a pricing study conducted by the Licensee's actuary contradicts the actuary's position.

As per management's assertion above, apart from CLOs, all other assets transferred to the Licensee in settlement of the ATE policy premium were worthless. From the audited financial statements as at December 31, 2017, the investments balance carried forward as at December 31, 2016 was approximately US\$13 million of which approximately US\$6.5 million were CLOs. As at December 31, 2017, the CLOs were valued at a fair market value of approximately US\$31 million being the opening balance plus those transferred to the Licensee during the year. From the statement of cash flows for the year ended December 31, 2017, there were no significant disposals of investments during the year 2017. It therefore follows that the total value of the investments transferred to the Licensee in settlement of the premiums for the ATE policy was approximately US\$24.5 million being the approximately US\$31 million in CLOs as at the December 31, 2017 less the approximately US\$6.5 million opening balance. It therefore puzzles the Authority, what accounts for the difference between the approximately US\$13 million of investments at the end of the year 2016 and the approximately US\$86.6 million worth of investments carried at the end of the year 2017 if only approximately US\$24.5 million worth of investments was transferred to the Licensee during the year?

In addition, in any case, to amend an insurance policy to artificially inflate the premium amount to equal the value of the investments transferred to the Licensee without any justifiable business purpose and economic substance is at the very least questionable.

Further, the Authority maintains its position that within **two weeks** from the date of the this report, the Authority requires the Licensee to provide the Authority with a written explanation of the ownership of the US\$68.3 million used in settlement of the ATE policy premiums prior to being transferred to the Licensee. The explanation should be supported

by evidence of ownership of the investments and cash prior to transfer to the Licensee and the basis of valuation at the point of transferring the assets to the Licensee.

### 5.2.2 **Due Diligence/ KYC**

#### Findings:

5.2.2.1 From interviews with management and those charged with the Licensee's governance, the Authority was informed that the Licensee relies on the AML Compliance procedures of the Insurance Manager, Beecher Carlson Cayman Ltd. The Insurance manager's AML Compliance Manual states that an assessment of clients for the risk of money laundering will be performed before a client relationship is established and on an ongoing basis throughout the relationship. The Insurance Manager's AML Compliance Manual further states that all clients are assigned a risk rating and the frequency of the review of the clients' risk rating is dependent on the risk rating assigned with normal risk clients reviewed every two years and higher risk clients annually. From the interviews conducted with the Insurance Manager, the Authority was informed that no such risk rating reviews have been performed by the Insurance Manager on the Licensee's policyholders and that no on-going monitoring of the Licensee's policyholders is ever done.

In addition, whereas the Insurance Manager's AML Compliance Manual asserts that the Insurance Manager uses a risk-based approach, the Authority was not provided with any documented risk assessment process applied during client acceptance. All policyholders are classified as "Low Risk" without any documented rationale.

#### Conclusion

5.2.2.2 The Licensee is not in compliance with Section 3(A)(1) of the AML Guidance Notes for failure to develop/adopt, implement and maintain a commensurate risk-based approach to client onboarding and ongoing monitoring sufficient to ensure that AML/CFT risk are identified and adequately mitigated.

#### Requirement (High Priority – MRIA)

5.2.2.3 **Within three months** from the date of the Final Inspection Report, the Authority requires the Licensee to develop, implement and establish procedures to maintain a risk-based approach to AML/CFT risk rating of the Licensee's policyholders and ongoing monitoring thereafter. A copy of the AML/CFT risk rating framework should be provided to Authority **within three months** from the date of the Final Inspection Report. All the Licensee's policyholders must be risk-rated, and the results of the risk-rating process provided to the Authority **within six months** from the date of the Final Inspection Report.

#### Management response

5.2.2.4 The Licensee acknowledges the Authority's finding and will update the RMF to include a rational for the risk based rating process.

The Licensee acknowledges that it is not in compliance with Section 3(A)(1) of the AML Guidance Notes and will take appropriate action to ensure that it is.

The Licensee will within three months from issuance of the Final Inspection Report develop, implement, and establish, as part of its RMF, a scoring process as a risk based approach to AML/CFT risk rating of the Licensee's policyholders. A copy of the AML/CFT risk rating framework will be provided to the Authority within three months from the date of the Final Inspection Report and all policyholders will be risk rated, documenting the results of the risk rating process, which will be provided to the Authority within six months from the date of the Final Inspection Report. As noted above, Licensee wishes for the Authority to take note that all current policyholders are within the same Financial Group as the Licensee with the same Ultimate Beneficial Owner as the Licensee.

#### Authority's response

5.2.2.5 The Authority has noted management's response and expects the Licensee to comply with the requirements stated at paragraph 5.2.2.3 within the timelines stated therein.

6 **CONCLUSION**

- 6.1 As detailed in the preceding paragraphs, two (2) MRIs were generated from the On-site Inspection’s findings, based on the review of the documentation provided and the interviews conducted.
- 6.2 The requirements as noted in this Report are instances where the Authority has identified deficiencies of a regulatory or statutory nature and may result in a formal directive being issued by the Authority for corrective actions. The requirements as noted are intended to assist management in its efforts to strengthen the policies, procedures and internal controls of the Licensee and to ensure it is operating in accordance with the regulatory framework of the Cayman Islands. In the event they are not rectified within the specified timeframe, it may result in the Authority taking enforcement action.

7 **Appendix 1 –Table of Requirements**

- 7.1 The below Table sets out the requirements from the On-Site Inspection.

Name of Licensee
The Authority requires that: <ol style="list-style-type: none"><li>1. <b>Within two weeks</b> from the date of the Final Inspection Report, the Licensee provides the Authority with a written explanation of the ownership of the US\$68.3 million used in settlement of the ATE policy premiums prior to being transferred to the Licensee. The explanation should be supported by evidence of ownership of the investments and cash prior to transfer to the Licensee and the basis of valuation at the point of transferring the assets to the Licensee.</li><li>2. <b>Within three months</b> from the date of the Final Inspection Report, the Authority requires the Licensee to develop, implement and establish procedures to maintain a risk-based approach to AML/CFT risk rating of the Licensee’s policyholders and ongoing monitoring thereafter. A copy of the AML/CFT risk rating framework should be provided to Authority <b>within three months</b> from the date of the Final Inspection Report. All the Licensee’s policyholders must be risk-rated, and the results of the risk-rating process provided to the Authority <b>within six months</b> from the date of the Final Inspection Report.</li></ol>

8 **Appendix 2 –Summary of Documents Reviewed**

8.1 The below Table sets out the items of the Licensee reviewed as part of the On-site Inspection:

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26. ATE Policy document 2017-2019	4 March 2019
27. Revised Organizational Chart	27 February 2019
28. SARS Log	11 March 2019



**CAYMAN ISLANDS MONETARY AUTHORITY  
INSURANCE SUPERVISION DIVISION**

**Acknowledgement Signature Sheet**

We, the undersigned members of the Board of Sentinel Reinsurance, Ltd. acknowledge that we have received copies of the May 2019 Final Inspection Reports which resulted from the inspection conducted in or during 4 March 2019 to 11 March 2019 and that we have been given an opportunity to ask questions related to the inspection:

Name	Position on the Board of Directors	Signature	Date
<b>Matthew DiOrio</b>	Director		
<b>Dilip Massand</b>	Director		
<b>Damien Austin</b>	Director		
<b>Jan Neveril</b>	Director		

**To:** JP Sevilla[jsevilla@sasmgt.com]; Matt DiOrio[mdiorio@sasmgt.com]  
**Cc:** Alli Devins[ADevins@beechercarlson.com]  
**Sent:** Wed 6/6/2018 2:23:00 PM Coordinated Universal Time  
**Subject:** RE: Sentinel

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JP, we don't typically have amendments for premium changes unless there was either a mistake made or change in exposure.

Having said that, what we have here is an unusual circumstance in that assets other than cash were received for premium. Its almost always that cash is received, so its cut and dry what that value is.

I revisited the policy and it specifically states that if premium can be paid in a form other than cash (assuming its acceptable to insurer) and that the value of this shall be equal to or greater than the premium. Therefore, I think its acceptable to amend the policy premium to specifically state premium received in the form of cash as \$XX and fair value securities of \$YY.

---

**From:** JP Sevilla [mailto:jsevilla@sasmgt.com]  
**Sent:** Wednesday, June 06, 2018 9:49 AM  
**To:** Tom Adamczak; Matt DiOrio  
**Cc:** Alli Devins  
**Subject:** RE: Sentinel

Fair enough re: term.

Have any of your other clients effected an amendment increasing premium this way? We will consult counsel at Solomon Harris, but it would be helpful to know, anecdotally at least, whether this is done with any regularity.

Thank you.

---

**From:** Tom Adamczak [mailto:tadamczak@beechercarlson.com]  
**Sent:** Wednesday, June 6, 2018 8:46 AM  
**To:** JP Sevilla <jsevilla@sasmgt.com>; Matt DiOrio <mdiorio@sasmgt.com>  
**Cc:** Alli Devins <ADevins@beechercarlson.com>  
**Subject:** RE: Sentinel

Yes, they are comfortable with this.

So originally (at the time the ATE policy was written) the trial was to be scheduled in mid-2018 with everything wrapping up (including appeal) in 2019. This fits into the 24 month policy term. Now if the projection is to go through end of 2019/early 2020, I don't think we can change policy term. This would cause more concern with whether it is an arm-length transaction. I think its important to stick with the original estimate at policy inception.

---

**From:** JP Sevilla [mailto:jsevilla@sasmgt.com]  
**Sent:** Wednesday, June 06, 2018 9:21 AM  
**To:** Tom Adamczak; Matt DiOrio  
**Cc:** Alli Devins  
**Subject:** RE: Sentinel

Can you tentatively confirm that the auditor will be comfortable with this? We will need to chase down some legal issues.

As for term, two years was proposed because the trial setting is scheduled for mid-2018, and extending the term through 2019 would allow time for an appeal. However, it's possible that if the premium is changed upwards, the term could be

extended to perhaps 30 months – would that be problematic?

---

**From:** Tom Adamczak [<mailto:tadamczak@beechercarlson.com>]  
**Sent:** Wednesday, June 6, 2018 7:55 AM  
**To:** JP Sevilla <[jsevilla@sasmgt.com](mailto:jsevilla@sasmgt.com)>; Matt DiOrio <[mdiorio@sasmgt.com](mailto:mdiorio@sasmgt.com)>  
**Cc:** Alli Devins <[ADevins@beechercarlson.com](mailto:ADevins@beechercarlson.com)>  
**Subject:** RE: Sentinel

JP, cash is still fine under the proposed option. Sentinel's maintained cash is required to at least be equal to 100% of reserves, which are not affected by this option. Additionally, CIMA's surplus requirements are that Sentinel must maintain surplus in excess of 125% of the greater of 1) Minimum Capital Requirement (\$200k), or 2) Prescribed Capital Requirement (15% of earned premium). Because Earned premium would increase, there would be a great minimum surplus under this option. At 12/31/17 this would only increase the surplus requirement by about \$600k - not a concern for Sentinel as the surplus would be about \$32m, or \$30m in excess of the requirement.

Let me know if this makes or if you want to discuss.

Did you have any information you could provide on how 2 years was determined to be an appropriate risk period for earning the premium?

Thanks,  
Tom

---

**From:** JP Sevilla [<mailto:jsevilla@sasmgt.com>]  
**Sent:** Tuesday, June 05, 2018 4:28 PM  
**To:** Tom Adamczak; Matt DiOrio  
**Cc:** Alli Devins  
**Subject:** RE: Sentinel

How much cash will Sentinel have to hold per CIMA if the premium is \$40m? Assuming the term is two years.

---

**From:** Tom Adamczak [<mailto:tadamczak@beechercarlson.com>]  
**Sent:** Tuesday, June 5, 2018 3:24 PM  
**To:** JP Sevilla <[jsevilla@sasmgt.com](mailto:jsevilla@sasmgt.com)>; Matt DiOrio <[mdiorio@sasmgt.com](mailto:mdiorio@sasmgt.com)>  
**Cc:** Alli Devins <[ADevins@beechercarlson.com](mailto:ADevins@beechercarlson.com)>  
**Subject:** Sentinel  
**Importance:** High

JP and Matt,

I just spoke with Lisa (Sr. Mgr at Crowe) regarding the Sentinel audit and they one particular area that is causing them issues. It relates to the gain that we have recognized on the transfer of securities into Sentinel as premium. The value of securities we have transferred in amounted to just over \$40m (as valued by VRC on CLOs and other sources). The problem is that the premium was only \$25m, creating a gain on the transaction. Because there is no return of overpayment of premium, it gives rise to the question "is this an arms-length transaction?" Essentially Sentinel has been overpaid by approximately \$15m. Although there doesn't appear to be anything in GAAP preventing the recording of a gain, it does create a significant amount of questions as well as a ton of additional disclosures in the audit report.

Alternatively, if we could adjust the premium to \$40m, it would resolve the issue on their end. Lisa doesn't see any negatives for increasing premium (no premium tax or income tax position concerns) and I think she may be on to something. I know the pricing study showed \$25m and I can run it by the actuary too, but don't think it will matter to him.

Also, the auditors are wanting further information on how we got to 2 years on the ATE policy term. I don't want to say we pulled it out of the air so am thinking if you could give some general comments on the status of the matter at the time (thinking back to August may be appropriate as circumstances now may be very different) and estimations on when it might settle/resolve, I can add that into a memo to satisfy their inquiry.

Let me know if you have any thoughts on either of these or if we need to discuss further.

Thanks,

Tom

### **Thomas P. Adamczak, CPA**

*Accounting Manager*

T 802.660.7706 | M 802.999.6486

156 College Street, Suite 301

Burlington | VT | 05401

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**To:** Matt DiOrio[mdiorio@sasmgt.com]; 'Lesley Thompson (Lesley.Thompson@maplesfs.com)'[Lesley.Thompson@maplesfs.com]; 'Andrew.Dean@maplesfs.com'[Andrew.Dean@maplesfs.com]; dmassand@sasmgt.com[dmassand@sasmgt.com]  
**Cc:** 'jsevilla@sasmgt.com'[jsevilla@sasmgt.com]; Alli Devins[ADevins@beechercarlson.com]  
**From:** Tom Adamczak[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4F4B95C3BA054EDFB32D2F3CF0AAF040-TOM ADAMCZA]  
**Sent:** Fri 6/8/2018 6:15:07 PM Coordinated Universal Time  
**Subject:** Sentinel ATE endorsement  
**Attachment:** SEN ATE Endorsement 1 - Change.doc

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All,

Based on a recent discussion with and recommendation by the Sentinel Auditors, the ATE policy premium should be endorsed to reflect the fair value of the basket of securities received as premium in August 2017. After revaluing the securities received (through valuations from VRC and a markdown of many worthless securities to zero), Sentinel recognized a gain of approximately \$15m. The auditors suggested that although Sentinel could record the gain, it likely would be more correct (and efficient) to consider it as premium. If the gain was recorded, additional effort and time would be exhausted related to the following: notes to the audited financials would require expanded disclosures; the opinion would include an Emphasis of Matter paragraph to express concern with the arms-length transaction; additional time and documentation on the part of the auditors to support and defend the position to their QC partners. Meanwhile, modification of the premium amount doesn't present any foreseeable concerns for Sentinel (such as tax deductibility, increases to premium tax, etc.).

Assuming it is acceptable to include the gain as premium, one topic that comes to mind with respect to adjusting premium via an endorsement, is which party should sign. Both Sentinel and the insured signed the original policy, while it is customary that only the insurer would sign a policy. Perhaps it is a preference of Sentinel to have both parties sign the insurance policies (D&O also has representatives of both sign)? Should the endorsement follow suit or is it acceptable that only the insurer sign?

I have drafted an endorsement for discussion/comment/edit. Let me know if you have any questions.

JP, feel free to add any comments if you feel I missed something important.

Thanks,

Tom

**Thomas P. Adamczak, CPA**

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Sentinel Reinsurance, Ltd.  
Maples Fiduciary Services (Cayman) Limited  
P.O. Box 1093, Boundary Hall  
Cricket Square  
Grand Cayman KY1-1102  
Cayman Islands

Endorsement No. 1

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The following is hereby understood and agreed:

The premium, as stated in the schedule, is adjusted to \$40,040,668.90 to include the total fair value of received assets. Premium received consists of cash of \$11,083,855.74, miscellaneous receivables of \$1,753,020.00, and an investment portfolio of \$27,203,793.16 as measured at fair value on the transfer date.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Attaches to and forming part of the Legal Liability Insurance Policy dated August 1, 2017 of Sentinel Reinsurance, Ltd.

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(Authorized Signature)

Legal Liability Insurance Policy

00753351-1



MD\_000010



## 1. Our agreement in general

### 1.1 Parties to this agreement

This **policy** is between the **insured** and the **insurer** as declared in the **schedule**. This document, together with its **schedule** and any attached endorsements is the **policy** which sets out this insurance. It is a legal contract so please read all of it carefully.

### 1.2 Words in bold

Words in bold typeface used in this **policy** document, other than in the headings, have specific meanings attached to them as set out in the General definitions and interpretation.

### 1.3 Policy Structure

1.3.1 Each **insured section** sets out the scope of the main coverage and the circumstances in which the **insurer's** liability to the **insured** is limited or may be excluded. Further, each **insured section** sets out other terms and conditions relevant to that **insured section**. The cover provided by each **insured section** is only operative if a **limit of indemnity** is shown in the **schedule**. Where the **limit of indemnity** in respect of any item in the **schedule** is shown as 'n/a', 'not applicable' or 'not insured' then no cover applies for that item. Where the **insured** comprises more than one person, the **limit of indemnity** for all **claims** made by all persons comprising the **insured** shall apply but as there is no sub-limit of indemnity in relation to each individual person, one or more of those persons will not receive payment of a **claim** if the limit of indemnity has already been met as a result of the payment of other **claims**.

1.3.2 Additional clauses set out terms, exclusions or limitations that may apply to more than one **insured section**.

1.3.3 The following general terms apply to each **insured section**, clauses and endorsements:

- a) General exclusions and limitations
- b) Duties in the event of a claim or potential claim;
- c) General terms and conditions; and
- d) General definitions and interpretation.

### 1.4 Policy period and premium

1.4.1 This **policy** will provide insurance as described herein for the **period of insurance** provided the **premium** (and **deposit premium** if applicable) and other charges are paid to and accepted by the **insurer** on or before the payment date shown in the **schedule**. Taxes, levies and other relevant fiscal charges are payable in addition to the **premium**. The **premium** is deemed paid and accepted by the **insurer** on receipt by the **insurer** or the intermediary appointed to place this insurance with the **insurer**.

1.4.2 If any **premium** (or **deposit premium** if applicable) is not paid and accepted by the **insurer** on or before its payment date as set out in this **policy** then the **insurer** may, in its sole discretion, give written notice to the **insured** at its address shown in the **schedule** cancelling this **policy** from seven (7) days after the date of service of the

notice of cancellation. Cancellation will be prevented from taking effect and the **policy** will continue in force if the outstanding **premium** (or **deposit premium** if applicable) is paid and accepted before cancellation takes effect. Without prejudice to other forms of service, notice of cancellation is deemed served on the fifth (5<sup>th</sup>) day after being posted if sent by pre-paid airmail letter properly addressed.

- 1.4.3 In consideration of the payment of the **premium** (and **deposit premium** if applicable) by the **insured** to the **insurer** the **insurer** agrees to provide the insurance as described in 'Legal liability' **insured section**.

## **2. Insured section – Legal liability**

### **2.1 Legal liability cover**

The **insurer** agrees to indemnify the **insured** in respect of any **legal liability** occurring during the **period of insurance** up to and including but not exceeding the **limit of indemnity** provided that either:

- 2.1.1 the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) makes an order of liability relating to the **legal action** against the **insured**; or
- 2.1.2 the **legal action** is (with the prior written agreement of the **insured**, the **appointed representative** and the **insurer**) settled on terms that provide for payment by the **insured** to the **opponent**.

## **3. General exclusions and limitations**

This **policy** excludes and the **insurer** shall not be liable to indemnify the **insured** in any of the following circumstances:

### **3.1 Absence of the insurer's prior consent**

where the **insurer's** written consent has not been obtained pursuant to the 'Written consent' clause below;

### **3.2 Failure to notify**

where the **insured** has failed to notify the **insurer** pursuant to the 'Claim notification' clause below;

### **3.3 Insured's conduct**

- 3.3.1 where the **legal action** is settled or the court makes an order of liability relating to the **legal action** against the **insured** as a result of the dishonesty of the **insured**; or
- 3.3.2 where the **insured** fails to act in accordance with the advice of the **appointed representative** or to provide full instructions promptly to the **appointed representative** or to co-operate with the **appointed representative** or to comply with any order made by the **court** or any **court rule**;

### **3.4 Failure to mitigate**

where **legal liability** is incurred or increased as a result of a failure on part of the **insured** or the **appointed representative** to mitigate such a liability;

**3.5 Non-disclosure**

where the **insured** or the **appointed representative** has failed to disclose material facts;

**3.6 Unnecessary costs because of delay etc.**

where the **opponent's costs** arise from

3.6.1 any unreasonable delay or negligence or wilful act or omission by the **insured** or the **appointed representative**;

3.6.2 any unreasonable failure on part of the **insured** or the **appointed representative** to attend a hearing or other appointment;

**3.7 Amended pleadings**

Where **legal liability** is incurred or increased as a result of any unreasonable amendment to the **insured's** pleadings or any failure to comply with any court directions, pre-action protocols or any other rule, regulation or statutory provision;

**3.8 Fraud**

where the **insured** or the **appointed representative** has made any fraudulent, false or misleading representation;

**3.9 Legal action outside the territorial limits**

where **legal liability** is incurred or increased as a result of the **legal action** being pursued, issued, brought or transferred outside the **territorial limits**;

**3.10 Non-contribution**

where but for the existence of this **policy** the **insured** would be entitled to indemnity under another insurance policy;

**3.11 Quote disclosed prior to inception of the policy**

where the existence of any offer of insurance made by the **insurer** to the **insured** in respect of the **legal action** was disclosed to any third party other than those third parties to whom the **insurer** has offered its consent for such quote to be disclosed;

**3.12 Sums due under other policies of insurance**

where any premium has fallen due to be paid by the **insured** to the **insurer** pursuant to the terms of any other policy of insurance issued by the **insurer** to the **insured** but remains unpaid (whether in full or in part) at the date of a **claim** under this **policy**.

**4. Other terms and conditions relating to cover**

**4.1 Set-off**

In the event that a **claim** is made under this **policy** and the **insured** has obtained a **recovery** in the **legal action** then the **insurer** shall only be liable to indemnify the

**insured** for the net sum (if any) after deduction of the amount of the **recovery**. This is irrespective of whether or not payment is actually made to the **insured**.

## **4.2 Appeal**

- 4.2.1 In the event that the **legal action** is subject to **appeal** then at the end of the appeal's process this **policy** will be construed as if the **court** had reached the same decision as the appellate court.
- 4.2.2 In the event that any sums of money are paid by the **insurer** pursuant to the terms of this **policy** and the judgment of the **court** is amended following an **appeal** (such that the **insurer** would not have made the payment had the amended judgment been the judgment of the **court**) then the **insured** shall reimburse the **insurer** for any such sums of money already paid together with interest at 2% above the United States Dollar prime lending rate in the Cayman Islands from time to time.

## **5. Conduct of the legal action**

### **5.1 Written consent**

The **insured** must obtain, and irrevocably instructs the **appointed representative** to obtain, written consent from the **insurer** prior to:

- 5.1.1 the settlement of the **legal action** in the **opponent's** favour;
- 5.1.2 the rejection (whether explicitly or by conduct) of an **opponent's** offer to settle the **legal action**;
- 5.1.3 the rejection of any offer of alternative dispute resolution (including mediation) from the **opponent**;
- 5.1.4 any change of the **appointed representative**.

The **insurer** will not unreasonably withhold consent to the **insured** taking any of the steps referred to in this clause and will, in making a decision as to whether to provide consent pursuant to this clause, consider whether a reasonably prudent uninsured litigant would pursue the course of action for which the **insurer's** consent is sought.

### **5.2 Notification**

The **insured** must notify, and irrevocably instructs the **appointed representative** to notify, the **insurer** immediately:

- 5.2.1 on receipt of any offer of settlement of the **legal action**;
- 5.2.2 on receipt of any offer of alternative dispute resolution (including mediation) from the **opponent**;
- 5.2.3 in the event of any development in the **legal action** material to the prospects of succeeding in the **legal action**;
- 5.2.4 if the **insured** is no longer more likely than not to succeed in the **legal action**, assuming that it is determined at trial; and

- 5.2.5 after any period of 6 months during which there has been no requirement to request the insurer's consent or notify the insurer in order to confirm the current status of the legal action.

### 5.3 Monies to be held on account

The insured irrevocably instructs the appointed representative to hold any monies (whether costs, interest or damages) received from the opponent until the premium is paid in full, any claim under this policy has been submitted and all terms and conditions of this policy have been fully complied with.

### 5.4 Co-operation by the insured and appointed representative

The insured must:

- 5.4.1 provide, and instruct the appointed representative to provide, the insurer with full and prompt co-operation to include providing such information as is requested by the insurer from time to time; and
- 5.4.2 co-operate, and instruct the appointed representative to co-operate, with any request by the insurer to audit information pursuant to the 'Audit' clause.

### 5.5 Prosecution of the legal action

The insured agrees to:

- 5.5.1 prosecute the legal action promptly;
- 5.5.2 provide any instructions to the appointed representative as are necessary or desirable in order to prosecute the legal action in the best manner;
- 5.5.3 act as a reasonably prudent uninsured litigant with the objective of achieving the best outcome in the legal action (and any subsequent costs assessment proceedings); and
- 5.5.4 comply with any order of the court and any court rules and in all respects conduct the legal action in a reasonable manner in order to minimise costs.

### 5.6 Territorial limits

The insured agrees to prosecute the legal action in the court within the territorial limits and warrants that the legal action will be governed by the laws of the territorial limits.

## 6. Bond

### 6.1 Payment under bond forms part of indemnity

In the event that the insurer is obliged to make any payment pursuant to the terms of a bond issued in conjunction with this policy then such payment shall contribute to and form part of the indemnity provided by this policy and shall erode both the limit of indemnity stated in the schedule.

### 6.2 Recovery of sums paid pursuant to bond

In the event that the insurer makes any payment whatsoever pursuant to the terms of a bond in circumstances in which the insurer would not have been obliged to make such payment pursuant to the terms of this policy then the insured shall indemnify the

**insurer** in respect of such payment and the **insurer** shall be entitled to recover such payment from the **insured**.

## **7. Duties in the event of a claim or potential claim**

The due observance and fulfilment of the provisions of 'Claim notification' and 'Insured's duties and insurer's rights' are condition precedents to the **insurer's** liability for any **claim** under this **policy**. The 'Termination by the insurer' clause sets out the consequences of a failure to comply with conditions precedent or **policy** provisions.

### **7.1 Claim notification**

- 7.1.1 The **insured** shall give the **insurer** written notice as soon as practicable of any **claim** or any circumstance which might reasonably be expected to give rise to a **claim**.
- 7.1.2 Notice to the **insurer** of a **claim** under this policy must be given to the claims notification address specified in the **schedule**.

### **7.2 Insured's duties and insurer's rights**

- 7.2.1 A **claim** form must be completed with full particulars.
- 7.2.2 The **insured** shall provide to the **insurer** and the **appointed representative** all **information** and, in addition, shall provide all necessary assistance (notwithstanding the right for the **insurer** to audit pursuant to the 'Audit' clause) to enable the **insurer** or its agents to investigate and/or defend any **claim** under this **policy** and/or to enable the **insurer** to determine its liability under this **policy**.
- 7.2.3 Neither the **insured** nor its **appointed representative** shall make any admission with respect to liability in relation to the **legal action** or attempt to settle the **legal action** without the **insurer's** prior written consent.
- 7.2.4 The **insured** will promptly provide the **insurer** with full details of **legal liability** and shall, if requested by the **insurer**, have such **legal liability** assessed by the appropriate body.
- 7.2.5 The **insurer** will be entitled (but not obliged) to conduct any costs assessment or review and the **insured** will provide (and hereby gives irrevocable instructions to the **appointed representative** to provide) such assistance as the **insurer** requires.

### **7.3 Subrogated claims**

In the event of the **insurer** making any payment under this **policy**:

- 7.3.1 the **insurer** shall be subrogated to all the **insured's** rights or causes of action related to or arising out of the **legal action** against any other party to the extent that these rights or causes of action are pertinent to a loss being suffered by the **insured** and the **insured** undertakes to provide the **insurer** with all assistance which may be required to pursue these rights; and
- 7.3.2 any entitlement to a recovery from the **opponent** by the exercise of such rights or otherwise will, until received, be set off against any **claim** comprised of **legal liability** and when received be applied, in order of priority, to repay and extinguish any payment

made by the **insurer** under this **policy**, any **insurer's** costs, any interest due on such payment and costs and finally any **insured's** losses.

## **8. General terms and conditions**

### **8.1 Audit**

The **insurer** has the right to audit all **information** within the possession or control of the **insured** or the **appointed representative** whether held in physical or electronic format.

### **8.2 Applicable law**

This **policy** will be governed by and interpreted in accordance with the laws of the Cayman Islands and subject to the exclusive jurisdiction of the courts in the Cayman Islands.

### **8.3 Assignment**

Assignment of interest under this **policy** will not bind the **insurer** unless and until the **insurer's** written consent is endorsed hereon.

### **8.4 Confidentiality**

The **insurer** agrees that any **information** given by the **insured** or the **appointed representative** is received in confidence and will not be disclosed to any other party.

### **8.5 The Contracts (Rights of Third Parties) Law, 2014**

This insurance does not confer or create any right enforceable under the Contracts (Rights of Third Parties) Law, 2014 of the Cayman Islands or any amending or subsequent legislation by any person who is not named as the **insured** and both the **insurer** and **insured** may amend, cancel or lapse this insurance without giving notice to, or requiring the consent of, any other third party.

### **8.6 Disclosure**

8.6.1 The **insurer** will follow appropriate security procedures in the storage and disclosure of data provided by the **insured** or its appointed representative to prevent unauthorised access or loss of such data. The **insurer** may find it necessary to pass such data to other firms or businesses that supply products and services associated with this **policy**.

The **insurer** collects non-public personal information about the **insured** from the following sources:

- a. information the **insurer** receives from the **insured** on applications or other forms;
- b. information about the **insured's** transactions with the **insurer**, its subsidiary, parent and/or other group companies or others;
- c. information the **insurer** receives from consumer reporting agencies.

8.6.2 The **insurer** does not disclose any non-public personal information relating to the **insured** to anyone except as is necessary in order to provide its products or services to the **insured** or otherwise as it is required or permitted by law (e.g. a subpoena, fraud investigation, regulatory reporting, etc.).

- 8.6.3 Further, by accessing and updating various databases, the **insurer** may share information with other firms and public bodies, including the police, in order to substantiate information and prevent or detect fraud. If false or inaccurate information is provided and fraud is suspected, this fact will be recorded and the information will be available to other organisations that have access to the databases. Details of databases accessed or contributed to are available on request.

## 8.7 Dispute resolution

- 8.7.1 Any matters in dispute between the **insurer** and the **insured** arising out of or in connection with this insurance will be referred to a mediator to be agreed by the **insurer** and the **insured** within ten (10) working days of a written notice served on one of them by the other of them requesting such an agreement. If a mediator is not agreed then either the **insurer** or the **insured** may apply to the Centre for Effective Dispute Resolution ('CEDR') for the appointment of a mediator. The **insurer** and the **insured** agree to share equally the costs of CEDR and of the mediator and that the reference of the dispute to mediation will be conducted in confidence.
- 8.7.2 The **insurer** and the **insured** agree to perform their respective continuing obligations under this insurance, if any, while the dispute is resolved unless the nature of the dispute prevents such continued performance of those obligations.
- 8.7.3 If any such dispute is not resolved by mediation or the **insurer** and the **insured**
- 8.7.4 cannot agree upon the appointment of a mediator or the form that the mediation will take, the dispute will be referred by either of them to courts, subject to the law and jurisdiction set down in the 'Applicable law' clause above.

## 8.8 Observance

- 8.8.1 The due observance and fulfilment of the provisions of this **policy** insofar as they may relate to anything to be done or complied with by the **insured**, and are not described in the **policy** as conditions precedent, will be a condition of this **policy**. Any waiver by the **insurer** of any provision will not prevent the **insurer** from relying on such term or condition or condition precedent in the future.
- 8.8.2 Further, where an indemnity is provided to any other party, the **insured** will arrange for each party to comply with the terms, conditions and conditions precedent of this insurance so far as they can apply provided always that the other party complies with the terms of 'Duties in the event of a claim or potential claim'.
- 8.8.3 In the event of a breach of any condition in the **policy**, and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach providing the **insurer** can demonstrate some prejudice.
- 8.8.4 In the event of a breach of any condition precedent in the **policy** and without prejudice to any of the **insurer's** other rights, the **insurer** may reject or reduce **claims** connected with the breach and continue the **policy** on such terms as the **insurer** may determine and, if any payment on account of any such **claim** has already been made, the **insured** will repay forthwith all payments on account to the **insurer**.



## 8.9 Payment of premium

The **insured** agrees to pay the **premium** stated in the **schedule** on the **due date** as specified in the **schedule**. If the insurer agrees that some or all of the premium may be satisfied otherwise than in cash (e.g. by the transfer by the **insured** to the **insurer** of an investment portfolio), the **insured** shall take all necessary steps to satisfy the **insurer's** due diligence requirements in relation to the assets proposed to be transferred and that their net realisable value is equal to or greater than the **premium** or that part of the **premium** which is to be satisfied otherwise than in cash. If the **insurer** agrees to accept such assets in satisfaction of all or part of the **premium**, the **insured** shall on the **due date** ensure that the insurer becomes the beneficial owner of such assets, free from any charge, lien or encumbrance.

8.9.1 Taxes, levies and other relevant fiscal charges are payable in addition to the **premium**. Where there is more than one **insured**, each **insured** shall be jointly and severally liable for the **premium**.

8.9.2 Should the **premium** (or any part thereof) remain unpaid after seven (7) days after the **due date** then interest shall accrue on the **premium** (or the unpaid part) at a rate of 2% (two percent) above the United States Dollar prime lending rate in the Cayman Islands as calculated at the time of the **due date** until the actual date of payment.

## 8.10 Records

The **insurer** may hold documents relating to this insurance and any **claims** under it in electronic form and may destroy the originals. An electronic copy of any such document will be admissible in evidence to the same extent as, and carry the same weight as, the original.

## 8.11 Rights surviving end of period of insurance

All rights and obligations on the part of the **insured** and the **insurer** pursuant to this **policy** shall continue until such time as the **insured's** and the **insurer's** liabilities under this **policy** have been finally determined.

## 8.12 Termination by the insured

The **insured** may terminate this **policy** at any time whereupon the **premium** (if unpaid) becomes immediately payable and the **insurer** will not be liable for any **claim** under this **policy**. Where the **insured** comprises more than one person, this termination right may only be exercised if each such person consents in writing.

## 8.13 Termination by the insurer

8.13.1 The **insurer** may terminate this **policy** immediately:

- a. if the **insured**, or where the **insured** comprises more than one person, any such person, fails to observe all the terms and conditions of this **policy** including, for the avoidance of doubt, the terms relating to the payment of the **premium**;
- b. if the **insured**, or where the **insured** comprises more than one person, any such person, becomes bankrupt or insolvent during the **period of insurance**. The **insured** or any such person shall be deemed insolvent upon the appointment of a liquidator in circumstances where it is insolvent.

8.13.2 In the event of termination by the **insurer** then the **insurer** will not be liable for any **claim** under this **policy**.

**8.14 Sanction limitation and exclusion clause**

The **insurer** shall not provide cover nor be liable to pay any **claim** or provide any benefit hereunder to the extent that the provision of such cover, payment of such **claim** or provision of such benefit would expose the **insurer** or any member of the **insurer's** group to any **sanction**, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of any jurisdiction.

**8.15 Joint and several obligations**

Where the **insured** comprises two or more persons, all duties and obligations of such persons under this **policy** shall be joint and several.

## 9. General definitions and interpretation

The following words will have the same meaning attached each time they appear in this **policy** in bold type-face, whether with a capital first letter or not.

Where the context so admits or requires, words importing the singular will include the plural and vice versa and words importing the masculine will import the feminine and the neuter. References to 'person' will be construed so as to include any individual, company, partnership, or any other legal entity. References to a statute will be construed to include all its amendments or replacements. All headings within the **policy** are included for convenience only and will not form part of this **policy**.

### 9.1 Appeal

Appeal means an appeal against the judgment of the **court** to any appellate court.

### 9.2 Appointed representative

Appointed representative means a firm of attorneys which has been accepted by the **insurer** to act for the **insured** in accordance with the terms of this **policy**.

### 9.3 Bond

Bond means any deed of indemnity issued by the **insurer** in respect of the **legal action** for the purpose of providing security for costs in the **legal action** on behalf of the **insured**.

### 9.4 Claim

Claim means a request by the **insured** under the terms of this **policy** for payment in respect of **legal liability**. Any claim or series of claims arising out of the same **legal action** shall be regarded as one claim.

### 9.5 Court

Court means any judge, arbitrator or any other tribunal that hears the **legal action** at first instance within the **territorial limits**.

### 9.6 Deposit premium

Deposit premium means the amount, if any, specified as deposit premium in the **schedule**.

### 9.7 Due date

Due date means the date for payment of the premium as specified in the **schedule**.

### 9.8 Information

Information means any information within the possession control or knowledge of the **insured** or the **appointed representative**, both before and after the inception of this **policy**, that is relevant to or relates to the **legal action**, whether privileged or not (which privilege the **insured** irrevocably waives), and extends to the **appointed representative's** file on the **insured's legal action**.

**9.9 Insured**

Insured means the person or persons named in the **schedule** as declared to and accepted by the **insurer** and where the **insured** comprises more than one person, the expression **insured** where used in this **policy** shall be construed, unless the context otherwise requires, so as to refer to each person named as the **insured** in the **schedule**.

**9.10 Insured section**

Insured section means all or any individually numbered sections of this **policy** that forms part of the insurance contract but only if stated as 'insured section' in the heading to the section.

**9.11 Insurer**

Insurer means the party specified as insurer in the **schedule** and any other subscribing insurers.

**9.12 Legal action**

Legal action means the action described in the **schedule**.

**9.13 Legal liability**

Legal liability means either:-

9.13.1 the aggregate of (a) the total sum (including any opponent's costs) ordered by the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) to be paid by the **insured** to the **opponent** in the **legal action** and (b) **own costs**; or

9.13.2 the aggregate of (a) the total sum (including any opponent's costs) to be paid by the **insured** to the **opponent** pursuant to a settlement of the **legal action** reached between the **insured** and the **opponent** (with the prior written agreement of the **insured**, the **appointed representative** and the **insurer**) and (b) **own costs**.

**9.14 Limit of indemnity**

Limit of indemnity means:

9.14.1 the amount stated in the **schedule** which is the maximum amount of the **insurer's** liability under this **policy** regardless of the number of:

- a. **insureds** or other insured parties;
- b. persons or organisations bringing claims or suits; or
- c. claims against the **insured** or series of claims against the **insured** or claims or series of claims made by the **insured**;

9.14.2 where a limit of indemnity is stated in the **schedule** as in the aggregate, that aggregate is the maximum the **insurer** will pay for all insured events during the **period of insurance**;

where indemnity may be provided under two (2) or more **insured sections** of this **policy**, then the combined single limit stated in the **schedule** is the maximum the **insurer** will pay for any insured event to which such **insured sections** apply in combination.

### 9.15 **Opponent**

Opponent means the party or parties who are named in the **schedule** and with whom the **insured** is in dispute in the **legal action**.

### 9.16 **Opponent's costs**

Opponent's costs mean all costs and expenses that have been reasonably incurred by the **opponent** in the **legal action**.

### 9.17 **Own costs**

Own costs means all costs and expenses of the Representative and other service providers in the normal course, including related tax, which are incurred during the conduct of the legal action on behalf of the insured.

### 9.18 **Period of insurance**

Period of insurance means the period which commences from the date shown on the **schedule** and ceases upon the occurrence of any of the following events:

9.18.1 the **legal action** is concluded by a final judgment or order of the **court** (or any appellate court to which the **court's** judgment in the **legal action** is **appealed**) which also deals finally with the amount of any costs payable by the parties to the **legal action**;

9.18.2 the **legal action** is settled on terms which also deals with the amount of any costs payable by the parties to the **legal action**;

9.18.3 the **legal action** is transferred outside of the **territorial limits**;

9.18.4 the retainer between the **insured** and the **appointed representative** ceases; or

9.18.5 this **policy** is terminated or cancelled in accordance with the terms and conditions of the **policy**.

### 9.19 **Policy**

Policy means this document, the **schedule** (including any **schedules** issued in substitution) and any endorsements attaching to this document or the **schedule** that will be considered part of the legal contract and any word or expression in bold type face on any of these documents will bear the specific meaning stated in these definitions.

### 9.20 **Premium**

Premium means the amount specified as premium in the **schedule**.

**9.21 Recovery**

Recovery means any sum (inclusive of costs) ordered by the **court** or any appellate court to be paid by the **opponent** to the **insured** in the **legal action** or any amount (inclusive of costs) agreed to be paid by the **opponent** to the **insured** in settlement of the **legal action** (irrespective of whether or not payment is actually made).

**9.22 Schedule**

Schedule means the document titled schedule that includes the name and address of the **insured**, the premium and other variables to this **policy** (including endorsement clauses) and is incorporated in this **policy** and accepted by the **insured**. Schedules may be re-issued from time to time where each successor overrides the earlier document.

**9.23 Territorial limits**

Territorial limits means the territory or territories specified in the **schedule**.

INSURER: 2017 August 10.

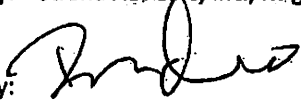
Sentinel Reinsurance, Ltd.

By: 

Name:  
Title: Andrew Dean  
Director

INSURED:

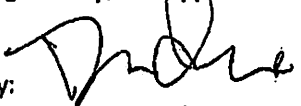
- Highland CDO Opportunity Master Fund, L.P.
- By: Highland CDO Opportunity Fund GP, L.P., its general partner
- By: Highland CDO Opportunity GP, LLC, its general partner
- By: Highland Capital Management, L.P., its sole member
- By: Strand Advisors, Inc., its general partner

By:   
Name: James Dondero  
Title: President

Highland CDO Holding Company

By:   
Name: James Dondero  
Title: Director

Highland Special Opportunities Holdings Company

By:   
Name: James Dondero  
Title: Director

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**SCHEDULE**

**Insurer:** Sentinel Reinsurance, Ltd.

**Insured:**

- Highland CDO Opportunity Master Fund, LP
- Highland CDO Holding Company; and
- Highland Special Opportunities Holding Company

**Appointed Representative:** Paul Lackey  
Lackey Hershman, LLP  
3102 Oak Lawn Avenue  
Suite 777  
Dallas, Texas 75219

**Date of commencement of Period of Insurance:** August 1, 2017

**Legal Action:** UBS Securities LLC and UBS AG, London Branch, v. Highland Capital Management, L.P., Highland Special Opportunities Holding Company, Highland Financial Partners, L.P., Highland CDO Opportunity Master Fund, L.P., Highland Credit Opportunities CDO, L.P., and Strand Advisors, Inc., Cause No. 650097/2009

**Court:** Supreme Court of the State of New York, County of New York

**Opponent:** UBS Securities LLC and UBS AG, London Branch

**Territorial Limits:** State of New York

**Limit of Indemnity:** US\$100,000,000 (One Hundred Million United States Dollars) in aggregate

**Payment Date for Premium:** August 31, 2017

**Premium:** US\$25,000,000 (Twenty Five Million United States Dollars)

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Sentinel Reinsurance, Ltd.  
Maples Fiduciary Services (Cayman) Limited  
P.O. Box 1093, Boundary Hall  
Cricket Square  
Grand Cayman KY1-1102  
Cayman Islands

Endorsement No. 1

---

The following is hereby understood and agreed:

The premium, as stated in the schedule, is adjusted to \$68,362,333.62 to include the total fair value of received assets. Premium received consists of cash of \$11,083,855.74, miscellaneous receivables of \$1,753,020.00, and an investment portfolio of \$55,525,457.88 as measured at fair value on the transfer date.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Attaches to and forming part of the Legal Liability Insurance Policy dated August 1, 2017 of Sentinel Reinsurance, Ltd.



(Authorized Signature)

**Lesley Thompson**  
Director

MD\_000027

CONFIDENTIAL

Sentinel Reinsurance, Ltd.  
Maples Fiduciary Services (Cayman) Limited  
P.O. Box 1093, Boundary Hall  
Cricket Square  
Grand Cayman KY1-1102  
Cayman Islands

Endorsement No. 2

---

The following is hereby understood and agreed:

The **premium**, as stated in the schedule, is reduced to \$59,362,333.62.

\$9,000,000.00 has been prepaid by the **insured** to the **insurer** to cover risk mitigation costs, which include, but are not limited to, legal defense costs.

The limit of indemnity is reduced to \$91,000,000.00 in the aggregate to correlate with prefunding the risk mitigation costs of \$9,000,000.00.

The **insurer** will have sole responsibility to settle all risk mitigation costs with respect **legal action**.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.**

Attaches to and forming part of the Legal Liability Insurance Policy dated August 1, 2017 of Sentinel Reinsurance, Ltd.



(Authorized Signature)

MD\_000028

CONFIDENTIAL

**ASSET TRANSFER AGREEMENT**

Dated as of 31 December 2019

**PARTIES:**

1. **SENTINEL REINSUANCE, LTD.**, an exempted company incorporated in the Cayman Islands whose registered office is c/o CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands (the "**Seller**"); and
2. **SEBASTIAN CLARKE LTD**, an exempted company incorporated in the Cayman Islands whose registered office is c/o CO Services Cayman Limited, PO Box 10008, Willow House, Cricket Square, Grand Cayman KY1-1001, Cayman Islands (the "**Purchaser**").

Words and expressions used in this Agreement shall be interpreted in accordance with Schedule 4.

**WHEREAS**, on 31 December 2019, the Seller agreed to sell certain assets to the Purchaser for the consideration and upon the terms set out in this Agreement.

**IT IS AGREED:**

**1. SALE AND PURCHASE**

1.1 The Seller shall sell, and the Purchaser shall purchase, all of the Seller's right, title and interest to, in and under the following assets with effect from Closing on the terms of this Agreement (including, in particular, clauses 1, 2 and 4):

- (a) the benefit and burden of the each of position to which the Seller is a counterparty as set forth in Schedule 2 hereto (together, the "**Positions**");
- (b) the Purchaser Claims; and
- (c) the Asset Information,

together, the "**Assets**".

**2. PRICE**

2.1 The price for the Assets (the "**Purchase Price**") shall be the amount specified in Schedule 1 as the "**Purchase Price**".

2.2 On the Effective Date, the Purchaser shall pay to the Seller the Purchase Price.

**Exhibit #**

**Deposition Exhibit #38**

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2.3 The Purchase Price shall be apportioned between the Assets in the proportions set out in Schedule I or in such other proportions as the Seller and the Purchaser may agree in writing.

2.4 The Seller and the Purchaser acknowledge and agree that they consider the Purchase Price to represent a market value price for the Assets.

### 3. CLOSING

3.1 Closing shall take place on 31 December 2019 and the settlement of the transfer of the Assets shall occur as promptly as practicable after Closing and, in any event, in accordance with clause 4.

### 4. ASSETS, CONTRACTS AND LIABILITIES

#### Assets, Contracts and Liabilities to be transferred to the Purchaser

4.1 With effect from Closing:

(a) the Seller hereby assigns and transfers to the Purchaser the benefit of all the Seller's right, title and interest to, in and under the Assets to hold the same unto the Purchaser absolutely, and the Seller shall (to the extent required) promptly after Closing give the other parties to the Assets written notice of the assignment pursuant to this clause 4.1(a); and

(b) the Purchaser hereby:

(i) assumes and agrees to discharge when due all Assumed Liabilities; and

(ii) indemnifies the Seller against all Assumed Liabilities and any and all Costs suffered or incurred by the Seller as a result of any failure to discharge such Assumed Liabilities.

4.2 The provisions of Schedule 3 shall apply to any Purchaser Claims if and to the extent the benefit and/or the burden of such Purchaser Claims cannot effectively be assigned or transferred by the Seller to the Purchaser except by an agreement of novation or by obtaining a consent, an approval, a waiver or the like from a third party (any such agreement of novation or consent, a "**Counterparty Consent**").

4.3 The Purchaser shall use all reasonable efforts to procure that as soon as possible after Closing all Counterparty Consents are entered into in each case by all the parties thereto other than the Seller, whereupon the Seller shall execute the same.

### 5. GENERAL

5.1 **Whole Agreement.** This Agreement sets out the whole agreement between the parties in respect of the sale and purchase of the Assets and supersedes any prior agreement (whether oral or written) relating to the transactions contemplated by this Agreement. It is agreed that: (i) no party has entered into this Agreement in reliance upon any representation, warranty or undertaking of any other party which is not expressly set out or referred to in this

Agreement; (ii) all terms and conditions which are implied by law in any jurisdiction in relation to this Agreement and the transactions hereunder are excluded to the fullest extent permitted by law or, if incapable of exclusion, any right, or remedies in relation to them are irrevocably waived; and (iii) a party may claim in contract for breach of warranty under this Agreement but shall have no claim or remedy under this Agreement in respect of misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or untrue statement made by the other party. This clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

**5.2 Assignment.**

- (a) Except as provided in this clause 5.2 or unless the Seller and the Purchaser specifically agree in writing (such agreement not to be unreasonably withheld or delayed), no party shall assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement nor grant, declare or dispose of any right or interest therein.
- (b) The Purchaser may assign or charge its rights under this Agreement for the purpose of securing any debt or capital markets financing or refinancing from time to time made available to the Purchaser or any member of its Group.

**5.3 Waiver.** No failure or delay by any party in exercising any right or remedy provided by law or under this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude it or its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy.

**5.4 Further Assurance.** The Seller and the Purchaser shall, for a period of six months from the Effective Date, at the Purchaser's cost perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or be necessary to implement and give effect to this Agreement.

**5.5 Counterparts.** This Agreement may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart signature page of this Agreement by e-mail (PDF) or telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement.

**5.6 Variation.** No amendment of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties to it. Subject to the foregoing, the parties may by written agreement on or prior to the Effective Date make such amendments to this Agreement as they may agree to either add assets to or remove assets from the scope of this Agreement.

**5.7 Invalidity.** Each of the provisions of this Agreement is severable. If any provision is held to be or becomes invalid or unenforceable in any respect under the laws of any jurisdiction it shall have no effect in that respect and the parties shall use all reasonable endeavours to replace it by a valid and enforceable substitute provision the effect of which is as close to the intended effect as possible.

**5.8 Third Party Rights.** A person who is not a party to this Agreement shall have no right under the Contract (Rights of Third Parties) Law, 2014 to enforce any of its terms.

5.9 **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by, and interpreted in accordance with, Cayman Islands law.

5.10 **Jurisdiction.** The Cayman Islands courts shall have exclusive jurisdiction in relation to all disputes arising out of or in connection with this Agreement (including claims for set-off and counterclaims), including disputes arising out of or in connection with: (i) the creation, validity, effect, interpretation, performance or non-performance of, or the legal relationships established by, this Agreement; and (ii) any non-contractual obligations arising out of or in connection with this Agreement. For such purposes each party irrevocably submits to the jurisdiction of the Cayman Islands courts.

**SCHEDULE 1**  
**PURCHASE PRICE**

Asset	Purchase Price (US\$)
(a) the benefit and burden of the Positions	1.00
(b) Purchaser Claims	1.00
(c) Asset Information	1.00
<b>Purchase Price from Purchaser to Seller (clause 2)</b>	<b>3.00</b>

**SCHEDULE 2**

**ASSETS**

ISIN/CUSIP	NAME	Acquired	Par/Face
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	8/11/2017	16,000
US5431742056	LONGSTREET CDO I LTD PFD 144A	8/11/2017	4,570
US43009L2034	HIGHLAND FINL PARTNERS LP	8/11/2017	615,733
US43009L9898	HIGHLAND FINL PARTNERS LP NPV	8/11/2017	3,000,000
US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A	8/11/2017	48,500,000
N/A	Dugaboy Investment Trust Promissory Note	8/11/2017	2,399,996
N/A	CLO Hold Co, Ltd. Promissory Note	8/11/2017	32,801,593
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	8/11/2017	11,000,000
USG44392AF82	HIGHLAND PARK C 4.93867	8/11/2017	17,000,000
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	8/11/2017	12,000,000



**SCHEDULE 3**

**PURCHASER CLAIMS**

1. The provisions of this Schedule 3 shall apply to any Purchaser Claims if and to the extent that a Counterparty Consent is required in relation to a Purchaser Claim as specified in clause 4.2.
2. The Purchaser shall use all reasonable efforts, at its own cost, to obtain any Counterparty Consent as soon as possible after Closing. The Purchaser shall provide any information reasonably requested for that purpose by the person, firm or company concerned.
3. Until such Counterparty Consent has been obtained:
  - (a) the Purchaser's obligation to use all reasonable efforts to obtain that Counterparty Consent shall continue;
  - (b) the transfer of that Purchaser Claim (to the extent that a Counterparty Consent is required) shall not take effect and the Seller shall from Closing hold it on trust for the Purchaser and account for and pay or deliver to the Purchaser (as soon as reasonably practicable after receipt) any moneys, goods and other benefits which it receives after Closing to the extent that they relate to such Purchaser Claim net of any taxation suffered thereon; and
  - (c) the Seller shall from Closing give such reasonable assistance to the Purchaser (at the Purchaser's written request and sole expense) as is necessary to enable the Purchaser to enforce the Seller's rights under the relevant Purchaser Claim, provided that:
    - (i) the Seller shall not be obliged to make any payment (in money or money's worth) under this paragraph (c) unless the Purchaser has first paid it the amount concerned nor shall it be obliged to become involved in any legal action; and
    - (ii) the Purchaser shall not agree to any amendment or waiver of those rights under the relevant Purchaser Claim (which continue to be rights of the Seller) without prior written approval of the Seller.
4. If any Counterparty Consent is not obtained within twelve months after Closing or is refused and the procedure set out in this Schedule does not enable the benefit of the relevant Purchaser Claim to be enjoyed in all material respects by the Purchaser after Closing, then the Seller and the Purchaser shall use reasonable efforts to achieve an alternative solution by which the Purchaser shall receive the benefit of the relevant Purchaser Claim and assume the associated obligations (provided that the Seller shall not be obliged to make any commitment, incur any liability or make any payment for that purpose).

**SCHEDULE 4**

**DEFINITIONS AND INTERPRETATION**

1. In this Agreement, the following words and expressions shall have the following meanings:

**"Asset Information"** means all documents, data, records and other information in respect of which the Seller has a right to transfer possession to the Purchaser to the extent that such information relates exclusively to the Assets set out in clause 1.1(a) to (b);

**"Assets"** has the meaning given in clause 1.1;

**"Assumed Liabilities"** means all liabilities, duties and obligations of every description whether deriving from contract, common law, statute or otherwise, whether present or future, actual or contingent or ascertained or unascertained and whether owed or incurred severally or jointly or as principal or surety of the Seller to the extent that they relate to the Assets (excluding any tax for which the Seller is liable in respect of any of the Assets);

**"Closing"** means closing of the sale and purchase of the Assets in accordance with the provisions of this Agreement which shall take place on 31 December 2019;

**"Costs"** means losses, damages, costs (including reasonable legal costs) and expenses (including taxation), in each case of any nature whatsoever;

**"Counterparty Consent"** has the meaning given in clause 4.2;

**"Effective Date"** means the date on which the Assets are effectively transferred from the Seller to the Purchaser in accordance with the terms of this Agreement;

**"Purchaser Claims"** means the benefit of all rights and claims of the Seller relating to the Assets whether arising on, prior to or after Closing (including all amounts which are not otherwise transferred under this Agreement but excluding rights and claims to the extent that they relate to taxation);

**"Purchase Price"** has the meaning given in clause 2.1;

2. In this Agreement, unless the context otherwise requires:

(a) references to a person include any individual, firm, body corporate (wherever incorporated), government, state or agency of a state or any joint venture, association, partnership, works council or employee representative body (whether or not having separate legal personality);

(b) headings do not affect the interpretation of this Agreement; the singular shall include the plural and vice versa; and references to one gender include all genders;

(c) references to any Cayman Islands legal term or concept shall, in respect of any jurisdiction other than Cayman Islands, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction;

(d) references to United States Dollars, US\$ or \$ are references to the lawful currency from time to time of United States of America;

(e) references to any agreement are to that agreement as from time to time amended, supplemented, varied, assigned or transferred; and

(f) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3. References to any legislation or law or to any provision thereof shall include references to any such law as it may, after the date hereof, from time to time, be amended, supplemented or re-enacted, any reference to any statutory provision shall include any subordinate legislation made from time to time under that provision, and any reference to law generally shall include any law applicable to the relevant party, including statutory and common law.

4. The Schedules comprise schedules to this Agreement and form part of this Agreement.

5. Where there is any inconsistency between the definitions set out in this Schedule and the definitions set out in any clause or any other Schedule, then, for the purposes of construing such clause or Schedule, the definitions set out in such clause or Schedule shall prevail.

**SIGNATURE**

This Agreement is signed by duly authorised representatives of the parties:



\_\_\_\_\_  
Sentinel Reinsurance, Ltd.  
By: Matthew Diorio  
Director  
\_\_\_\_\_

\_\_\_\_\_  
Sebastian Clarke Ltd  
By: Summit Management Limited  
Director  
By: \_\_\_\_\_  
Its: Authorised Signatory

**From:** James Seery <jpseeryjr@gmail.com>  
**To:** Isaac Leventon <ILeventon@highlandcapital.com>  
**Cc:** Scott Ellington <SEllington@highlandcapital.com>  
**Subject:** Re: UBS Supplemental Information Request  
**Date:** Wed, 5 Aug 2020 19:06:53 -0400

---

Yes

Sent from my iPhone

On Aug 5, 2020, at 7:06 PM, Isaac Leventon wrote:

9:30 am CT, 10:30 am et?

---

**From:** James Seery  
**Sent:** Wednesday, August 5, 2020 6:05 PM  
**To:** Isaac Leventon  
**Cc:** Scott Ellington  
**Subject:** Re: UBS Supplemental Information Request

Thanks.

Can we discuss early tomorrow?

I'm open.

Thanks.

Sent from my iPhone

On Aug 5, 2020, at 6:29 PM, Isaac Leventon <[ILeventon@highlandcapital.com](mailto:ILeventon@highlandcapital.com)> wrote:

Jim – Wanted to walk you through the additional analysis and support before I send it to Pachulski. Please let me know when you have a moment to discuss. Summary:

- CDO Fund
  - Current assets: \$32 million, composed of \$11 mill in Greenbriar CLO equity and \$21 million in Multi-Strat.
  - 2009 v. 2019: We have the assets lists from 2009 – 2011. I reconciled the remaining 2011 assets (in the attached) against 2019. That is how we showed the \$32 million in remaining positions.

- Cash: 2012 – 2015. Fund has unaudited financials from 2009 – 2011 (attached). From 2012 – 2015, the fund had \$10.5 million in cash from cash-on-hand plus sales proceeds. \$16.6 million in legal fees paid (trying to determine source of additional funds to pay fees).
  - One asset unaccounted for: Lehman BK claim. Our system is just not built to track this asset type easily. I am still working on it.
  - Support: A 2011 unaudited financial prepared in support of HCMLP's audit. Trade tickets to support each 2011 asset not still in the fund. List of legal fee payments by date, amount, payor.
- SOHC
    - Current Assets: written off bonds of Delphi and Tousa; Longstreet CDO Mezz. (zero value).
    - 2009 v. 2019: Have position statements from 2009 – 2012. The remaining non-cash positions in 2012 were the Delphi Bonds, still in the fund.
    - Cash: We have a cash flow statement showing all payments from 2009 – 2018 (last payment date). Last remaining \$295,000 in cash was paid in 2017. Since then the fund has received \$109.10 in dividend payments. That means SOHC currently has enough gross assets to buy a steak dinner, as long as it does not order the wine.
    - Support: Position statements, cash flow statement.

---

**From:** Isaac Leventon

**Sent:** Wednesday, August 5, 2020 2:54 PM

**To:** 'James Seery' <jpseeryjr@gmail.com>; James Romey <jromey@DSIConsulting.com>; David Klos <DKlos@HighlandCapital.com>; Gregory V. Demo <GDemo@pszjlaw.com>

**Cc:** Bradley Sharp <bsharp@DSIConsulting.com>

**Subject:** RE: UBS Supplemental Information Request

+ Greg Demo.

- UBS's current requests for information exceed what it was entitled to under the Special Master Discovery Order (attached). UBS is asking for documents from 12/31/07 – 12/31/19. UBS already received these documents from 12/31/06 – 5/31/09, which was the relevance cut-off for proving liability on alter ego. The relevance time period was defined as the time period in which the alleged fraudulent transfers took place. UBS has all of the documents to which the special master deemed it was entitled.
- HFP (the parent of SOHC) and CDO Fund both informed their investors in 2009 that they had zero net asset value. I have attached the letters for reference. I know the HFP letter was part of the earlier production to UBS; I am trying to verify if the CDO Fund letter was produced.
- I have been tracking the assets through on SOHC and CDO Fund. I am putting together a report with supporting documents.
  - SOHC had \$295,000 in cash, all since paid in legal fees. It has four worthless securities, two bonds in bankrupt companies (Delphi and Tousa) and two CDO mezz tranches.
  - I found a CDO Fund work book from 2011. CDO Fund had ten assets as of end of 2011 (plus \$1.2 m in cash). Four were sold and the proceeds (plus \$1.2m cash-on-hand) used to pay legal fees. One asset, a claim in the Lehman BK, I still am trying to track down. Five assets remain in the Fund, three with zero value, as well as \$11m in Greenbriar CLO equity and some amount of Multi-Strat equity (\$11m as of 2011, I am trying to figure out the value today). Greenbriar's portfolio is made up almost entirely of Highland-managed private equity names (Carey, Cornerstone, Omnimax, etc). Multi-Strat's portfolio should be familiar, but it is primarily MGM, JHT, and Omnimax. Also, Multi-Strat cannot pay its equity holders until

it resolves a dispute with its primary creditor UBS. Therefore, both portfolio assets are illiquid unless the underlying PE positions are sold.

---

**From:** James Seery <[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)>  
**Sent:** Wednesday, August 5, 2020 9:16 AM  
**To:** James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Isaac Leventon <[ILEventon@HighlandCapital.com](mailto:ILEventon@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>  
**Cc:** Bradley Sharp <[bsharp@DSIConsulting.com](mailto:bsharp@DSIConsulting.com)>  
**Subject:** Re: UBS Supplemental Information Request

We have the cash call at 11. Can we get on this call now? Thanks

Best. Jim

Jim Seery

631-804-2049

[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)

---

**From:** James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>  
**Date:** Wednesday, August 5, 2020 at 9:22 AM  
**To:** Isaac Leventon <[ILEventon@HighlandCapital.com](mailto:ILEventon@HighlandCapital.com)>, David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>  
**Cc:** Jim Seery <[jpseeryjr@gmail.com](mailto:jpseeryjr@gmail.com)>, Bradley Sharp <[bsharp@DSIConsulting.com](mailto:bsharp@DSIConsulting.com)>  
**Subject:** UBS Supplemental Information Request

Isaac/David,

Can you do a call this morning asap with Jim to discuss status of these materials? This is a high priority item.

Let me know what works for you guys and I'll send a dial in.

Thanks,  
James

**James E. Romey**

Development Specialists, Inc.

110 East 42<sup>nd</sup> Street

Suite 1818

New York City, NY 10017

Tel: (212) 425-4141 Ext. 1174

[www.dsiconsulting.com](http://www.dsiconsulting.com)

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**From:** Scott Ellington <SELLINGTON@HighlandCapital.com>

**To:** "Gregory V. Demo" <GDemo@pszjlaw.com>

**Cc:** Isaac Leventon <ILEventon@HighlandCapital.com>, James Romey <jromey@DSIConsulting.com>, David Klos <DKlos@HighlandCapital.com>, Jim Seery <jpseeryjr@gmail.com>

**Subject:** Re: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

**Date:** Sat, 15 Aug 2020 12:47:38 -0500

**Importance:** Normal

---

I don't think there is any need for a call. I can tell you where we are currently.

We are searching for documents and records that were created as far back as 15 years ago. As you can imagine records and documents storage and best practices were very different in 2005.

Most of the employees and custodians of such documents and records have not worked for the debtor or related entities in 10+ years.

The professionals and service providers of the target entities have not been associated with those entities in 7+ years.

The Debtor doesn't have any leverage or ability to get former professionals and service providers to help in this endeavor.

The Debtor has not managed these target entities in 7 years.

As I am sure you are aware and I know UBS is aware that the document retention policy of the SEC is that the RIAs are required to maintain documents for 7 years.

Furthermore, I have personally discussed at length with the head of KPMG Cayman Islands this particular situation and he expressed to me that there are currently more than 6000 "ghost funds" such as these target entities, stemming from the 2008 crisis, that do not have directors, custodians, administrators, bank accounts etc. that sit dormant and NO ONE knows what they truly retain etc.

I know that UBS is aware of this situation and I know Andy Clubok knows of this situation because I have personally discussed it with him several dozen times. Including as recently as this year.

Needless to say this project is a Herculean task.

Isaac and myself have spent in excess of a 100 hours trying to piece together everything we can to create a true and accurate document based record of what happened with these target entities.

A large majority of our efforts are based in educated "guess work" which is only possible due to our long tenures with the Debtor, that has lead to the ability to discover documents and correspondence that I hope will ultimately result in us being able to produce all that is available to UBS.

We are being incredibly careful and diligent not to provide documents or conclusions which are not 100% based in fact as we strongly believe, and I have discussed with same with Jim Seery, that producing inaccurate results would cause unwanted issues with UBS.

Be assured that Isaac and me are actively working on this and speak literally daily about it.

UBSPROD1611114

Sent from my iPhone

> On Aug 15, 2020, at 11:31 AM, Gregory V. Demo <GDemo@pszjlaw.com> wrote:

>

> Scott and Isaac,

>

> I spoke to Jim about this issue this morning. It is a high priority at this point and we need to do what we can to push it to conclusion. I understand that it's going to take some work.

>

> Can we schedule a time Wednesday morning (8/19) to discuss progress and where we're at? I'm generally available so whenever works for you all will work for me.

>

> Best,

> Greg

>

> Gregory V. Demo

> (212) 561-7730

>

> Sent from my iPad

>

> On Aug 6, 2020, at 6:08 PM, Scott Ellington <SEllington@highlandcapital.com> wrote:

>

> Isaac and me were instructed by Jim Seery to get this UBS deliverable handled.

> I was just on phone with Isaac when this email came through.

> Don't see how this is urgent. Especially relative to UBS request.

> We will get to this when it is a priority.

>

> Sent from my iPhone

>

> On Aug 6, 2020, at 5:05 PM, Isaac Leventon <ILeventon@highlandcapital.com> wrote:

>

>

> Guys, I don't think this is a prerequisite to delivering materials to UBS in satisfaction of their concerns. I am prepping the document set for delivery tomorrow. Dave has not worked on this, so I will just call Greg and James. However, this is the current status.

>

> From: Gregory V. Demo <GDemo@pszjlaw.com>

> Sent: Thursday, August 6, 2020 5:01 PM

> To: James Romey <jromey@DSIConsulting.com>; Isaac Leventon <ILeventon@HighlandCapital.com>; David Klos <DKlos@HighlandCapital.com>

> Cc: Jim Seery <jpseeryjr@gmail.com>

> Subject: RE: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

>

> I'll circulate a dial in for 6:15 EST. Sorry I didn't see this earlier.

>

> Gregory V. Demo

> Pachulski Stang Ziehl & Jones LLP

> Tel: 212.561.7730 | Fax: 212.561.7777

> GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>

> vCard<<http://www.pszjlaw.com/vcard-130.vcf>> | Bio<<http://www.pszjlaw.com/attorneys-130.html>> |

> LinkedIn<<https://www.linkedin.com/in/gregory-demo-482aa112>>

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> Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa  
>  
> From: James Romey [mailto:jromey@DSIConsulting.com]  
> Sent: Thursday, August 06, 2020 5:41 PM  
> To: Isaac Leventon; Gregory V. Demo; David Klos  
> Cc: Jim Seery  
> Subject: RE: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.  
> Importance: High

> Are you guys available for a call at 6pm eastern for a status check?  
>  
>

> James E. Romey  
> Development Specialists, Inc.  
> 110 East 42nd Street  
> Suite 1818  
> New York City, NY 10017  
> Tel: (212) 425-4141 Ext. 1174  
> [www.dsiconsulting.com](http://www.dsiconsulting.com)<<http://www.dsiconsulting.com>>

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>  
> From: Isaac Leventon [mailto:ILEventon@HighlandCapital.com]  
> Sent: Thursday, August 6, 2020 3:55 PM  
> To: Gregory V. Demo <GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>>; David Klos <DKlos@HighlandCapital.com<mailto:DKlos@HighlandCapital.com>>; James Romey <jromey@DSIConsulting.com<mailto:jromey@DSIConsulting.com>>  
> Cc: Jim Seery <jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>>  
> Subject: RE: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

> Dave - I will call you to figure this out.  
>

> From: Gregory V. Demo <GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>>  
> Sent: Thursday, August 6, 2020 2:17 PM  
> To: David Klos <DKlos@HighlandCapital.com<mailto:DKlos@HighlandCapital.com>>; James Romey <jromey@DSIConsulting.com<mailto:jromey@DSIConsulting.com>>; Isaac Leventon <ILEventon@HighlandCapital.com<mailto:ILEventon@HighlandCapital.com>>  
> Cc: Jim Seery <jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>>  
> Subject: RE: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

> The confusion that we're having is that the asset shown on the worksheets we got from Isaac says that Highland CDO Opportunity Master Fund has a \$21.5 million limited partnership interest in MVCDO:

> Highland Credit Opportunities CDO Ltd.

> Partnership Interest



>

> So the issue you raise is exactly the issue that we're trying to figure out. Going off the org chart, I also thought this entity was 100% owned by MSCF. We're trying to figure out what the \$26 million asset on CDO Fund's books means and whether it's a direct interest in MCVDO, an LP interest in MSCF, or a redemption interest in MSCF. I have not seen Highland CDO Opportunity Master Fund listed as either an LP in MSCF or as one of the redeemers.

>

> Greg

> Gregory V. Demo

> Pachulski Stang Ziehl & Jones LLP

> Tel: 212.561.7730 | Fax: 212.561.7777

> GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>

> vCard<<http://www.pszjlaw.com/vcard-130.vcf>> | Bio<<http://www.pszjlaw.com/attorneys-130.html>> | LinkedIn<<https://www.linkedin.com/in/gregory-demo-482aa112>>

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>

> From: David Klos [mailto:DKlos@HighlandCapital.com]

> Sent: Thursday, August 06, 2020 3:08 PM

> To: James Romey; Isaac Leventon

> Cc: Gregory V. Demo; Jim Seery

> Subject: RE: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

>

> Suspect there may be some confusion over the name, and Isaac – feel free to chime in here, because I may not have all the history, but the entity that you're asking about is often referred to as MVCDO, and is indirectly owned 100% by MSCF. See org chart attached.

>

> For purposes of MSCF financial reporting (annual audits as well as what we provide you when you ask us for MSCF holdings), MVCDO's holdings are fully consolidated, so they are shown as part of the fund. Many of the funds larger holdings are directly held by MVCDO (MGM, Omnimax, JHT to name a few).

>

> On a standalone basis, the MSCF master fund shows MVCDO as a holding equal to the net assets of MVCDO, but that holding completely eliminates when MVCDO's holdings are consolidated. Call if this is not clear.

>

> From: James Romey <jromey@DSICConsulting.com<mailto:jromey@DSICConsulting.com>>

> Sent: Thursday, August 6, 2020 12:39 PM

> To: Isaac Leventon <ILeventon@HighlandCapital.com<mailto:ILeventon@HighlandCapital.com>>

> Cc: Gregory V. Demo <GDemo@pszjlaw.com<mailto:GDemo@pszjlaw.com>>; Jim Seery <jpseeryjr@gmail.com<mailto:jpseeryjr@gmail.com>>; David Klos <DKlos@HighlandCapital.com<mailto:DKlos@HighlandCapital.com>>

> Subject: UB Diligence Requests: Highland Credit Opportunities CDO Ltd.

> Importance: High

>

> Isaac,

>

> Before we give anything to UBS today, we need to track down what the Highland Credit Opportunities CDO Ltd. partnership interest in MSCF means and how it's accounted for on MSCF's books, ie whether it's part of the existing redemption group, or how it has any remaining interests in the fund.

>

> Or, if I'm misunderstanding something, please let me know asap.

>  
>  
> James E. Romey  
> Development Specialists, Inc.  
> 110 East 42nd Street  
> Suite 1818  
> New York City, NY 10017  
> Tel: (212) 425-4141 Ext. 1174  
> www.dsiconsulting.com<<http://www.dsiconsulting.com>>

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**From:** Matt DiOrio <MDiOrio@HighlandCapital.com>

**To:** "Gregory V. Demo" <GDemo@pszjlaw.com>

**Cc:** James Romey <jromey@DSIConsulting.com>, Vishal Patel <VPatel@HighlandCapital.com>, David Klos <DKlos@HighlandCapital.com>

**Subject:** RE: HCM - Greenbriar Pref Shares CDO Fund

**Date:** Thu, 28 Jan 2021 10:22:28 -0600

**Importance:** Normal

---

I know he worked in ops but other than that I do not know his title and his direct boss.

---

**From:** Gregory V. Demo

**Sent:** Thursday, January 28, 2021 9:26 AM

**To:** Matt DiOrio

**Cc:** James Romey ; Vishal Patel ; David Klos

**Subject:** RE: HCM - Greenbriar Pref Shares CDO Fund

Guys,

A few additional questions:

- What was Carter Chism's title when he worked at HCMLP or its affiliates?
- Who did Carter Chism report to?
- Who directed Carter Chism to transfer the Greenbriar shares to Maples fbo Sentinel?

Greg

Gregory V. Demo

Pachulski Stang Ziehl & Jones LLP

Tel: 212.561.7730 | Fax: 212.561.7777

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Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

-----Original Message-----

From: Matt DiOrio [<mailto:MDiOrio@HighlandCapital.com>]

Sent: Wednesday, January 27, 2021 9:03 PM

To: Gregory V. Demo

Cc: James Romey; Vishal Patel; David Klos

Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

1. August 2017

2. I do not have any of these documents

From: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

Sent: Wednesday, January 27, 2021 5:13 PM

To: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>

Cc: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>; David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

Subject: Re: HCM - Greenbriar Pref Shares CDO Fund

Matt,

Two follow ups:

1. When was the date of the attempted transfer of the Greenbriar shares to Sentinel?
2. Can you please send us Sentinel's subscription documents in MSCF and their redemption request?

Greg

Gregory V. Demo

(212) 561-7730

Sent from my iPad

> On Jan 27, 2021, at 3:58 PM, Matt DiOrio <[MDiOrio@highlandcapital.com](mailto:MDiOrio@highlandcapital.com)> wrote:

>

> Yes I believe that's correct.

>

> -----Original Message-----

> From: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>

> Sent: Wednesday, January 27, 2021 2:52 PM

> To: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; Gregory V. Demo

> <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> They are part of the MSCF redemption group, correct?

>



>

> James E. Romey

> Development Specialists, Inc.

> 110 East 42nd Street

> Suite 1818

> New York City, NY 10017

> Tel: (212) 425-4141 Ext. 1174

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> From: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>

> Sent: Wednesday, January 27, 2021 3:50 PM

> To: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; James Romey

> <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> It is a non-debtor, non-affiliate reinsurance company and I do not know who or how its owned.

>

>

> -----Original Message-----

> From: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Sent: Wednesday, January 27, 2021 2:37 PM

> To: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; James Romey

> <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> Do we have any visibility into who Sentinel Reinsurance is? Who owns them, what do they do, etc.?

>

> Gregory V. Demo

> Pachulski Stang Ziehl & Jones LLP

> Tel: 212.561.7730 | Fax: 212.561.7777

> [GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)

> <http://www.pszjlaw.com>

>

> Los Angeles | San Francisco | Wilmington, DE | New York | Costa Mesa

>

>

> -----Original Message-----

> From: Matt DiOrio [<mailto:MDiOrio@HighlandCapital.com>]

> Sent: Wednesday, January 27, 2021 3:34 PM

> To: James Romey; Vishal Patel; Gregory V. Demo

> Cc: David Klos

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> My understanding is they were transferred to Maples FS in Cayman as custodian for Sentinel Reinsurance, Ltd. When delivery of the shares was not taken by Maples, the certificates seem to have been lost which is what we are working with State Street to remedy.

>

> -----Original Message-----

> From: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>

> Sent: Wednesday, January 27, 2021 1:32 PM

> To: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; Vishal Patel

> <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> Matt,

>

> Who was the intended recipient of the transfer initiated by Carter?

>

>

> James E. Romey

> Development Specialists, Inc.

> 110 East 42nd Street

> Suite 1818

> New York City, NY 10017

> Tel: (212) 425-4141 Ext. 1174

> <http://www.dsiconsulting.com>

>

>

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>

> -----Original Message-----

> From: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>

> Sent: Wednesday, January 27, 2021 2:10 PM

> To: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Vishal Patel

> <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> Hi Guys,

>

> • I am working with State Street to reissue physical certificates and will keep everyone in the loop on timing. It does not appear to be a swift process but we are moving forward. The shares are still registered to Hare and Co with CDO Opportunity Fund as beneficial owner.

> • BONY has a custody account in CDO Opportunity Fund's name and has still been receiving cash waterfall payments for the 16,250 shares.

> • The certificates were transferred in error in 2017 by Carter Chism, who no longer works at HCM, and the recipient never took delivery. The physicals were never returned which is why we are now working on reissuing them.

>

>

>

>

>

> -----Original Message-----

> From: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>

> Sent: Wednesday, January 27, 2021 12:00 PM

> To: Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>; Matt DiOrio

> <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> All,

>

> Checking-in to see what BNY came back with, and when we can speak with them. This needs to get resolved.

>

> -James

>

>

> James E. Romey

> Development Specialists, Inc.

> 110 East 42nd Street

> Suite 1818

> New York City, NY 10017

> Tel: (212) 425-4141 Ext. 1174

> <http://www.dsiconsulting.com>

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>

> -----Original Message-----

> From: Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Sent: Monday, January 25, 2021 11:02 AM

> To: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Matt DiOrio

> <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> Hi James,

>

> Per conversation, BNY has their team looking into this for us and will/should get us an update by end of day today. Based on what they come back with, we can then hop on a call with them to discuss further.

>

> I will follow up with BNY in a bit to see if they have any updates.

>

> Thanks,

>

>

> VISHAL PATEL | DIRECTOR OF OPERATIONS

>

>

> 300 Crescent Court | Suite 700 | Dallas, Texas 75201

> O: 972.419.6292 | F: 972.628.4147

> [VPATEL@hcmlp.com](mailto:VPATEL@hcmlp.com) | <http://www.hcmlp.com>

>

> -----Original Message-----

> From: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>

> Sent: Monday, January 25, 2021 9:15 AM

> To: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>; Gregory V. Demo

> <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; Vishal Patel

> <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>

> All,

>

> Want to bring this task back to the forefront for the week. Can we first arrange the call with BoNY, and once that is set, have a pre-call amongst ourselves to discuss what we need from them and how to get it?

>

>

> James E. Romey

> Development Specialists, Inc.

> 110 East 42nd Street

> Suite 1818

> New York City, NY 10017

> Tel: (212) 425-4141 Ext. 1174

> <http://www.dsiconsulting.com>

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>

> -----Original Message-----

> From: Matt DiOrio <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>

> Sent: Thursday, January 21, 2021 3:42 PM

> To: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>

> Cc: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>; James Romey

> <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>; Vishal Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>

> Subject: Re: HCM - Greenbriar Pref Shares CDO Fund

>

> I must have misunderstood the original ask. I thought we were just trying to determine whether or not CDO Fund was still owner of these shares and then to have new certs issued once we determined they weren't held at BONY but that they were still receiving cash on behalf of CDO fund.

>

> Sent from my iPhone

>

>> On Jan 21, 2021, at 2:30 PM, Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)> wrote:

>>

>> The time sensitivity is more on figuring out what happened to the original certificate. There's going to be pushback on signing any type of lost stock certificate or similar cert without knowing what happened to the original cert.

>>

>> Gregory V. Demo

>> (212) 561-7730

>>

>> Sent from my iPad

>>

>> On Jan 21, 2021, at 2:45 PM, Matt DiOrio <[MDiOrio@highlandcapital.com](mailto:MDiOrio@highlandcapital.com)> wrote:

>>

>>

>> I reached out to the transfer agent to see what we need to do to start the process of reissuing physical certs for these shares.

>>

>> From: David Klos <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>

>> Sent: Thursday, January 21, 2021 1:34 PM

>> To: James Romey <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>

>> Cc: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>; Vishal Patel

>> <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>; Matt DiOrio

>> <[MDiOrio@HighlandCapital.com](mailto:MDiOrio@HighlandCapital.com)>

>> Subject: RE: HCM - Greenbriar Pref Shares CDO Fund

>>

>> Hey James,

>> + Matt D.

>> Let me work with Vishal on corralling the right people at BNY for a call and will try to get that scheduled. I understand that the physical certs themselves are not at BNY and Matt has been chasing. As this seems to be time sensitive, my suggestion would be to fill out whatever paperwork is required to re-issue a physical cert for the shares to CDO fund and send to BNY once complete, which I think Matt is in the best position to take the lead on. This process has been undertaken a few times and I recall it came up after Hurricane Sandy where we had physicals that were lost or damaged in the vault and they had to be re-issued. In the meantime, we'll work on setting that call.

>> Thanks,

>> DK

>>

>> From: James Romey

>> <[jromey@DSIConsulting.com](mailto:jromey@DSIConsulting.com)>>

>> Sent: Thursday, January 21, 2021 8:55 AM

>> To: David Klos



>> <[DKlos@HighlandCapital.com](mailto:DKlos@HighlandCapital.com)>>; Vishal

>> Patel <[VPatel@HighlandCapital.com](mailto:VPatel@HighlandCapital.com)>>

>> Cc: Gregory V. Demo <[GDemo@pszjlaw.com](mailto:GDemo@pszjlaw.com)>>

>> Subject: HCM - Greenbriar Pref Shares CDO Fund

>>

>>

>> David/Vishal,

>>

>>

>>

>> We've been working with Matt DiOrio on tracking down the physical certificate of Greenbriar Class 1 Preference Shares that we've been told were a holding of Highland CDO Opportunity Master Fund, L.P.

>>

>>

>>

>> Matt believes that BoNY is the custodian for the holding, and BoNY confirmed with him that they are holding cash that Greenbriar Pref shares have earned, but that they do not have the physical certificate. Are either of you familiar with this issue specifically, or even generally when it comes to custodians and the physical certificates?

>>

>>

>>

>> Secondly, we'd like to arrange a group call with BoNY to investigate what happened to the certificate, and it would be helpful to have you guys join so that we can ask the right questions and get this issue resolved which is a very high priority for Seery right now.

>>

>>

>>

>> Thanks,

>> James

>>

>>

>>

>> James E. Romey

>> Development Specialists, Inc.

>> 110 East 42nd Street

>> Suite 1818

>> New York City, NY 10017

>> Tel: (212) 425-4141 Ext. 1174

>> <http://www.dsiconsulting.com><<http://www.dsiconsulting.com>>

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**To:** Tom Adamczak[tadamczak@beechercarlson.com]  
**From:** Alli Devins[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C7555E75FF6F47BAB18A021E6FA467F9-ALLISON DEV]  
**Sent:** Thur 2/6/2020 5:07:54 PM Coordinated Universal Time  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance  
**Attachment:** SEN 200206 Scott Ellington Invoices - \$176,334.77.pdf  
**Attachment:** SEN 200206 Bermuda Monetary Authority Invoices - \$2,340.00.pdf  
**Attachment:** SEN 200206 Solomon Harris Invoice - \$1,927.42.pdf

---

Yes, that was actually on my list to do today. I have them all pulled together, just need to send them out. These are the three I have, not sure if you have any additional invoices.



Alli Devins

Beecher Carlson Insurance Services, LLC  
*Accountant*  
T 802.338.1997  
156 College Street, Suite 301  
Burlington | VT | 05401  
[www.beechercarlson.com](http://www.beechercarlson.com)

---

**From:** Tom Adamczak <tadamczak@beechercarlson.com>  
**Sent:** Thursday, February 6, 2020 12:03 PM  
**To:** Alli Devins <ADevins@beechercarlson.com>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

We have a bunch of invoices for Sentinel that in need of processing. Do you have time to get approvals on those?

---

**From:** Alli Devins  
**Sent:** Thursday, February 6, 2020 11:56 AM  
**To:** Tom Adamczak <tadamczak@beechercarlson.com>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Sounds good, no problem!



Alli Devins

Beecher Carlson Insurance Services, LLC  
*Accountant*  
T 802.338.1997  
156 College Street, Suite 301  
Burlington | VT | 05401  
[www.beechercarlson.com](http://www.beechercarlson.com)

---

**From:** Tom Adamczak <tadamczak@beechercarlson.com>  
**Sent:** Thursday, February 6, 2020 11:48 AM  
**To:** Alli Devins <ADevins@beechercarlson.com>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

**BC SEN0000727319**  
**12/10/21**  
**Highly Confidential**

Thanks. I wasn't worried about those as Dan had mentioned they were processed already. I just wanted to check on the other as Katie was asking me.

---

**From:** Alli Devins  
**Sent:** Thursday, February 6, 2020 11:46 AM  
**To:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Looks like they finally paid the Beecher and Crowe invoices as well back in January. Not sure why they weren't showing up on the first report I sent, but they are on the January statement attached.



Alli Devins

Beecher Carlson Insurance Services, LLC  
*Accountant*  
T 802.338.1997  
156 College Street, Suite 301  
Burlington | VT | 05401  
[www.beechercarlson.com](http://www.beechercarlson.com)

---

**From:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Sent:** Thursday, February 6, 2020 11:38 AM  
**To:** Alli Devins <[ADevins@beechercarlson.com](mailto:ADevins@beechercarlson.com)>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Alli, are you able to see whats been processed or can you only get statements?

---

**From:** Cormier, Daniel [<mailto:DRCormier@landolakes.com>]  
**Sent:** Wednesday, February 5, 2020 11:00 AM  
**To:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Cc:** Alli Devins <[ADevins@beechercarlson.com](mailto:ADevins@beechercarlson.com)>  
**Subject:** RE: [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Tom - This will be getting wired today, Dee Lo was out of the office.

---

**From:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Sent:** Monday, February 3, 2020 10:30 AM  
**To:** Cormier, Daniel <[DRCormier@landolakes.com](mailto:DRCormier@landolakes.com)>  
**Cc:** Alli Devins <[ADevins@beechercarlson.com](mailto:ADevins@beechercarlson.com)>  
**Subject:** [EXTERNAL] FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Dan, do you know if this has been settled with ProAg yet? I want to follow up with Katie regarding the commutation and don't want this to be a hang-up on their end.

Thanks,

Tom

---

**From:** Peace, Katie [<mailto:kpeace@proag.com>]

BC SEN0000727320  
12/10/21  
Highly Confidential

**Sent:** Thursday, January 23, 2020 9:37 AM

**To:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>

**Cc:** [BEKoland@landolakes.com](mailto:BEKoland@landolakes.com); [JHedges@landolakes.com](mailto:JHedges@landolakes.com); Cormier, Daniel <[DRCormier@landolakes.com](mailto:DRCormier@landolakes.com)>

**Subject:** FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Tom,

Attached are the wire instructions for USSIC. We look forward to payment from WinSure.

Thanks,

Katie

**KATIE PEACE**

Director of Reinsurance, ProAg  
7950 Main Street North, Suite 230  
Maple Grove, MN 55369  
Office: (800) 366-2767 ext 4109  
Cell: (952) 847-3067  
[www.ProAg.com](http://www.ProAg.com)

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---

**From:** Peace, Katie

**Sent:** Wednesday, January 22, 2020 4:29 PM

**To:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>

**Cc:** Cormier, Daniel <[DRCormier@landolakes.com](mailto:DRCormier@landolakes.com)>; [BEKoland@landolakes.com](mailto:BEKoland@landolakes.com); [JHedges@landolakes.com](mailto:JHedges@landolakes.com); Ryan Bakke ([RBakke@proag.com](mailto:RBakke@proag.com)) <[RBakke@proag.com](mailto:RBakke@proag.com)>; Cooke, Cindy ([ccooke@tmhcc.com](mailto:ccooke@tmhcc.com)) <[ccooke@tmhcc.com](mailto:ccooke@tmhcc.com)>; Katie Peace <[kpeace@proag.com](mailto:kpeace@proag.com)>

**Subject:** RE: WinSure Yield Stack 2019 Quota Share Reinsurance

Hi Tom,

As it turns out, the amount indicated in the Jan 15 QS settlement calculation as “previously paid” by WinSure to USSIC was not actually ever paid. Before sending the Jan 15 settlement spreadsheet to you all last week I had asked internally for confirmation that we had received the \$51,675.82 that was due to USSIC from WinSure for the Oct 31 preliminary settlement, and received an erroneous confirmation that it had been received in early December. However, when I asked for a copy or proof of payment earlier today, per your request below, we could not find it and had in fact determined that what was previously confirmed as being received was a payment from IronShore, not from Winsure. Therefore, I apologize for any confusion, but I have now zeroed out the “previously paid” amount in the attached revision to reflect that the Oct 31 settlement adjustment was never actually paid by WinSure.

The revised balance due to USSIC from WinSure is **\$49,838.38**.

I’ve requested wire instructions for USSIC and will forward upon receipt. If you have questions, please let me know.

Best regards,

Katie

**KATIE PEACE**

Director of Reinsurance, ProAg  
7950 Main Street North, Suite 230  
Maple Grove, MN 55369  
Office: (800) 366-2767 ext 4109  
Cell: (952) 847-3067  
[www.ProAg.com](http://www.ProAg.com)

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**From:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>

**Sent:** Wednesday, January 22, 2020 8:25 AM

**To:** Peace, Katie <[kpeace@proag.com](mailto:kpeace@proag.com)>

**Subject:** RE: WinSure Yield Stack 2019 Quota Share Reinsurance

**BC SEN0000727321**

**12/10/21**

**Highly Confidential**

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Katie, do you have any information on the previously paid amount of \$51,675.82? I do not have any record of this in our files and am wondering if it may have been paid by some other party.

---

**From:** Peace, Katie [<mailto:kpeace@proag.com>]  
**Sent:** Friday, January 17, 2020 4:08 PM  
**To:** Tom Adamczak <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>  
**Subject:** FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Hi Tom,  
Do you happen to know if any of the LOL/Winsure folks that I sent the below emails to are still around to handle this?  
Thanks,  
Katie

**KATIE PEACE**

Director of Reinsurance, ProAg  
7950 Main Street North, Suite 230  
Maple Grove, MN 55369  
Office: (800) 366-2767 ext 4109  
Cell: (952) 847-3067  
[www.ProAg.com](http://www.ProAg.com)

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---

**From:** Peace, Katie  
**Sent:** Friday, January 17, 2020 10:25 AM  
**To:** Cormier, Daniel <[DRCormier@landolakes.com](mailto:DRCormier@landolakes.com)>  
**Cc:** 'Tom Adamczak' <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>; 'BEKoland@landolakes.com' <[BEKoland@landolakes.com](mailto:BEKoland@landolakes.com)>; 'JHedges@landolakes.com' <[JHedges@landolakes.com](mailto:JHedges@landolakes.com)>  
**Subject:** FW: WinSure Yield Stack 2019 Quota Share Reinsurance

Dan,  
Further to the captioned settlement adjustment calculation I sent to you earlier this week, USSIC has requested that you fill out the EFT Authorization Form so that they can make this payment to WinSure. Please complete and return to me at your earliest convenience.  
Thank you!  
Katie

**KATIE PEACE**

Director of Reinsurance, ProAg  
7950 Main Street North, Suite 230  
Maple Grove, MN 55369  
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Cell: (952) 847-3067  
[www.ProAg.com](http://www.ProAg.com)

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---

**From:** Peace, Katie  
**Sent:** Wednesday, January 15, 2020 8:16 AM  
**To:** Cormier, Daniel <[DRCormier@landolakes.com](mailto:DRCormier@landolakes.com)>  
**Cc:** 'Tom Adamczak' <[tadamczak@beechercarlson.com](mailto:tadamczak@beechercarlson.com)>; 'BEKoland@landolakes.com' <[BEKoland@landolakes.com](mailto:BEKoland@landolakes.com)>; 'JHedges@landolakes.com' <[JHedges@landolakes.com](mailto:JHedges@landolakes.com)>; Ryan Bakke ([RBakke@proag.com](mailto:RBakke@proag.com)) <[RBakke@proag.com](mailto:RBakke@proag.com)>; Cooke, Cindy ([ccooke@tmhcc.com](mailto:ccooke@tmhcc.com)) <[ccooke@tmhcc.com](mailto:ccooke@tmhcc.com)>; Katie Peace <[kpeace@proag.com](mailto:kpeace@proag.com)>



**Subject:** WinSure Yield Stack 2019 Quota Share Reinsurance

Hello Dan,

Please find attached a final premium and loss report on the 2019 Yield Stack program, as of 1/15/19. As we just paid the last two claims in Indiana, there are no further reserves remaining. The attached report also includes a final QS settlement adjustment calculation showing a **balance due from USSIC to WinSure of \$1,837.44.**

Please review and let us know if you have questions or find any discrepancies with the calculation.

Best regards,  
Katie

**KATIE PEACE**

Director of Reinsurance, ProAg  
7950 Main Street North, Suite 230  
Maple Grove, MN 55369  
Office: (800) 366-2767 ext 4109  
Cell: (952) 847-3067  
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"Insurance cannot be bound, altered, or cancelled via email. Coverage confirmation must be communicated through a licensed Beecher representative."

"Beecher Carlson deems receipt of all electronic transmissions, including delivery of insurance policy documents, submitted by an authorized representative of our company to you as an acceptable mode of communication in conducting business transactions as electronic transmissions are permitted by law."

"Beecher Carlson also does not warrant or make any representations that this communication is free of any malicious software or other defect that might affect any computer system that receives, opens or retrieves such communication. Accordingly, any and all liability for alleged or actual loss, damage or injury arising out of or as a result from the receipt, opening or any use of such communication is expressly disclaimed"

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**Ellington Expenses (London & Paris)**

TOTAL = \$78,841.93

<b>Date</b>	<b>Description</b>	<b>Total (USD)</b>	<b>Foreign</b>	
11/17/19	BRITISH AIRWAYS [BA.COM]	\$9,354.82	-	Risk Mitigation
12/12/19	LW THEATRES GROUP LIMITED	\$495.86	£375.00	Risk Mitigation
12/13/19	CLARIDGES HOTEL - LONDON	\$654.54	£495.00	Risk Mitigation
12/17/19	BROWNS HOTEL - LONDON	\$994.95	£750.00	Risk Mitigation
12/22/19	SCOTTS - LONDON	\$701.86	£536.51	Risk Mitigation
12/23/19	LONDON HILTON PARKLANE	\$388.72	£297.14	Risk Mitigation
12/23/19	NOVIKOV BAR & GRILL - LONDON	\$1,397.47	£1,072.09	Risk Mitigation
12/24/19	CLARIDGE'S HOTEL [3CPAYMENT*]	\$2,629.26	£2,027.81	Risk Mitigation
12/24/19	MONCKS - LONDON	\$219.89	£169.59	Risk Mitigation
12/26/19	CECCONIS MAYFAIR [3CPAYMENT*]	\$171.15	£131.63	Risk Mitigation
12/26/19	CURB MOBILITY - LONDON	\$24.58	£18.96	Risk Mitigation
12/26/19	BLACK CAB - LONDON	\$23.86	£18.40	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	\$22.50	£17.35	Risk Mitigation
12/26/19	THE CLARENCE - LONDON	\$29.95	£23.10	Risk Mitigation
12/27/19	BROWNS HOTEL - LONDON	\$15,187.76	£11,576.04	Risk Mitigation
12/27/19	ROSTANG ET COMPAGNIE - PARIS	\$2,799.92	€ 2,522.00	Risk Mitigation
12/28/19	CARS ZURICH - PARIS	\$2,887.35	€ 2,600.75	Risk Mitigation
12/28/19	JULES VERNE TPE - PARIS	\$1,728.58	€ 1,546.00	Risk Mitigation
12/28/19	LA TOUR D ARGENT - PARIS	\$2,969.67	€ 2,656.00	Risk Mitigation
12/29/19	FOUR SEASONS HOTEL GEORGE V	\$7,978.46	€ 7,135.73	Risk Mitigation
12/29/19	RESTAURANT ALLARD - PARIS	\$228.43	€ 204.30	Risk Mitigation
12/30/19	34 - LONDON	\$317.27	£241.82	Risk Mitigation
12/30/19	FOUR SEASONS HOTEL GEORGE V	\$110.98	€ 99.00	Risk Mitigation
12/30/19	PARK CHINOIS - LONDON	\$4,155.66	£3,159.48	Risk Mitigation
12/31/19	JEAN GEORGE, THE CONNAUGHT	\$632.58	£480.94	Risk Mitigation
01/01/20	CABVISION - LONDON	\$27.78	£21.12	Risk Mitigation
01/01/20	SEXY FISH - LONDON	\$716.75	£544.93	Risk Mitigation
01/02/20	BROWNS HOTEL - LONDON	\$21,991.33	£16,719.63	Risk Mitigation
		<b>\$78,841.93</b>		

**ELLINGTON EXPENSE REPORT**

Toronto (01/15/20 - 01/19/20)

	<b>Date</b>	<b>Description</b>	<b>TOTAL (USD)</b>	<b>TOTAL (CAD)</b>	
1	01/08/20	Shangri-La Toronto - Quarry Bay, HK	\$15,511.88	\$20,243.00	Risk Mitigation
2	01/08/20	SEG - Suite Experience Group	\$7,725.00	-	Biz Dev
3	01/14/20	Shangri-La Toronto - Quarry Bay, HK	\$2,637.02	\$3,443.42	Risk Mitigation
4	01/14/20	L.A. Limocoach	\$294.25	\$383.35	Biz Dev
5	01/14/20	L.A. Limocoach	\$2,885.26	\$3,759.50	Biz Dev
6	01/15/20	Dasha - Toronto	\$1,757.19	\$2,291.37	Biz Dev
7	01/16/20	Rabba Fine Foods - Toronto	\$210.48	\$274.47	Biz Dev
8	01/16/20	Dasha - Toronto	\$6,297.71	\$8,212.22	Biz Dev
9	01/17/20	SBA Pinnacle Suites	\$1,808.38	\$2,356.32	Biz Dev
10	01/17/20	Jacobs & Co. Steakhouse - Toronto	\$6,883.13	\$8,968.72	Risk Mitigation
11	01/17/20	Goldie - Toronto	\$18,292.60	\$23,835.26	Biz Dev
12	01/18/20	Akira Back - Toronto	\$3,042.20	\$3,963.99	Biz Dev
13	01/18/20	Four Seasons Hotel - Toronto	\$2,426.65	\$3,161.92	Biz Dev
14	01/18/20	Dasha - Toronto	\$8,862.32	\$11,547.60	Biz Dev
15	01/19/20	Shangri-La Hotel Toronto	\$647.79	\$844.07	Risk Mitigation
16	01/19/20	Shangri-La Hotel Toronto	\$407.30	\$530.71	Risk Mitigation
17	01/19/20	Shangri-La Hotel Toronto	\$327.64	\$426.91	Risk Mitigation
18	01/19/20	Shangri-La Hotel Toronto	\$108.82	\$141.79	Risk Mitigation
19	01/19/20	Shangri-La Hotel Toronto	\$1,428.08	\$1,860.79	Risk Mitigation
20	01/19/20	Shangri-La Hotel Toronto	\$1,362.17	\$1,774.91	Risk Mitigation
21	01/19/20	Shangri-La Hotel Toronto	\$1,152.50	\$1,501.71	Risk Mitigation
22	01/19/20	Shangri-La Hotel Toronto	\$1,081.80	\$1,409.58	Risk Mitigation
23	01/19/20	Rebel Nightclub	\$12,150.81	\$15,832.50	Biz Dev
24	01/20/20	L.A. Limocoach	\$191.86	\$250.00	Biz Dev
<b>TOTAL =</b>			<b>\$97,492.84</b>		

## Alli Devins

---

**From:** Matt DiOrio <mdiorio@sasmgt.com>  
**Sent:** Friday, January 31, 2020 4:53 PM  
**To:** Tom Adamczak; Alli Devins  
**Subject:** Expenses  
**Attachments:** Dec - Jan Expenses.xlsx

Hi Tom and Alli,

Please submit the attached expenses for reimbursement to the account listed below:

Account Name: Scott Ellington  
Account Number: 6512711208  
Bank name: Wells Fargo  
Routing Number: 121000248

The details are attached and I've broken out which should be from the risk mitigation bucket and which would be business development for you to assign to whatever the appropriate expense categories might be. The Toronto expenses included 5 people total and doubled as a due diligence trip for a potential investment. Total reimbursement amount is **\$176,334.77**.

Please let me know if you have any questions and have a great weekend.

Thanks,  
Matt DiOrio  
857-453-0197

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Bermuda Monetary Authority  
 43 Victoria Street  
 Hamilton HM12  
 (441)295-5278

**Statement**



MS. HELEN KIM  
 HIGHLAND CDO OPPORTUNITY FUND. LTD.  
 C/O HIGHLAND CAPITAL MANAGEMENT L.P.  
 13455 NOEL ROAD  
 STE. 800  
 DALLAS, TEXAS 75240  
 USA

Date 2/4/2020  
 Due Date 03/31/2020  
 Account FIST001939

Document No.	Date	Code	Description	Amount	Balance Due
FEES49271	1/16/2020	SLS	IFA INSTITUTIONAL FUNDS - ANNUAL FEES	1,090.00	1,090.00
				<b>Amount Due</b>	<b>1,090.00</b>

SLS	Sales / Invoices	LTF	Late Penalty Fee	CR	Credit Memos
SCP	Scheduled Payments	SVC	Service / Repairs	RTN	Returns
DR	Debit Memos	WRN	Warranties	PMT	Payments

**Please ensure appropriate account number is included on all correspondence and remittances.**  
**Please advise the Authority (Finance-receivables@bma.bm) of any changes to your e-mail billing address.**  
 After the due date, a late penalty fee is calculated at 10% per month on outstanding annual fees.  
 Late fees will be removed if evidence satisfactory to the Authority confirms that the ABF was received prior to the due date .  
 Please pay by statement, as an invoice will not be sent.  
 Credit balances can be applied to the current year's fee.  
 BMA is available as a "Bill Payee" on Butterfield and HSBC online banking.  
 When paying online, please select relevant licensee type.  
 2020 Annual fees are due March 31, 2020; all other transactions are due upon receipt.  
**If paying by cheque please note that the Authority will only accept BMD or USD cheque drawn on Bermuda Banks .**  
**The 2020 fees are published on the Fee Schedule posted on the BMA website.**  
 Pursuant to the Economic Substance Act 2018 (the "Substance Act"), previously Excluded funds were renamed Private funds. In order to verify requirements applicable to Private funds have been met, the Authority required all previously Excluded funds to file the updated Prospectus on or before 30 June 2019. If you have not filed a copy of the updated prospectus with the Authority , please do so soonest to avoid falling out of compliance. If you have questions concerning this process please email [Funds@bma.bm](mailto:Funds@bma.bm) <<mailto:Funds@bma.bm>>

Bermuda Monetary Authority  
 43 Victoria Street  
 Hamilton HM12  
 (441)295-5278

**Statement**



ELAINE COLMET  
 HIGHLAND CDO OPPORTUNITY MASTER FUND, L.P.  
 C/O WAKEFIELD QUIN  
 VICTORIA PLACE  
 HAMILTON HM 10  
 BERMUDA

Date 2/4/2020  
 Due Date 03/31/2020  
 Account FEXC000523

Document No.	Date	Code	Description	Amount	Balance Due
FEES49013	1/15/2020	SLS	IFA PRIVATE FUND	1,250.00	1,250.00
				<b>Amount Due</b>	<b>1,250.00</b>

SLS	Sales / Invoices	LTF	Late Penalty Fee	CR	Credit Memos
SCP	Scheduled Payments	SVC	Service / Repairs	RTN	Returns
DR	Debit Memos	WRN	Warranties	PMT	Payments

**Please ensure appropriate account number is included on all correspondence and remittances.**  
**Please advise the Authority (Finance-receivables@bma.bm) of any changes to your e-mail billing address.**  
 After the due date, a late penalty fee is calculated at 10% per month on outstanding annual fees.  
 Late fees will be removed if evidence satisfactory to the Authority confirms that the ABF was received prior to the due date .  
 Please pay by statement, as an invoice will not be sent.  
 Credit balances can be applied to the current year's fee.  
 BMA is available as a "Bill Payee" on Butterfield and HSBC online banking.  
 When paying online, please select relevant licensee type.  
 2020 Annual fees are due March 31, 2020; all other transactions are due upon receipt.  
**If paying by cheque please note that the Authority will only accept BMD or USD cheque drawn on Bermuda Banks .**  
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 Pursuant to the Economic Substance Act 2018 (the "Substance Act"), previously Excluded funds were renamed Private funds. In order to verify requirements applicable to Private funds have been met, the Authority required all previously Excluded funds to file the updated Prospectus on or before 30 June 2019. If you have not filed a copy of the updated prospectus with the Authority , please do so soonest to avoid falling out of compliance. If you have questions concerning this process please email [Funds@bma.bm](mailto:Funds@bma.bm) <mailto:Funds@bma.bm>

**To:** Alli Devins[ADevins@beechercarlson.com]  
**Sent:** Fri 12/20/2019 4:15:08 PM Coordinated Universal Time  
**Subject:** FW: Ellington - Request Reimbursement  
**Attachment:** Ellington Expense Report\_2019.12.19.pdf  
**Attachment:** ATT00001.htm  
**Attachment:** Ellington Expenses (2019-12-19).xlsx  
**Attachment:** ATT00002.htm

---

Nice... what the hell is going on with these expenses? I question how much "business development" is actually being done... did you look at this?

---

**From:** Matt DiOrio [mailto:mdiorio@sasmgt.com]  
**Sent:** Friday, December 20, 2019 10:49 AM  
**To:** Tom Adamczak <tadamczak@beechercarlson.com>; Alli Devins <ADevins@beechercarlson.com>  
**Subject:** Fwd: Ellington - Request Reimbursement

Hi Guys,

Please submit the attached expenses for approval and reimbursement. Just a heads up, settlement talks are cranking up as we understand it so there will be an increase in travel expense over the next few months.

These are actually related to business development as we try to plan for a potential world post ATE.

Thanks

Sent from my iPhone  
Begin forwarded message:

**From:** Sarah Goldsmith <[sgoldsmith@sasmgt.com](mailto:sgoldsmith@sasmgt.com)>  
**Date:** December 19, 2019 at 6:06:04 PM CST  
**To:** Matt DiOrio <[mdiorio@sasmgt.com](mailto:mdiorio@sasmgt.com)>  
**Cc:** Conni <[711cwe@gmail.com](mailto:711cwe@gmail.com)>, Scott Ellington <[sellington@sasmgt.com](mailto:sellington@sasmgt.com)>  
**Subject:** Ellington - Request Reimbursement

Matt –

As discussed earlier, I am submitting the attached expense reimbursement on behalf of Scott Ellington. Subject to review and approval by the directors, please instruct reimbursement to Scott Ellington for these attached travel expenses. Total is **\$318,934.88**. Thank you please let me know if you have any additional questions or need any additional information.

Wire info herein:

Account name: Scott Ellington  
Account Number: 6512711208  
Bank name: Wells Fargo  
Routing Number: 121000248

**Sarah Bell Goldsmith**  
SAS Asset Recovery Ltd.  
(o) 972.628.4102  
(c) 214.642.3487

[SGoldsmith@sasmgt.com](mailto:SGoldsmith@sasmgt.com)

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**EXPENSE REPORT**

NAME: SCOTT ELLINGTON

DATE: 12/19/2019

TOTAL: \$318,934.88

DATE	DESCRIPTION	AMOUNT
1 11/13/19	FOUR SEASONS AUSTIN	\$1,046.54
2 11/13/19	FOUR SEASONS AUSTIN	\$1,015.40
3 11/13/19	FOUR SEASONS AUSTIN	\$960.40
4 11/16/19	FOUR SEASONS AUSTIN	\$30.87
5 11/16/19	JEFFREY'S	\$4,124.10
6 11/16/19	RPM DINING TOO, LLC	\$2,244.04
7 11/16/19	AMERICAN AIRLINES	\$1,423.60
8 11/16/19	AMERICAN AIRLINES	\$1,423.60
9 11/16/19	AMERICAN AIRLINES	\$1,423.60
10 12/11/19	TM CAESARS LINQ - LAS VEGAS, NV	\$4,000.00
11 12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$80.09
12 12/12/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$152,142.13
13 12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$37.89
14 12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$1,048.14
15 12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$1,086.83
16 12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$1,087.71
17 12/13/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$2,310.14
18 12/14/19	Omnia Las Vegas - LAS VEGAS, NV	\$40,060.88
19 12/15/19	BOUCHON RESTAURANT - LAS VEGAS, NV	\$1,580.38
20 12/16/19	AMERICAN AIRLINES	\$522.30
21 12/16/19	AMERICAN AIRLINES	\$522.30
22 12/16/19	AMERICAN AIRLINES	\$564.30
23 12/16/19	Omnia Las Vegas - LAS VEGAS, NV	\$24,256.53
24 12/16/19	Omnia Las Vegas - LAS VEGAS, NV	\$33,388.78
25 12/16/19	SAPPHIRE - LAS VEGAS, NV	\$6,185.00
26 12/16/19	SAPPHIRE - LAS VEGAS, NV	\$7,440.00
27 12/16/19	SAPPHIRE - LAS VEGAS, NV	\$9,050.00
28 12/16/19	SAPPHIRE - LAS VEGAS, NV	\$9,820.00
29 12/16/19	SAPPHIRE - LAS VEGAS, NV	\$9,829.00
30 12/17/19	PARKING CONCEPTS INC - DFW DALLAS, TX	\$167.79
31 12/17/19	WYNN LAS VEGAS HOTEL - LAS VEGAS, NV	\$62.54

**TOTAL = \$318,934.88**

**To:** Tom Adamczak[tadamczak@beechercarlson.com]  
**From:** gps@cibfcib.com[gps@cibfcib.com]  
**Sent:** Fri 4/24/2020 7:02:44 PM Coordinated Universal Time  
**Subject:** FCIB\_CAYMAN\_PROD-Debit Advice  
**Attachment:** 20200424\_150245241D10469815.pdf

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[External]

Please find attached PDF file containing Transaction Debit Advice :  
20200424\_150245241D10469815.pdf

This message was sent by the System :24/04/20 15:02

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**SENTINEL REINSURANCE, LTD.  
C/O MAPLES FS  
BOUNDARY HALL, CRICKET SQUARE  
P.O. BOX 1093**

### **Wire Transfer Debit Advice**

**Date:** 24/04/2020  
**Branch:** INT'L CORP BANKING CAYMAN ISLAND  
**Account Number:** \*\*\*\*\*815  
**Currency and Amount:** USD 4,480,000.00  
**Total Cost :** USD 4,480,000.00  
**Beneficiary:** MAINSPRING LTD  
SUITE 4-210 GOVERNORS SQUARE  
P.O BOX 32311  
GRAND CAYMAN KY1-1209  
**Beneficiary Account Number:**  
**Remittance Information:** 70 share of 6,400,000 dividend

#### **ADDITIONAL DETAILS**

**Beneficiary Bank:**  
**Branch Reference:** 753416215335346  
**Transaction Reference:** 2004242805100384  
**UETR:** 284db6a8-879f-40d9-9d31-eb4cc51f6b4  
**Ordering Currency and Amount:** USD 4,480,000.00  
**Value Date:** 24/04/2020  
**Exchange Rate:** N/A  
**Details Of Charges:** OUR

This is a computer generated advice. No Signature required.  
CAYMAN

**BC SEN0000123499**  
**11/12/21**  
**Highly Confidential**

**To:** Tom Adamczak[tadamczak@beechercarlson.com]  
**From:** gps@cibfcib.com[gps@cibfcib.com]  
**Sent:** Fri 4/24/2020 7:01:34 PM Coordinated Universal Time  
**Subject:** FCIB\_CAYMAN\_PROD-Debit Advice  
**Attachment:** 20200424\_15013543D10469815.pdf

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[External]

Please find attached PDF file containing Transaction Debit Advice :  
20200424\_15013543D10469815.pdf

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BOUNDARY HALL, CRICKET SQUARE  
P.O. BOX 1093**

### **Wire Transfer Debit Advice**

**Date:** 24/04/2020  
**Branch:** INT'L CORP BANKING CAYMAN ISLAND  
**Account Number:** \*\*\*\*\*815  
**Currency and Amount:** USD 1,920,000.00  
**Total Cost :** USD 1,920,000.00  
**Beneficiary:** MONTAGE HOLDINGS LTD  
SUITE 4-210 GOVERNORS SQUARE  
P.O BOX 32311  
GRAND CAYMAN KY1-1209  
**Beneficiary Account Number:**  
**Remittance Information:** 30 share of 6,400,000 dividend

#### **ADDITIONAL DETAILS**

**Beneficiary Bank:**  
**Branch Reference:** 819548215335425  
**Transaction Reference:** 2004242805100382  
**UETR:** 686fd461-428b-4144-8f20-4b7bdf8efc36  
**Ordering Currency and Amount:** USD 1,920,000.00  
**Value Date:** 24/04/2020  
**Exchange Rate:** N/A  
**Details Of Charges:** OUR

This is a computer generated advice. No Signature required.  
CAYMAN

**BC SEN0000004243**  
**11/03/21**  
**Highly Confidential**

To: Saintvil, Leonna[LeonnaSaintvil@cima.ky]  
Cc: Williams, Danya[DanyaWilliams@cima.ky]; Contactinsurance@cima.ky[Contactinsurance@cima.ky]; Clayton Price[eprice@beechercarlson.com]  
From: Gareth Pereira[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C723F8FE4247CB9E3E60D569A89127-PGARETH]  
Sent: Tue 4/27/2021 3:22:00 PM Coordinated Universal Time  
Subject: Sentinel Reinsurance, Ltd - License # 642423  
Attachment: Sentinel Notification - Dividend..pdf

---

Good morning Leonna

Hope all is well

Please see attached Sentinel Reinsurance, Ltd dividend notification as approved by the authority.

Let me know if there are any questions and many thanks for the assistance.

Kind regards

Gareth

**Gareth Pereira**  
*Account Manager*  
[pgareth@beechercarlson.com](mailto:pgareth@beechercarlson.com)  
T: 404.293.1709 | M: 345.923.1726  
Beecher Carlson Cayman, Ltd.  
P.O. Box 10193 | KY1-1002  
Grand Cayman | Cayman Islands



**Beecher Carlson Cayman, Ltd.**



April 26, 2021

Ms. Leonna Saintvil  
Insurance Supervision Division  
Cayman Islands Monetary Authority  
Six Cricket Square  
PO Box 10052  
Grand Cayman KY1-1001  
Cayman Islands

Re: **Sentinel Reinsurance, Ltd. ("Sentinel"; License #642423)**  
**Notification – Dividend Payment**

Dear Leonna:

Pursuant to "Regulatory Procedure: Approval and Notification of Changes – Class B, C, and D Insurers and Portfolio Insurance Companies, 4.3.1", Sentinel is notifying the Authority of a \$2,500,00 dividend to be declared and paid.

After the dividend, Sentinel will maintain the following interim balances:

Total Assets:	\$140,827,475
Total Liabilities:	\$ 20,651,993
Total Shareholders' Equity:	\$123,447,507

In accordance with its dividend policy, approved by the Authority on March 21, 2016, capital and surplus of \$123,447,507 remains well above the minimum capital and surplus of \$250,000 (125% of the greater of the minimum capital requirement and the prescribed capital requirement). In addition, the capital and surplus exceeds \$28,650,000 or 150% of loss reserves. Further, subsequent to the dividend distribution, cash will be \$25,628,032 which exceeds total reserves of \$19,100,000.

As you review this notification, please feel free to contact me via email at [cprice@beechercarlson.com](mailto:cprice@beechercarlson.com), by phone at 928-1127, or my colleague at [pgareth@beechercarlson.com](mailto:pgareth@beechercarlson.com) should you have any questions regarding the above or if you need additional information.

Kind regards,

Clayton Price  
Managing Director  
Beecher Carlson Cayman, Ltd.  
*As Managers for Sentinel Reinsurance, Ltd.*

A.P.O. Box 10193  
Anderson Square Building, 5<sup>th</sup> Floor  
64 Shedden Road  
Grand Cayman Ky1-1002  
Cayman Islands

**BC SEN0000083962**  
**11/03/21**  
**Highly Confidential**



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We Make It *Happen*<sup>™</sup>

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# Transcript of James Dondero

**Date:** May 10, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

**www.planetdepos.com**



Transcript of James Dondero  
Conducted on May 10, 2021

<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION 4 -----X 5 In re : Chapter 11 6 HIGHLAND CAPITAL MANAGEMENT, L.P., Case No: 7 Debtor : 19-34054-SGJ11 8 -----: 9 UBS SECURITIES LLC and UBS AG : Adversary No. 10 LONDON BRANCH, : 21-03020-sgi 11 Plaintiffs, : 12 vs. : 13 HIGHLAND CAPITAL MANAGEMENT, L.P.: 14 Defendant. : 15 -----X 16 DEPOSITION OF JAMES DONDERO 17 APPEARING REMOTELY FROM DALLAS, TEXAS 18 MONDAY, MAY 10, 2021 19 11:00 A.M. EST 20 21 22 Job No.: 371141 23 Pages 1 - 267 24 Reported by: Adrienne Mignano, RPR 25 Appearing remotely</p>	<p>1 A P P E A R A N C E S 2 3 ON BEHALF OF PLAINTIFFS: 4 ANDREW CLUBOK, ESQUIRE 5 SARAH TOMKOWIAK, ESQUIRE 6 KATHRYN GEORGE, ESQUIRE 7 LATHAM &amp; WATKINS LLP 8 555 Eleventh Street, NW 9 Suite 1000 10 Washington, District of Columbia 20004 11 (202) 637-2200 12 13 14 ON BEHALF OF DEFENDANT-HIGHLAND CAPITAL MGMT. 15 ROBERT FEINSTEIN, ESQUIRE 16 JOHN MORRIS, ESQUIRE 17 GREGORY DEMO, ESQUIRE 18 JEFFREY POMERANTZ, ESQUIRE 19 PACHULSKI STANG ZIEHL &amp; JONES 20 780 Third Avenue 21 34th Floor 22 New York, New York 10017 23 (212)561-7700 24 25</p>
<p>1 Deposition of JAMES DONDERO, held via Zoom 2 videoconferencing, pursuant to Notice, before Adrienne 3 M. Mignano, a Registered Professional Reporter and a 4 Notary Public in and for the State of New York. 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES (Continued) 2 3 4 ON BEHALF OF WITNESS 5 CLAY TAYLOR, ESQUIRE 6 BONDS ELLIS EPPICH SCHAFFER JONES, LLP 7 420 Throckmorton Street 8 Suite 1000 9 Fort Worth, Texas 76102 10 (817)405-6900 11 12 13 ALSO PRESENT: 14 Drew Halton - Videographer 15 Jordan Collins - Remote Technician 16 Joshua Tubbs - Remote Technician 17 18 19 20 21 22 23 24 25</p>

Transcript of James Dondero  
Conducted on May 10, 2021

5	7
1                   C O N T E N T S	1    The videographer today is Drew Halton,
2	2    representing Planet Depos. All participants are
3    EXAMINATION OF JAMES DONDERO                   PAGE	3    attending remotely.
4    By Mr. Clubok   8	4            Would counsel please voice identify
5	5    themselves and state whom they represent.
6	6            MR. CLUBOK: On behalf of UBS, it is
7                   E X H I B I T S	7    Andrew Clubok, Sarah Tomkowiak and Kathryn George,
8    (Confidential- Not Attached to the Transcript)	8    all from Latham & Watkins LLP.
9    DEPOSITION EXHIBIT                                   PAGE	9            MR. FEINSTEIN: On behalf of the
10   Exhibit 23    Subpoena                               63	10   defendant, Highland Capital Management, I'm Robert
11   Exhibit 24    E-mail dated May 6, 2021               66	11   Feinstein from Pachulski, Stang, Ziehl & Jones.
12   Exhibit 25    Revised unaudited financial           127	12   With me are my colleagues, Jeffrey Pomerantz, John
13                   statements	13   Morris and Gregory Demo.
14   Exhibit 26    One-page Document identifying       163	14            MR. TAYLOR: Clay Taylor on behalf of
15                   entities connected to Sentinel	15   Jim Dondero, appearing pursuant to a subpoena
16   Exhibit 27    E-mail chain                               172	16   issued to a third-party.
17   Exhibit 28    E-mail   184	17            Just for purposes of a clean record, I
18   Exhibit 29    Document Bates stamped               204	18   believe the case number that was identified was
19                   HCMUBS005324	19   the main bankruptcy case number rather than the
20   Exhibit 30    Document Bates numbered 5322       211	20   adversary number, and that probably needs to be
21   Exhibit 31    Letter from McKool Smith dated       231	21   corrected.
22                   October 19, 2018	22            THE VIDEOGRAPHER: Sir, if you have
23	23   that available, would you mind reading that into
24	24   the record now?
25	25            MR. TAYLOR: Certainly.
6	8
1            REMOTE TECH: Thank you to everyone for	1            THE VIDEOGRAPHER: Thank you.
2   attending this proceeding remotely, which we	2            MR. TAYLOR: One second, please. Just
3   anticipate will run smoothly. Please remember to	3   pulling it up.
4   speak slowly and do your best not to talk over one	4            MR. CLUBOK: I believe it is Number
5   another.	5   21-03020-SGJ.
6            Please be aware we are recording this	6            MR. TAYLOR: Thank you, Andy.
7   proceeding for backup purposes. Any	7            THE VIDEOGRAPHER: The court reporter
8   off-the-record discussions should be had away from	8   today is Adrienne Mignano, representing Planet
9   the computer. Please remember to mute your mic	9   Depos.
10   for those conversations.	10          Would the reporter please swear in the
11          Please have your video enabled to help	11   witness.
12   the reporter identify who is speaking. If you are	12   Whereupon,
13   unable to connect with video and are connecting	13            JAMES DONDERO,
14   via phone, please identify yourself each time	14   being first duly sworn or affirmed to testify to
15   before speaking.	15   the truth, the whole truth, and nothing but the
16          I apologize in advance for any	16   truth, was examined and testified as follows:
17   technical-related interruptions. Thank you.	17   EXAMINATION BY COUNSEL FOR THE PLAINTIFF
18          THE VIDEOGRAPHER: Here begins Tape	18   BY MR. CLUBOK:
19   Number 1 in the videotaped deposition of James	19   Q   Good morning, Mr. Dondero.
20   Dondero in the matter of UBS Securities LLC, et	20   A <b>Good morning.</b>
21   al. versus Highland Capital Management LP in the	21   Q   Mr. Dondero, you have been deposed
22   U.S. Bankruptcy Court, Northern District of Texas,	22   before, correct?
23   Dallas Division; Case Number 19-34054-SGJ11.	23   A <b>Yes.</b>
24          Today's date is May 10th, 2021. The	24   Q   Many times, right?
25   time on the video monitor is 11:05 a.m. Eastern.	25   A <b>Yes.</b>

9

1 Q And you understand that in a deposition  
2 we have to be careful not to talk over each other,  
3 right?  
4 A Yes.  
5 Q If either of us -- if I find either of  
6 us doing that, like if I start talking before  
7 you're done answering or if you start answering  
8 before I'm done talking, I may try to stop and  
9 reset so the court reporter can get a clean  
10 record. Do you understand that?  
11 A Okay.  
12 Q And so to that end, if you'd pause for  
13 just a second when you think I'm done to make sure  
14 I'm done, and I'll try to do the same for you,  
15 that will help us make sure we don't talk over  
16 each other as much as possible, okay?  
17 A Yes.  
18 Q And you know that if you say "uh-huh"  
19 or "uh-uh" and shake your head or something like  
20 that, that may not be clear on the record, and so  
21 instead of doing that, you'll try to answer with  
22 like "yes" or "no" as opposed to head signals or  
23 "uh-huhs"; is that okay?  
24 A Yes.  
25 Q And if I catch you doing it, I'll just

10

1 say, is that a yes? I'm not trying to be rude. I  
2 just want to make sure you're clear if you're  
3 saying "uh-huh" or "uh-uh" or something. If it is  
4 actually a "no," just tell me, no, that meant that  
5 was a no. But I may follow up with you if I catch  
6 you giving a nonverbal answer, okay?  
7 A Yes.  
8 Q And you understand you're under oath  
9 and you have to tell the truth as completely and  
10 accurately as possible?  
11 A Yes.  
12 Q And you understand if I ask you a  
13 question that is capable of being answered with a  
14 simple yes or no, you will do that, correct?  
15 A Yes.  
16 Q And by the way, if I happen to ask --  
17 sometimes I find -- I have seen in these  
18 transcripts where I may ask a double negative. If  
19 I said, for example, it's not raining outside, and  
20 you are like, no, that could be confusing. And if  
21 I catch us doing that, if I see us doing that, I  
22 might follow up and say, it is true that it is not  
23 raining outside, right? I'm just doing that,  
24 again, to make sure the record is clear as opposed  
25 to unclear. Is that okay with you?

11

1 A Yes.  
2 Q Any reason why you can't give fully  
3 truthful, accurate answers to questions today?  
4 A No.  
5 Q Okay. Mr. Dondero, you used to be  
6 effectively in charge of Highland Capital  
7 Management until the bankruptcy, correct?  
8 A Yes.  
9 Q And you were also in charge of other  
10 entities besides Highland Capital Management,  
11 correct?  
12 A Yes.  
13 MR. CLUBOK: Is that noise coming from  
14 somewhere? I don't know if you're hearing that.  
15 MR. TAYLOR: Yes, there is an emergency  
16 alert that is being issued for this area for a  
17 severe thunderstorm, and that was what was -- what  
18 you heard in the background. So to the extent we  
19 have a tornado come through, we'll have to shut it  
20 down.  
21 MR. CLUBOK: I think we had a tornado  
22 come through one deposition before that I was  
23 involved with Mr. Dondero, at least one of them, I  
24 seem to recall. But --  
25 THE WITNESS: It will be a sign from

12

1 God that you should stop.  
2 MR. CLUBOK: Yeah, well, we'll take it  
3 as a sign from the National Weather Service, too,  
4 that we should stop.  
5 So let us know, Clay, if you do get any  
6 kind of notice like that that says you need to  
7 take some kind of action.  
8 Q By the way, Mr. Dondero, do you have  
9 anything at all in front of you as you're sitting  
10 there today?  
11 A Just the laptop.  
12 Q Just the laptop with the video. Is  
13 there anything on the laptop other than the Zoom  
14 screen for this deposition?  
15 A Nope.  
16 Q Okay. And you understand you're not  
17 allowed to refer to anything -- notes or anything,  
18 assistance in answering questions, without letting  
19 us know that you're doing that, correct?  
20 A Yes.  
21 Q Okay. Thank you.  
22 So, sir, one of the other entities that  
23 you -- that you're in control of is an entity  
24 Called Sentinel Insurance, correct?  
25 MR. TAYLOR: Objection. Form.

13

1 **A I wouldn't use the word "control."**  
2 Q Okay. And I think I said the wrong  
3 name. I think it is technically called Sentinel  
4 Reinsurance. Is that the name of the entity?  
5 **A I don't know the official name. It's**  
6 **Sentinel something.**  
7 Q Okay. And what does Sentinel  
8 Reinsurance do?  
9 **A It's an offshore Cayman-based**  
10 **reinsurance company.**  
11 Q What does that mean?  
12 **A As far as I understand, it does some**  
13 **insurance, it does some reinsurance and it -- I**  
14 **believe it is conforming and it is in compliance**  
15 **with regulations regarding qualification as a**  
16 **Cayman reinsurer and it invests its capital and**  
17 **its premiums.**  
18 Q You own part of Sentinel Reinsurance,  
19 correct?  
20 **A I believe I'm a beneficial holder of a**  
21 **majority of it.**  
22 Q Okay. You're the beneficial holder of  
23 the majority of Sentinel Reinsurance, correct?  
24 **A Yes.**  
25 Q And you have been since its founding,

14

1 correct?  
2 **A I believe so.**  
3 Q And, in fact, you are the beneficial  
4 holder of approximately 70 percent of the economic  
5 interest in Sentinel Reinsurance, correct?  
6 **A I believe that's approximately correct.**  
7 Q And the other beneficial holder of  
8 Sentinel Reinsurance is Scott Ellington, right?  
9 **A I believe so.**  
10 Q And you and Scott Ellington are the  
11 only two beneficial holders of the economic  
12 interest in Sentinel Reinsurance, correct?  
13 **A I -- I don't know. I believe so, but I**  
14 **don't know.**  
15 Q And that's been the case since the  
16 founding of Sentinel Reinsurance, to the best of  
17 your knowledge, correct?  
18 **A To the best of my knowledge.**  
19 Q Did you invest any money in Sentinel  
20 Reinsurance, invest any capital?  
21 **A I believe so.**  
22 Q Roughly how much?  
23 **A I don't know.**  
24 Q Roughly.  
25 **A I don't know. I don't remember.**

15

1 Q Was it more than \$1 million?  
2 **A Probably, but I don't --**  
3 Q Was it more than \$10 million?  
4 **A I don't know.**  
5 Q Was it more than \$100 million?  
6 MR. TAYLOR: Andy, I'm going to ask  
7 that you move on. It's been asked and answered  
8 four times now.  
9 **A I really don't know, Andy.**  
10 Q Was it more than \$1 billion?  
11 **A It was less than \$1 billion, I'm sure,**  
12 **but I don't know how much it was.**  
13 Q Okay. Was it less than \$500 million?  
14 MR. TAYLOR: Objection.  
15 **A Yes.**  
16 Q Okay. Was it less than \$100 million?  
17 **A I don't know.**  
18 Q Okay. Was it less than \$250 million?  
19 MR. TAYLOR: Objection.  
20 **A Was it less than -- yes.**  
21 Q Okay. Was it less than 200 million?  
22 **A Yes.**  
23 Q Was it less than 150 million?  
24 **A Yes.**  
25 Q Okay. Was it less than 125 million?

16

1 **A Yes.**  
2 Q Was it more than 50 million?  
3 **A I don't know.**  
4 Q Was it more than 1 million?  
5 **A I don't know, Andy.**  
6 Q Okay. So fair to say -- I thought you  
7 said it was probably more than a million, you  
8 thought.  
9 MR. TAYLOR: Objection. Asked and  
10 answered.  
11 **A Yes.**  
12 Q Okay. So is there -- so do you have  
13 any ability to narrow the amount of capital you  
14 invested in Sentinel Reinsurance in a range that  
15 is smaller than from 1 to \$125 million?  
16 **A From 1 to 100 would be the range. And**  
17 **I don't have a basis for knowing more specifically**  
18 **than that.**  
19 Q And you have no idea within that range  
20 whether it was closer to 1 million or closer to  
21 100. It's just somewhere in that range and you  
22 have no further information. Is that your  
23 testimony?  
24 **A Yes.**  
25 Q When did you put the capital into

17

1 Sentinel Reinsurance?  
2 **A I don't know. A half of a dozen years**  
3 **ago, I guess. I don't know.**  
4 Q Just at its founding?  
5 **A No. I think there's been other**  
6 **contributions along the way also.**  
7 Q Do you have records of how much you've  
8 invested into Sentinel Reinsurance?  
9 **A No, I do not.**  
10 Q You have no tax records, no records  
11 with your investment, there is no record at all in  
12 your control that would tell you how much you  
13 invested in Sentinel Reinsurance in a closer  
14 approximation than 1 to \$100 million?  
15 **A I don't know. All I know is if I was a**  
16 **tax reporter or if it was offshore income, or if**  
17 **it was -- if it was -- however it was supposed to**  
18 **be properly accounted for, I'm confident that it**  
19 **was. There was no attempt to not comply with**  
20 **whatever regulation or taxing was relevant.**  
21 Q Okay. But do you keep records of your  
22 investments somewhere?  
23 **A I do not.**  
24 Q Does anyone keep records of your  
25 investments on your benefit --

18

1 MR. CLUBOK: Strike that.  
2 Q Does anyone on your behalf keep records  
3 of your investments, to your knowledge, like an  
4 accountant, a tax preparer, a lawyer, a financial  
5 advisor, anyone like that?  
6 **A The tax department handles all my taxes**  
7 **domestically, internationally and all the relevant**  
8 **compliance. My personal balance sheets or assets**  
9 **handled by Melissa Schroth in my office.**  
10 Q Okay. You said the tax department  
11 handles all your taxes domestically,  
12 internationally and all the relevant compliance.  
13 The tax department of what entity?  
14 **A They were formerly of Highland. Now**  
15 **they're of -- one of the entities over here. I**  
16 **don't know if it's NextPoint or SkyBridge or**  
17 **whatever.**  
18 Q When you say "here," where are you  
19 physically today?  
20 **A In the bank next to the -- in the**  
21 **NexBank office space across the street from the**  
22 **old Highland offices.**  
23 Q Do you have an office there?  
24 **A Yes.**  
25 Q What is your business address?

19

1 **A I don't know what the address is here.**  
2 THE WITNESS: Do you know what the  
3 address is here?  
4 Hold on one second. We'll get it for  
5 you.  
6 MR. TAYLOR: Well, just for purposes of  
7 a clean record, I'm showing Mr. Dondero something  
8 off of my calendar where I have the address  
9 written down so that he can refer to it, and it's  
10 just a calendar appointment from my phone.  
11 **A It's 2515 McKinney Avenue.**  
12 Q And do you have a permanent office in  
13 that location?  
14 **A Yes.**  
15 Q What other entities work in the same  
16 location that are in any way connected to you?  
17 **A NexBank, NextPoint and -- I don't know**  
18 **how we're doing the shared services with**  
19 **SkyBridge. I don't know if SkyBridge is**  
20 **associated with me. So I -- but they're in the**  
21 **offices here, too, at the moment. We're getting**  
22 **office space -- we were expecting to stay at**  
23 **Highland so it's been a bunch -- it's been a -- we**  
24 **located over here -- relocated over here quickly,**  
25 **but ultimately we'll spread out from here at some**

20

1 **point.**  
2 Q And you said -- you named a woman who  
3 had your personal balance sheets, Melissa -- and  
4 could you spell her last name.  
5 **A S-H-R-O-T-H.**  
6 Q Does she work there in the building  
7 that you're in right now?  
8 **A Yes.**  
9 Q And did she previously work for  
10 Highland Capital Management?  
11 **A Yes.**  
12 Q Does Scott Ellington work there?  
13 **A I haven't seen him, but I believe so.**  
14 Q When was the last time you spoke with  
15 Scott Ellington?  
16 **A Last year.**  
17 Q Does Isaac Leventon work there with you  
18 in that office?  
19 **A I believe so, but I haven't seen or**  
20 **talked with him either.**  
21 Q When was the last time you spoke with  
22 Isaac Leventon?  
23 **A Last year.**  
24 Q You mean 2020?  
25 **A Yes.**

<p>21</p> <p>1 Q Have you in any way communicated 2 directly or indirectly with Scott Ellington about 3 anything in 2021? 4 MR. FEINSTEIN: Can I just interject 5 here for one second, please? This is Rob 6 Feinstein. 7 So I did want to put a comment on the 8 record regarding Highland Capital Management's 9 attorney-client privilege as it pertains to this 10 deposition. So I want to be very clear that we 11 are not waiving the privilege in regard to 12 anything with one exception, and that is the 13 matters and transactions that are discussed in the 14 Highland Capital Management motion for approval of 15 UBS settlement, and I think, in particular, 16 paragraphs 5 to 11, which set forth the facts and 17 circumstances regarding the Sentinel Reinsurance 18 insurance policy and related transactions, and as 19 to those matters, we are not asserting the 20 privilege. 21 BY MR. CLUBOK: 22 Q Have you in any way communicated 23 directly or indirectly with Scott Ellington about 24 anything in 2021? 25 <b>A No.</b></p>	<p>23</p> <p>1 <b>SkyBridge and NexBank and NextPoint.</b> 2 Q Have you spoken with Katie Irving at 3 all in 2021? 4 <b>A I have not. I believe she is on</b> 5 <b>maternity leave, still.</b> 6 Q Have you -- when you spoke with 7 Mr. Sevilla, did you talk in any way about 8 Sentinel Reinsurance? 9 <b>A No.</b> 10 Q When was the last time you spoke to 11 anybody about Sentinel Reinsurance other than your 12 lawyers? 13 <b>A I haven't. I know -- I haven't and I</b> 14 <b>have purposely not tried to refamiliarize myself</b> 15 <b>with anything there.</b> 16 Q When was the last time you were 17 familiar with anything -- 18 MR. CLUBOK: Strike that. 19 Q When was the last time you spoke with 20 anybody about Sentinel Reinsurance prior to 2021? 21 MR. TAYLOR: Objection. Form. 22 Q Okay. Let me just ask, other than your 23 lawyers, who was the last person you spoke to 24 about Sentinel Reinsurance on any matter? 25 <b>A I can't remember specifically. It</b></p>
<p>22</p> <p>1 Q Have you communicated directly or 2 indirectly with Isaac Leventon about anything in 3 2021? 4 <b>A No.</b> 5 Q Have you communicated with J.P. Sevilla 6 in 2021 about anything? 7 <b>A Yes. J.P Sevilla is actively engaged</b> 8 <b>in a lot of Highland- and NextPoint-related</b> 9 <b>activities. Or not Highland, I'm sorry. A lot of</b> 10 <b>NextPoint-related activities and SkyBridge-related</b> 11 <b>activities.</b> 12 Q Does Mr. Sevilla have an office in the 13 same building you're in now? 14 <b>A Yes. Not in the same floor, but in the</b> 15 <b>same building.</b> 16 Q And when was the last time you spoke 17 with Mr. Sevilla? 18 <b>A Last week.</b> 19 Q How about Matt DiOrio? Do you speak 20 with him at all? 21 <b>A Infrequently. I think I have spoken to</b> 22 <b>him once this year.</b> 23 Q When was that? 24 <b>A When we first moved here early March to</b> 25 <b>set up the shared services agreement between</b></p>	<p>24</p> <p>1 <b>would have been -- it would have been Scott</b> 2 <b>Ellington. And I -- it would have been sometime</b> 3 <b>last year. And it really would have been in the</b> 4 <b>context of we were trying to get a Cayman bank</b> 5 <b>going, and there was going to be -- there was</b> 6 <b>going to be some involvement, I think, from</b> 7 <b>Sentinel and Matt, but we didn't get the bank off</b> 8 <b>the ground last year.</b> 9 Q Is this post bankruptcy? 10 <b>A I don't know. It was either post</b> 11 <b>bankruptcy or shortly before.</b> 12 Q Did you ever speak with Jim Seery about 13 Sentinel Reinsurance? 14 <b>A No, I did not.</b> 15 Q Did you ever speak with John Dubel 16 about Sentinel Reinsurance? 17 <b>A No, I did not.</b> 18 Q Did you ever speak with Judge Nelms 19 about Sentinel Reinsurance? 20 <b>A No, I did not.</b> 21 Q Did you tell any of the lawyers at the 22 Pachulski law firm anything about Sentinel 23 Reinsurance? 24 <b>A No, I did not.</b> 25 Q Have you ever told anyone at UBS</p>

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1 anything about Sentinel Reinsurance?  
2 **A I do not think so.**  
3 Q You have spoken with Isaac Leventon  
4 about Sentinel Reinsurance in the past, correct?  
5 **A No, I do not believe I have. I**  
6 **don't -- I didn't think Isaac was materially**  
7 **involved with Sentinel before.**  
8 Q You have spoken to J.P. Sevilla about  
9 Sentinel Reinsurance, right?  
10 **A No. I -- sentinel Reinsurance is not**  
11 **something I was intimately involved with on an**  
12 **operating or day-to-day basis. Ellington is the**  
13 **only person I remember talking to Sentinel about,**  
14 **really, ever.**  
15 Q The only person you have ever spoken to  
16 about Sentinel Reinsurance, as you can recall  
17 sitting here today, other than your lawyers in  
18 this matter, is Scott Ellington; is that correct?  
19 **A Yes.**  
20 Q Have you ever spoken with Matt DiOrio  
21 about Sentinel Reinsurance?  
22 **A No, I have not.**  
23 Q Have you ever spoken with any of the  
24 directors of Sentinel Reinsurance?  
25 **A No, I have not.**

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1 Q Have you ever made decisions on behalf  
2 of Sentinel Reinsurance?  
3 **A I think from time to time I gave some**  
4 **investment advice, but that's -- that would be the**  
5 **extent of it.**  
6 Q Did you ever make decisions on behalf  
7 of Sentinel Reinsurance?  
8 **A Not that I can recall other than, like**  
9 **I said, periodically giving investment advice.**  
10 Q But you -- when you say you gave  
11 investment advice, who did you give that advice  
12 to?  
13 **A Ellington.**  
14 Q And that was just advice, it wasn't a  
15 directive?  
16 **A Correct.**  
17 Q And other than -- and what was that  
18 specific advice you gave, if you can recall?  
19 **A I don't remember. Just that it was,**  
20 **you know, periodically, infrequently, no more than**  
21 **once -- I would say once a year on average, just**  
22 **advice if they had cash or were repositioning the**  
23 **portfolio.**  
24 Q Did you receive any documents about the  
25 financial position of Sentinel Reinsurance?

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1 **A No. I don't think I ever have.**  
2 Q How did you know what was in their  
3 portfolio?  
4 **A Ellington would tell me when they had**  
5 **cash available. It was really when they had cash**  
6 **available to spend he would be looking for**  
7 **suggestions.**  
8 Q And other than Ellington coming to you  
9 for suggestions about how to spend cash that  
10 Sentinel Reinsurance had available, you can't  
11 recall any other specific business issue that  
12 Scott Ellington ever came to you with -- about  
13 with respect to Sentinel Reinsurance?  
14 **A Correct.**  
15 Q Did you know who were the insurers that  
16 Sentinel Reinsurance did business with?  
17 **A No. I mean, I know generally they did**  
18 **some D&O insurance, I think they did some title**  
19 **reinsurance, and they did some other policies.**  
20 **But I don't know who specifically was on the other**  
21 **side of those policies.**  
22 Q Do you have any idea about anyone who  
23 was on the other side of any policy that's ever  
24 been issued by Sentinel Reinsurance?  
25 **A I have a -- I mean, I have an awareness**

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1 **of the policy that we're talking about here today,**  
2 **but it's really just a general awareness.**  
3 Q What is your general awareness about  
4 the policy that you're here to talk about today?  
5 **A That it's a -- my recollection is that**  
6 **it's a \$100 million, plus/minus, but I think it's**  
7 **a \$100 million face policy. And it was done half**  
8 **a dozen years ago, approximately.**  
9 Q Who is the insured?  
10 **A I don't know -- I don't know. I**  
11 **believe it was -- I don't know what part or which**  
12 **entities, but I believe it was -- specifically,**  
13 **but HFP was a holding company structure with four**  
14 **or five different subsidiaries. I believe it was**  
15 **some part of that organization.**  
16 Q You believe that HFP was the insured  
17 under the policy that we're here to talk about  
18 today?  
19 MR. TAYLOR: Objection. Misstates  
20 prior testimony.  
21 **A Like I said, I didn't try and refresh**  
22 **myself on this. I thought it was either a**  
23 **subsidiary or holding company or part of or all**  
24 **of -- I don't know -- of that entity, as far as I**  
25 **know.**

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1 Q Do you know anything else about the  
2 insureds under the policy other than that?  
3 A **No, I do not.**  
4 Q Do you know what the point of the  
5 policy is?  
6 MR. TAYLOR: Objection. Vague.  
7 Q Do you know what the policy is designed  
8 to insure against?  
9 A **I've never seen the policy. I don't**  
10 **know the specific payout triggers and -- no, I do**  
11 **not.**  
12 Q You have no idea whatsoever, sitting  
13 here today, what this policy that we're here to  
14 talk about today was designed to insure against.  
15 Is that your testimony?  
16 A **That's correct. I have never seen it.**  
17 **I don't know the specifics of it.**  
18 Q Do you generally know what the policy  
19 that we're here to talk about today was designed  
20 to ensure against?  
21 A **Again, just really the most general**  
22 **sense. It was to provide, I believe, cash for**  
23 **legal expenses and to defend against any claims, I**  
24 **believe, that -- whatever relevant entity was the**  
25 **beneficiary in the HFP complex, to provide them**

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1 **with legal fees and serv- -- cash for legal fees**  
2 **and services to defend itself or operate or -- I**  
3 **believe that structure was winding down. And it**  
4 **wasn't really operating as a structure. So I**  
5 **think it was meant as a transition policy of some**  
6 **sort, but that's all I know.**  
7 Q Do you know -- so I had asked you if  
8 you generally knew what the policy that we're here  
9 to talk about today was designed to insure  
10 against. You just gave your answer.  
11 Is that the entirety of what you know  
12 about what the policy was designed to insure  
13 against, as you sit here today?  
14 MR. TAYLOR: Objection. Asked and  
15 answered.  
16 A **I mean, yes. I wasn't directly**  
17 **involved with putting the policy together in terms**  
18 **of its terms and specifics.**  
19 Q So I'm going to ask you one more time  
20 very broadly. Is there anything else at all you  
21 know about this policy that you haven't described?  
22 MR. TAYLOR: Objection. Vague.  
23 A **I mean, you can ask me some other**  
24 **specific questions, but I know very little, but**  
25 **there may be something else I know.**

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1 Q Who paid for the policy?  
2 A **I believe the beneficiary paid for the**  
3 **policy.**  
4 Q Which beneficiary?  
5 A **I don't know. I don't know, whichever**  
6 **was the beneficiary of the policy I believe paid**  
7 **for it.**  
8 Q And your testimony is that the  
9 beneficiary is some part of the HFP complex, as  
10 you call it?  
11 A **Yes.**  
12 Q And did the -- okay. And did you have  
13 any --  
14 MR. CLUBOK: Strike that.  
15 Q When did you first hear about this  
16 policy?  
17 A **I mean, at or about when it was put**  
18 **together. I mean, you know -- yeah, at or about**  
19 **shortly before when it was put together.**  
20 Q Well, was it -- so shortly before it  
21 was put together you were told about it?  
22 A **Yes.**  
23 Q By whom?  
24 A **I'm sorry, was there a question there?**  
25 Q I'm sorry, I said, "By whom?" You said

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1 shortly before the policy --  
2 A **Scott Ellington crafted it, and then**  
3 **Sky -- Ellington handled getting it through**  
4 **compliance and the insurance company in the**  
5 **Caymans.**  
6 Q Okay. So you first heard about this  
7 policy from Scott Ellington, correct?  
8 A **Yes.**  
9 Q And everything you ever learned about  
10 the policy came from Scott Ellington; is that  
11 correct?  
12 A **Yes.**  
13 Q And you -- and Scott Ellington told you  
14 that he had crafted the policy?  
15 A **Again, there was a business purpose in**  
16 **terms of the entities winding down and ceasing to**  
17 **exist. I think they had been completely written**  
18 **off for tax purposes and the boards weren't in**  
19 **existence anymore, and there was no management in**  
20 **existence anymore and there was a business purpose**  
21 **to winding it down and crafting it as an insurance**  
22 **policy.**  
23 Q My question was much simpler. My  
24 question was, is it true that Scott Ellington told  
25 you that he had crafted the policy?



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1 **A Yes. I mean, whether it was him**  
2 **directly or him working with reinsurance brokers**  
3 **or him working with third parties, I don't know.**  
4 **But he was the one that brought it to me or -- and**  
5 **proposed the policy.**  
6 Q And what did Scott tell you about why  
7 he was proposing the policy?  
8 MR. TAYLOR: Objection. Form. Calls  
9 for hearsay.  
10 **A I have answered this already, but,**  
11 **again, that there was a business purpose that I'd**  
12 **said already in terms of it was an illiquid pool**  
13 **of assets that was cash deficient, cash deprived**  
14 **that needed on a longer term basis liquidity and**  
15 **an ability to fund legal fees and orchestrate**  
16 **legal activities. Whether it was defensive or**  
17 **offensive, I don't know. But it needed**  
18 **functionality and it needed liquidity.**  
19 Q Did Scott tell you any other purpose  
20 for why he was proposing the policy other than  
21 what you've just described?  
22 MR. TAYLOR: Objection. Form.  
23 **A That's the purpose as I understood it**  
24 **and remember it.**  
25 Q What do you mean by "orchestrate legal

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1 activities"? What does that mean, as you used  
2 that phrase?  
3 **A Well, again, there was no staff and no**  
4 **board left and no functioning apparatus at HFP.**  
5 **So it had no ability to operate or, you know,**  
6 **defend itself or coordinate legal activities or**  
7 **operating activities or if there was any residual**  
8 **tax issue or anything. So the policy, like I**  
9 **said, I believe remedied all that and provided**  
10 **transition going forward.**  
11 Q Transition to what?  
12 **A Transition to going out of business or**  
13 **ceasing to exist yet handling any residual**  
14 **activities.**  
15 Q What were the residual activities of  
16 HFP at that point?  
17 **A Again, I understood them just broadly**  
18 **to be regulatory and legal and, you know, some**  
19 **residual operating activities. You know, when --**  
20 **I mean, let's just take the tax thing, for**  
21 **example. When you declare something ultimately**  
22 **worthless and non-operating so that the investors**  
23 **can take a write-off, the tax authorities can**  
24 **question that or challenge that or litigate that,**  
25 **and then you need to be able to defend it. And**

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1 **then any -- you know, similarly, any business**  
2 **issues or legacy issues, whether it's around --**  
3 **you know, UBS or Citibank or Barclays or any other**  
4 **institutions that had conflict with HFP, you know,**  
5 **there's, you know, a chance that that stuff could**  
6 **be active again.**  
7 Q At the time the insurance policy was  
8 taken out, you knew that HFP was in litigation  
9 with UBS, correct?  
10 **A I don't know if that's true. I don't**  
11 **know -- I don't remember. I don't remember -- I**  
12 **don't remember if the UBS litigation was active or**  
13 **real when the policy was taken out. It could have**  
14 **been -- it might have been -- the UBS litigation**  
15 **has been out there for a long time, but I don't**  
16 **know specifically.**  
17 Q You know the policy was specifically --  
18 MR. CLUBOK: Strike that.  
19 Q You know that part of the reason for  
20 the policy was specifically to address the UBS  
21 litigation; isn't that true?  
22 **A I would rather stay with the testimony**  
23 **that I just gave. I understood it to be broadly**  
24 **based to handle any residual activities on the**  
25 **litigation or regulatory or tax side.**

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1 Q Did you know at the time the policy was  
2 taken out whether or not, in some part, it was  
3 directed specifically to address the UBS  
4 litigation?  
5 **A I don't know.**  
6 Q You don't know if you knew or you  
7 didn't know at the time?  
8 **A I don't know. I don't recall it**  
9 **being -- I don't recall it being specifically to**  
10 **UBS so I -- I don't recall that so I don't want to**  
11 **say that.**  
12 Q Was there ever any analysis done to  
13 indicate how the policy could fit into the  
14 strategy for dealing with UBS in its litigation?  
15 **A Not that I saw.**  
16 Q Did Mr. Ellington ever tell you in any  
17 words or substance how the policy could be used in  
18 connection with dealing with the UBS litigation?  
19 MR. TAYLOR: Objection. Calls for  
20 hearsay.  
21 **A Again, my general understanding was to**  
22 **provide liquidity and capability to wind down**  
23 **legal issues that -- I believe, and the way it was**  
24 **characterized in my memory is that none of the**  
25 **legal issues were viewed as material. They were**

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**1 viewed as normal course resolutions of an entity**  
**2 that was going out of business. So it wasn't --**  
**3 it wasn't in anticipation or because of one**  
**4 particular thing. It was to handle liquidity and**  
**5 functionality issues that the dead entity had.**  
6 Q That wasn't my question. My question  
7 is, did Mr. Ellington ever tell you in words or  
8 substance how the policy could be used  
9 specifically in connection with dealing with the  
10 UBS litigation?  
11 MR. TAYLOR: Same objection. Calls for  
12 hearsay.  
**13 A The answer is no. Or no, not -- I**  
**14 don't remember -- I have no recollection of it**  
**15 being -- of him having any specific comments or**  
**16 thoughts regarding the handling of the UBS**  
**17 litigation via the policy.**  
18 Q Did Mr. Ellington, at or around the  
19 time the policy was being taken out, talk to you  
20 about a strategy for settling the UBS litigation?  
21 MR. TAYLOR: Hold on. Before you  
22 answer that, is Mr. Ellington an attorney at all?  
23 THE WITNESS: He is.  
24 MR. TAYLOR: So I'm going to have to  
25 ask that he not disclose -- first of all, it calls

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1 for hearsay, and, second of all, it invades the  
2 attorney-client privilege and I'm instructing him  
3 not to answer.  
4 MR. CLUBOK: Hold on a second. I  
5 believe --  
6 Q Mr. Dondero, Mr. Ellington at the time  
7 was the general counsel of Highland Capital  
8 Management, correct?  
**9 A Yes.**  
10 MR. CLUBOK: And the privilege, I  
11 believe, belongs to Highland Capital Management,  
12 who is here being represented by Mr. Feinstein.  
13 Mr. Feinstein --  
14 MR. FEINSTEIN: Right. And we are not  
15 asserting it as to conversations that in-house  
16 counsel had with anyone on this topic.  
17 MR. TAYLOR: And just so I'm clear, did  
18 Mr. Ellington have any other roles as counsel for  
19 you in any other capacity in non-Highland Capital,  
20 other than as a debtor? Did he advise you in any  
21 of your other roles for --  
22 THE WITNESS: I mean, yeah, he has  
23 helped out on a lot of different things. Yes.  
24 MR. TAYLOR: So the record is clear,  
25 was Mr. Ellington under the shared services

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1 agreement? For instance, would he help you in  
2 your role as one of the advisors or for Sentinel  
3 Reinsurance and give those entities counsel also?  
4 THE WITNESS: I mean, yeah. I mean,  
5 besides working for various entities, he did give  
6 me legal advice often, too.  
7 MR. TAYLOR: So, Andy, based upon that,  
8 we've got to assert the privilege. I don't know  
9 exactly all of the roles Mr. Ellington may have  
10 been filling, but if he was filling other types of  
11 roles under a shared services agreement or other,  
12 that advice could have been to other clients, some  
13 of which are not Highland Capital entity ones, and  
14 he can't answer those questions.  
15 MR. CLUBOK: Okay. Hold on a second  
16 here.  
17 Q Mr. Dondero, did Mr. Ellington ever  
18 give legal advice to Sentinel Reinsurance, as far  
19 as you know?  
**20 A I'm sure he did, actually. I mean, I**  
**21 think that was part of his role and function in**  
**22 Sentinel.**  
23 Q You think as part of his role and  
24 function in Sentinel, he was an attorney in  
25 addition to a part owner, giving legal advice to

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1 Sentinel Reinsurance, a Cayman-based company; is  
2 that correct?  
**3 A Yes.**  
4 Q And did you ever receive any legal  
5 advice from Scott Ellington that was specifically  
6 directed at Sentinel Reinsurance, as far as you  
7 know?  
**8 A I did not receive it, no. I mean,**  
**9 yeah, no, I don't have specific awareness.**  
10 Q Okay. So this particular  
11 conversation -- when Mr. Ellington came to you and  
12 said, we're going to -- came to you to talk to you  
13 about the policy, he was not speaking to you as a  
14 representative of Sentinel Reinsurance, correct?  
**15 A I don't know. I can't say because --**  
16 Q Well, let me ask it slightly  
17 differently. When you considered -- you approved  
18 the policy, correct?  
**19 A Yeah, I approved of him moving forward**  
**20 with the policy, yes.**  
21 Q And did you approve on behalf of  
22 Sentinel Reinsurance with Mr. Ellington moving  
23 forward with the policy?  
**24 A No. He just -- he ran it by me as a**  
**25 solution and a business idea.**

<p>41</p> <p>1 Q Okay. And he ran that by you -- okay. 2 So as a solution as a business idea -- 3 so as a solution as a business idea, did 4 Mr. Ellington tell you in words or substance that 5 the policy would assist in a strategy for settling 6 the UBS litigation? 7 MR. TAYLOR: Objection. Calls for 8 hearsay. And just because something is a business 9 solution doesn't mean it doesn't have legal 10 aspects, Andy. So, again, we have the 11 attorney-client privilege. 12 MR. CLUBOK: And, specifically, 13 Mr. Taylor, what's the attorney-client privilege 14 that you are claiming? In what capacity was 15 Mr. Ellington acting as an attorney and in what 16 capacity is Mr. Dondero receiving statements from 17 him that is causing you to assert the privilege on 18 this particular line of questioning? 19 MR. TAYLOR: So it's my understanding, 20 and Mr. Dondero can correct me if I'm wrong, that 21 Mr. Ellington under the shared services agreement 22 not only provided legal services directly to 23 Highland Capital Management but also to other 24 subsidiaries that are not owned nor controlled by 25 Highland Capital as we sit here today, and I am</p>	<p>43</p> <p>1 Mr. Ellington was acting on behalf of and that you 2 have the right to instruct Mr. Dondero not to 3 answer. That's what I want to get to. I'm 4 looking at this realtime. I don't see any 5 specific entities mentioned. You are just saying 6 you assume that or you generally think that may be 7 and et cetera. 8 MR. TAYLOR: It could be Sentinel 9 Reinsurance, Andy. 10 MR. CLUBOK: Sentinel Reinsurance -- he 11 just said that he was not accepting -- he was not 12 acting on behalf of Sentinel Reinsurance when 13 Mr. Ellington gave him this suggestion. 14 Do you represent Sentinel Reinsurance? 15 MR. TAYLOR: I do not, but I can't let 16 my client waive their privilege. 17 MR. CLUBOK: Okay. 18 Q Did you -- Mr. Dondero, did you -- by 19 the way, Mr. Dondero, what are you looking at 20 right now? 21 A My thumbnails. 22 Q No, you weren't looking at your 23 thumbnails. Is that it? You weren't -- 24 MR. TAYLOR: Andy -- 25 A I was looking at my thumbnails.</p>
<p>42</p> <p>1 merely asking that Mr. Dondero carefully consider 2 whether any of those services were legal services 3 directed to non-Highland Capital Management 4 entities. That is it. 5 I don't know exactly what might or 6 might not have been said. First of all, it calls 7 for hearsay, but, second of all, to the extent 8 that there was any legal advice rendered to any 9 non-Highland Capital Management entity that is not 10 controlled by Highland Capital today, I believe 11 you have to assert the attorney-client privilege, 12 Andy. 13 MR. CLUBOK: Okay. So two things. 14 First of all, just generally speaking, I'm going 15 to ask you to stop making hearsay objections. You 16 know those are preserved. You don't have to make 17 them at a deposition. In fact, you're not allowed 18 to under the federal rules. So I'm just going to 19 ask you to stop continually making hearsay 20 objections, please. Those objections, as you know 21 well, are preserved. You make form and foundation 22 objections, other than privilege. 23 Second of all, with respect to the 24 privilege, I am asking you for -- you cannot name 25 a specific entity that you are asserting that</p>	<p>44</p> <p>1 MR. TAYLOR: -- I can represent to you 2 he is not holding anything in his hands, 3 electronic, paper or otherwise. 4 MR. CLUBOK: Mr. Dondero -- Mr. Dondero 5 has already testified that he received no legal 6 advice on behalf of Sentinel Reinsurance from 7 Scott Ellington. So do you have any others that 8 you are claiming other than Sentinel Reinsurance 9 that Mr. Ellington supposedly gave advice on 10 behalf of in this conversation that I was asking 11 Mr. Dondero about, that you're instructing on 12 their behalf Mr. Dondero not to answer? 13 MR. TAYLOR: I'm just representing 14 Mr. Dondero individually. There could be other 15 entities. I believe there's three different 16 entities to whom you directed litigation hold 17 letters. I'm not representing those, but to the 18 extent any of those other two -- one of them had 19 the name Sentinel in them and one did not. 20 To the extent that any of those 21 entities received legal advice from Mr. Ellington 22 and that was legal advice, he can't answer to 23 those entities either. He can't waive their 24 privilege. 25 MR. CLUBOK: Okay. What entity -- name</p>

<p style="text-align: right;">45</p> <p>1 an entity other than -- are you asserting a 2 privilege on behalf of Sentinel Reinsurance even 3 in light of what Mr. Dondero has testified under 4 oath? Yes or no? 5 MR. TAYLOR: I'm asking him to consider 6 that he cannot waive those privileges on behalf of 7 those entities. 8 MR. CLUBOK: Okay. You're asking him 9 to consider. You're not -- are you instructing 10 him not to answer on behalf of Sentinel 11 Reinsurance? I just -- you did before. 12 MR. TAYLOR: It's impossible to answer, 13 Andy, because I don't know exactly what was told 14 to him. I don't know -- 15 MR. CLUBOK: Are you instructing him 16 not to answer, Clay? 17 MR. TAYLOR: I'm instructing him not to 18 answer if he got any legal advice on behalf of any 19 of those entities. 20 MR. CLUBOK: Okay. All right. 21 Q So I'm going to go back to my question 22 then, Mr. Dondero. 23 Well, first of all, you didn't get 24 legal advice on behalf of Sentinel Reinsurance in 25 this conversation with Scott Ellington about</p>	<p style="text-align: right;">47</p> <p>1 services agreement with Sentinel Reinsurance and 2 any other Highland entity? 3 <b>A I don't know. I don't know if there 4 was a formal one there. There were formal shared 5 services agreements and then there were informal 6 shared services agreements.</b> 7 Q Are you aware, sitting here today, of 8 any formal shared services agreements with 9 Sentinel Reinsurance and any other Highland 10 entity? 11 <b>A I don't know.</b> 12 Q You don't know if you are aware or, as 13 you sit here today, it's true that you're not 14 aware of any such shared services agreement 15 between Sentinel Reinsurance and Highland; isn't 16 that true? 17 <b>A I -- I don't know, meaning I don't have 18 awareness, but I'm -- and I don't want that to 19 imply that there is or isn't one. I don't know.</b> 20 Q So getting back to Mr. Ellington, when 21 he first broached you -- so I want to understand 22 this. He broached you. At that time you were the 23 president of Highland Capital Management, correct? 24 <b>A Yes.</b> 25 Q And you were the sole director of --</p>
<p style="text-align: right;">46</p> <p>1 establishing the policy, correct? 2 <b>A Did I get -- I'm sorry, did I get legal 3 advice from Scott Ellington regarding --</b> 4 Q Was he acting as your lawyer with 5 respect to Sentinel Reinsurance or was he acting 6 as your lawyer with respect to Highland Capital 7 and the other funds? 8 <b>A I mean, I think he's always wearing 9 multiple legal hats.</b> 10 Q Did you think at the time he broached 11 this policy with you he was wearing a legal hat 12 with respect to Sentinel Reinsurance? 13 <b>A Yes, and with regard to Highland also.</b> 14 Q You think -- so you were -- were you -- 15 you were receiving legal advice from Scott 16 Ellington in your capacity as a majority owner of 17 Sentinel Reinsurance when he first broached you 18 about this policy? 19 <b>A I think he was wearing a hat -- a legal 20 hat from a Sentinel perspective in terms of 21 structuring and understanding the policy, in order 22 to achieve the business purpose that he was trying 23 to achieve, that he then had to run through 24 Highland compliance.</b> 25 Q So wait a second. Was there a shared</p>	<p style="text-align: right;">48</p> <p>1 MR. CLUBOK: Strike that. 2 Q You were in control of what was left of 3 Highland Financial Partners and its subsidiaries, 4 correct? 5 <b>A I don't know if it was me or Highland, 6 but we were trying to take a leadership role in 7 winding that entity down.</b> 8 Q You, Jim Dondero, were the decision 9 maker for what was left of Highland Financial 10 Partners and its subsidiaries at the time 11 Mr. Ellington approached you about this insurance 12 policy, correct? 13 <b>A Generally.</b> 14 Q And when Mr. Ellington talked to you 15 about this insurance policy, you say he was 16 wearing many legal hats. Was one of the legal 17 hats he was wearing, to your knowledge, as a legal 18 advisor to Sentinel reinsurance? 19 <b>A I believe so.</b> 20 Q And was one of the legal hats that he 21 was wearing when he approached you about the 22 insurance policy as a legal advisor to Highland 23 Capital Management? 24 <b>A I believe so.</b> 25 Q And was one of the legal hats that</p>

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1 Mr. Ellington was wearing when he approached you  
2 about this insurance policy was as a legal advisor  
3 to Highland Financial Partners?  
4 **A I believe so.**  
5 Q And was one of the legal hats that  
6 Mr. Ellington was wearing when he approached you  
7 with respect to this insurance policy was as a  
8 legal advisor to all of Highland Financial  
9 Partners subsidiaries?  
10 **A I -- I believe so.**  
11 Q And was one of the legal hats that  
12 Mr. Ellington was wearing when he approached you  
13 with respect to the insurance policy a legal  
14 advisor to Highland CDO Fund and its subsidiaries?  
15 **A I -- I don't know if that was relevant**  
16 **or if I had any -- I don't know if that was**  
17 **relevant -- we've had a lot of names that are**  
18 **similar. I'm not even sure what fund that is, per**  
19 **se, but I don't remember that one specifically.**  
20 MR. CLUBOK: By the way, just for the  
21 record, I know it is hard to -- in the rough --  
22 this is CD -- as in David -- O Fund, CDO Fund.  
23 THE WITNESS: Okay. Yeah, I --  
24 MR. CLUBOK: I think the court reporter  
25 heard me say CEO Fund, or at least that's the way

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1 it came out on the rough.  
2 Q So I just -- I want to make sure that  
3 you know, Jim, I'm saying Highland CDO Fund. Have  
4 you heard of that?  
5 **A Yeah, I don't remember what fund that**  
6 **is.**  
7 Q Are you aware that UBS obtained a  
8 judgment against two funds that you formerly were  
9 involved with?  
10 **A Are you talking about the recent**  
11 **judgment?**  
12 Q Yes, the recent judgment.  
13 **A Yes.**  
14 Q And who was that judgment against, do  
15 you know?  
16 **A I do not.**  
17 Q Do you have any idea who are the  
18 parties that are responsible for the  
19 billion-dollar judgment that UBS obtained?  
20 **A I do not.**  
21 Q Getting back to Mr. Ellington, I will  
22 say that, at a bare minimum, if this conversation  
23 was privileged, it was a joint privilege and we  
24 have a representative of Highland Capital  
25 Management here, who have said they are not

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1 asserting the privilege. So I'm going to ask the  
2 question, given the record that we have just heard  
3 one more time and ask, did Scott Ellington, in  
4 words or substance, ever mention dealing with UBS  
5 as one of the business reasons for entering into  
6 the insurance policy that we're here to discuss?  
7 MR. TAYLOR: And, Andy, I'm going to  
8 make my objection but tell Mr. Dondero it's the  
9 same objection, attorney-client privilege, but  
10 subject thereto, given the foundation you laid,  
11 that you can answer subject to my objection.  
12 **A Okay. I'd like to get -- can I have an**  
13 **uninterrupted 30-second moment to describe**  
14 **contextually and answer your question in a way**  
15 **that I think connects everything together? If I**  
16 **can go on --**  
17 Q You can do that. I may go back and ask  
18 my question again if you don't answer it, but go  
19 ahead.  
20 **A Okay.**  
21 **We filed in October '19. In August of**  
22 **'19, Ellington and I believed we had a handshake**  
23 **agreement with UBS to settle all outstanding**  
24 **issues and get back to most favored nation status**  
25 **instead of our real estate group, that has been**

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1 **growing aggressively and would have nice business**  
2 **reasons to do business with UBS -- instead of both**  
3 **firms not doing business together, we believed we**  
4 **had a handshake agreement with UBS that, Andy, you**  
5 **were involved in. And we believed that that**  
6 **agreement was for 7 million of cash and 10 million**  
7 **of future business.**  
8 **And it wasn't that we thought those**  
9 **monies were for justified damages to UBS for**  
10 **whatever cases were outstanding in the past**  
11 **because we truly believed we had paid for releases**  
12 **from UBS twice. We felt like we had paid**  
13 **120 million in securities in 2008 or 2009, and**  
14 **then we felt via the 2015 Redeemer settlement --**  
15 **Redeemer and Credit Strat settlement of 72 million**  
16 **or \$77 million, we felt like we had paid for the**  
17 **same releases from UBS twice, and we believed that**  
18 **we had no liabilities whatsoever with UBS, and we**  
19 **believed that the ongoing litigation was just a**  
20 **cloud over the firm's doing business, and it was**  
21 **worth us paying \$7 million of cash and 10 million**  
22 **of future business to put it behind us.**  
23 **So our frame of mind in August of**  
24 **2019 -- our frame of mind, meaning my frame of**  
25 **mind and Ellington's frame of mind -- was that the**

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1 UBS claims were de minimis, but it was worth  
2 paying seven of cash and ten million of future  
3 business to put it behind us.  
4 The case had been dormant for an  
5 extended period of time. And when I say "an  
6 extended period of time," it would be in the years  
7 prior to 2019, incorporating when this reinsurance  
8 policy was done at Sentinel. So the reinsurance  
9 policy, when it was done at Sentinel, was done to  
10 wrap up the HFP issues in aggregate, including all  
11 legal, regulatory, compliance, tax, operating  
12 issues, et cetera.  
13 It wasn't done in anticipation of or  
14 trying to circumvent or prepare for some big UBS  
15 judgment because at that period of time, we truly,  
16 and, I think, UBS truly thought that their claims  
17 were zero or de minimis because as recently as  
18 August of 2019 we had a handshake agreement to  
19 settle them for 7 million in cash and 10 million  
20 of future business, which is de minimis in the  
21 overall scheme of things and de minimis relative  
22 to HFP or the Sentinel policy, et cetera.  
23 So that's my overall testimony on the  
24 subject, and I don't know much more beyond that.  
25 Q Okay. Let me go back to the question I

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1 asked you and then we'll cover some of the things  
2 you just said.  
3 So, first of all, you're talking about  
4 October of -- you said, "October of '19 we filed."  
5 You mean you filed for bankruptcy in October of  
6 '19?  
7 A Highland filed, I think, on  
8 October 16th of 2019.  
9 Q Okay. You -- Highland Capital  
10 Management filed for bankruptcy on October 16th,  
11 2019, correct?  
12 A Correct.  
13 Q And you claim that in August of 2019,  
14 just a few months before that, there was a  
15 handshake deal with UBS to settle all outstanding  
16 matters. Is that your claim?  
17 A Yes.  
18 Q And have you seen any documents that  
19 support that claim?  
20 MR. TAYLOR: Objection. Form.  
21 MR. CLUBOK: Withdrawn.  
22 Q Have you seen any documents that  
23 reflect that supposed handshake agreement?  
24 A No, I have not.  
25 Q Are you aware of any documents in the

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1 world that reflect that supposed handshake  
2 agreement?  
3 A You know, Andy, I believe -- I know I  
4 heard it from Seery or from UCC -- or not UCC --  
5 from independent board members or from the  
6 mediators last year, that there was a point in  
7 time where you admitted that there was a handshake  
8 agreement, but -- on those numbers at that time,  
9 but that was then and this is now, and now you  
10 guys have a different view and you also have a New  
11 York action.  
12 And I -- so I don't have -- I don't  
13 have anything written that's been put in front of  
14 me, but I do believe there are people who will say  
15 that you admitted that occurred. You were  
16 involved with the Indian guy who came over from  
17 London. You were involved with the meetings with  
18 Ellington. I -- but I don't have anything in  
19 writing to support it.  
20 Q My question is, are you aware of any  
21 document in the world that reflects the supposed  
22 handshake agreement from August of 2019 that you  
23 just described?  
24 A I do not. I do not have such a paper.  
25 Q Are you aware of any such documents in

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1 the world, even if you don't have them, that  
2 reflect the supposed handshake agreement from  
3 August of 2019 that you just described?  
4 A I do not. I do not have them and I do  
5 not have awareness of them.  
6 Q Now, you claim -- now, you claim that  
7 Jim Seery told you that there had been an  
8 agreement from August of 2019?  
9 A No, no, no. And I'm not sure it was  
10 Seery or somebody else under --  
11 Q Let's start with Jim Seery, okay. You  
12 said that -- so did Jim Seery, in words or  
13 substance, ever tell you that there was a  
14 handshake agreement in August of 2019 along the  
15 lines that you've just described?  
16 A It was -- my recollection is it was  
17 either Jim Seery or somebody else on the  
18 independent board --  
19 Q Okay.  
20 A -- said that subsequent, meaning in --  
21 sometime in 2020, around the arbitration or  
22 mediation, I believe, that you admitted to people  
23 or to the arbitrators that there was an agreement  
24 in principle but it hadn't been finalized or  
25 documented, but that was then and this is now.

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1 Q Okay. The other independent board  
2 members were John Dubel and Judge Russ Nelms; is  
3 that right?  
4 A Yes.  
5 Q So it's your testimony that either Jim  
6 Seery or John Dubel or Russell Nelms told you that  
7 there had been a handshake deal in August of 2019  
8 along the lines of what you've just described. Is  
9 that your testimony?  
10 A Yes.  
11 Q And you can't remember which of those  
12 three supposedly told you this, correct?  
13 A Correct.  
14 Q Okay. Now, other than the supposed  
15 conversation between one of these three directors  
16 about this supposed deal, had you ever heard of  
17 that supposed handshake deal before that time?  
18 A Well, from Scott Ellington, who  
19 negotiated with you and the guy from London.

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20 Q Okay. So Scott Ellington told you that  
21 there was a handshake deal in August of 2019  
22 whereby you would pay \$7 million and \$10 million  
23 of additional business to resolve all the claims  
24 that UBS had against Highland and the affiliated  
25 funds? Is that your testimony?  
1 A Yes, correct.  
2 Q And did Mr. -- when did Mr. Ellington  
3 tell you this?  
4 A At or about when he came back from the  
5 meeting with you and the guy from India -- or you  
6 and the Indian guy from London.  
7 Q And this was in August of 2019?  
8 A Yes.  
9 Q And did Mr. Ellington give you any more  
10 specifics about this supposed handshake deal?  
11 A Those were the primary business points  
12 I remember. I don't remember others.  
13 Q Did Mr. Ellington tell you who shook  
14 hands on this deal, supposedly?  
15 A I don't know the name of the Indian  
16 guy, but I know -- we do have the calendar  
17 meetings that you attended, he attended, the  
18 Indian guy attended, you know, et cetera, but I  
19 don't know his name off the top of my head.  
20 Q Sorry, you have calendar meetings?  
21 Where?  
22 A No, no, I mean, they were orchestrated  
23 meetings, Andy. I mean, you, Scott, the guy from  
24 UBS from -- I think he was from London. I don't  
25 remember whether you had the meeting in New York

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1 or London, but we do have calendar documentation  
2 of you guys' meeting, I'm sure we do.  
3 Q And --  
4 A Andy, listen, I know I can't enforce a  
5 handshake agreement. You know, my life would be  
6 easier and we would have a nice residual value to  
7 Highland if I could force the handshake agreement  
8 to be reality. I know I can't force it, but what  
9 I'm trying to just lay the ground work of is that  
10 we never viewed the UBS claims -- prior to you  
11 getting the judgment out of the judge in New York,  
12 we never viewed the UBS claims as material or  
13 significant until then.  
14 Q Well, prior to then, you knew that if  
15 UBS were to win its case, the consequences for  
16 Highland could be catastrophic, correct?  
17 A No, we never viewed them as a material,  
18 legitimate claim. We believe we had paid for the  
19 releases twice before. I don't know what happened  
20 in New York, and I haven't looked at the case. I  
21 don't know what she actually awarded. I don't  
22 know if we were properly represented or if it was  
23 done. I don't know if it's appealable. I don't  
24 know what the New York Circuits represents.  
25 But I'm just saying that prior to that

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1 judgment coming around, we did not believe, and I  
2 don't believe you believed either in August of '19  
3 that the UBS claims were material up until that  
4 point. But congratulations on getting a big award  
5 out of New York.  
6 Q Your testimony is that prior to the  
7 time the judgment was awarded, you never believed  
8 there was any possibility of UBS obtaining more  
9 than, say, \$7 million in total from its lawsuit  
10 that was pending in New York; is that correct?  
11 A That's right, 7, 10, 5, 20, I mean,  
12 something de minimis, something nominal, you  
13 know -- I mean, there's always a risk that it --  
14 you know, just like, you know, we -- Highland went  
15 into bankruptcy and there were 110 million of  
16 claims that have now ballooned to 300, you know.  
17 So, you know, things can always go awry, but yes,  
18 that was our opinion.  
19 Q So your opinion was there was never a  
20 realistic possibility of the total liability in  
21 connection with the UBS legal action in New York  
22 ever being more than, say, 10 or \$20 million,  
23 correct?  
24 A We thought it was something that --  
25 like any other potential or lingering claim from

<p style="text-align: right;">61</p> <p><b>1 UBS or Barclays or from Citibank or from</b> <b>2 regulators or from tax authorities, you know, we</b> <b>3 thought they were all normal course of business</b> <b>4 that would be resolved for not material amounts of</b> <b>5 money, correct.</b></p> <p>6 Q And when you say "we," who is the "we" 7 in that sentence? Are you speaking on behalf of 8 Highland Capital Management, are you speaking on 9 behalf of Sentinel Reinsurance or on behalf of HFP 10 or all of the above?</p> <p><b>11 A All of the above. And I think that was</b> <b>12 Ellington's view also, and that's why it made</b> <b>13 sense to transition an otherwise dead entity via</b> <b>14 the insurance policy.</b></p> <p>15 Q What is the insurance -- okay. So 16 getting back to my original question, what, if 17 anything, did Mr. Ellington ever tell you, at the 18 time the insurance policy was being considered, 19 with respect to how it would impact the UBS 20 litigation?</p> <p><b>21 A I mean, like I said, there wasn't -- it</b> <b>22 wasn't a specific concern regarding UBS. It was</b> <b>23 to handle the transition of an otherwise dead</b> <b>24 entity that was illiquid that still had operating</b> <b>25 issues without a board and without any management</b></p>	<p style="text-align: right;">63</p> <p>1 you don't, I'll continue going. So it's up to 2 you.</p> <p>3 THE WITNESS: You know what, I have -- 4 at 11:30 I need half an hour. I have got a 5 half-hour meeting I can't move.</p> <p>6 MR. CLUBOK: Okay. If that's the case, 7 then let's keep going for another 11 minutes.</p> <p>8 THE WITNESS: Yes.</p> <p>9 MR. CLUBOK: Okay. Let's continue 10 going, then.</p> <p>11 Is that okay, Clay?</p> <p>12 MR. TAYLOR: Yes.</p> <p>13 THE WITNESS: Yes.</p> <p>14 MR. CLUBOK: Okay.</p> <p>15 So -- we're going to just -- I just 16 want to show you a copy of the subpoena we issued 17 for your testimony today.</p> <p>18 If you could put that up, and I believe 19 we'll mark it as Exhibit 23.</p> <p>20 (Deposition Exhibit 23 marked for 21 identification.)</p> <p>22 REMOTE TECH: Pardon me, Counsel, which 23 tab is that?</p> <p>24 MR. CLUBOK: It was something 25 Ms. George just sent you, probably the last thing</p>
<p style="text-align: right;">62</p> <p><b>1 team and without any way to pay anybody. It was a</b> <b>2 way to transition all issues, but it wasn't</b> <b>3 anything specific to UBS that I recall at the</b> <b>4 time.</b></p> <p>5 Q Okay. So when you -- and we jumped -- 6 you jumped ahead and started talking about August 7 '19, but the policy was taken out, you know, 8 approximately four years or so ago. So let's say 9 2017.</p> <p><b>10 A Okay.</b></p> <p>11 Q Back in 2017, you're saying, the policy 12 was not in any way specifically directed at UBS, 13 correct?</p> <p><b>14 A Correct.</b></p> <p>15 Q Okay. And the policy back in 2017 was 16 not issued with the UBS litigation in mind, 17 correct?</p> <p><b>18 A Yes, that's correct.</b></p> <p>19 Q And in -- and Mr. Ellington never 20 raised how the policy could impact the UBS 21 litigation when he gave you the business reasons 22 for taking out the policy, correct?</p> <p><b>23 A Correct.</b></p> <p>24 MR. CLUBOK: I think this might be a 25 good time to take a break, if you want one. If</p>	<p style="text-align: right;">64</p> <p>1 she sent you, two documents. One is the subpoena 2 and one is Mr. Dondero's response via counsel.</p> <p>3 REMOTE TECH: Please stand by.</p> <p>4 MR. TAYLOR: Andy, why are we -- just 5 for my curiosity, why are we starting with 23?</p> <p>6 MR. CLUBOK: Because we're 7 continuing -- we've already marked some exhibits 8 in this action. So, you'll see, we'll go through 9 Exhibits 1 and 2 and 3 later, but they have 10 already been marked in previous depositions.</p> <p>11 MR. TAYLOR: Okay.</p> <p>12 MR. CLUBOK: We're just -- we're trying 13 to keep one set instead of starting every 14 deposition over at 1, which gets very confusing. 15 Then you have, like, ten Exhibit 1s.</p> <p>16 MR. TAYLOR: Understood. Thank you.</p> <p>17 MR. CLUBOK: Sure.</p> <p>18 Q So here is Exhibit 23. This is Exhibit 19 23 for this action. And Exhibit 23 is a copy of 20 the Subpoena to Produce Documents, Information, or 21 Objects or to Permit Inspection of Premises in a 22 Bankruptcy Case. Do you see that?</p> <p><b>23 A Yes.</b></p> <p>24 Q And have you seen that subpoena before 25 today?</p>



<p style="text-align: right;">65</p> <p>1 <b>A I believe so.</b></p> <p>2 Q And if I could have control of it,</p> <p>3 Jordan.</p> <p>4 REMOTE TECH: One moment, please.</p> <p>5 All right. Sir, I've given you</p> <p>6 control. If you could just click on your screen.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q And so you say you believe you have</p> <p>9 seen this Exhibit 23. Are you sure you have seen</p> <p>10 it?</p> <p>11 <b>A I think it was stapled to -- wasn't it</b></p> <p>12 <b>part of everything else that was sent over? But</b></p> <p>13 <b>this is what covers discovery requests, right?</b></p> <p>14 Q Correct.</p> <p>15 <b>A Yeah.</b></p> <p>16 Q And, in particular, there was an</p> <p>17 attachment or a page that I have got on the screen</p> <p>18 now. It starts with Roman numeral III. It says,</p> <p>19 "Documents to be produced."</p> <p>20 <b>A Yes.</b></p> <p>21 Q And did you review Roman numeral III</p> <p>22 and the 12 categories of documents that you were</p> <p>23 under subpoena to produce?</p> <p>24 <b>A Yes.</b></p> <p>25 Q And did you make an effort to locate</p>	<p style="text-align: right;">67</p> <p>1 MR. CLUBOK: No. I'll have to -- I'll</p> <p>2 assess during the break and see if I can get an</p> <p>3 estimate. We have another break that we have to</p> <p>4 take, too. What time is the hear- -- is there a</p> <p>5 hearing still set for today?</p> <p>6 MR. TAYLOR: 1:30, and yes.</p> <p>7 MR. CLUBOK: Is that substantive or</p> <p>8 just a call?</p> <p>9 MR. TAYLOR: We just have to dial in,</p> <p>10 but both of us have to be there, both he and I.</p> <p>11 MR. CLUBOK: I'm just saying, it's</p> <p>12 supposed to be a short meeting, I take it?</p> <p>13 MR. TAYLOR: Actually, I think it might</p> <p>14 be a little more substantive, but I'm not sure.</p> <p>15 It's a docket call and we do have a motion for</p> <p>16 continuance which will be argued. So I'm just not</p> <p>17 sure how long it's going to take, 30 minutes to an</p> <p>18 hour, my guesstimate.</p> <p>19 MR. CLUBOK: Okay.</p> <p>20 If I can have the control too, Jordan,</p> <p>21 please.</p> <p>22 Thank you.</p> <p>23 Q Mr. Dondero, I've got up here an e-mail</p> <p>24 from Roland Schafer to Andrew Clubok and Katie</p> <p>25 George, copying Clay Taylor and Bryan Assink, with</p>
<p style="text-align: right;">66</p> <p>1 documents responsive to that subpoena?</p> <p>2 <b>A Yes.</b></p> <p>3 MR. CLUBOK: And we're going to put up</p> <p>4 what we're going to mark as Exhibit 24. It is a</p> <p>5 response that we received to the subpoena last</p> <p>6 week.</p> <p>7 REMOTE TECH: Please stand by.</p> <p>8 (Deposition Exhibit 24 marked for</p> <p>9 identification.)</p> <p>10 Q It is a May 6th, 2021 e-mail from</p> <p>11 Schafer to Clubok.</p> <p>12 MR. TAYLOR: We're not seeing that,</p> <p>13 Andy.</p> <p>14 MR. CLUBOK: It will just take a</p> <p>15 second. I think Jordan is putting it up. There's</p> <p>16 a little bit of a lag with this process. I'm not</p> <p>17 seeing it either, for what it's worth.</p> <p>18 REMOTE TECH: Counsel, I apologize. I</p> <p>19 have to get this downloaded real quick.</p> <p>20 MR. CLUBOK: No problem. Take your</p> <p>21 time. I was just explaining to Clay.</p> <p>22 MR. TAYLOR: Andy, for planning</p> <p>23 purposes while we wait, do you have any idea how</p> <p>24 late you're thinking, how many hours more you</p> <p>25 need?</p>	<p style="text-align: right;">68</p> <p>1 the subject, "Dondero Subpoena."</p> <p>2 Have you seen this document before?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And it's been marked as Exhibit 24. In</p> <p>5 Exhibit 24 Mr. Schafer says that they have</p> <p>6 completed their "search of the e-mail/documents to</p> <p>7 which we have access. Keep in mind that</p> <p>8 Mr. Dondero was exclusively on the HCMLP e-mail</p> <p>9 until December 30th, 2020." He now has a NexBank</p> <p>10 e-mail account and beginning in late March 2021 he</p> <p>11 moved to NextPoint e-mail. Or he had a NexBank</p> <p>12 e-mail account, I should say, in the beginning of</p> <p>13 late March 2021. And he said that the only</p> <p>14 documents are communications between yourself and</p> <p>15 his law firm, and that's it, that in any way are</p> <p>16 responsive to the subpoena request we issued.</p> <p>17 I'm paraphrasing, but that's the gist</p> <p>18 of what it said, correct?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And is that the case, that you have</p> <p>21 absolutely no access to or control over or ability</p> <p>22 to obtain any document that is in any way</p> <p>23 responsive to Exhibit number 23 other than</p> <p>24 communications with your attorneys?</p> <p>25 <b>A That is correct.</b></p>

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1 MR. CLUBOK: Okay. Let's see. Thank  
2 you. Jordan, we can take that off the screen.  
3 Okay.  
4 Q Let me just see if I can do a couple  
5 more quick things here before your 12:30.  
6 Other than this --  
7 MR. CLUBOK: Well, strike that.  
8 Q Other than the insurance policy that's  
9 the subject of this litigation that we have been  
10 talking about, I think you said that you  
11 understood that Sentinel had issued policies such  
12 as D&O insurance and title reinsurance, correct?  
13 **A Yes.**  
14 Q For the D&O insurance, who were the  
15 insureds that you are aware of that Sentinel  
16 Reinsurance issued policies for?  
17 **A I mean, some of them were completely**  
18 **third party. I think some of them were the back**  
19 **end of related D&O insurance, you know, where**  
20 **somebody like an Aon or somebody would take the**  
21 **first, would take 60 percent of premium, would be**  
22 **the face of the premium, and take the first X**  
23 **dollars of loss, and then Sentinel would take the**  
24 **back half. Or maybe it was the reverse, where**  
25 **Sentinel would take the first piece of the loss**

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1 **and Aon would take the back piece. But it was**  
2 **splitting -- it was splitting policies with some**  
3 **major carriers.**  
4 Q Sorry. So when you use that phrase  
5 "completely third party," using that phrase, would  
6 you say that Sentinel Reinsurance is a completely  
7 third-party entity?  
8 **A No -- is it completely third party, no.**  
9 **But to be a bona fide reinsurer in Cayman, Cayman**  
10 **doesn't want reinsurance companies or banks to be**  
11 **captive or not be legitimately in the insurance or**  
12 **banking business. So you have to have a portfolio**  
13 **or a certain amount of legitimate insurance and**  
14 **reinsurance from a variety of players.**  
15 Q Okay. But Sentinel Re is an affiliate  
16 of yours, correct?  
17 **A Affiliate in terms of similar**  
18 **ownership, I guess, you know.**  
19 Q If I just asked you generically, it's  
20 Sentinel Re third-party -- how did you use the  
21 phrase? I'm sorry. If I said is Sentinel Re a  
22 completely third-party entity to you, Jim Dondero,  
23 you would say no, that's not true, correct?  
24 **A Well, I would say there is the**  
25 **beneficial ownership that we have spoken of, but**

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1 **I'm just saying as far as business or policies**  
2 **that Sentinel issued or was part of, there were --**  
3 **there were multiple types.**  
4 Q Right. But to be clear, Sentinel Re is  
5 affiliated with you, Jim Dondero, correct?  
6 **A If you define affiliate as similar**  
7 **ownership, then yes, yeah.**  
8 Q Okay. And Sentinel Re did issue  
9 policies to other entities that have overlapping  
10 ownership with you, correct?  
11 **A Correct.**  
12 Q And what were those entities that  
13 Sentinel Re issued policies to that you were in  
14 some way connected to?  
15 **A Like I said, I believe they did some**  
16 **D&O insurance splitting on some of the private**  
17 **equity companies in the portfolio.**  
18 Q Like what?  
19 **A I don't remember, and I don't know**  
20 **which ones they did, but I remember that was a**  
21 **business line or a business purpose for a few**  
22 **years.**  
23 Q Is there any entity that you can name  
24 here today that Sentinel Reinsurance issued a  
25 policy to that you have some beneficial interest

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1 in?  
2 **A You'll have to ask Scott. Scott**  
3 **Ellington is the right person to ask.**  
4 Q How about you? As you sit here today,  
5 are you aware of even a single entity that you can  
6 think of -- are you claiming that you don't know a  
7 single entity that Sentinel Re issued a policy to  
8 that you have a beneficial ownership in?  
9 **A No, I don't remember. I don't remember**  
10 **specifically.**  
11 Q Do you know what proportion of Sentinel  
12 Re's business was issuing policies to entities  
13 that had some sort of connection to you?  
14 **A I do not.**  
15 Q Okay. Well, look, it's 11:30. I will  
16 say, we weren't told about this break. We also  
17 obviously weren't told we were going to start a  
18 half hour late. So we're going to -- it's going  
19 to end up becoming a long day at a minimum. When  
20 is the meeting?  
21 MR. CLUBOK: Let's go off the record.  
22 THE VIDEOGRAPHER: Off record. 12:31.  
23 (A recess was taken.)  
24 THE VIDEOGRAPHER: On record. 1:11.  
25

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1 BY MR. CLUBOK:  
2 Q Okay, Mr. Dondero, Mr. Ellington --  
3 we've talked a little bit about what Mr. Ellington  
4 told you about the insurance policy that was  
5 ultimately issued by Sentinel Reinsurance that is  
6 the subject of today's discussion. Do you  
7 remember that discussion before our break?  
8 **A Yes.**  
9 Q Okay. At the time you signed -- first  
10 of all, did you know that the --  
11 MR. CLUBOK: Strike that.  
12 Q Did you know the policy limit of that  
13 policy that you signed off on?  
14 MR. CLUBOK: Strike that. Let me say  
15 that more clearly.  
16 Q With respect to the Sentinel  
17 Reinsurance policy that Mr. Ellington spoke to you  
18 about in 2017 and that you approved, did you know  
19 the policy limits when you approved it?  
20 **A Just in a most general sense that it**  
21 **was approximately 100 million. I don't know if**  
22 **there were different amounts set for different**  
23 **items or occurrences. I just remember the policy**  
24 **being around 100 million bucks.**  
25 Q And when did you -- how did you learn

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1 that the policy was \$100 million?  
2 **A I just remember the policy was -- there**  
3 **is really only -- it took lots of twists and**  
4 **turns, I believe, to get it through compliance and**  
5 **get it through the reinsurer. I just remember**  
6 **there was a lot of back-and-forth, but I remember**  
7 **generally the policy was targeted to be around**  
8 **100 million.**  
9 Q How did you learn that the policy was  
10 \$100 million? Did you learn it by reading it --  
11 reading the policy? Did you learn it because  
12 Mr. Ellington told you? Did you learn because  
13 compliance said something to you? How did you  
14 learn that the policy was \$100 million?  
15 **A From Scott Ellington. You know, he**  
16 **handled the interactions with compliance and the**  
17 **reinsurer. I don't believe I ever saw the policy,**  
18 **nor was I involved in any of the conversations**  
19 **with the reinsurer or the -- or Highland**  
20 **compliance, that I remember.**  
21 Q But you approved the policy, correct?  
22 **A I approved the -- yes.**  
23 Q And prior to approving the policy, did  
24 you read it?  
25 **A No. I'm not -- I don't think it would**

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1 **have been natural for me even to sign the policy,**  
2 **but if I did, I did not read it or have any**  
3 **specific knowledge of what it covered or didn't**  
4 **cover.**  
5 Q Did you sign the policy?  
6 **A I don't believe so. I have no**  
7 **recollection of that.**  
8 Q And you have no recollection of ever  
9 actually reading the policy, correct?  
10 **A Correct.**  
11 Q Do you have a recollection of reading  
12 any ancillary documents of the policy itself, like  
13 any related documents that were about the policy  
14 or connected to the policy in some way?  
15 **A No.**  
16 Q At the time Sentinel Re issued the  
17 \$100 million policy that you approved, what was  
18 the largest policy they had previously issued?  
19 **A I have no idea.**  
20 Q Had they ever previously issued a  
21 policy anywhere in the same magnitude as the  
22 policy that's at issue here today?  
23 **A I believe they have done multiple**  
24 **policies in the millions and tens of millions, but**  
25 **I don't know the specifics.**

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1 Q Can you name one policy that they had  
2 done in the tens of millions prior to the policy  
3 that's at issue that we have been discussing  
4 today?  
5 **A I wouldn't have specific knowledge.**  
6 Q Well, you said you believed they've  
7 done multiple policies in the millions and tens of  
8 millions. Did you just make that up, or is that  
9 based on something specific?  
10 **A Well, like I said, I believe they did**  
11 **some large title policy sharings that --**  
12 Q You're saying under oath that you  
13 believe they had previously issued a policy that  
14 was at least \$10 million prior to issuing the one  
15 that we have been discussing today?  
16 MR. TAYLOR: Object to the form of the  
17 question. Okay.  
18 **A I don't know if --**  
19 Q Let me ask it again.  
20 Sir, are you testifying that you  
21 believe that Sentinel Reinsurance had previously  
22 issued a policy that was at least \$10 million  
23 prior to issuing the policy that we have been  
24 discussing today?  
25 **A Okay. I don't know if it's prior or**

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1 subsequent, but I know -- I don't know. I believe  
2 they have, on some of the big title insurance,  
3 like there was a big \$65 million title insurance  
4 policy that they split with somebody. I don't  
5 know if it was before or after. But my belief is  
6 they have or continue to do things in the millions  
7 and tens of millions of dollars.

8 Q I want you to focus on my question. I  
9 want you to -- there was a time when you approved  
10 the issuance of this \$100 million policy, correct?

11 A Yes.

12 Q And it was not a title insurance  
13 policy, right?

14 A Correct.

15 Q It was a judgment insurance policy,  
16 correct?

17 A I don't know what it covered and what  
18 it didn't cover.

19 Q Well, a \$100 million policy covered a  
20 lot more than expected legal fees, correct?

21 A I believe it covered legal outcomes  
22 also, but --

23 Q Okay. So in addition to covering legal  
24 fees, it also was intended to cover against  
25 judgments that would be entered against the

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1 insureds, correct?

2 A If you say so. Again, I don't have  
3 specific knowledge.

4 Q No, I want to know what you say under  
5 oath.

6 So you approved this policy and when  
7 you approved it, and you knew it was \$100 million,  
8 did you understand that part of the policy was as  
9 judgment insurance in case the insureds lost at  
10 trial?

11 A I did not have that specific  
12 understanding.

13 Q Did you understand that part of the  
14 \$100 million policy's purpose was to pay for any  
15 legal liability of the insureds who paid for the  
16 policy?

17 A I didn't have that specific knowledge.  
18 And a word like "any" would be something I would  
19 not have any knowledge of. And these insurance --  
20 any type of insurance and reinsurance things has  
21 specifics around what's covered, what's not, what  
22 entities, what has to be done in order to collect  
23 or not collect. And I'm not even saying all this  
24 from a Sentinel perspective.

25 I'm just saying from my awarenesses of

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1 having gotten and underwritten significant  
2 insurance in a lot of other companies and a lot of  
3 other places, it's a -- there's a lot of specifics  
4 and a lot of highly negotiated parts to it, in  
5 insurance in general, and I have no awareness of  
6 what this policy covered, didn't cover, under what  
7 circumstances, et cetera.

8 Q At the time that you approved the  
9 \$100 million insurance policy, did you understand  
10 that part of what was covered by the policy was  
11 legal liability of HFP and its subsidiaries?

12 A I didn't have specific knowledge of  
13 what was covered but an understanding that there  
14 was some coverage of liability or outcomes.

15 Q Okay. You understood that some of  
16 the -- the \$100 million policy was not just for  
17 legal fees and expenses, but it was also for some  
18 liability or potential liability in litigation  
19 with the insureds, correct?

20 A Yes, and that's about as far as it  
21 goes.

22 Q And did you have any idea whatsoever,  
23 when you approved the policy, as to what would be  
24 the circumstances whereby that payment obligation  
25 for legal liability would be triggered?

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1 A I have no idea.

2 Q Did you have any idea whatsoever, at  
3 the time that you approved the \$100 million  
4 insurance policy, that a trigger of coverage under  
5 the policy would be legal liability of CDO Fund or  
6 SOHC to UBS?

7 A I have no idea. I had no idea then and  
8 I have no idea now what's covered, what's the  
9 triggers, and if it's -- if there's a bona fide  
10 amount due or not. I have no idea.

11 Q What was the amount paid for the  
12 policy?

13 MR. CLUBOK: Strike that.

14 Q The amount paid for a policy is often  
15 called a premium, right?

16 A Yes.

17 Q You are familiar with the term  
18 "premium" in connection with an insurance policy,  
19 right?

20 A Yes.

21 Q Okay. What was the premium on this  
22 \$100 million insurance policy that you approved?

23 A I -- I don't know -- I've heard -- you  
24 know what, I don't know how the -- what I do know  
25 at the time is the illiquid assets were 70 or

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1 **80 million bucks. That's what I do know at that**  
2 **time. I do remember that.**  
3 **How they were accounted for or how much**  
4 **of it was premium, how much of it was other**  
5 **consideration or whatever, I don't know what**  
6 **the -- I don't know what the split or the**  
7 **breakdown was.**  
8 Q Okay. We'll come back to that answer,  
9 but, first, I want to start with the question I  
10 asked you, which is, what was the premium on the  
11 \$100 million insurance policy that you approved?  
12 **A I don't know.**  
13 Q So you started to say in your answer,  
14 "I've heard," and then you caught yourself. What  
15 had you heard in connection with this question I  
16 asked?  
17 **A I was remembering back, and, again,**  
18 **this took lots of twists and turns, and I don't**  
19 **even have a basis for saying "I heard." There**  
20 **was -- there was -- I don't even have a basis**  
21 **for -- it was a matter of trying to bridge the**  
22 **illiquid assets to some liquidity and have some of**  
23 **it be called a premium and some of it be called**  
24 **something else. But I don't even know what -- I**  
25 **don't even know what else or if it was all called**

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1 **premium. The policy took twists and turns through**  
2 **the regulators and compliance. I don't know what**  
3 **the final structure of the policy was other than**  
4 **it was ultimately about \$100 million of coverage.**  
5 Q And these twists and turns that you say  
6 it took, is the entirety of your information about  
7 that from Scott Ellington?  
8 **A Yes. And -- but I wasn't involved in**  
9 **the twists and turns. At the time this wasn't**  
10 **that big of a deal. It was something that was**  
11 **just trying to help transition a dead entity.**  
12 Q Sorry, but you said there were twists  
13 and turns. How did you know that there were  
14 twists and turns?  
15 **A I just know there were. I mean,**  
16 **because what they were trying to do, they had to**  
17 **get it through both the regulators and Highland's**  
18 **compliance department, so I -- there's always**  
19 **give-and-take on their independent views of what's**  
20 **the risk, what's the business purpose, what's a**  
21 **fair structure, et cetera, et cetera. So that's**  
22 **what I mean by "twists and turns."**  
23 Q Yeah, but you say you just know there  
24 were twists and turns. You mean you were just  
25 imagining it or guessing or because there always

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1 are twists and turns, or you specifically know  
2 there were twists and turns connected with this  
3 insurance policy?  
4 **A There are always twists and turns, and**  
5 **especially if we're on both sides of a**  
6 **transaction, there's heightened compliance**  
7 **scrutiny and then there's also heightened**  
8 **regulatory scrutiny. So there's -- A, there's**  
9 **always twists and turns, and there's definitely**  
10 **always significant twists and turns if we're**  
11 **involved on both sides of it.**  
12 Q And in this case you were involved on  
13 both sides of it, correct?  
14 **A Yes.**  
15 Q And, as a result, you had to get  
16 your -- you had to disclose that involvement on  
17 both sides to your compliance people in order to  
18 get it approved?  
19 **A Yes.**  
20 Q And who did you disclose that to in  
21 compliance?  
22 **A I wasn't directly involved, but I know**  
23 **Scott Ellington worked closely with Thomas Surgent**  
24 **on it.**  
25 Q And who was Thomas Surgent at that --

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1 MR. CLUBOK: Or strike that.  
2 Q What did Thomas Surgent do at that  
3 time?  
4 **A He was our chief compliance officer.**  
5 Q And how do you know that Scott  
6 Ellington worked closely with Thomas Surgent to  
7 get approval for this transaction with the  
8 insurance policy in 2017?  
9 **A He told me. And ultimately he had -- I**  
10 **know he had to get Tom Surgent's sign-off on it,**  
11 **which I believe he did.**  
12 Q And you said, "He told me." Do you  
13 mean Scott Ellington told you?  
14 **A Yes.**  
15 Q And you -- how do you know that Scott  
16 Ellington had to get Tom Surgent's sign-off on  
17 this policy being issued?  
18 **A I can say unilaterally for at least the**  
19 **last 15 years we've never done a transaction that**  
20 **we were on both sides of, that didn't have**  
21 **compliance sign off.**  
22 Q Okay. So your absolute policy at  
23 Highland Capital is for any transaction where you  
24 have a connection to both sides of the  
25 transaction, "you" meaning Jim Dondero, you always

<p style="text-align: right;">85</p> <p>1 get compliance approval, correct? 2 <b>A Yes.</b> 3 Q And is that a policy that Scott 4 Ellington knows about? 5 <b>A Yes.</b> 6 Q Is that a policy that Thomas Surgent 7 knows about? 8 <b>A Yes. It's an industry -- it's a</b> 9 <b>post-2008 Sarbanes or Dodd-Frank mandate. Chief</b> 10 <b>compliance officers have the personal liability of</b> 11 <b>a C-suite executive starting in '08 in financial</b> 12 <b>firms.</b> 13 Q I see. So if Thomas Surgent did not -- 14 MR. CLUBOK: Strike that. 15 Q If Thomas Surgent -- well, you had to 16 get Thomas Surgent's approval because you, Jim 17 Dondero, had beneficial ownership interest on both 18 sides of the transaction, correct? 19 <b>A Not because of -- more of control, not</b> 20 <b>benefi- -- beneficial ownership on the Sentinel</b> 21 <b>side. You have control on both sides, but, yes,</b> 22 <b>it was appropriate to get compliance approval,</b> 23 <b>which I'm certain we did. I can't imagine -- I</b> 24 <b>can't imagine there is any transaction where, any</b> 25 <b>transaction over the last 15 years that would</b></p>	<p style="text-align: right;">87</p> <p>1 Q How would Mr. Surgent have learned that 2 Sentinel Reinsurance was an affiliated entity? 3 <b>A He would have known as part of Scott</b> 4 <b>Ellington's presentation to him proposing the</b> 5 <b>transaction.</b> 6 Q What presentation are you talking 7 about? 8 <b>A Compliance builds -- they definitely</b> 9 <b>have folders and documentation on any transaction</b> 10 <b>that they -- especially any significant</b> 11 <b>transaction that they approve. They have to keep</b> 12 <b>written documentation for the regulators.</b> 13 Q Sorry, but have you seen a presentation 14 that Scott Ellington prepared to describe the 15 transaction that he would have shared with 16 Mr. Surgent? 17 <b>A I have not seen it.</b> 18 Q Have you seen any presentation that 19 Scott Ellington ever prepared related to this 20 transaction? 21 <b>A I have not.</b> 22 Q Did Mr. Ellington -- did -- were you 23 ever -- 24 MR. CLUBOK: Strike that. 25 Q How often do people use PowerPoints</p>
<p style="text-align: right;">86</p> <p>1 <b>involve affiliated entities that did not have</b> 2 <b>compliance approval.</b> 3 Q And in this situation Sentinel Re 4 insurance would have been an affiliated entity, 5 using the phrase the way you just used it, 6 correct? 7 <b>A Yes.</b> 8 Q And HFP and its subsidiaries would have 9 been affiliated entities, using the phrase the way 10 you just described it, correct? 11 <b>A Yes.</b> 12 Q Is it your responsibility to ensure 13 that compliance measures are adhered to? 14 <b>A Yes. I mean, it's every professional</b> 15 <b>in the organization's responsibility, as part of</b> 16 <b>the annual compliance review, to run appropriate</b> 17 <b>things through compliance. But I would say under</b> 18 <b>an abundance of caution, the organization is</b> 19 <b>pretty well trained that anything that's close</b> 20 <b>goes through compliance.</b> 21 Q Okay. But you never spoke with 22 Mr. Surgent directly about this transaction, 23 correct? 24 <b>A Correct. Scott Ellington was the</b> 25 <b>person on this transaction.</b></p>	<p style="text-align: right;">88</p> <p>1 with you back in this time period to describe 2 transactions or make it easier to follow them? 3 <b>A Often.</b> 4 Q Why? 5 <b>A I mean, just often. I mean, there's</b> 6 <b>process for investment underwriting, there's</b> 7 <b>process for trade execution, there's process for</b> 8 <b>investment monitoring and tracking. Most of those</b> 9 <b>are documentation, you know, based. And there is</b> 10 <b>process and procedures around compliance also, and</b> 11 <b>those are generally documentation based also.</b> 12 Q Would you have received a presentation 13 for every major transaction that one of the 14 affiliated entities did during this time period? 15 <b>A Not on the compliance side. I'm not</b> 16 <b>directly involved in compliance. On most -- on</b> 17 <b>most significant investments, generally I would be</b> 18 <b>in an investment committee or be aware or be</b> 19 <b>presented with something, yes.</b> 20 Q And so it would be highly unusual for 21 you not to be presented with a PowerPoint, or the 22 like, sort of presentation if there was a 23 significant transaction being contemplated with 24 one of the affiliated entities at that time, 25 correct?</p>

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1 MR. TAYLOR: Objection to form.  
2 **A If there was a significant investment**  
3 **being made, you know, per se, but, again, that**  
4 **wasn't the case in what we're talking about. And**  
5 **I didn't see a PowerPoint on the insurance -- on**  
6 **the insurance product overall.**  
7 Q Well, you mentioned before that you  
8 heard that there were 70 to 80 million dollars in  
9 illiquid assets?  
10 **A Correct.**  
11 Q And was it your understanding that all  
12 of those assets were transferred to Sentinel  
13 Reinsurance?  
14 **A I believe that was part of the policy**  
15 **or part of the premium, and, again, part of the**  
16 **transition to, you know, provide liquidity and**  
17 **some functionality.**  
18 Q And did you understand that in addition  
19 to illiquid assets there were also liquid assets  
20 that were transferred to Sentinel Reinsurance as  
21 part of the premium?  
22 **A I don't remember that. I remember it**  
23 **being almost entirely illiquid assets.**  
24 Q Were there any -- was there any cash  
25 that was transferred as part of the premium

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1 payments?  
2 **A I don't believe there was anything**  
3 **liquid or cash other than a de minimis amount.**  
4 **That's my recollection. But I never saw a**  
5 **reconciliation or a true-up. But it was never**  
6 **described to me as anything other than a**  
7 **preponderance of illiquid assets.**  
8 Q What would a de minimis amount -- when  
9 you say "de minimis," you're -- in the past, I've  
10 learned that your view of de minimis is different  
11 than lots of people's view. So when you say  
12 "de minimis," do you mean less than 1 million,  
13 less than 10 million, less than 100 million?  
14 What's de minimis to you in this context?  
15 **A I would guess that there would be less**  
16 **than 10 percent of any kind of liquid or cash**  
17 **assets. That would be my guess. That would be**  
18 **10 percent or -- well, less than 10 percent.**  
19 Q Okay. But if it was \$10 million in  
20 cash, you would consider that to be de minimis?  
21 **A I was kind of using 10 percent as a**  
22 **cutoff. It was 7 or 8 -- 7 or 8 or less of cash**  
23 **or illiquid assets is what I would have expected.**  
24 Q Sorry. You said, "It was 7 or 8 less  
25 of cash or illiquid is what I would have

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1 expected." Sorry --  
2 **A Less than 7 or 8 of liquid assets or**  
3 **cash is what I would have expected. I would --**  
4 **when I say "preponderance," I would have guessed**  
5 **that 90 percent, or I would have expected**  
6 **90 percent or more was illiquid.**  
7 Q Sorry. So do you believe that it was  
8 approximately 7 or 8 million dollars in liquid  
9 assets that was transferred as part of this?  
10 **A No, I'm saying I don't know, but you**  
11 **were asking me my expectation of de minimis, and I**  
12 **would say that I would have thought that the cash**  
13 **and the liquid portion of the portfolio would have**  
14 **been 10 percent or less.**  
15 Q Okay. So if the liquid portion was  
16 more than 10 percent, that's above what you call  
17 de minimis in a transaction like this, correct?  
18 **A Yeah, I mean, you're asking my**  
19 **expectations, but I don't have specific awareness.**  
20 Q Okay. Did you -- so getting back to  
21 Mr. Surgent, how would he have known that this was  
22 an affiliated transaction?  
23 **A He would have known from the**  
24 **presentation, but he also has a high degree of**  
25 **awareness of our corporate structures and our**

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1 **various entities, and it would have been part of**  
2 **his analysis and decision-making process. He**  
3 **wouldn't have approved it without knowing the**  
4 **details and the counterparties.**  
5 Q And when compliance approves  
6 transactions like this, is there a formal process  
7 they go to? Is there a way that that approval is  
8 reflected? Is there a form they fill out? Is  
9 there a, you know, group of people they have to  
10 copy? Anything like that?  
11 MR. TAYLOR: Objection to the form.  
12 **A I don't know the -- there is some**  
13 **formality to the process, but I don't know what it**  
14 **is.**  
15 Q Did you ever see an approval by  
16 Mr. Surgent --  
17 **A No.**  
18 Q -- of this projection?  
19 **A I have not.**  
20 Q Okay. So we got off on a little  
21 tangent here, but are you aware of Sentinel Re  
22 ever issuing any other judgment insurance policy  
23 in its history?  
24 **A I -- I don't know, but I know it's**  
25 **considered some, and I know it's fought claims,**

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1 **you know, but I don't know for sure.**  
2 Q Do you know -- by the way, I've called  
3 it a judgment insurance policy. Have you heard of  
4 a phrase called "after the event," or "ATE"  
5 policy?  
6 **A Yeah, I mean, like I said, I know**  
7 **people sell claims and judgments, and after -- I**  
8 **mean, I have heard the term, yes.**  
9 Q Okay. Would you describe this policy  
10 as an after the event policy?  
11 **A No.**  
12 Q Why not?  
13 **A I mean, for all the reasons we talked**  
14 **about earlier. We viewed all the residual issues**  
15 **at HFP to be things that would be handled in due**  
16 **course and they needed liquidity and legal help or**  
17 **coordination. And the thought was, over an**  
18 **extended period of time, things would be resolved**  
19 **in normal course of business for not gigantic**  
20 **amounts of issue.**  
21 Q Right, but the insurance policy that  
22 you approved, I think you previously agreed it was  
23 a -- it could be called a judgment insurance  
24 policy, correct?  
25 **A I mean, I think I resisted naming it**

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1 **that because I viewed it as much more than that,**  
2 **but that it did have some liability component to**  
3 **it, but I don't believe that that was the primary**  
4 **purpose.**  
5 Q But you would agree that the policy was  
6 a legal liability insurance policy, correct?  
7 **A No, I don't want to say that.**  
8 Q I'm not asking if you want to say that.  
9 I'm asking if it's true. It's true that this  
10 policy that you approved for -- with a  
11 \$100 million potential value was a legal liability  
12 insurance policy, correct?  
13 **A I'm saying my recollection is that it**  
14 **had a component of that to it, but that was not**  
15 **the full extent of it or the business purpose of**  
16 **it, per se.**  
17 Q You're saying the main business purpose  
18 of this insurance policy was to be something other  
19 than a legal liability insurance policy; is that  
20 correct?  
21 Sorry, that question got garbled.  
22 **A Yeah, there was --**  
23 Q Jim, I'm sorry, let me ask it again  
24 because that question got garbled a little bit the  
25 way I said it.

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1 Are you saying that the main business  
2 purpose of this insurance policy was to do  
3 something other than act as a legal liability  
4 insurance policy?  
5 **A Yes.**  
6 Q And what is that other thing, or what  
7 is the other function of this policy other than  
8 being a legal liability insurance policy?  
9 **A To transition the residual legal, tax,**  
10 **authority, organizational responsibilities and**  
11 **issues over an extended period of time faced by a**  
12 **dead entity that had been unwound as worthless for**  
13 **tax purposes and wasn't functioning in and of**  
14 **itself.**  
15 Q Could you be any more specific than  
16 that in terms of the purpose of this policy other  
17 than to serve as a legal liability insurance  
18 policy?  
19 **A I just said it, and I've said it, like,**  
20 **five times, so I'm not going to say that again.**  
21 **But for transition issues on residual legal,**  
22 **regulatory, tax, operating issues and that -- but**  
23 **there was a liability component to it also. But**  
24 **the expectation was that the liability stuff would**  
25 **resolve itself over time, you know, partly with**

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1 **legal fees and partly with maybe some settlements,**  
2 **partly with, you know, time lapse on statute of**  
3 **limitations, you know, who knows.**  
4 **And then but what also happens too is**  
5 **things that you don't know or don't expect at the**  
6 **time you put a transition policy like this in**  
7 **place, there are things you don't know that end up**  
8 **coming up later, like -- you know, like whatever,**  
9 **like HarbourVest in the Highland case wasn't**  
10 **something that was known or thought about when**  
11 **filed.**  
12 Q Did this policy cover the HarbourVest  
13 case?  
14 **A I'm sorry, I got off on a tangent. I**  
15 **don't think HarbourVest is related to what we're**  
16 **talking about today.**  
17 Q Okay. So I want to talk about things  
18 that are related what we're talking about, and I  
19 want to know very specifically -- let's take it --  
20 just ask it again clearly.  
21 You're saying -- would you agree the  
22 main purpose of this policy was to serve as a  
23 legal liability insurance policy? Would you agree  
24 with that?  
25 **A No. I believe it was a component of**



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1 **it.**  
2 Q Okay. And so you have testified that  
3 the main point of issuing this insurance policy  
4 was to assist in the transition of HFP. Is that a  
5 fair characterization of what you said?  
6 **A Yes.**  
7 Q And specifically how? How would this  
8 policy help -- how was it intended that this  
9 policy would help HFP transition other than by  
10 being available to satisfy the legal liability HFP  
11 might have with respect to the UBS claims?  
12 **A Again, because it would handle the**  
13 **ongoing issues of an offshore Cayman entity that**  
14 **wasn't functioning but had a tail of legal,**  
15 **regulatory, tax, operating issues, some of which**  
16 **were known and some of which were unknown. And it**  
17 **didn't have liquidity or staff to handle it on its**  
18 **own, and Sentinel would be providing that**  
19 **functionality.**  
20 Q Sorry, how? How exactly? What  
21 specifically was anticipated when you signed off  
22 on this policy that Sentinel would ever do other  
23 than cover legal liability with respect to the UBS  
24 claim?  
25 **A It would manage all the things I just**

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1 **talked about as transition items.**  
2 Q What do you mean, "manage"? Like  
3 Sentinel was going to bring people over to manage,  
4 Sentinel was going to pay for something? What was  
5 the specific thing that Sentinel was signing up to  
6 do under this policy other than satisfy legal  
7 liability to UBS for its litigation in New York?  
8 **A Again, the UBS litigation in New York**  
9 **wasn't viewed as likely or material at the time.**  
10 **We went over that earlier. But let's say -- okay.**  
11 **HFP --**  
12 Q Wait, wait, sorry. Just to be clear  
13 here, you're saying at the time this policy was  
14 taken out there was no expectation of any material  
15 legal liability for any of your affiliated  
16 entities as a result of the UBS litigation,  
17 correct?  
18 **A Correct. I said it four times earlier.**  
19 Q I understand. So getting back to the  
20 policy, so -- but by the way, would you agree that  
21 the policy was intended to cover the UBS  
22 litigation liability on the off chance, from your  
23 perspective, that there should be liability?  
24 **A Again, it was a secondary not a main**  
25 **driver. The business purpose was for transition.**

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1 Q No, I understand. I'm going to come  
2 back to the main purpose, but as a secondary  
3 purpose, in your view, you would agree that the  
4 insurance policy, when it was taken out, was  
5 intended to cover legal liability to UBS for any  
6 of the affiliated entities that signed on to the  
7 policy on the off chance that such liability  
8 arose, correct?  
9 **A Not particularly, but for all legal**  
10 **liability issues in general. You have to**  
11 **remember, there were big residual issues with**  
12 **Barclays. There was big residual issues with**  
13 **Citibank. There were aggressive worthlessness**  
14 **deductions taken by some of the investors in there**  
15 **that could have created a tax audit or regulatory**  
16 **issues -- not regulatory issues so much as tax**  
17 **issues with the IRS.**  
18 **And so it was meant to cover all those**  
19 **things and address all those things if the**  
20 **residual, dormant, dead HFP entity were attacked**  
21 **by anybody.**  
22 Q I'm going to come back to the other  
23 things, okay, and I want to -- you've said a bunch  
24 of other things that you claim the policy was  
25 intended to, but one of the things that the policy

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1 was intended to cover when you approved it was any  
2 legal liability of HFP or its affiliates to UBS in  
3 connection with the New York litigation, correct?  
4 **A As long as we use the words "one of the**  
5 **things," not the main thing, not the primary thing**  
6 **not the focus of our attention at that point in**  
7 **time. As long as it's just included among the**  
8 **litany of other residual things that HFP was**  
9 **dealing with, yes. But I resist putting any --**  
10 **and I won't put any clarifier on it that makes it**  
11 **seem like it was a main point of contention**  
12 **because we absolutely, at the time, viewed the --**  
13 **all the way up through August of '19 viewed UBS as**  
14 **not significant and not a material risk.**  
15 Q Yes, you've testified to that. So you  
16 say that this policy was not taken out with a  
17 specific eye to UBS, correct?  
18 **A Yes.**  
19 Q And you say that the main point of this  
20 legal liability insurance policy was not to cover  
21 liability to UBS, correct?  
22 **A Correct.**  
23 Q We'll come back to that. We'll come  
24 back to the other purpose of the policy, but I  
25 just want to focus on it is the case, though, that

<p>101</p> <p>1 you would agree that at least one of what you say 2 are many purposes of this insurance policy was to 3 cover any legal liability of HFP or its affiliates 4 to UBS in connection with the New York litigation, 5 correct? 6 MR. TAYLOR: Andy, this has been asked 7 and answered numerous, numerous times at this 8 point. 9 MR. CLUBOK: Then it's a simple yes. 10 Then I would like a simple yes to this question, 11 Clay. It should be real simple. I'll ask the 12 question again, and I have never gotten a simple 13 yes. I've gotten a lot of stuff that the judge 14 doesn't like. So I'm going to ask Mr. Dondero, as 15 he said at the beginning, that he'd say yes if it 16 was a simple answer, and so I'm going to ask the 17 question one more time and then I'll move on. 18 Q Even though I understand you say that 19 there were other purposes of this insurance 20 policy, you agree that at least one purpose of the 21 insurance policy that you approved, that we have 22 been talking about today, was to cover any legal 23 liability of HFP or its affiliates to UBS in 24 connection with the New York litigation, correct? 25 MR. TAYLOR: I'm just going to object</p>	<p>103</p> <p>1 what I think Mr. Dondero is fighting on, so I'm 2 going to try to keep being more and more specific. 3 Q Mr. Dondero, would you agree that at 4 least one purpose of the \$100 million insurance 5 policy that you approved was to cover liability to 6 UBS in connection with the New York litigation on 7 behalf of HFP and its affiliates? 8 A Yes. 9 Q Thank you. Okay. 10 Now, let's talk about the other 11 purposes of the policy. Are you saying that the 12 policy also covered any losses that HFP or its 13 affiliates might suffer to Barclays after the 14 issuance of the policy? 15 A Again, I haven't seen it, but my belief 16 was that it was -- the business purpose was 17 that -- for it to be broad based for things known 18 and unknown and include a variety of tax and/or 19 legal dispute counterparties. 20 Q But you specifically said Barclays. 21 That's why -- I didn't -- that came from you, as 22 an example. And I don't know if you're just 23 making that up as an example or if you're saying 24 that you specifically, when you approved it, 25 understood the policy to cover potential liability</p>
<p>102</p> <p>1 to the form. 2 A Okay, Andy, I can't say yes because of 3 what you threw in there on the clarifiers at the 4 end that I don't know the answers to. I don't 5 know what the terms and conditions and trigger 6 points and I don't know which entities of HFP are 7 included in the policy or not included in the 8 policy. I don't know. But the general purpose 9 was to cover whatever legal disputes and 10 resolutions HFP would be subject to. I mean -- 11 MR. CLUBOK: Okay, Clay, that's why the 12 question has not been asked and answered. Every 13 time I've asked it, there has been a different 14 qualification. I'm going to explore this until I 15 get a direct answer, okay? I'm going to ask you 16 not to keep objecting "asked and answered." I 17 will show that clip to the judge, and it's -- I 18 can't stop Mr. Dondero from qualifying things, but 19 I'm allowed to keep asking until I get an answer 20 to my question. 21 MR. TAYLOR: Andy, here is just 22 something for your consideration. You keep on 23 throwing in the word "any" -- 24 MR. CLUBOK: I understand. I've asked 25 different questions, and I'm getting closer to</p>	<p>104</p> <p>1 with Barclays. And that's what I'm trying to get 2 at. I'm going to ask -- you threw out different 3 names, and I'm trying to just see if you were just 4 throwing those out up against the wall or if you 5 were actually saying, I recall that those were 6 things the policy was intended to cover. 7 So let me -- with that in mind, I'll 8 just ask you. When you signed off on this 9 \$100 million insurance policy, did you believe 10 that it would cover liability that HFP or its 11 affiliates might face to Barclays in the future? 12 A Yes, to any claim known and unknown. I 13 mean, that -- the history of Highland over the 14 last 15 years is resolution of a dispute is not 15 necessarily as much resolution as we thought it 16 was. You know, like I said, UBS -- we thought we 17 had them settled in '08 and then we paid again in 18 2015, and you're back again, right? And then 19 Redeemer, we settled with them in 2015, all kinds 20 of accolades and whatever, and then they came back 21 to us with arbitration and award and forced us 22 into bankruptcy on the same issues, you know. 23 So it's -- the settlements that we had 24 with Barclays, the settlements that we had with 25 Citibank all could have potentially come back</p>

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1 **similarly because their settlements touched HFP**  
2 **also, just like your guy's settlements touched**  
3 **HFP.**  
4 Q I'm going to ask you to please listen  
5 to the questions I ask and answer the questions  
6 that I ask, if you can.  
7 Are you saying that when you signed off  
8 on this \$100 million insurance policy, you  
9 believed that it would cover any liability from  
10 any source against HFP going forward, known or  
11 unknown?  
12 **A That was my belief that it was -- the**  
13 **business purpose was primarily, yes, a transition**  
14 **policy.**  
15 Q And so, from the time that you signed  
16 this policy through today, if HFP or any of its  
17 affiliates have any legal liability, your  
18 expectation is that it would be covered by this  
19 \$100 million policy, correct?  
20 **A I didn't sign the policy, and the**  
21 **insurance policy, whatever it says, it says, and**  
22 **who it covers under what circumstances it will**  
23 **cover or dispute, but I don't know the specifics.**  
24 Q Okay. Mr. Dondero, so first of all --  
25 **A The answer is I don't know. If you**

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1 **don't like my clarifier, then my answer is I don't**  
2 **know.**  
3 Q Well, my questions have been from the  
4 beginning, when you signed off -- first of all,  
5 you claim you didn't sign the policy, right?  
6 **A I don't believe I did, no.**  
7 Q Okay. But you at least know that you  
8 signed off on the policy. You authorized it to be  
9 signed, correct?  
10 **A Yes.**  
11 Q Okay. And when you authorized the  
12 signing of a policy for \$100 million and the  
13 transfer of roughly that amount or more in assets  
14 from other affiliated entities --  
15 MR. TAYLOR: Object to that  
16 characterization of the evidence.  
17 Q Okay. Well, would you agree that over  
18 \$100 million in fair market value was transferred  
19 to Sentinel Re in consideration for this policy?  
20 **A My recollection is it was between 70**  
21 **and 80.**  
22 Q You said before -- you think the total  
23 fair market value of the assets transferred to  
24 Sentinel Reinsurance for this policy was between  
25 70 and 80 million dollars?

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1 **A That's my recollection.**  
2 Q And that's -- did you ever look at the  
3 assets that were transferred?  
4 **A No.**  
5 Q Did you ever review the fair market  
6 value of the assets that were transferred to buy  
7 this policy?  
8 **A No. That is how it was presented to**  
9 **me, that it was 70 or 80 million of fair market**  
10 **value.**  
11 Q Presented to you by Scott Ellington?  
12 **A Yes.**  
13 Q Okay. And when you approved that  
14 transaction -- I'm trying to figure out what you  
15 believed you were buying with all those assets  
16 that you were moving from one affiliated entity to  
17 another, okay. And by the way, was it an arm's  
18 length transaction?  
19 **A Yeah, I -- ultimately getting it**  
20 **through compliance and the regulators, I think**  
21 **that's one of the standards that compliance and**  
22 **the regulators use, is that it's a**  
23 **market-structured -- a market-level transaction.**  
24 **That's the whole purpose of compliance when you**  
25 **have affiliated entities.**

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1 Q Did you make any effort to ensure that  
2 it was an arm's length transaction or the  
3 equivalent of an arm's length transaction?  
4 **A No. Again, that would have been the**  
5 **responsibility of compliance and the regulators.**  
6 Q Did you ever do a market test to see  
7 what the fair market value of the assets were?  
8 **A I did not, but I'm very comfortable**  
9 **organizationally the fair market values at any**  
10 **point in time are accurate and that's been proven**  
11 **for 15 years.**  
12 Q Sorry, the fair market values that  
13 Highland retains on its books are accurate?  
14 **A Very accurate. They are robustly**  
15 **tested, verified, generally third parties. They**  
16 **are documented. I'm very comfortable our fair**  
17 **market values on liquid, less liquid, and illiquid**  
18 **securities, whatever buckets 1, 2 and 3, are**  
19 **accurate.**  
20 Q So if the documents --  
21 MR. CLUBOK: Strike that.  
22 Q So where would we go to find documents  
23 that reflect the fair market values of the assets  
24 that were transferred at the time of the  
25 transfers?

<p>109</p> <p>1 <b>A That would all be at Highland.</b> 2 Q Where? 3 <b>A We keep detailed valuation records</b> 4 <b>going back 20 years.</b> 5 Q In what system? 6 <b>A I don't know.</b> 7 Q Who would know? 8 <b>A I don't think Highland could be</b> 9 <b>compliant as a registered investment advisor and</b> 10 <b>not be able to produce those to you.</b> 11 Q Who would be able to most easily get 12 those documents, if they are still there, if you 13 know? 14 <b>A DSI is functioning as the back office</b> 15 <b>of Highland, as far as I understand it.</b> 16 Q And there would have been fair market 17 values for each of the assets that were 18 transferred to pay for the insurance policy? 19 <b>A Yes.</b> 20 Q And we could rely on those fair market 21 values in the Highland books if we wanted to know 22 the fair market value of the assets that were 23 transferred? 24 <b>A I believe so.</b> 25 Q So when you -- getting back to what you</p>	<p>111</p> <p>1 liability with respect to other entities other 2 than UBS, Barclays, Citibank that we have not 3 specifically mentioned? 4 <b>A Yeah, or tax authorities or -- yes. I</b> 5 <b>mean, that just -- that was part and parcel of it,</b> 6 <b>but, again, the terms of the payouts and the -- I</b> 7 <b>have no knowledge of. And I don't know if they</b> 8 <b>are specifically addressed or ignored. I don't</b> 9 <b>know how UBS is handled in the policy. I do not</b> 10 <b>have detailed knowledge on the specifics.</b> 11 Q When was the last time you thought 12 about the policy before you got the -- before you 13 heard about this adversary proceeding? 14 <b>A I hadn't thought about it at all. I</b> 15 <b>wasn't even sure the New York action applied,</b> 16 <b>honestly.</b> 17 Q Other than legal liability for either 18 attorneys' fees or bad outcomes of litigation, you 19 have repeatedly used a phrase about "liquidity for 20 transition." I'm trying to understand, 21 specifically under what circumstances did you 22 think Sentinel Re would ever pay money to handle 23 something that was not lawyer fees or legal 24 liability under this policy? 25 <b>A Well, lawyers' fees, essentially, you</b></p>
<p>110</p> <p>1 knew at the time, you approved this transaction. 2 <b>A Right.</b> 3 Q Did you believe that you were 4 purchasing liability insurance for all known and 5 unknown claims of Highland Financial Partner and 6 its subsidiaries? 7 MR. TAYLOR: Objection to the form of 8 the question. 9 <b>A I didn't have specific knowledge beyond</b> 10 <b>that it was a transition policy to cover -- to</b> 11 <b>provide the liquidity and the management necessary</b> 12 <b>to deal with the conflicts and then probably net</b> 13 <b>of those amounts to provide some amounts of</b> 14 <b>liability insurance given certain circumstances or</b> 15 <b>certain events.</b> 16 Q Did you believe that you were buying 17 liability insurance with respect to the Barclays 18 claims that were known or unknown at the time? 19 <b>A Generally, yes.</b> 20 Q Did you believe you were buying legal 21 liability insurance with respect to the Citibank 22 claims against HFP and its subsidiaries that were 23 known or unknown at the time? 24 <b>A Generally, yes.</b> 25 Q Did you believe you were buying legal</p>	<p>112</p> <p>1 <b>know, any other operating or regulatory costs or</b> 2 <b>defenses, and then bona fide settlements and then,</b> 3 <b>you know, but -- Andy, I know you know the</b> 4 <b>insurance world. Bona fide settlements are --</b> 5 <b>bona fide settlements are getting paid on a</b> 6 <b>more -- that's a whole industry subset of its own,</b> 7 <b>you know.</b> 8 Q We'll come back to that. What do you 9 mean by "operating or regulatory costs"? What 10 does that mean? 11 <b>A If there's any regulatory costs for</b> 12 <b>operating in the Caymans, if there is any, like I</b> 13 <b>said, tax questions on -- or challenges on the</b> 14 <b>worthlessness deduction when HFP was unwound, I --</b> 15 <b>you know, all those kinds of things.</b> 16 Q You believe that this policy you're 17 buying would pay for costs associated with 18 challenges to the worthless tax deduction that you 19 took when HFP was declared insolvent? 20 <b>A Again, I believe there was a transition</b> 21 <b>policy. That's how it was presented to me.</b> 22 Q Are you saying that you believe the 23 policy that you approved buying, that we have been 24 discussing today, was expected to pay costs 25 associated with challenges to the worthless tax</p>

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1 deduction that you took when HFP was declared  
2 insolvent?  
3 **A Yes.**  
4 Q And did Sentinel Re ever pay any costs  
5 associated with that worthless tax deduction that  
6 you took?  
7 **A I do not know. The administering of**  
8 **the policy and the payment of expenses and legal**  
9 **fees, Scott Ellington would have an awareness of**  
10 **that. I do not.**  
11 Q By the way, that worthless tax  
12 deduction provided a significant tax benefit to  
13 you personally, correct?  
14 **A I don't know. I wasn't a majority**  
15 **owner in HFP. "A significant tax" -- it was a**  
16 **complete wipeout economically, and there was**  
17 **some -- but those are bona fide -- the**  
18 **worthlessness deduction for a dead entity is a**  
19 **bona fide -- it's a bona fide tax deduction, it's**  
20 **a bona fide policy. But a lot of times the IRS**  
21 **questions it. It doesn't mean that it was in any**  
22 **way inappropriate.**  
23 Q But if UBS had lost its litigation  
24 against HFP and its subsidiaries, that worthless  
25 tax deduction would have had to be reversed,

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1 correct?  
2 **A I have no knowledge or awareness of**  
3 **that.**  
4 Q You were told specifically that there  
5 would be a significant tax liability for you and  
6 others if HFP and its subsidiaries were to prevail  
7 in the New York litigation against UBS; isn't that  
8 true?  
9 **A I don't remember that at all.**  
10 Q You remember that you were on the hook  
11 for over \$50 million personally if that worthless  
12 tax deduction was overturned by the IRS, correct?  
13 MR. TAYLOR: Objection to the form.  
14 **A I have no specific knowledge on any of**  
15 **this, Andy.**  
16 Q I should say --  
17 **A You can refresh --**  
18 Q -- you remember that you were on the  
19 hook for over \$50 million personally if the  
20 worthless tax deduction was disallowed by the IRS,  
21 correct?  
22 MR. TAYLOR: Objection. Lack of  
23 foundation and calls for speculation.  
24 **A I don't have a -- you can try and**  
25 **refresh me on it, but I have no recollection of**

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1 **that.**  
2 Q You remember that you were -- maybe  
3 without knowing the specific numbers, you remember  
4 you faced significant consequences if the  
5 worthless tax deduction you took in connection  
6 with HFP was disallowed by the IRS, correct?  
7 MR. TAYLOR: Same objections.  
8 **A Yeah, I have no awareness of that,**  
9 **Andy. And, listen, the way I understand worthless**  
10 **deductions is it's really a declaration at a time**  
11 **and point that the entity is worthless and no**  
12 **longer exists, okay, as a functioning entity. If**  
13 **the tax authorities overturn that position, it**  
14 **doesn't mean you never get that tax deduction for**  
15 **the loss that's occurred. It just means you get**  
16 **it later.**  
17 **So it's not -- it's a timing issue more**  
18 **than anything else. And, again, it's in no way**  
19 **improper, but I don't remember it being a decision**  
20 **variable as you're describing it.**  
21 Q You knew that everyone who was  
22 potentially going to be impacted, if the worthless  
23 tax deduction was disallowed, would potentially  
24 have a claim directly against you as the decision  
25 maker of HFP; is that true?

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1 **A No, that's not true.**  
2 Q Scott Ellington repeatedly warned you  
3 that there would be significant tax consequences  
4 if the worthless tax deduction were to be  
5 disallowed by the IRS, correct?  
6 MR. TAYLOR: Object to the form of the  
7 question.  
8 **A I don't remember that, Andy. And just**  
9 **because you're a tax partner doesn't make you**  
10 **liable. You do things in good faith, and it ends**  
11 **up being a timing issue and the IRS delays the**  
12 **deduction. That doesn't necessarily -- that**  
13 **doesn't necessarily create any liability.**  
14 Q Scott Ellington repeatedly warned you  
15 that if HFP were to win the litigation against  
16 UBS, there would be significant tax consequences,  
17 correct?  
18 MR. TAYLOR: Object to the form of the  
19 question.  
20 **A I don't remember any of that, Andy.**  
21 Q Scott Ellington tried to get you to  
22 settle the UBS case many times, right?  
23 **A I -- I mean, again, I remember the**  
24 **August '19 stuff. I don't remember many times**  
25 **before that. I don't remember a bid ask before**

<p>117</p> <p>1 <b>that.</b> 2 Q Is the DAF -- the DAF is a 3 donor-advised fund? 4 <b>A Yes.</b> 5 Q And it's a charitable fund that you 6 established? 7 <b>A Yes.</b> 8 Q Roughly how much does it have in assets 9 right now? 10 MR. TAYLOR: Andy, that's not at all an 11 appropriate line of questioning, and he does not 12 have to answer it. 13 MR. CLUBOK: It is, and I'll link it up 14 here in a second. 15 Q It certainly has -- well, let me put it 16 this way: You know that HFP and CDO Fund 17 collectively had a \$32 million note payable from 18 DAF that it transferred to Sentinel as part of 19 purchasing the insurance policy; isn't that true? 20 <b>A I believe there is a note in there from</b> 21 <b>the DAF of 32 millionish, but I don't remember how</b> 22 <b>it got there.</b> 23 Q And did the DAF have enough money to 24 pay that \$32 million? 25 <b>A It doesn't have the liquidity, but it</b></p>	<p>119</p> <p>1 Q Well, do you know who the DAF owes that 2 \$32 million to today? 3 <b>A No, I do not.</b> 4 Q You have no clue whatsoever as to 5 where -- as to who is the current holder of that 6 \$32 million note; is that correct? 7 <b>A I do not. I'm willing to be refreshed,</b> 8 <b>but I don't know. I don't remember.</b> 9 Q Who is responsible for making payments 10 on behalf of the DAF of that \$32 million note? 11 <b>A The -- I don't know, the DAF trustee, I</b> 12 <b>guess.</b> 13 Q Who is the DAF trustee? 14 <b>A Grant Scott.</b> 15 Q And does Grant Scott have full 16 authority to pay off that \$32 million note? 17 <b>A I believe ultimately.</b> 18 Q Do you have any say in the matter? 19 <b>A I think we're investment advisor for</b> 20 <b>the DAF.</b> 21 Q Who is "we" in that sentence? 22 <b>A I believe -- that's a good question.</b> 23 <b>Probably Sky -- probably SkyBridge, I'm guessing,</b> 24 <b>has a shared services asset management agreement</b> 25 <b>with the DAF, replacing what used to be done by</b></p>
<p>118</p> <p>1 <b>has more than 100 million in assets at this point.</b> 2 Q Okay. The DAF has more than 3 \$100 million in assets. Has it made any payments 4 on this \$32 million note? 5 <b>A I do not know.</b> 6 Q Who owns the \$32 million note now? 7 <b>A I do not know.</b> 8 Q It was held by HFP and CDO Fund 9 previously, correct? 10 MR. CLUBOK: Strike that. 11 Q It was held by either HFP or CDO Fund 12 prior to the Sentinel Reinsurance policy purchase, 13 correct? 14 <b>A I believe so.</b> 15 Q And you understand that it was 16 transferred to Sentinel Reinsurance as part of the 17 insurance policy, correct? 18 <b>A It would make sense that that would</b> 19 <b>have been part of the illiquid securities or</b> 20 <b>illiquid asset bucket.</b> 21 Q And you know it has been transferred 22 since, right? 23 <b>A I don't have -- I don't have the</b> 24 <b>specific knowledge to be helpful here, Andy. I</b> 25 <b>don't know.</b></p>	<p>120</p> <p>1 <b>Highland.</b> 2 Q When was that? 3 <b>A That started when everybody moved --</b> 4 <b>well, Seery terminated all the agreements, I</b> 5 <b>think, at the end of February. When everybody</b> 6 <b>moved over here at the end of February or March,</b> 7 <b>the bank and the DAF and other entities redid</b> 8 <b>their shared services agreements with SkyBridge.</b> 9 Q And you control SkyBridge, correct? 10 <b>A No, I do not.</b> 11 Q What ownership do you have in 12 SkyBridge? 13 <b>A I believe at the moment it's zero and</b> 14 <b>we're trying to figure out how best to construct</b> 15 <b>the ownership there.</b> 16 Q Who owns SkyBridge? 17 <b>A The employees at the moment.</b> 18 Q Which employees? 19 <b>A I don't know. We're doing an</b> 20 <b>organizational restructure analysis of how that</b> 21 <b>entity should be held. And I haven't seen the</b> 22 <b>final recommendation yet.</b> 23 Q Who is controlling SkyBridge today? 24 <b>A I -- I don't know. I don't know how</b> 25 <b>much of it is -- it's some combination of Frank</b></p>

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1 **Waterhouse and -- some combination of Frank**  
2 **Waterhouse, J.P., probably Isaac and Ellington,**  
3 **but I don't want to say for sure Isaac and**  
4 **Ellington because I don't know.**  
5 Q And you are saying that you have no say  
6 whatsoever in SkyBridge as of today?  
7 **A Other than as a client, I'm not an**  
8 **owner.**  
9 Q What do you mean, "other than as a  
10 client"?  
11 **A Well, other than as -- I'm the chairman**  
12 **of NexBank and NexBank is a client, and I'm the**  
13 **president of NextPoint and NextPoint is a client.**  
14 Q Does SkyBridge have full authority to  
15 make a decision as to whether and if or when the  
16 DAF pays off the \$32 million note that used to be  
17 held by HFP and CDO Fund?  
18 **A I don't know. I don't know -- I don't**  
19 **know where the responsibilities begin and end on**  
20 **the asset management agreement.**  
21 Q So this is a long detour from when I  
22 first asked you about Sentinel and whether they  
23 had ever issued any other legal liability  
24 insurance policies or after -- let me ask it this  
25 way: I will represent to you that this policy has

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1 sometimes been called a legal liability insurance  
2 policy, sometimes it has been called an after the  
3 event policy, sometimes it's been called a  
4 judgment insurance policy.  
5 I'm going to say other than this policy  
6 that we have been discussing today, has Sentinel  
7 Reinsurance ever issued any policy that you would  
8 characterize as a legal liability insurance  
9 policy, an after the event policy or a judgment  
10 insurance policy?  
11 **A I don't know.**  
12 Q When you authorized the issuance --  
13 MR. TAYLOR: Andy, can you come to a  
14 logical stopping point? We're going to have to  
15 hop off here really soon and get relogged in to  
16 the court system.  
17 MR. CLUBOK: Yeah, that's fine. I'll  
18 go no more than about five minutes or so and I'll  
19 find a logical stopping and we'll take a break,  
20 maybe five or ten, but not ten to eleven -- five  
21 to seven, or less.  
22 Q Mr. Dondero, when you authorized the  
23 issuance of this policy for \$100 million, at that  
24 time in your head, were you aware of Sentinel  
25 Reinsurance ever previously issuing any policy at

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1 all for legal liability insurance, after the event  
2 insurance or judgment insurance?  
3 **A I know they evaluated a lot of the**  
4 **policies. I didn't have knowledge of the specific**  
5 **alternative policy that was done like this. I did**  
6 **not.**  
7 Q And did you know they had ever  
8 evaluated a legal liability insurance policy, an  
9 after the event policy or a judgment insurance  
10 policy prior to the time they issued this  
11 \$100 million policy that you authorized?  
12 **A Yes, I believe they have and they do to**  
13 **this day.**  
14 Q Okay, but I didn't ask you about this  
15 day. Stay with me on the questions. It's back in  
16 2017. When you approved the policy, name one  
17 policy that they had ever evaluated that was a  
18 legal liability policy, an after the event policy  
19 or a judgment insurance policy prior to the time  
20 that they issued this \$100 million policy that you  
21 authorized in August 2017?  
22 **A I wouldn't have specific knowledge, but**  
23 **I believe they were -- or they did evaluate**  
24 **others.**  
25 Q Based on what?

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1 **A Their high awareness of this kind of**  
2 **policy, how to structure it, how to get it through**  
3 **the regulators, how to get it through compliance,**  
4 **et cetera. Because I think they had reviewed and**  
5 **looked at numerous other policies that were like**  
6 **this policy.**  
7 Q But as far as you know, they never  
8 issued one like this policy before then, correct?  
9 **A I don't know.**  
10 Q And as far as you know, you're unaware  
11 of them ever actually issuing a policy like this  
12 one prior to this policy being issued, correct?  
13 **A Correct. I don't have specific**  
14 **awareness.**  
15 Q And you before had said that you  
16 believe there had been a title insurance policy of  
17 up to \$65 million that was issued that at least  
18 they had some role in. Are you saying that that  
19 was before August '17, that \$65 million title  
20 insurance policy you mentioned before? Or do you  
21 know?  
22 **A I don't remember the dates, but it --**  
23 **it was -- it was on or around that time because it**  
24 **was -- it was a significant number of years ago.**  
25 Q What was the premium for that

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1 \$65 million title insurance policy roughly?  
2 **A I don't know. A few million -- a**  
3 **couple few million bucks. Oh, no, wait a minute.**  
4 **I'm sorry. Excuse me. Let me -- it was a**  
5 **\$65 million premium. It was on the Cheniere**  
6 **facility in Houston. It was a**  
7 **multi-billion-dollar title policy on their**  
8 **\$12 billion facility outside Houston. The premium**  
9 **was 65 million, and we shared in some of the**  
10 **premium with some other reinsurance companies, but**  
11 **the gross amount was in the billions.**  
12 Q Roughly how much of the 65 million  
13 premium went to Sentinel Reinsurance, roughly?  
14 **A I don't know. But for each dollar of**  
15 **premium, it was probably 20 times as much title**  
16 **insurance face.**  
17 Q Okay. But what was the face of the  
18 title insurance that Sentinel Reinsurance issued?  
19 I'm not asking what all the other insurers or  
20 reinsurers --  
21 **A I don't know.**  
22 Q My original question to you was, prior  
23 to issuing this \$100 million face value policy,  
24 were you aware of any other policy that Sentinel  
25 Re had issued with a liability of at least

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1 10 million? You mentioned the 65 one, but now  
2 you're saying you don't really know how much of it  
3 was Sentinel Re. So I'm just asking you to be --  
4 to name any policy that you actually are aware of,  
5 or tell us that you're not really aware of any,  
6 that were for more than \$10 million that Sentinel  
7 Re had issued prior to issuing this \$100 million  
8 policy that you approved in August of 2017.  
9 **A I'm going to stay with the Cheniere**  
10 **title policy as my answer, but I don't know the**  
11  **specifics.**  
12 Q And you have no idea how much of that  
13 Cheniere title policy was on Sentinel Re's hands,  
14 correct?  
15 **A Correct.**  
16 Q And do you know that that was issued  
17 prior to August 2017?  
18 **A I believe on or about, but I don't know**  
19 **the dates.**  
20 Q Is there any other example you can  
21 think of that even might be a policy that would be  
22 10 million or more than Sentinel Re has ever  
23 issued other than potentially its involvement in  
24 the Cheniere title insurance?  
25 **A I -- no, I wasn't involved enough in**

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1 **the day-to-day to know.**  
2 MR. CLUBOK: Okay. Let's go ahead and  
3 take our break now. Let's convene five minutes  
4 after the Court breaks. Does that work, Clay?  
5 MR. TAYLOR: Sure. Let's go off the  
6 record.  
7 MR. CLUBOK: Oh, sure.  
8 THE VIDEOGRAPHER: Off record. 2:22.  
9 (A recess was taken.)  
10 THE VIDEOGRAPHER: On record. 4:35.  
11 (Deposition Exhibit 25 marked for  
12 identification.)  
13 BY MR. CLUBOK:  
14 Q Mr. Dondero, we're about to show you a  
15 document that's been marked as Exhibit 25. It is  
16 a document that has got "Sentinel Reinsurance,  
17 LTD" at the top, and it's a cover letter that  
18 says, "Via e-mail" and attaches -- what the cover  
19 e-mail says are "the revised unaudited financial  
20 statements of Sentinel Reinsurance as of, and for  
21 the year ended, December 31, 2016."  
22 MR. TAYLOR: We can't see that.  
23 MR. CLUBOK: I understand. We're going  
24 to make it more accessible here, hopefully. Okay.  
25 Q Can you see the first page now of

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1 Exhibit 25?  
2 **A Yes.**  
3 Q And Exhibit 25 is a document. It's  
4 entitled "Sentinel Reinsurance LTD." It's a  
5 letter that on its face says was sent via e-mail  
6 to Mr. J.P. Sevilla at SAS Asset Recovery Limited  
7 from Peter Kranz, CPA, at Beecher Carlson  
8 Insurance Services, LLC, as Manager for Sentinel  
9 Reinsurance, Limited.  
10 Do you see that?  
11 **A Yes.**  
12 Q Now, first of all, you know who J.P.  
13 Sevilla is, right?  
14 **A Yes.**  
15 Q In August 2017 he worked at Highland  
16 Capital Management?  
17 **A Yes.**  
18 Q And he wore several hats, I take it,  
19 for different entities?  
20 **A Yes.**  
21 Q And one of them was for an entity  
22 called SAS Asset Recovery Limited?  
23 **A I can't say for sure whether he worked**  
24 **there or not or was just providing services. I**  
25 **don't know.**



<p>129</p> <p>1 Q Was there a shared services agreement 2 between SAS Asset Recovery Limited and Highland 3 Capital Management? 4 A Yes. I mean, it might not have been 5 formal but either informal or formal, but it was 6 one of the entities that I believe Highland 7 provided services for. 8 Q Do you have an ownership stake in SAS 9 Asset Recovery Limited? 10 A I don't believe so. 11 Q What is SAS Asset Recovery Limited? 12 A I think they primarily do litigation 13 financing. Litigation financing, litigation joint 14 venture stuff around the -- around the world. 15 Q Who owns SAS Asset Recovery Limited? 16 Or who is the beneficial owner of it, I should 17 say. 18 A I don't know. 19 Q You have no idea whatsoever as you sit 20 here today? 21 A Yes, that's correct. 22 Q Isn't it true that -- 23 A I would -- let me just say that it's 24 something you could put on the list for us to get 25 you that information, if it's appropriate for us</p>	<p>131</p> <p>1 that's -- like I was saying, I don't know if he's 2 representing SAS. I don't know if it's -- I don't 3 know what SAS -- I don't know what Sentinel's 4 relationship or shared services with SAS is. I 5 don't know if Sentinel owns a piece of SAS. I 6 don't know the ownership structure and I don't 7 know what hat J.P. is wearing when he's, you know, 8 part of this correspondence. 9 Q Were the activities of SAS Asset 10 Recovery Limited known to those at Highland 11 Capital Management? 12 A They would be known to Scott Ellington. 13 I don't know who else besides Scott Ellington 14 would know the cases that SAS was involved in. 15 Q How do you know that Scott Ellington 16 would know about SAS Asset Recovery? 17 A It was one of the entities he was 18 responsible for. 19 Q How do you know that? 20 A I -- I just know it. 21 Q You were -- did you know when SAS was 22 set up? 23 A No. 24 Q So do you know anything else about SAS 25 Asset Recovery other than Scott Ellington was</p>
<p>130</p> <p>1 to get you that information, but I don't know the 2 answer. 3 Q Who would know the answer? 4 A I don't know, but I would find out. 5 Q You have absolutely no idea who has any 6 ownership interest in SAS Capital -- SAS Asset 7 Recovery Limited; is that what you're saying? 8 A Correct. It was a complex structure, 9 and I don't remember how it shook out at the end 10 of the day. But like I said, I'm not being 11 evasive. If it's -- you know, give us some time. 12 If it's appropriate for us to give you the answer, 13 we can get the answer. I just don't know. 14 Q Did you ever have any control over SAS 15 Asset Recovery Limited in any way? 16 A I don't believe so. I don't know 17 throughout its history, but I don't believe so. 18 Q Was Scott Ellington a beneficial owner 19 of SAS Asset Recovery Limited? 20 MR. TAYLOR: Objection. Form. 21 A I don't know. 22 Q Why would SAS Asset Recovery Limited 23 have been getting the unaudited financial 24 statements of Sentinel Reinsurance? 25 A I don't know. I don't know if</p>	<p>132</p> <p>1 involved in it and it was a litigation funder, as 2 far as you know? 3 A Yeah, I mean, that's really all I know 4 about it. 5 Q Did you ever receive the financial 6 statements of Sentinel Reinsurance? 7 A No. I'm curious what -- when you flip 8 the page, I'm curious what it's going to say. But 9 this was early -- earlier on, I guess. 10 Q So -- all right. Let's flip the page. 11 The second page of Exhibit 25 is the table of 12 contents. The next page, which is also Bates 13 labeled, ending with the digits 1069, is the 14 Sentinel Reinsurance, Limited, Management 15 Discussion and Analysis, dated December 31st, 16 2016, or, I suppose, as of December 31st, 2016. 17 MR. TAYLOR: Andy, could you blow that 18 up a little? It's a little bit hard for us to see 19 here. 20 Q Can you see it, Jim? 21 A It's tough. My vision is not so good 22 either. 23 Q Is that better? 24 A That's better, yeah. 25 Q Okay. And you can see that it says</p>

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1 that "For the 12 months ended December 31st, 2016  
2 and 2015, Sentinel Reinsurance, Limited had pretax  
3 income of \$4.2 million and \$5.1 million,  
4 respectively." Do you see that?  
5 **A Yep.**  
6 Q Did you know that Sentinel Insurance's  
7 pretax income for the years 2016 and 2015 were  
8 approximately a little over 4 million and a little  
9 over 5 million, respectively?  
10 **A I did not.**  
11 Q It says the capital and surplus at the  
12 end of 2016 was about 17.6 million. Do you see  
13 that?  
14 **A Yes.**  
15 Q Did you know that?  
16 **A No, I did not.**  
17 Q Did you have any idea about the income  
18 or capital and surplus levels at Sentinel  
19 Reinsurance ever?  
20 **A No.**  
21 Q Do you have somebody in your life who  
22 would manage an investment like Sentinel  
23 Reinsurance, Limited for you, that you had a  
24 70 percent stake in?  
25 **A Scott Ellington.**

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1 Q Okay. It's entirely Scott Ellington  
2 who's responsible for managing Sentinel  
3 Reinsurance and monitoring it?  
4 **A Yes.**  
5 Q And he's always had that role since its  
6 founding?  
7 **A Yes.**  
8 Q And is there any one else at all you  
9 know that's involved in Sentinel Reinsurance,  
10 Limited, other than Scott Ellington?  
11 **A Not that I'm aware of. If there is, he  
12 would know.**  
13 Q Did Scott Ellington ever report  
14 anything about the financials of Sentinel  
15 Reinsurance to you in any way?  
16 **A I mean, sometimes he would verbally  
17 talk about it, but -- you know, like the  
18 transaction we were discussing earlier. But other  
19 than that, there wasn't a formal reporting process  
20 or -- or I wasn't in the loop on documentation  
21 such as this.**  
22 Q Did you ever in your life see a  
23 document that referred to Sentinel Reinsurance,  
24 Limited?  
25 **A I don't believe so.**

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1 Q When you approved the \$100 million  
2 policy in August 2017, did you know what the  
3 balance sheet of Sentinel Reinsurance, Limited  
4 showed?  
5 **A No.**  
6 Q You can see from this document that it  
7 reports that as of the end of 2016, the cash and  
8 investments totaled \$5.9 million.  
9 **A Yes.**  
10 Q And you see that there was unearned  
11 premiums of about 1.2 million as of the end of the  
12 year 2016, right?  
13 **A Yes.**  
14 Q Were you aware of any of that  
15 information when you signed off on the  
16 \$100 million insurance policy that has been the  
17 subject of today's discussion?  
18 **A No.**  
19 Q Did you -- I'm flipping the next page,  
20 which says, "Sentinel Reinsurance, Limited,  
21 Financial Statements" as of December 31st, 2016.  
22 And then on the next page -- I'll scroll down a  
23 little so you can see it more easily -- it shows  
24 the balance sheets as of December 2016 and  
25 December 2015. Do you see that?

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1 **A Yep.**  
2 Q And do you see where it says  
3 "Shareholders' Total Equity," and breaks it down  
4 from contributed surplus, unrealized loss,  
5 et cetera, and then Total Shareholders' Equity.  
6 Do you see that?  
7 **A Yes.**  
8 Q Does that in any way help you remember  
9 roughly how much you invested in Sentinel  
10 Reinsurance that narrows the range from 1 to  
11 200 -- sorry, from 1 to 125 million dollars, as  
12 you previously testified?  
13 **A I -- is that -- is that what you're  
14 asking me, is 20 or 30 million dollars between 1  
15 and 100? Yeah, but I didn't know these numbers  
16 specifically.**  
17 Q No, I previously asked you how much you  
18 invested in Sentinel Reinsurance, and you said you  
19 didn't really know other than it was somewhere in  
20 the range of 1 to 125 million dollars. And I'm  
21 wondering if, by looking at this balance sheet, it  
22 in any way refreshes your recollection or allows  
23 you to better narrow the range of how much you  
24 invested in Sentinel Reinsurance.  
25 **A I don't -- was it started in this year?**

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1 **Was it started in '15? I mean, I don't know when**  
2 **exactly it started, but it's looking like there**  
3 **was -- it looks like it was worth 20-odd million**  
4 **dollars. I don't understand the dividend lines,**  
5 **though. I will say that. I don't remember ever**  
6 **getting a dividend out of Sentinel.**  
7 Q Would you have records to show whether  
8 or not you ever received a dividend from Sentinel?  
9 A **I mean, I would know if I did. I don't**  
10 **know if Sentinel was part of a holding company or**  
11 **something. Maybe there's a holding company above**  
12 **this. But I can say for sure -- I can say for**  
13 **sure I never received 70 percent of 11.5 or 4.0.**  
14 Q Are you still unable to narrow down how  
15 much you invested in Sentinel Reinsurance to  
16 anything more definite than somewhere between  
17 1 and 125 million dollars?  
18 A **I don't have a recollection. Based on**  
19 **these financials, I would say it's more likely**  
20 **between 1 and 50. I would say that.**  
21 Q Okay. I'm flipping to the next page,  
22 and it shows the income statements for 2016 and  
23 2015. Have you ever seen this before?  
24 A **No.**  
25 Q Did you have any knowledge of even

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1 directionally or approximately the amount of  
2 income that Sentinel Reinsurance generated in 2016  
3 and 2015?  
4 A **No.**  
5 Q I'm showing you the next page, which is  
6 marked "Sentinel Reinsurance, Limited, Statements  
7 of Cash Flow" for the periods of 2016 and 2015,  
8 and it shows "Net income," "Cash Flows from  
9 Investing Activities," and "Cash Flows from  
10 Financing Activities." Do you see that?  
11 A **Yep.**  
12 Q And do you see where it shows cash  
13 balances as well?  
14 A **Yes.**  
15 Q And here it refers to significant  
16 dividends paid in 2016.  
17 A **Yep.**  
18 Q And then it says, "Contributed  
19 surplus." Do you have any idea what that refers  
20 to?  
21 A **I don't know.**  
22 Q The next page says, "Sentinel  
23 Reinsurance, Limited, Supplemental Schedules" as  
24 of December 31st, 2016. And the next page shows  
25 "Prepaid Expenses and Other Liabilities." Do you

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1 see that?  
2 A **Yep.**  
3 Q Any of this ring a bell at all?  
4 A **Nope.**  
5 Q But you would expect Scott Ellington  
6 would know all about this?  
7 A **Yes.**  
8 Q And there is no other human being that  
9 you can identify who you would expect to know  
10 about this?  
11 A **No. Yeah, but again, you know, to the**  
12 **extent that Scott needed help or access to other**  
13 **people, he would know.**  
14 Q Do you know who Andrew Dean is?  
15 A **No.**  
16 Q I'm flipping through the pages here to  
17 the page titled "Summary of All Units," and it  
18 says, "Underwriting Income," "Premiums written"  
19 and "Change in unearned premiums." Do you see  
20 that?  
21 A **Yes.**  
22 Q And do you see that it says  
23 "Inception-to-Date," the total premiums written  
24 were \$6.2 million as of the end of the year 2016,  
25 correct?

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1 A **Yes.**  
2 Q And do you remember previous -- and  
3 then it says there's unearned premiums of  
4 \$1.228 million. Do you see that?  
5 A **Yes.**  
6 Q So does this information change your  
7 view as to whether or not Sentinel Reinsurance had  
8 ever issued a policy for more than -- a single  
9 policy for more than \$10 million prior to August  
10 of 2017?  
11 A **Well, I mean, we only go through end of**  
12 **'16 here. I don't know how rapid the growth was**  
13 **in '17, but it was -- you know, it's clearly --**  
14 **it's clearly a start-up but it's on a significant**  
15 **trajectory, with the desire probably to have even**  
16 **greater trajectory. So I -- you know, so maybe**  
17 **the bigger policies came later.**  
18 **But, anyway, I -- like I said, I wasn't**  
19 **involved in the day-to-day. I don't have**  
20 **awareness, exactly.**  
21 Q Okay. But in 2017, in approximately  
22 August, you authorized an insurance policy with a  
23 face value of \$100 million, correct?  
24 A **Right. But I'm sure a premium value of**  
25 **much less than 100, right?**

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1 Q What was the premium value of the  
2 policy that had the \$100 million liability,  
3 roughly?  
4 **A I don't know.**  
5 Q Didn't you previously say you thought  
6 it was 70 to 80 million dollars in illiquid  
7 assets?  
8 **A No. I said the amount of illiquid**  
9 **assets were 70 to 80, but I don't know what the**  
10 **premium structure was, like how much of the net 70**  
11 **or 80 was premium. Or -- or, you know, you'd**  
12 **mentioned 110 of asset value, which I never heard**  
13 **before, but maybe the 110 less the premium is how**  
14 **it got to 75 or 80. You know, I don't know the --**  
15 **I don't know the structure of the policy.**  
16 Q Why would 70 or 80 million dollars of  
17 assets be transferred to Sentinel Reinsurance in  
18 connection with the policy other than for a  
19 premium payment?  
20 **A I don't know. I mean, that's what I'm**  
21 **saying. It's -- but the premiums can take**  
22 **different forms, where it's like a first-year**  
23 **premium or future premiums, you know, whatever,**  
24 **you can segment the premiums. Again, I just -- I**  
25 **don't know the structure of the policy, Andy. I**

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1 **don't know the structure.**  
2 Q Who decided how much premium would be  
3 paid for the \$100 million face value policy?  
4 **A That would have been the process**  
5 **Ellington went through with compliance and with**  
6 **the regulators on what was fair and appropriate**  
7 **for the risk and then what was comparable to**  
8 **third-party transactions.**  
9 Q Did Mr. Ellington do a market check  
10 against third-party transactions in deciding how  
11 much premium to pay for the \$100 million face  
12 value policy?  
13 **A I'm sure -- I'm sure that was part of**  
14 **his process and approval in his back-and-forth.**  
15 **I'm sure it was. But I don't have specific**  
16 **awareness.**  
17 Q Is that because he told you that's what  
18 he did?  
19 **A It's -- that would have been, I would**  
20 **have thought, the starting point -- the logical**  
21 **starting point for discussions with compliance and**  
22 **the regulators, but I don't have awareness.**  
23 Q So you assumed that Mr. Ellington must  
24 have done a third-party check on the amounts of  
25 premium that had to be paid --

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1 **A Yes.**  
2 Q -- to justify the \$100 million policy?  
3 **A Yes.**  
4 Q But you've made no effort to confirm  
5 that he did that; is that true?  
6 **A Other than talking with my lawyers.**  
7 **Like I said, I haven't prepared or refreshed on**  
8 **the history here.**  
9 Q Well, as you sit here today, do you  
10 recall making any effort to ensure that  
11 Mr. Ellington did any sort of market task to  
12 ensure that the amount of premium paid for the  
13 \$100 million policy was consistent with what a  
14 third-party transaction would have required?  
15 **A Not that I recall at this point.**  
16 Q Who negotiated on behalf of Highland  
17 Financial Partners and its subsidiaries in setting  
18 the amount that would be paid for the \$100 million  
19 insurance policy?  
20 **A Scott Ellington.**  
21 Q Who negotiated on behalf of Sentinel  
22 Reinsurance in that transaction?  
23 **A You know what, before I say Scott**  
24 **Ellington, I -- well, compliance -- I don't know.**  
25 **All I know is, like I said, we had to go through**

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1 **compliance, I know we had to work it through the**  
2 **regulators also. And when you're on both sides of**  
3 **the transaction, the scrutiny is higher, but I**  
4 **don't know if -- sometimes organizationally**  
5 **compliance will require somebody to be**  
6 **representing one party and somebody to be**  
7 **representing the other party just to make sure**  
8 **there is some separation. And although Scott**  
9 **Ellington coordinated the overall transaction, I**  
10 **don't know if there was somebody separate**  
11 **representing one side or the other or if he**  
12 **represented both. I don't know, so I shouldn't**  
13 **speculate, but -- but he was the overall architect**  
14 **of the transaction.**  
15 Q Did Scott Ellington represent all the  
16 other parties to the insurance policy other than  
17 HFP and its subsidiaries and Sentinel Reinsurance,  
18 as far as you know?  
19 **A "Other parties." I don't know if there**  
20 **were other parties to the core of the transaction.**  
21 **There might have been approvals from some other**  
22 **parties if you're saying there was a DAF note or**  
23 **something else. But I believe if there was any**  
24 **other parties involved, they would have their**  
25 **own -- their approval would be separate. I**

<p>145</p> <p>1 <b>just -- I can't say for sure Ellington represented</b> 2 <b>both HFP and Sentinel. I can't say for sure.</b> 3 Q You were requested to provide advice 4 about the assets of Sentinel Reinsurance and 5 what -- how to best maximize their value, correct? 6 <b>A Yes -- or, yeah, it would be on the</b> 7 <b>asset side I would get queried periodically on</b> 8 <b>what to invest in.</b> 9 Q Okay. I'm going to flip ahead a few 10 pages of this Exhibit 25 to a page that says, 11 "Sentinel Reinsurance, Limited, Supporting 12 Schedules," as of December 31st, 2016. 13 <b>A Sure.</b> 14 Q And then the next page has some assets. 15 I'm going to blow this up a little bit. There 16 are, it says here, "Sentinel Reinsurance, Limited, 17 Detailed Investment Schedule," as of 18 December 31st, 2016, and there are four CLOs 19 listed on this page, which is Bates labeled with 20 1081 as the last four digits. Do you see that? 21 <b>A Yes.</b> 22 Q And the first one is an asset called 23 "Grayson CLO LTD 144A." Do you see that? 24 <b>A Yes.</b> 25 Q Do you know what that asset is, Grayson</p>	<p>147</p> <p>1 <b>fall in arrears when the economy weakens and cash</b> 2 <b>is diverted, but generally they pay -- generally</b> 3 <b>they pay flows or dividends.</b> 4 Q Is the Grayson CLO Limited 144A, is 5 that a collection of corporate loans or 6 securitized corporate loans? 7 <b>A Yes.</b> 8 Q And what does the 144A refer to, do you 9 know? 10 <b>A 144A private placement.</b> 11 Q What does that mean to you? 12 <b>A That it's a private placement. It's</b> 13 <b>not a public bond. It's issued under the 144A</b> 14 <b>private placement exemption the SEC has.</b> 15 Q Do you know how much cash over time 16 Sentinel Reinsurance collected with respect to 17 this asset? 18 <b>A No idea.</b> 19 Q Do you know how much they paid for this 20 asset? 21 <b>A No idea.</b> 22 Q Do you know where they got this asset? 23 <b>A No idea.</b> 24 Q There are -- there is another asset 25 here called "Greenbriar CLO LTD" that has a market</p>
<p>146</p> <p>1 CLO LTD 144A? 2 <b>A I think that was an old CLO that we did</b> 3 <b>in the early 2000 period, and -- yes, that's what</b> 4 <b>it looks like.</b> 5 Q And it said as of that date it had a 6 value of \$1.7 million. Do you see that? 7 <b>A Yep.</b> 8 Q And it had a -- do you know if that 9 asset was ever monetized? 10 <b>A I have no idea.</b> 11 Q Do you know if Sentinel Reinsurance 12 still holds that asset today? 13 <b>A I have no idea.</b> 14 Q Do you have any idea if it was ever 15 sold? 16 <b>A No.</b> 17 Q Would an asset like that generate cash? 18 <b>A It would depend on the year.</b> 19 <b>Generally, yes.</b> 20 Q Do you know if any cash has been 21 generated in connection with the Grayson CLO 22 Limited 144A asset? 23 <b>A Over its life, for sure, but at any</b> 24 <b>given year or any given moment, I don't know.</b> 25 <b>They generally pay quarterly, but sometimes they</b></p>	<p>148</p> <p>1 value of 1.4. Do you see that? 2 <b>A Yes.</b> 3 Q Do you know anything about that asset? 4 <b>A No. I would say for all four listed, I</b> 5 <b>would give you the exact same answers. And I</b> 6 <b>don't know where they came from. They generally</b> 7 <b>produce cash flow, but I don't know in any given</b> 8 <b>particular year, and I couldn't even begin to</b> 9 <b>estimate how much cash over its life, and I don't</b> 10 <b>know where it came from.</b> 11 Q You have heard of the Greenbriar CLO 12 Limited asset recently, haven't you? You've 13 discussed that recently? 14 <b>A Was that the asset that Seery promised</b> 15 <b>to help give to UBS? Was that that asset?</b> 16 Q Well, you heard about an asset called 17 Greenbriar that I believe you offered to provide 18 to UBS in one of your settlement proposals and 19 that is -- also been mentioned in connection with 20 the UBS settlement with Highland. Does that ring 21 a bell? 22 <b>A Yes. Yeah, that is -- it may not be</b> 23 <b>that Greenbriar, I mean, or it may not be that</b> 24 <b>piece, because I think the piece you guys were</b> 25 <b>talking about was larger, but it's essentially the</b></p>

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1 same security.  
2 Q The same security. And that security  
3 that you had offered previously to either turn  
4 over or pay the value to as part of a proposed  
5 settlement, is that currently being held by CDO  
6 Fund?  
7 A I don't know where it's being held. I  
8 think -- I don't know. I don't know where --  
9 it's -- I think the only reason why it was the  
10 only asset hanging around is I think it couldn't  
11 be transferred directly, and so I think it might  
12 have been transferred indirectly versus a  
13 participation letter. I don't know its history or  
14 where it is exactly.  
15 Q Sorry, it couldn't be transferred from  
16 whom to whom?  
17 A It was going to be transferred at some  
18 point, somewhere, at some time, and it just -- it  
19 couldn't be transferred directly so I think it was  
20 transferred indirectly via a participation letter.  
21 That was my recollection on why the Greenbriar was  
22 still sitting somewhere, wherever that was.  
23 Q What's a participation letter, as you  
24 used that term?  
25 A It's like if you didn't want to sell me

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1 your house and go through the change of ownership  
2 record, redoing a mortgage, whatever, but if you  
3 signed a participation letter with me that over  
4 the next five years, whatever appreciation of the  
5 house would go to me and I would pay the expenses  
6 of the mortgage for the next five years, where  
7 we're essentially transferring the  
8 responsibilities of ownership and you net the  
9 differences in flows and price at some later date.  
10 That's what I thought. That's  
11 typically what our participation letter is and  
12 that's what I thought was involved in the  
13 Greenbriar, but I'm not sure.  
14 Q Who told you that?  
15 A Scott Ellington, I believe.  
16 Q When did he tell you that?  
17 A I don't know, years ago. Like I said,  
18 I think there was always -- there was always some  
19 issue with Greenbriar and transferability, I  
20 believe.  
21 Q Did you ever see the supposed  
22 participation letter?  
23 A No.  
24 Q Did you tell Jim Seery there was a  
25 participation letter that affected the Greenbriar

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1 asset?  
2 A I don't believe I ever talked to Seery  
3 about Greenbriar at all.  
4 Q Did you tell any of the directors that  
5 the Greenbriar asset was subject to a  
6 participation letter?  
7 A No, I don't think I discussed it with  
8 any of them.  
9 Q Did you discuss that with any of the  
10 lawyers at the Pachulski firm?  
11 A No.  
12 Q Who was the participate- -- who was the  
13 counterparty in that participation letter?  
14 A I don't know.  
15 Q If there --  
16 A If one exists, Scott Ellington will be  
17 your person on that.  
18 Q Anybody else in the world you can think  
19 of who would know anything about it, other than  
20 Scott Ellington?  
21 A No.  
22 Q This is the last page I'm turning to  
23 now of Exhibit 25. It's a page entitled "Sentinel  
24 Reinsurance, Limited, Intercompany Receivables" as  
25 of December 31, 2016. Do you see that?

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1 A Yes.  
2 Q And there's relatively small sums that  
3 date from November 24th, 2014 through, it looks  
4 like, July of 2016, the total about \$114,000. Do  
5 you know anything about this?  
6 A No.  
7 Q And then it lists some entities at the  
8 bottom, Nimitz, Ltd.; Patton, Ltd. Do you know  
9 what those entities are?  
10 A No.  
11 Q Do you know what SS Holdings is?  
12 A Nope.  
13 Q Given this balance sheet -- and I'm  
14 going to go back. And I realize this is as of  
15 December 2016, but this is being sent -- you can  
16 see it's -- going back to the first page, it's  
17 being sent August 16, 2017. That was around the  
18 time that Sentinel entered into this \$100 million  
19 policy that you approved, correct?  
20 A Yes.  
21 Q And given the information here about  
22 the balance sheet -- and I'm going to go back to  
23 the balance sheet page, which ends with Bates  
24 number 1071 -- how could Sentinel Reinsurance have  
25 ever made good on a \$100 million insurance policy,

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1 given its balance sheet as of December 2016?  
2 MR. TAYLOR: I'm going to object to the  
3 form.  
4 **A Without going over in detail the policy**  
5 **itself, you couldn't make a negative judgment. So**  
6 **what you have here is two years of very good**  
7 **profitability, very good dividend history, very**  
8 **good earnings history, very good accretion of**  
9 **value. Without knowing the policy itself, the --**  
10 **no insurance company underwrites a policy that**  
11 **they believe has a chance of paying out**  
12 **immediately at full value with no premiums**  
13 **received, you know, so there's -- depending upon**  
14 **the policy structure, there's premiums, there's**  
15 **cushion, there's whatever, and then there's a**  
16 **probability associated with the payout and there's**  
17 **a timing estimate associated with the payout.**  
18 **You can't make a -- I don't believe.**  
19 **You can't make a judgment from this to say what**  
20 **would or wouldn't be a good, plausible investment**  
21 **from here.**  
22 Q Do you know -- did you endeavor to make  
23 any assessment about the timing of potential  
24 payments or the likelihood of payments under the  
25 policy or the timing of the premiums or anything

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1 like that before you approved the insurance  
2 policy?  
3 **A That -- that general underwriting and**  
4 **structuring would have been the process that**  
5 **Ellington underwent to make it arm's length and to**  
6 **also make it compliant with compliance and the**  
7 **regulators.**  
8 Q And Ellington would have had to go  
9 through that both with your internal compliance  
10 and in some form or fashion to submit to the  
11 regulators; is that correct?  
12 **A Yes.**  
13 Q And do you know -- and the records  
14 showing that that occurred, if they did -- if it  
15 did occur, would it still exist at Highland?  
16 **A Yes. It -- it occurred, and it was an**  
17 **extensive multi-month process, and there was a lot**  
18 **of back-and-forth.**  
19 Q How do you know that?  
20 **A Because people would talk about it --**  
21 Q What people?  
22 **A -- oh, they're still working on this,**  
23 **they are still going with that, compliance needs**  
24 **this, the regulators want that, they don't**  
25 **understand this, you know, whatever, we're trying**

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1 **to make this clear. We're going to have to**  
2 **renegotiate that or renege- -- but it was -- it**  
3 **was an extensive process. It wasn't -- it was**  
4 **not -- it was not a one-week process. It was a**  
5 **multiple-month process. I do remember that. It**  
6 **wasn't easy.**  
7 Q You've testified many times today that  
8 Scott Ellington was your sole source of  
9 information, and only oral, about anything having  
10 to do with Sentinel, but you just said that many  
11 people were involved in this process.  
12 **A Well, just in the office, people**  
13 **reporting -- it was primarily -- it was**  
14 **probably -- it was primarily Surgent and just**  
15 **people reporting to him were all running around**  
16 **for months going back and forth with Ellington and**  
17 **his group, you know.**  
18 Q Sorry, Surgent -- Thomas Surgent, who  
19 was then the chief of compliance?  
20 **A Yes.**  
21 Q He spent many months analyzing this  
22 transaction?  
23 **A Yes. The back-and-forth with Ellington**  
24 **and, like I said, also the offshore regulators,**  
25 **also.**

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1 Q Okay. But let's stick with the people  
2 at Highland. So Thomas Surgent went back and  
3 forth with Ellington many times over several  
4 months?  
5 **A Yes.**  
6 Q And you said many people working with  
7 him. Who specifically worked with Thomas Surgent  
8 assisting in this effort?  
9 **A See, that's a -- I mean, his area had**  
10 **people buzzing on this and different people, I**  
11 **think, sticking their fingers in and whatever, but**  
12 **I -- beyond the general buzz of his areas and then**  
13 **to a lesser extent Ellington's area -- I think**  
14 **Ellington was largely handling it for his area.**  
15 **But there was a lot of activity. There was a lot**  
16 **of -- there was a lot of back-and-forth.**  
17 Q Who specifically other than Tom  
18 Surgent?  
19 **A I don't know who they were accessing,**  
20 **and I don't want to speculate on who on their**  
21 **teams were working with them. But Ellington and**  
22 **Surgent were both knee-deep in it.**  
23 Q And did you talk to Surgent at any  
24 point while he was knee-deep in efforts to examine  
25 the propriety of this \$100 million policy?

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1 A No. I mean, I -- no. He's very  
2 capable, very thoughtful. He's a smart -- he's a  
3 smart man. He is smart financially even though  
4 his background is more on the legal side. He  
5 didn't need my help. And, plus, on these kinds of  
6 things, it's compliance versus the businessperson.  
7 It's better if I don't get involved.  
8 Q Is Scott Ellington trustworthy, in your  
9 opinion?  
10 A Yes.  
11 Q Is he honest?  
12 A Yes. I think you know that too.  
13 Q Do you absolutely trust him to handle  
14 this honestly and appropriately?  
15 A Yes. I mean, and like I said, when I  
16 look at the dividend thing there, those are large  
17 dividends, and I'm telling you, I didn't get any.  
18 So, you know, but I don't sit here -- I don't sit  
19 here worried about the fact that the money was  
20 absconded with. I know there's probably a holding  
21 company or a funding of some other subsidiary or  
22 something. I know there is an explanation to it.  
23 I trust there is an explanation to it, but I don't  
24 know what it is.  
25 Q Is Thomas Surgent trustworthy?

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1 A Yes. I -- honestly, my experience with  
2 him over the years is that he was very  
3 trustworthy. I think he is one of the half dozen  
4 people whose career has been ruined or corrupted,  
5 corrupted by Seery in the whole process, and, you  
6 know, whatever. I think he is more distant and  
7 less focused and less interested. But I still  
8 think he is -- even though I think he is in a very  
9 difficult situation at the moment, I think he is a  
10 trustworthy person.  
11 Q Is Thomas Surgent honest, in your view?  
12 A Yes. Although, again, I just have to  
13 draw a distinction from -- I haven't talked to him  
14 in over a year, and he has been very  
15 discombobulated by the bankruptcy process. He was  
16 the one who was negotiating with Redeemer for the  
17 three weeks before we filed when Mashrum jerked  
18 him on the 50 million at 7:00 a.m. in the morning  
19 in Delaware. And so I'm not sure he's recovered  
20 from that, let alone -- you know, Seery used to  
21 work for the estate up until about June, and since  
22 then, he has been working for the creditors for --  
23 largely for his own payday. And I think he has  
24 been disappointed by that also.  
25 Q Sorry, who has been disappointed?

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1 A Thomas. Thomas. I think he's -- this  
2 bankruptcy process and the way people behave in  
3 bankruptcy I think has disappointed him.  
4 Q What makes you say that if you haven't  
5 talked to him?  
6 A Well, I just -- from other people who  
7 do talk to him.  
8 Q Who?  
9 A Well, the guys -- there are still a  
10 bunch of guys here that talk to him.  
11 Q Who?  
12 A Does it matter? I -- you know.  
13 Q Yeah. Who did you hear from that  
14 Thomas Surgent feels this way?  
15 A You know what, I -- let me think about  
16 it, I'll get back to you. Let me think on it.  
17 Q No, you just said that you have heard  
18 these things that Thomas Surgent is feeling. Who  
19 did you hear that from?  
20 A Yeah, let me think. It's one of a  
21 couple people. Let me boil it down and I'll get  
22 back to you.  
23 Q Who?  
24 A I'll get back to you. I can't remember  
25 exactly who.

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1 Q Depositions aren't take-home exams. So  
2 as you sit here today --  
3 A Okay, but I'm just going to tell -- I'm  
4 just going to leave you, then, with I don't  
5 remember.  
6 Q Who were you thinking said that when  
7 you said it? Who were the two candidates?  
8 MR. TAYLOR: Objection. Form.  
9 A I --  
10 Q Who are the two candidates in your mind  
11 that might have been the ones who told you that  
12 Thomas Surgent was unhappy?  
13 A I'm not going to go there, Andy.  
14 MR. TAYLOR: Andy, he doesn't have to  
15 speculate.  
16 A I'm going to leave it at -- I'm going  
17 to leave it at I don't remember or I'll get back  
18 to you, if you want.  
19 Q You said you would get back to me. Who  
20 were the two names that you were thinking of when  
21 you said that there are people who still talk to  
22 Surgent?  
23 A Like I said, I don't want to spec- --  
24 it might be three names. I need to chew on it  
25 some more and think about it but at the moment, I



<p>161</p> <p>1 <b>don't remember.</b> 2 Q You really have to answer to the best 3 of your ability. So who are the names you were 4 thinking of? 5 MR. TAYLOR: Andy, he doesn't have to 6 speculate. He says he can't remember. He doesn't 7 have to speculate. 8 Q Well, you testified that somebody told 9 you something -- well, you testified about what 10 Mr. Surgent feels, and you have not spoken to him 11 in over a year, correct? 12 A <b>That's right. And so think about it.</b> 13 <b>It was, you know, multiple people giving multiple</b> 14 <b>tidbits. I don't want to -- I don't want to</b> 15 <b>speculate or jump to a conclusion. I'll think</b> 16 <b>about it some more, but I can't remember or</b> 17 <b>attribute it exactly to one person at this moment.</b> 18 Q You said there were people who speak to 19 Thomas Surgent still. Who are they? 20 A <b>Well, I mean, it's most -- most</b> 21 <b>everybody in senior management still speaks to him</b> 22 <b>so ...</b> 23 Q Who? 24 A <b>I mean, just most everybody in senior</b> 25 <b>management still --</b></p>	<p>163</p> <p>1 person by name who has ever told you anything 2 about how Thomas Surgent feels about the 3 bankruptcy, correct? 4 A <b>Correct.</b> 5 Q So you have no basis for the assumption 6 that Thomas Surgent feels a certain way about the 7 bankruptcy as you sit here today, correct? 8 A <b>That's -- that's what I was beginning</b> 9 <b>to realize as I was saying it, that I might be</b> 10 <b>overlying too much of my -- too much of my own</b> 11 <b>views or too much of other people's just general</b> 12 <b>views or just too much -- I might be reading into</b> 13 <b>too much or connecting too many dots. So I don't</b> 14 <b>want to go any further down that conjecture.</b> 15 Q Okay. Let's close this document, 16 please, and let's open up the next document that's 17 behind Tab 6. It will be marked as Exhibit 26. 18 (Deposition Exhibit 26 marked for 19 identification.) 20 Q Exhibit 26, when it gets put up on the 21 screen, will be a one-page document that 22 identifies entities that are connected to Sentinel 23 Reinsurance. And here we go. We have it up here. 24 First of all, it says that "Multi Strat 25 Credit Fund" -- it identifies Multi Strat Credit</p>
<p>162</p> <p>1 Q What are their names? 2 A -- <b>speak to him.</b> 3 <b>You know, you can look up the org</b> 4 <b>chart, Andy. I'm not -- I don't want to speculate</b> 5 <b>or point to anybody in particular at this point.</b> 6 <b>You know, and really, really part of the reason,</b> 7 <b>too, as I was thinking before -- before I would</b> 8 <b>speculate or attribute it to one person, I was</b> 9 <b>going through it in my mind, like, okay, how much</b> 10 <b>of it is my perception, maybe being a little</b> 11 <b>sensitive to everything he's been through, and</b> 12 <b>then how much of it is did someone truly say, and</b> 13 <b>then how much did maybe somebody else put their</b> 14 <b>own spin on it.</b> 15 <b>And I just don't want -- I don't want</b> 16 <b>to go down the --</b> 17 Q As you sit here today, you can't 18 identify a single person who has told you anything 19 about how Thomas Surgent feels in 2021; is that 20 correct? 21 A <b>That's correct. It would be best to</b> 22 <b>talk to him about it. And, you know, you can --</b> 23 <b>it would be best to talk to him.</b> 24 Q And as you sit here today, you can't 25 think of one person -- you can't identify one</p>	<p>164</p> <p>1 Fund, and it says, "Investor, Sentinel 2 Reinsurance." Do you see that? 3 A <b>Yes.</b> 4 Q What does that mean? 5 A <b>I've never seen this -- I've never seen</b> 6 <b>this page before. Or I've never seen this paper</b> 7 <b>before.</b> 8 MR. TAYLOR: You don't have to 9 speculate. 10 Q Well, do you know whether or not 11 Sentinel Reinsurance, Limited is an investor in 12 Multi Strat Credit Fund LP? 13 A <b>I don't know.</b> 14 Q In fact, you have seen recently 15 documents that show you that Sentinel Reinsurance 16 is a redeemer in Multi Strat; isn't that true? 17 A <b>I'm trying to -- what documents have I</b> 18 <b>seen? And I'm willing to be refreshed on that.</b> 19 <b>Yeah, I'm willing to be refreshed on that.</b> 20 Q You are aware, as you sit here today, 21 that Sentinel Reinsurance is a redeemer in Multi 22 Strat, correct? 23 A <b>Okay, I'm willing to be refreshed.</b> 24 <b>That sounds -- that sounds plausible, potentially</b> 25 <b>familiar. If -- do you have a redeemer listing</b></p>

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1 **you could show me that Multi Strat is?**  
2 Q We'll get to that, but I just -- you're  
3 a 70 percent owner of Sentinel Reinsurance and  
4 there has been a lot of discussion in the last few  
5 months about Multi Strat and the redemption and  
6 potential settlements. And it's fair to say that  
7 you are aware that Sentinel Reinsurance is a --  
8 one of the redeemers of Multi Strat Credit Fund,  
9 correct?  
10 MR. TAYLOR: He's answered that, and he  
11 said he is willing to be --  
12 MR. CLUBOK: That's okay. It's okay.  
13 MR. TAYLOR: -- refreshed.  
14 MR. CLUBOK: You don't need to have a  
15 speaking objection.  
16 Q But Mr. Dondero, it's correct that over  
17 the last few months you have seen information that  
18 demonstrates to you that Sentinel Reinsurance is a  
19 redeemer in Multi Strat Credit Fund, correct?  
20 MR. TAYLOR: Objection as to the form  
21 and it's been asked and answered.  
22 **A I'm willing to be refreshed. And that**  
23 **sounds, like I said, plausible and possible.**  
24 Q It's not just plausible and possible.  
25 As you sit here today, you know that Sentinel

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1 Reinsurance is one of the redeemers in  
2 Multi-Strat; isn't that true?  
3 **A Yeah, I'm trying to remember. It's**  
4 **like they were an investor. Did they redeem, or**  
5 **are they a separate, you know, non-redeemed**  
6 **investor, or is some of it split -- I'm willing to**  
7 **be educated. I just can't remember the form of**  
8 **their investment.**  
9 Q Okay. And on this document that's been  
10 marked as Exhibit 26 it talks about Patton,  
11 Limited being a 70 percent beneficial owner. Do  
12 you see that?  
13 **A Yes.**  
14 Q Is it true that Patton, Limited is an  
15 entity that you have the beneficial ownership  
16 interest in?  
17 **A Well, I think I mentioned earlier I**  
18 **know that I'm a 70 percent beneficial owner of**  
19 **Sentinel. I never knew the name of the entity,**  
20 **and if you're telling me the entity is Patton,**  
21 **Limited, and it does resemble 70 percent, I --**  
22 **okay, I'm willing to be educated on that, but I**  
23 **didn't know the name before, but I still don't**  
24 **know the name now.**  
25 Q Okay. Do you know that Nimitz, Limited

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1 is an entity that Scott Ellington is the  
2 beneficial owner of?  
3 **A Yeah, I mean, it looks like it. And in**  
4 **the detail -- the detail below looks like those**  
5 **are the names of the entities that have the**  
6 **beneficial ownership. That's what this appears to**  
7 **be.**  
8 Q So as you sit here today, you have no  
9 reason to dispute the fact that you own an entity  
10 called Patton, Limited that, in turn, is a  
11 70 percent beneficial owner of Sentinel  
12 Reinsurance; is that correct?  
13 **A I have no reason to know otherwise. I**  
14 **have no reason to dispute that.**  
15 Q And you have no reason to dispute that  
16 Scott Ellington is the beneficial owner of Nimitz,  
17 which, in turn, is a 30 percent beneficial owner  
18 in Sentinel Reinsurance, correct?  
19 **A Correct.**  
20 Q Let's -- did you tell anyone at  
21 Highland Capital Management ever that you were a  
22 70 percent owner in Sentinel Reinsurance other  
23 than Scott Ellington?  
24 **A Not that I -- not that I remember, not**  
25 **that I recall.**

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1 Q Do you know what Mainspring, Limited  
2 is?  
3 **A No. I'm willing to be educated, but**  
4 **no, I don't.**  
5 Q Why didn't you tell anyone connected  
6 with Highland, other than Scott Ellington, that  
7 you were a 70 percent beneficial owner in Sentinel  
8 Reinsurance?  
9 **A It never came up or no one ever asked.**  
10 Q When you approved the \$100 million  
11 insurance policy, did you ever make an effort to  
12 ensure that Thomas Surgent knew that you were a  
13 70 percent beneficial owner in Sentinel  
14 Reinsurance?  
15 **A I'm 100 percent certain that Thomas, in**  
16 **his team in his process, knew that.**  
17 Q How?  
18 **A He would have -- he would have never**  
19 **proved it otherwise, and, again, he was asked to**  
20 **prove it because it was two entities related,**  
21 **controlled -- whatever the thresholds are for**  
22 **properly running something through compliance that**  
23 **Ellington was doing, there's no way you would get**  
24 **through compliance without disclosing fulsomely,**  
25 **completely and transparently what the overlaps**

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1 were.  
2 Q You're assuming all that because that's  
3 the only way it could have been done properly,  
4 correct?  
5 A **It's the only way it would have been  
6 done at all.**  
7 Q Okay. But you didn't see that  
8 disclosure, you don't have any firsthand knowledge  
9 of that disclosure occurring, you know nothing  
10 about that supposed disclosure other than what  
11 you're assuming happened, correct?  
12 A **Yeah, but again, if you go back to  
13 Dodd-Frank and the personal liability put in for  
14 chief compliance officers and the elevation of  
15 chief compliance officers to the C-suite, it would  
16 be a -- to do it haphazardly or to do it without  
17 doing that or knowing that would be a violation of  
18 compliance and regulations, and he would  
19 knowingly -- he would be knowingly putting himself  
20 in harm's way or liability if he were to do it  
21 without understanding and knowing the players.**  
22 Q And so would you. You would also have  
23 that same liability under Dodd-Frank that you just  
24 described that Mr. Surgent would have, given your  
25 road, correct?

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1 A **That's right. That's why I don't do it  
2 without doing it correctly.**  
3 Q So if you didn't ensure that it was  
4 known that Sentinel Reinsurance was an affiliated  
5 entity, there would be a big problem, correct?  
6 A **Well, yeah, I mean -- yes, I guess,  
7 yes, but there is no reason why it would have  
8 been -- if it was going to be obfuscated, it  
9 wouldn't have been pushed through compliance. It  
10 was pushed through compliance because we were  
11 being correctly transparent about it.**  
12 Q And that responsibility for ensuring  
13 that it was known that Sentinel Reinsurance was an  
14 affiliated entity also fell to Scott Ellington in  
15 addition to you and Mr. Surgent, correct?  
16 A **Yes.**  
17 Q And if Mr. Ellington obfuscated the  
18 fact that Sentinel Reinsurance was an affiliated  
19 entity, that would be a big problem, right?  
20 A **Yes. But you're missing the point. If  
21 they -- if Ellington was going to do an insurance  
22 policy with Aon or Chubb or some third party, he  
23 could have done it unilaterally in 10 minutes  
24 without ever mentioning a word of it to  
25 compliance. If he was going to obfuscate the**

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1 **ownership or the control of Sentinel, he would  
2 have never run it through compliance. The only  
3 reason to take a transaction like this through  
4 compliance is because you're being honest and  
5 forthright about the overlap.**  
6 Q And if you didn't run it through  
7 compliance honestly and forthrightly, that would  
8 be a huge problem, correct?  
9 A **If he didn't run it through compliance  
10 at all, yes.**  
11 Q And if he didn't fully disclose to  
12 compliance the nature of the affiliation of  
13 Sentinel Reinsurance, that would be a huge  
14 problem, correct?  
15 A **Yeah, but it goes back to my testimony  
16 that I don't think that would be possible.**  
17 Q Understood. But you have not seen any  
18 documents -- you have never seen a document, not a  
19 single document that shows Mr. Surgent and the  
20 compliance team being made aware that Sentinel  
21 Reinsurance was an affiliated entity; is that  
22 correct?  
23 A **Yes. I wasn't involved in the process.  
24 But, again, it's not plausible to go to compliance  
25 and say, I have a transaction you need to approve**

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1 **because there's overlap, but I'm not going to tell  
2 you what the overlap is. Sign off on it. There  
3 is just no chance of that happening.**  
4 Q If Mr. Ellington had not done that,  
5 that would be a huge problem, correct?  
6 A **Yeah, there would have to be some facts  
7 and circumstances that I don't understand.**  
8 Q Okay, let's look at -- let's look at  
9 Tab 7A. Tab 7A is an exhibit that will be marked  
10 as Exhibit 27.  
11 (Deposition Exhibit 27 marked for  
12 identification.)  
13 Q It will take a minute to -- oh, that  
14 was fast.  
15 Let me try to make it a little bit more  
16 sized properly so you can see it, hopefully.  
17 Exhibit 27 is an e-mail from you at  
18 your JDondero@HighlandCapital.com e-mail address  
19 to Tim Cournoyer, also at a HighlandCapital.com --  
20 A **Yes.**  
21 Q -- address; Subject: Re: Consent of  
22 Managers - SeaOne Holdings LLC, dated January  
23 2019.  
24 Do you see that?  
25 A **Yes.**

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1 Q Who is Tim Cournoyer?

2 A **He is one of the -- he was one of the**

3 **internal lawyers at Highland on the corporate**

4 **side, generally, who didn't come over to the new**

5 **entities over here but still works for Seery at**

6 **Highland.**

7 Q Is he honest?

8 A **I don't know Tim as well. I don't**

9 **know -- I can't -- I don't have -- I don't know**

10 **him as well to have a strong opinion.**

11 Q Okay. And in this e-mail at the top of

12 the chain you say, "Yes, I approve waiver and

13 moving forward." Do you see that?

14 A **Yes.**

15 Q Do you remember this exchange?

16 A **Not specifically, but I can be -- can**

17 **you enlarge this a little bit? I can be**

18 **refreshed, I believe.**

19 Q Yeah, I'm going to enlarge the e-mail

20 that immediately precedes that to which you're

21 responding to. And the e-mail that you say, "Yes,

22 I approve waiver and moving forward" is a response

23 to an e-mail that Mr. Cournoyer -- how do you

24 pronounce that name?

25 A **Cournin (phonetic) I think is how you**

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1 **pronounce it.**

2 Q How?

3 A **Cournin. I would have said Tim**

4 **Cournin.**

5 Q Cournin with an "N"?

6 A **Yes.**

7 Q So the O-Y-E-R is silent?

8 A **Yeah, I think so.**

9 Q Okay. The person that you call Tim

10 Cournin sent you an e-mail at 7:10 p.m. on

11 January 29th, and it looks like you respond that

12 same day, although the time stamp is curious.

13 Maybe it's a time zone issue. But in any event,

14 Mr. Cournin, as you say, said, "Jim, I reviewed

15 the documents that were sent over and left two

16 voice mails with Brian Brantley at the Company but

17 have not heard back."

18 And he goes on to explain how "Each of

19 Dugaboy and Sentinel have a preemptive right to

20 participate in the new offering." And he said,

21 "Please confirm that you are okay waiving the

22 right to participate in this round. If you

23 approve, please confirm," and he "will work with

24 Tara/Sue/Melissa to use your e-signature for the

25 Board resolutions and to obtain Sentinel's and

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1 Dugaboy's signature."

2 And in response to that you say you

3 approve the waiver and are moving forward.

4 Do you see that?

5 A **Yes.**

6 Q Do you remember this transaction?

7 A **Yes. I mean, generally, yes.**

8 Q Describe what you know about it.

9 A **SeaOne was a venture capital**

10 **investment. The former CEO of EOG had come up**

11 **with a more creative way to ship natural gas**

12 **around the world using -- essentially making a**

13 **radiator out of a 42-inch pipeline. It's much**

14 **better, it's much more efficient, much cheaper**

15 **than LNG, but it's taking two or three times as**

16 **long, as everybody expected, to get any kind of**

17 **industry buy-in, so they were frequently doing**

18 **additional capital raises. Some of them were**

19 **offensive and some of them were defensive.**

20 **We were an early investor -- an earlier**

21 **investor in SeaOne so we had the ability to**

22 **participate in rights offerings or block any**

23 **defensive rights offerings. We just had some**

24 **shareholder protections as an earlier investor.**

25 **And what this back-and-forth here is,**

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1 **you know, to allow the additional financing to**

2 **occur at the company, we had to waive some of our**

3 **rights.**

4 Q Okay. And you were the decision maker

5 for Dugaboy's decision to participate in the new

6 offering?

7 A **Yeah, I want to be careful here. You**

8 **know, Dugaboy has its own trustee. Sentinel has**

9 **its own management. But I was on the board of**

10 **SeaOne, and I was the resident expert as far as**

11 **SeaOne was concerned. So for decisions involving**

12 **the credit, people would rely on my expertise as**

13 **regarding SeaOne.**

14 **And that's what -- that's what Tim is**

15 **asking for at the bottom of the letter with the**

16 **underline, you know, so I'll go forward, you know,**

17 **and make that specific recommendation to the**

18 **various funds that own it. And he was just going**

19 **through the mechanisms, the signature mechanisms.**

20 Q You don't say you're going to make a

21 recommendation to the various funds. You say you

22 approve the waiver and moving forward. Do you see

23 that?

24 A **Yes.**

25 Q So you didn't have to go check with

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1 anyone. You just had the authority to approve the  
2 waiver on behalf of both Sentinel and Dugaboy,  
3 correct?  
4 **A No, I'm not saying that. I approved**  
5 **the waiver and the concept of the waiver, but,**  
6 **again, I'm acting as the investment professional**  
7 **on this particular investment. It doesn't give me**  
8 **carte blanche on the funds that they're in -- that**  
9 **those investments are in.**  
10 Q I didn't ask that. My question is,  
11 specifically with this transaction, you believed  
12 that you had the authority to approve the waiver  
13 of the right to participate in that new offering  
14 on behalf of both Sentinel and Dugaboy, correct?  
15 **A No. I approve, meaning I agree. You**  
16 **know, that's why I always use "I approve" -- from**  
17 **board positions or from senior lead, because it**  
18 **says I approve or I agree with the waiver. But to**  
19 **the extent that it's investment advice and there**  
20 **is no reason for a trustee to second-guess me,**  
21 **they would trust my investment advice, and that's**  
22 **what Tim is parlaying to the funds themselves at**  
23 **the bottom of the thing there, but just because I**  
24 **approve of the waiver doesn't give me broad**  
25 **authority at independent entities.**

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1 Q Right, but you didn't -- you just  
2 responded to Tim's e-mail. You didn't check with  
3 anyone before responding. Correct?  
4 **A Well --**  
5 Q Let me break this up. You have never  
6 spoken to a director of Sentinel, as far as you  
7 know, correct?  
8 **A That's -- that's correct.**  
9 Q So you didn't check in with the  
10 directors of Sentinel before you told Tim that you  
11 were okay waiving the right to participate in this  
12 round on behalf of Sentinel, correct?  
13 **A That's correct. But that's typical.**  
14 **If you're the investment manager -- like we were**  
15 **saying before, we do portfolios of bank loans.**  
16 **Companies need amendments all the time. That**  
17 **would be part of the normal investment process.**  
18 **We wouldn't call separate accounts or managements**  
19 **at CalPERS to tell them, you know, we were**  
20 **approving an amendment at Caesar's or Toys-R-Us or**  
21 **something.**  
22 MR. CLUBOK: So move to strike  
23 everything after "that's correct".  
24 Q My simple question to you is, for this  
25 transaction, you had the right to approve it

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1 without checking with the Sentinel directors;  
2 isn't that true?  
3 MR. TAYLOR: Objection. Form.  
4 **A I have no comment on that. I was just**  
5 **approving the company's -- the reasonableness of**  
6 **the company's amendment request.**  
7 Q I'm going down the e-mail chain here,  
8 and it started with, it looks like, an e-mail from  
9 Bart Baker of SeaOne Holdings to you that sought a  
10 consent of managers for SeaOne Holdings related to  
11 the continuation of the capital raise of that  
12 company, and they asked you to sign the signature  
13 page. Do you see that?  
14 **A Yes.**  
15 Q And you then forwarded that to Tim --  
16 **A Cournin.**  
17 Q -- Tim Cournin, as you call him, right?  
18 **A Yes.**  
19 Q And Tim said he reviewed the documents  
20 and he left voice mails with Brian Brantley and  
21 then he explained the transaction and he notes  
22 about these preemptive rights that Dugaboy and  
23 Sentinel have, and asked you to confirm that you  
24 were okay waiving the rights to participate in  
25 this round on behalf of Sentinel and Dugaboy,

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1 correct?  
2 **A Yes, overall. And you can see I --**  
3 **again, I'm approving it in general from a business**  
4 **perspective. That's what it says, "Yes, I approve**  
5 **the waiver and moving forward."**  
6 Q Okay. And you made that statement  
7 without checking in with any director of Sentinel,  
8 correct?  
9 MR. TAYLOR: Objection. Asked and  
10 answered.  
11 **A Yeah, correct. I didn't talk to any of**  
12 **the -- I didn't, nor would I have, in normal**  
13 **course, expected to for any accounts that we**  
14 **manage.**  
15 Q And you didn't speak to anyone at  
16 Dugaboy either before telling Tim that you  
17 approved of the waiver on behalf of Dugaboy,  
18 correct?  
19 **A That's correct.**  
20 Q And by the way, previously you said  
21 that in addition to satisfying internal  
22 compliance, you also had to satisfy regulators for  
23 the insurance policy that was issued?  
24 **A Yes.**  
25 Q What specific regulators are you

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1 talking about?

2 **A The Cayman reinsurance regulators do**  
3 **some of the analysis and underwriting that you**  
4 **were speaking of earlier in terms of making sure**  
5 **the structure, the potential paths, and the**  
6 **premiums and the assumptions and the probabilities**  
7 **are reasonable also, especially if it is an**  
8 **outsized policy for a company or if the company is**  
9 **in a high-growth state, which Sentinel was. And**  
10 **so that's why I know Ellington was in**  
11 **contemporaneous discussions with them at the same**  
12 **time he was getting the transaction through**  
13 **compliance.**

14 Q So, first of all, this was an outsized  
15 policy, given Sentinel Re's history, correct?

16 **A I mean, it's outsized or larger than**  
17 **what they had done historically.**

18 Q And, second of all, Sentinel Re, based  
19 on the financial statements, we showed was not in  
20 the high growth, but they were actually  
21 contracting 2016 as compared to 2015; isn't that  
22 right?

23 **A No. No, they were growing on all**  
24 **measures. Their capital just shrunk because of**  
25 **the dividends.**

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1 Q Well, their pretax income was shrinking  
2 from 2016 versus 2015, right?

3 **A Okay, all right. Yes, okay.**

4 Q And their balance sheet shrunk between  
5 2016 as compared to 2015, right?

6 **A Okay, yes, but they are still in the**  
7 **high growth mode.**

8 Q What was one measure that they were  
9 growing in in 2016 compared to 2015 if it's not  
10 balance sheet, income, capital? Name one measure  
11 that causes you to say that they were high growth?

12 **A There's an effort in futzpah, footnote**  
13 **on page 7.**

14 MR. TAYLOR: Andy, if you're going to  
15 ask him about a document, I would ask that you put  
16 it up in front of him.

17 Q There was a footnote on page 7 of what  
18 document?

19 **A I'm joking. I'm joking, Andy. I said**  
20 **it was an effort in futzpah, chutzpah, footnote on**  
21 **page 7. But no, I mean, it was -- that was the**  
22 **ambition and that was the plan. If it hit a lull**  
23 **in 2016, it looks like they were making up for it**  
24 **in growth in 2017.**

25 Q When you say "it looks like they were

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1 making up for it in growth," you're basing that  
2 solely on the fact that this \$100 million policy  
3 was issued and no other information that you have,  
4 correct?

5 **A I haven't seen the financials for '17**  
6 **or '18, so I don't know what else they were doing.**

7 Q Well, you just said, "it looks like  
8 they were making up for it in growth in 2017."

9 **A Well, yeah, based on -- based on what**  
10 **you have been telling me, the policy was done in**  
11 **August of '17 and it was a larger policy.**

12 Q When you say "it looks like they were  
13 making up for their lack of growth in 2016,"  
14 you're solely basing that on the issuance of this  
15 \$100 million policy and nothing else that you're  
16 aware of as you sit here today, correct?

17 **A That's right. I haven't seen the '17**  
18 **or the '18 or '19 or '20 financials.**

19 Q Okay. But you have seen financials  
20 that show you they contracted from 2016 as  
21 compared to 2015, correct?

22 **A Yes.**

23 MR. CLUBOK: Let's put up Exhibit --  
24 the document that is behind Tab 8. It will be  
25 marked as Exhibit 28.

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1 (Deposition Exhibit 28 marked for  
2 identification.)

3 Q This document, when it gets up, is an  
4 e-mail from Katie Irving to Sam Dawson, Dylan  
5 Wiltermuth, copy J.P. Sevilla and Matt DiOrio;  
6 Subject: Entity restructure - Sentinel, and it's  
7 dated April 10th, 2019.

8 I'll show you the top of that document  
9 so you can see that. Do you see all that at the  
10 top of Exhibit 28?

11 **A Yes.**

12 Q Okay. I'm going to skip the e-mail  
13 part, but I just want to -- there is an attachment  
14 here that says "SAS" and "Sentinel Final Structure  
15 as of 9 April 2019, a PowerPoint." And that  
16 attachment, I'm flipping down, it's a -- the first  
17 attachment, which is the structure -- "Offshore  
18 Fund Structure" of SAS, is on the page that ends  
19 Bates labeled 3125 of Exhibit 28.

20 Do you see that?

21 **A Yes.**

22 Q And I'm going to try to make it so it's  
23 as easy as possible to read. First of all, this  
24 is an SAS structure not Sentinel, SAS. And do you  
25 see where it talks about "USP1," "four USPs" and

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1 then "USP2" on the right?  
2 **A Yes.**  
3 Q Fair to say that you are one of these  
4 USPs?  
5 **A No, it's not fair to say. I have no**  
6 **idea.**  
7 Q You have no idea. Okay.  
8 Do you recognize any of the names on  
9 this org chart for SAS structure as of April 9,  
10 2019?  
11 **A No, I do not.**  
12 Q Have you ever heard of Sebastian  
13 Clarke, Limited?  
14 **A No.**  
15 Q Did you know that Matt DiOrio was a  
16 director of Sentinel Reinsurance?  
17 **A I did not.**  
18 Q Did you ever speak with Matt DiOrio  
19 about Sentinel Reinsurance?  
20 **A No.**  
21 Q Did you -- did you ever speak to Matt  
22 DiOrio in the last two years?  
23 **A I spoke to him a month ago. He was the**  
24 **point person on some of the shared services**  
25 **agreements with the bank, and so I was working**

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1 **with him on those.**  
2 Q Is he working with you at your new  
3 venture?  
4 **A He is at -- yeah, he works at whatever**  
5 **it's called, SkyBridge, SkyGate, whatever,**  
6 **whatever it's called.**  
7 Q So he has an office in the same  
8 building, although on a different floor, than the  
9 building you're sitting in today?  
10 **A Yes.**  
11 Q Have you ever talked to Matt DiOrio  
12 about SAS?  
13 **A No.**  
14 Q I'm going to turn to the next page.  
15 The next page in this document, Exhibit 28, is  
16 another chart, and this is for the Sentinel  
17 structure as of April 9, 2019. Do you see that?  
18 **A Yes.**  
19 Q Now, here you are USP2, correct?  
20 **A I've never seen this before. I don't**  
21 **know if you can make that statement just from --**  
22 **the Patton, Limited, I guess, is the same Patton**  
23 **on the other page, but I don't know how that**  
24 **connects to USP2.**  
25 Q Well, when you go down USP2, down this

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1 chart, you get to where it says "70 percent" value  
2 for Sentinel Re at the bottom?  
3 **A Yes.**  
4 Q And USP1 goes down, and there is  
5 30 percent value. Do you see that?  
6 **A Yep.**  
7 Q And fair to say that under this chart  
8 Mr. Ellington is USP1 and you are USP2?  
9 **A I don't know, and I haven't seen this**  
10 **before.**  
11 Q Are there any other U.S. partners  
12 invested in Sentinel, other than you and  
13 Mr. Ellington, to your knowledge?  
14 **A I've never seen this before. I don't**  
15 **have an awareness of this, that even USP means**  
16 **U.S. partner.**  
17 Q Okay. But you are -- you do have an  
18 awareness that Patton was an entity that you owned  
19 70 percent of Sentinel Re through, correct?  
20 MR. TAYLOR: Objection. Form.  
21 **A If that's the same Patton as the one**  
22 **that we saw in the Sentinel structure.**  
23 Q Okay. And you're saying, as you sit  
24 here today, you believe you have no relationship  
25 whatsoever with SAS?

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1 **A This is the first time I've seen**  
2 **this -- can you go back to the page before for a**  
3 **second?**  
4 (Witness reviewing document.)  
5 **A Even looking at this, I can't figure**  
6 **this out. Do we get these exhibits as part of the**  
7 **deposition?**  
8 Q I don't know. Why do you ask?  
9 **A I'd like to spend more time looking at**  
10 **this.**  
11 Q Well, as you sit here today, are you  
12 aware -- are you testifying that as far as you  
13 know, you have no connection whatsoever to SAS?  
14 **A I mean, that's how I understood it,**  
15 **which is it looks like this was the older**  
16 **structure. I mean, I'm trying to -- I'm trying to**  
17 **figure this out and it's --**  
18 Q How do you know it is the older  
19 structure?  
20 **A Well, because that's how it was**  
21 **presented and that's as of '19, and you have got a**  
22 **proposed structure a page later, right?**  
23 Q Oh, no, no, this is "SAS Structure" and  
24 the next page is "Sentinel Structure."  
25 **A Right, but isn't the next structure a**

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1 **combination of the two or no?**  
2 Q No. It's -- well, yes, it looks  
3 like -- ah, it look like SAS Holdings is involved  
4 somehow in Sentinel. Actually, now that you  
5 mention it, it looks like SAS Holdings is somehow  
6 connected. Does any of that ring a bell with you?  
7 **A No, none of this rings a bell. I**  
8 **didn't know it was restructured, and I can't make**  
9 **heads of tails out of the prior restructuring.**  
10 **But hold on a second. So in a day or two when we**  
11 **get the deposition transcript, aren't the exhibits**  
12 **included or no?**  
13 MR. TAYLOR: They are.  
14 THE WITNESS: They are. Okay, good.  
15 All right.  
16 Q It may be.  
17 **A Yeah, Clay is saying they are. I just**  
18 **want to be able to look at this in more detail**  
19 **then.**  
20 MR. TAYLOR: Andy, is this a Highland  
21 Capital document?  
22 MR. CLUBOK: It is a Highland Capital  
23 document produced by Highland Capital, Bates  
24 labeled.  
25 Q So as you sit here today, having seen

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1 this, as far as you know, you're not aware of any  
2 connection you had with SAS; is that correct?  
3 **A I thought the ownership of SAS was --**  
4 **didn't flow through to Scott and I. I thought**  
5 **there was some fee, some profitability sharing**  
6 **potentially, but I thought the ownership was owned**  
7 **by some -- to avoid operating a business offshore,**  
8 **sometimes I think there's charitable entities and**  
9 **stuff that are the owner for name purposes, and**  
10 **that's how I thought SAS was structured, where if**  
11 **there -- it would be possible to get some**  
12 **incentives or compensation out of it but that the**  
13 **ownership wasn't with Scott and I. That was my**  
14 **memory, but, you know --**  
15 Q Okay. But you believe that you had  
16 some economic interest in SAS; is that correct?  
17 **A You know, potentially, you know, but --**  
18 **I mean, but as far as I know, there hadn't been a**  
19 **lot of realizations there.**  
20 Q Have you ever received any economic  
21 benefit from SAS, as far as you know?  
22 **A No, I have not.**  
23 Q Has Scott Ellington, as far as you  
24 know?  
25 **A As far as I know, no.**

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1 Q By the way, on the chart for Sentinel,  
2 it shows that you have a 70 percent value, but it  
3 says 91 percent vote. Do you see that?  
4 **A Yes.**  
5 Q Do you know why you have a greater  
6 voting share than your economic benefit in  
7 Sentinel as it's set forth in this chart?  
8 **A No. Like I said, that's why I can't**  
9 **make heads or tails of this. Like I can't --**  
10 **like, look a little further right, where it's**  
11 **99 percent of value, 1 percent of the vote. I**  
12 **can't -- I can't seem to add up the value numbers**  
13 **or the vote numbers. I must be missing something.**  
14 **I couldn't do it on this chart or the other chart.**  
15 **That's why I would like to review them in more**  
16 **detail.**  
17 Q Yeah, but as you sit here today, are  
18 you aware generally that you have a greater voting  
19 interest in Sentinel than you do an economic  
20 interest?  
21 **A No, I would have guessed it was 70/30**  
22 **for both.**  
23 Q Was there a law firm that helped you  
24 set up Sentinel Reinsurance, that you're aware of?  
25 **A I do not know.**

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1 Q Was there ever an analysis done, to  
2 your knowledge, of how much Sentinel Reinsurance  
3 would owe if UBS's trial court decision was  
4 upheld?  
5 MR. TAYLOR: I'm just going to object  
6 to form.  
7 **A I don't know.**  
8 Q Do you know how much total payout there  
9 has been from the insurance policy for any of the  
10 purposes that you said that the policy was set up  
11 for?  
12 **A I do not know.**  
13 MR. CLUBOK: I think this is a good  
14 time to take a break.  
15 MR. TAYLOR: That's good. So we have  
16 to take another one at 6:00. Let's go off the  
17 record.  
18 THE VIDEOGRAPHER: Off record. 6:03.  
19 (A recess was taken.)  
20 THE VIDEOGRAPHER: On record. 6:24.  
21 BY MR. CLUBOK:  
22 Q Mr. Dondero, we're going to show you  
23 what's previously been marked as Exhibit 1. It is  
24 an e-mail from Isaac Leventon to Chris Dunn,  
25 D-U-N-N, dated October 26, 2017, with an



<p>193</p> <p>1 attachment called UBS_ATE.PDF. 2 Do you see that? 3 <b>A Yes.</b> 4 Q And Mr. Leventon said -- first of all, 5 who is Chris Dunn? 6 <b>A I believe he is one of the accountants</b> 7 <b>who used to work at Highland.</b> 8 Q Okay. And does he work with you now? 9 <b>A I don't believe so. I don't recognize</b> 10 <b>that name.</b> 11 Q And Mr. Leventon says to Mr. Dunn -- 12 "Subject: UBS - PRIVILEGED." Do you see that? 13 <b>A Yes.</b> 14 Q And he says, "Please see attached. 15 Please label all communications related to this 16 project as Privileged as all documents are being 17 requested of the Legal Team." 18 Do you see that? 19 <b>A Yes.</b> 20 Q And just scrolling down, there's 21 nothing else in the cover e-mail, and I'm going to 22 show -- and I take it you have never seen this 23 e-mail before? 24 <b>A No. No, I have not.</b> 25 Q Okay. So I'm going to show you the</p>	<p>195</p> <p>1 Do you see that? 2 <b>A Yes.</b> 3 Q And that's your signature, correct? 4 <b>A Yeah, or my assistant's, it looks like.</b> 5 <b>It is either my signature or my assistant's.</b> 6 Q Well, it's an authorized signature by 7 you, correct? 8 <b>A Yes.</b> 9 Q And that's on behalf of one of the 10 insureds, Highland CDO Opportunity Master Fund, 11 LP, correct? 12 <b>A Yeah. Do you want me to read the</b> 13 <b>signature lines? You'll need to zoom in for me.</b> 14 <b>But whoever it's signed for, it's signed for, I</b> 15 <b>guess.</b> 16 Q Okay. And it's also signed on behalf 17 of Highland CDO Hold Company, correct? 18 <b>A Highland CDO Holding Company, yes.</b> 19 Q And again, you signed on behalf of 20 Highland CDO Holding Company as another one of the 21 insureds under the policy, correct? 22 <b>A I don't know what the involvement is of</b> 23 <b>the different entities, if they're all the insured</b> 24 <b>or they're just somehow -- somehow involved in the</b> 25 <b>agreement, but yes, I'm signing for those various</b></p>
<p>194</p> <p>1 attachment and see if it refreshes your 2 recollection. Let me get this a little bit 3 smaller here. 4 This is a document -- the attachment is 5 the legal liability insurance policy that we have 6 been talking about today. This is the first page 7 of it, where it's called "Legal Liability 8 Insurance Policy" in blue letters on the first 9 page. 10 Do you see that? 11 <b>A Yes.</b> 12 Q And I want to go -- I'm going to go 13 through some of the policy with you. I'm going to 14 flip first to the very end, the last page, the 15 signature page. And do you see where it says 16 "Insurer: Sentinel Reinsurance, Limited," and it 17 says, "Andrew Dean, Director"? 18 <b>A Yep.</b> 19 Q And then do you see where it says 20 "Insureds," and the first insured is Highland CDO 21 Opportunity Master Fund, LP. And it says that you 22 are signing on behalf of CDO Opportunity Master 23 Fund by CDO Opportunity Fund, by CDO Opportunity 24 GP, by Highland Capital Management and by Strand 25 Advisors.</p>	<p>196</p> <p>1 <b>different funds.</b> 2 Q Well, so you sign this document on 3 behalf of Highland CDO Opportunity Master Fund, 4 LP, correct? 5 <b>A Yes.</b> 6 Q And you sign this document on behalf of 7 Highland CDO Holding Company, correct? 8 <b>A Yes.</b> 9 Q And you sign on behalf of Highland 10 Special Opportunities Holding Company, correct? 11 <b>A Yes.</b> 12 Q And you were the sole director of SOHC 13 at the time, right? 14 <b>A I -- I -- probably. I don't know.</b> 15 Q And you were the sole director of 16 Highland CDO Holding Company at the time, correct? 17 <b>A I don't know.</b> 18 Q Do you know -- can you name another 19 director of Highland CDO Holding Company? 20 <b>A No.</b> 21 Q And you were -- it says you were 22 president. Is that president of Highland CDO 23 Opportunity Master Fund, LP? 24 <b>A I don't know.</b> 25 Q Or is it president of Strand Advisors?</p>

<p>197</p> <p>1 <b>A I don't know.</b></p> <p>2 Q Were you president of Strand Advisors</p> <p>3 at that time?</p> <p>4 <b>A Yes, I would have been. Yeah, if it</b></p> <p>5 <b>had a president, yes.</b></p> <p>6 Q In August of 2017, did you have</p> <p>7 authority to sign a document like this on behalf</p> <p>8 of Strand Advisors?</p> <p>9 <b>A I assume so.</b></p> <p>10 Q And in August of 2017, did you have</p> <p>11 authority to sign a document like this on behalf</p> <p>12 of Highland Capital Management?</p> <p>13 <b>A I assume so.</b></p> <p>14 Q In August 2017 did you have authority</p> <p>15 to sign a document like this on behalf of Highland</p> <p>16 CDO Opportunity GP, LLC?</p> <p>17 <b>A I believe so.</b></p> <p>18 Q In August of 2017 did you have</p> <p>19 authority to sign the insurance policy on behalf</p> <p>20 of Highland CDO Opportunity Fund GP?</p> <p>21 <b>A I believe so.</b></p> <p>22 Q In August of 2017 did you have the</p> <p>23 authority to sign the insurance policy on behalf</p> <p>24 of Highland CDO Opportunity Master Fund, LP?</p> <p>25 <b>A I believe so.</b></p>	<p>199</p> <p>1 when making the decision to sign on SOHC's behalf?</p> <p>2 <b>A I don't know. I don't remember.</b></p> <p>3 Q Did you believe at the time you signed</p> <p>4 this document you had fiduciary duties to Highland</p> <p>5 CDO Holding Company?</p> <p>6 <b>A I don't know. I don't remember.</b></p> <p>7 Q At the time you signed this document,</p> <p>8 did you have fiduciary duties to Highland CDO</p> <p>9 Opportunity Master Fund that you took into account</p> <p>10 before you signed it?</p> <p>11 <b>A I don't know. I don't remember.</b></p> <p>12 Q Do you believe that you had any -- in</p> <p>13 August of 2017 the UBS litigation was still going</p> <p>14 on, correct?</p> <p>15 <b>A I think I testified I believe it was</b></p> <p>16 <b>dormant.</b></p> <p>17 Q Well, in fact, in August of 2017 UBS</p> <p>18 had just defeated Highland and the other</p> <p>19 defendants' motion for summary judgment; isn't</p> <p>20 that true?</p> <p>21 <b>A Like I said, I don't know. My belief</b></p> <p>22 <b>was it was dormant.</b></p> <p>23 Q Did you believe that you had any</p> <p>24 fiduciary duties to consider to UBS, as a</p> <p>25 potential creditor of SOHC and CDO Fund, when you</p>
<p>198</p> <p>1 Q In August of 2017 did you have the</p> <p>2 authority to sign on behalf of Highland CDO</p> <p>3 Holding Company?</p> <p>4 <b>A I believe so.</b></p> <p>5 Q And fair to say that in August of 2017</p> <p>6 you had the authority to sign off on this</p> <p>7 insurance policy on behalf of Highland Special</p> <p>8 Opportunities Holding Company, correct?</p> <p>9 <b>A I believe so.</b></p> <p>10 Q And before you signed off on this</p> <p>11 \$100 million insurance policy, did you take care</p> <p>12 to familiarize yourself with the terms of it?</p> <p>13 <b>A No.</b></p> <p>14 Q Did you have a fiduciary duty at the</p> <p>15 time to Highland Special Opportunities Holding</p> <p>16 Company when you signed this policy?</p> <p>17 <b>A I -- fiduciary -- as a registered</b></p> <p>18 <b>investment advisor, I assume -- I assume we did.</b></p> <p>19 <b>I don't know -- to the extent the fund doesn't</b></p> <p>20 <b>exist anymore, I -- I don't know the answer. Let</b></p> <p>21 <b>me just say that.</b></p> <p>22 Q Well, when you acted in August 2017 on</p> <p>23 behalf of SOHC, which is the shorthand for Special</p> <p>24 Opportunities Holding Company, did you believe</p> <p>25 that you had fiduciary duties you had to consider</p>	<p>199</p> <p>1 signed this document in August of 2017?</p> <p>2 MR. TAYLOR: Objection. Form.</p> <p>3 Q Okay. I'm going to break it down. In</p> <p>4 August of 2017, did you believe that you owed any</p> <p>5 fiduciary duties at all to UBS as a creditor or</p> <p>6 potential creditor of Highland Special</p> <p>7 Opportunities Holding Company?</p> <p>8 <b>A I -- I do not -- I do not believe or</b></p> <p>9 <b>recall believing that I had any fiduciary</b></p> <p>10 <b>responsibility to UBS.</b></p> <p>11 Q With respect to its status as a</p> <p>12 creditor or potential creditor of SOHC, correct?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And the same answer for Highland CDO</p> <p>15 Opportunity Master Fund?</p> <p>16 <b>A Yes.</b></p> <p>17 Q Same answer for Highland Financial</p> <p>18 Partners?</p> <p>19 <b>A Yes.</b></p> <p>20 Q You now know, sitting here today, that</p> <p>21 a Court has found that SOHC and CDO Fund</p> <p>22 collectively owe to UBS over \$500 million, plus</p> <p>23 interest, at the time this insurance policy was</p> <p>24 signed, correct?</p> <p>25 <b>A No, I don't know that.</b></p>

<p>201</p> <p>1 Q Well, you know that there has been a 2 judgment after a trial that found SOHC and CDO 3 Fund liable to UBS for over \$500 million, plus 4 accumulated interest, since 2009, correct? 5 <b>A I don't know the specifics of the 6 award, but generally I know there is a significant 7 award.</b> 8 Q Well, you know generally that the award 9 today totals roughly a billion dollars or more, 10 correct? 11 MR. TAYLOR: Objection. Form. 12 <b>A Again, I don't know the mix, I don't 13 know the specifics. You mentioned a minute ago a 14 total to 550, and then you said it was a billion. 15 So I don't know -- I don't know the details and 16 the specifics.</b> 17 Q Okay. Let's make it very simple. As 18 you sit here today, you know that there is a 19 pending judgment against SOHC and CDO Fund for a 20 total of over a billion dollars, including 21 interest, correct? 22 <b>A I -- I don't know. And I don't know 23 if-- a pending judgment, I don't know if it's 24 appealable, I don't know if it is being appealed. 25 I have no idea.</b></p>	<p>203</p> <p>1 is in favor of UBS? 2 <b>A I have not.</b> 3 Q Do you feel you currently owe any 4 fiduciary duties to UBS in your capacity as 5 director of SOHC? 6 MR. TAYLOR: Objection. Assumes facts 7 not in evidence. 8 MR. CLUBOK: Okay. Strike that. 9 Restate that. 10 Q I take it you have recently resigned 11 your position as director of SOHC? 12 <b>A I believe so.</b> 13 Q That was done just within the last week 14 or so? 15 <b>A I believe so.</b> 16 Q Prior to resigning as director of SOHC, 17 did you ever consider that you had fiduciary 18 duties owed to UBS in connection with the judgment 19 entered against SOHC on behalf of UBS? 20 <b>A I -- I don't recall.</b> 21 Q Are you currently a director of 22 Highland's -- sorry. 23 Do you currently have any role in 24 Highland CDO Opportunity Master Fund? 25 <b>A I don't know.</b></p>
<p>202</p> <p>1 Q You have absolutely no idea if there is 2 an outstanding judgment right now against SOHC and 3 CDO Fund for approximately a billion dollars in 4 favor of UBS? That's your testimony? 5 <b>A You said a minute ago a pending 6 judgment. Now you're saying it's a judgment. I 7 have no idea what the legal status is.</b> 8 Q Do you know that there was a judgment 9 entered against SOHC and CDO Fund for over a 10 billion dollars, including interest, in favor of 11 UBS in connection with the New York litigation? 12 <b>A I don't know the specifics. I don't 13 know the specific counterparties.</b> 14 Q Do you know? So is that a no to my 15 question? 16 <b>A Yes. I don't know.</b> 17 Q Have you made any effort to consider 18 whether or not SOHC owes any money currently to 19 UBS? 20 <b>A I have not.</b> 21 Q Have you made any effort to consider 22 whether currently CDO Fund owes any money to UBS? 23 <b>A I have not.</b> 24 Q Have you ever taken any steps to try to 25 satisfy any judgment against SOHC or CDO Fund that</p>	<p>204</p> <p>1 MR. CLUBOK: We're going to mark as an 2 exhibit the document that is Bates labeled 3 HCMUBS005324, and that will be, I think, 4 Exhibit 29. 5 That must be right. Whoops, sorry, no, 6 this is the wrong document. 7 Sorry. We'll find the document here in 8 a second. I'm trying to find the letter that you 9 recently sent to the lawyers representing the 10 debtor in which you tendered your resignation. 11 I think, Alan, you may have pulled the 12 wrong number. Let's try this again. It's 13 HCMUBS005324. 14 It should be a letter. There we go. 15 Thank you. Sorry, maybe I missaw it or something 16 if you had it before. 17 Q Anyway, let's take a look at this. 18 This is a letter dated -- 19 MR. CLUBOK: And we're going to make 20 this one Exhibit 29, correct? 21 Yes. Perfect. 22 (Deposition Exhibit 29 marked for 23 identification.) 24 Q Exhibit 29 is a letter dated April 28, 25 2021 from Bonds Ellis to Mr. James Seery, care of</p>

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1 Jeffrey Pomerantz. Do you see that?  
2 **A Yes.**  
3 Q And it's "RE: Resignation of James  
4 Dondero from Defendant Entities in UBS, et al.  
5 versus HCMLP, et al., Index No. 650097/2009 (N.Y.  
6 Sup. Ct.)" Correct?  
7 **A Yes.**  
8 Q Have you seen this letter before?  
9 **A It was prepared by counsel. I have**  
10 **seen it.**  
11 Q And it was signed by Mr. Clay Taylor,  
12 who is representing you here today, correct?  
13 **A Yes.**  
14 Q And you saw it after it was complete  
15 and either before or after it was sent to the --  
16 Mr. Seery?  
17 **A Yes.**  
18 Q And you authorized this letter to go  
19 out under your --  
20 MR. CLUBOK: Strike that.  
21 Q You authorized this letter to go out?  
22 **A Yes.**  
23 Q And in the letter you, in addition to  
24 Mr. Taylor, are describing a number of things. He  
25 says that you are hereby immediately resigning

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1 from "alleged director position(s) at HFP and SOHC  
2 and/or any other officer positions at those  
3 entities."  
4 Do you see that?  
5 **A Yes.**  
6 Q Now, before you sent this letter, did  
7 you believe that you were a director in SOHC?  
8 **A No.**  
9 Q When did you -- but you used to be a  
10 director at SOHC, correct?  
11 **A Many years ago.**  
12 Q Well, you certainly were a director in  
13 SOHC when you signed on their behalf in August of  
14 2017 for the insurance policy, correct?  
15 **A Yes.**  
16 Q So when did you stop being a director  
17 of SOHC?  
18 **A I mean, prior to 2017 it had been**  
19 **inactive for a number of years, and, again, my**  
20 **view and recollection is the insurance policy was**  
21 **to transition and wrap up the dissolution, so to**  
22 **speak, responsibly.**  
23 Q When did you stop being a director of  
24 SOHC, to the best of your knowledge?  
25 **A For all intents and purposes -- I don't**

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1 **want to -- it was sometime 2017 or earlier, you**  
2 **know, essentially.**  
3 Q Sorry, you believe that you were no  
4 longer a director of SOHC earlier than 2017?  
5 **A You know what, it's -- I don't want to**  
6 **agree with that terminology. I just want to say**  
7 **that the entity was not functioning normally or**  
8 **routinely as far as corporate governance was**  
9 **concerned, and I was probably the last surviving**  
10 **director who tried to wrap it up responsibly with**  
11 **the 2017 policy.**  
12 Q Okay. You were the only director ever  
13 in the history of SOHC; isn't that true?  
14 **A I don't know. HFP had numerous**  
15 **directors originally --**  
16 Q I didn't ask you about HFP, okay? In  
17 the interest of time here, I would like you to  
18 answer the questions that I ask. You were the  
19 sole director of SOHC from its inception, correct?  
20 **A I don't know.**  
21 Q When you signed in August of 2017, did  
22 you believe you were still the director of SOHC?  
23 **A Yes.**  
24 Q Did you check with any other -- or were  
25 you aware of any other directors in the world of

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1 SOHC other than yourself at that time?  
2 **A I don't know. I didn't check. I don't**  
3 **remember.**  
4 Q Okay. So as far as you knew, you were  
5 the sole director of SOHC in August 2017, correct?  
6 **A No. I didn't know is my testimony.**  
7 Q Okay. You didn't check to see if there  
8 were other directors when you signed on behalf of  
9 SOHC; is that correct?  
10 **A Correct.**  
11 Q And were you still a director of SOHC  
12 in August 2017 when you signed that insurance  
13 policy?  
14 MR. TAYLOR: Objection. Asked and  
15 answered.  
16 **A I believe so.**  
17 Q Okay. And when -- and you resigned in  
18 this letter that you sent -- or that Mr. Taylor  
19 sent -- April 28, 2021, correct?  
20 **A Yes.**  
21 Q And so fair to say you were a director  
22 of SOHC for August 2017 until this resignation  
23 letter, as far as you know, correct?  
24 MR. TAYLOR: Objection. Form.  
25 **A I -- maybe in formality, but I can't**

<p style="text-align: right;">209</p> <p>1 <b>remember doing a single activity between 2017 and</b> 2 <b>today on behalf of SOHC.</b> 3 Q Who directed SOHC's litigation strategy 4 in 2018 and 2019? 5 <b>A I believe Scott Ellington.</b> 6 Q Who was ultimately responsible for 7 SOHC, as far as you knew, during those years? 8 <b>A Ultimately Scott Ellington through</b> 9 <b>Sentinel.</b> 10 Q You're saying Sentinel was responsible 11 for SOHC starting in August 2017 going forward? 12 <b>A My general understanding is that the</b> 13 <b>Sentinel policy took over the transition</b> 14 <b>responsibilities for SOHC, meaning the legal</b> 15 <b>strategies or any other legal issues that cropped</b> 16 <b>up or any tax issues. So if you're talking about</b> 17 <b>the period between the policy and today, I would</b> 18 <b>have guessed that Sentinel was handling them.</b> 19 Q Who was able to make the decision as to 20 whether or not to settle the litigation with UBS 21 on behalf of SOHC after August of 2017, as far as 22 you knew? 23 <b>A That would have been Scott Ellington.</b> 24 Q Did you have any role at all in the 25 decision of whether or not SOHC would settle after</p>	<p style="text-align: right;">211</p> <p>1 connection with the UBS litigation. So even if 2 Mr. Feinstein didn't have a problem with it, this 3 has already been waived. But I assume, 4 Mr. Feinstein, you don't have a problem with this 5 line of questioning? 6 MR. FEINSTEIN: I don't, to the extent 7 that there is some question about whether SAS was 8 involved in the decision making. And, as we said, 9 our waiver extends to Sentinel- and SAS-related 10 matters. 11 MR. CLUBOK: Okay. 12 Q So Mr. Dondero, again, my question is, 13 did you ever hear about any settlement demands 14 from UBS in between August 2017 and the time you 15 filed for bankruptcy? 16 <b>A I did not hear of any.</b> 17 MR. CLUBOK: The next document I want 18 to put up is the responsive letter that was sent 19 in response to Exhibit 29. That's going to be 20 Bates number 5322. And that will be marked as 21 Exhibit 30. 22 (Deposition Exhibit 30 marked for 23 identification.) 24 Q Exhibit 30 is a letter sent via e-mail 25 from Jeffrey Pomerantz to your lawyer, Clay</p>
<p style="text-align: right;">210</p> <p>1 August of 2017? 2 <b>A Until the -- I had never -- you asked</b> 3 <b>me this earlier today. I had never heard of other</b> 4 <b>UBS settlement offers until the August of '19</b> 5 <b>settlement.</b> 6 Q Did you have any authority to decide 7 whether or not SOHC would settle between August of 8 2017 and that time of the bankruptcy? 9 <b>A I don't know. Because I haven't read</b> 10 <b>the insurance policy, I don't know where</b> 11 <b>responsibilities begin and end between SOHC and</b> 12 <b>Sentinel.</b> 13 Q Did you ever hear about any settlement 14 demands from UBS in between August 2017 and the 15 time that you filed for bankruptcy? 16 <b>A So --</b> 17 MR. TAYLOR: To the extent that that 18 asks for him to invade the attorney-client 19 privilege, I don't believe -- but subject to 20 Highland Capital's counsel potentially saying 21 they've waived that, I'm going to instruct him not to 22 answer. I understood that to be further than what 23 they waived. 24 MR. CLUBOK: Mr. Dondero has already 25 testified about alleged settlement offers in</p>	<p style="text-align: right;">212</p> <p>1 Taylor, dated May 7, 2021. Do you see that? 2 <b>A Uh-huh.</b> 3 Q Is that a yes? 4 <b>A Yes. I see that.</b> 5 Q And it's the same Re line, the same 6 "Resignation of James Dondero from the Defendant 7 Entities" in the New York UBS litigation, correct? 8 <b>A Yes.</b> 9 Q Have you seen a copy of this letter 10 before today? 11 <b>A Yes.</b> 12 Q Okay. And without reading all of it, 13 I'm going to briefly summarize. Mr. Pomerantz 14 says he's in receipt of the letter where James 15 Dondero resigned from his positions in connection 16 with HFP and SOHC, and then he notes that you're 17 also, at least as of the time of writing this 18 letter, "a director of Highland CDO Opportunity 19 Fund, the Bermuda feeder fund for the Highland CDO 20 Opportunity Fund," also called "the CDO Fund," 21 collectively. And he asks to confirm immediately 22 whether you are "resigning from HCDOF and all 23 other subsidiaries of HCDOF as well." And I 24 believe, as far as I know, there has never been a 25 formal response to that.</p>

<p style="text-align: right;">213</p> <p>1 But my question is, as you sit here 2 today, are you a director of Highland CDO 3 Opportunity Fund? 4 MR. TAYLOR: Objection. Form. 5 <b>A I don't know, and -- I don't know. And 6 when I got this letter, I wasn't sure of its 7 relevance relative to the insurance policy. I 8 didn't remember Bermuda entities being relevant to 9 the HFP structure.</b> 10 Q Okay. Well, are you resigning from CDO 11 Fund if you are currently a director? 12 MR. TAYLOR: Objection as to the form 13 of the question. 14 <b>A I don't know. I mean, we were going to 15 look into it on whether I was a director and we 16 were going to look into it if it had any relevance 17 or -- any relevance or effect on the rest of it, 18 and we hadn't decided yet.</b> 19 Q Well, do you know that CDO Fund is one 20 of the defendants in the New York litigation? 21 <b>A Is it one of the entities that was 22 found guilty or owing money?</b> 23 Q Yes. 24 <b>A Okay. I didn't know that. So we 25 need -- we needed to look into that.</b></p>	<p style="text-align: right;">215</p> <p>1 <b>the -- see, I didn't see any -- do you see any 2 Ltd. -- any Bermuda funds here? I just didn't see 3 it at first glance.</b> 4 Q I don't know. It would have to be 5 Ltd.? 6 <b>A See, I wasn't sure that any of these 7 impacted Bermuda.</b> 8 Q Well, in -- okay. 9 How is CDO Opportunity Master Fund 10 connected to CDO Fund that says Ltd. on it? 11 <b>A I have no idea.</b> 12 Q Previously you said that you didn't 13 remember signing the insurance policy, correct? 14 <b>A Correct.</b> 15 Q Does seeing this now refresh your 16 recollection that you did sign the insurance 17 policy on behalf of three different entities? 18 <b>A No, not really.</b> 19 Q But you authorized your signature on 20 this policy, correct? 21 <b>A Correct.</b> 22 Q And before you authorized the policy -- 23 MR. CLUBOK: Well, strike that. 24 Q So when you authorized it, you knew you 25 were authorizing it not just on behalf of SOHC or</p>
<p style="text-align: right;">214</p> <p>1 Q Okay. I take it you made no effort to 2 try to satisfy any portion of the judgment that 3 was entered against CDO Fund on behalf of UBS? 4 <b>A I don't believe so.</b> 5 Q And do you have any idea right now if 6 you have any responsibility for CDO Fund, either 7 as a director, an officer, owner or anything like 8 that? 9 <b>A I don't know.</b> 10 Q When was the last time you did -- you 11 took any actions with respect to CDO Fund? 12 <b>A Not that I can remember at this moment. 13 None that I can remember at this moment.</b> 14 Q When do you -- well, when do you intend 15 to decide whether or not you are going to resign 16 from being a director of CDO Fund? 17 <b>A I don't know. Soon, I would imagine.</b> 18 Q Okay. Well, please let us know if you 19 intend to resign from CDO Fund. 20 Let's go back to Exhibit 1. This is 21 the insurance policy. We're back on this last 22 page, and you can see here there is CDO Fund that 23 you signed on behalf of as one of the insureds. 24 Do you see that? 25 <b>A I'm sorry, my eyes are so bad, but</b></p>	<p style="text-align: right;">216</p> <p>1 CDO Holding Company, but also on behalf of 2 Highland CDO Opportunity Master Fund, LP, correct? 3 <b>A Again, I delegated and entrusted it to 4 Scott Ellington and his team.</b> 5 Q So is that a yes? 6 <b>A No. I didn't know. I delegated it to 7 him. I didn't -- I didn't review the signature 8 lines and the appropriateness of the signature 9 lines individually or in aggregate. I trusted him 10 to have the appropriate signature lines for what 11 he was trying to accomplish.</b> 12 Q Going back to the first page here of 13 the insurance policy, it's called the "Legal 14 Liability Insurance Policy," correct? 15 <b>A It appears so, yes.</b> 16 Q And on the first page, 1.1 -- and I'm 17 going to expand it so you can read it -- it says, 18 "This policy is between the insured and the 19 insurer as declared in the schedule. The 20 document, together with its schedule and any 21 attached endorsements, is the policy which sets 22 out this insurance. It is a legal contract so 23 please read all of it carefully." 24 Do you see that? 25 <b>A Yes.</b></p>

<p>217</p> <p>1 THE WITNESS: You know, guys, listen, I 2 got to jump on this call. I will make it as 3 quickly as possible, hopefully less than a half an 4 hour. Okay? 5 MR. CLUBOK: Okay. We'll be here at 6 6:30. Let's go off the record. 7 THE VIDEOGRAPHER: Off the record. 8 6:59. 9 (A recess was taken.) 10 THE VIDEOGRAPHER: On record. 7:39. 11 BY MR. CLUBOK: 12 Q Let's go back to Exhibit 1. 13 Exhibit 1 was the e-mail from Isaac 14 Leventon claiming privilege and attaching a copy 15 of this insurance policy that we have been talking 16 about, correct? 17 A Yes. 18 Q So in 1.1 it said that because it's a 19 legal contract, you should "please read all of it 20 carefully." Did you read all of this carefully, 21 ever? 22 A No. 23 Q It says the "policy is between the 24 insured and the insurer as declared in the 25 schedule." Let's go look at the schedule, which</p>	<p>219</p> <p>1 Q Do you -- is he still the appointed 2 representative for this insurance policy, as far 3 as you know? 4 A I don't -- I don't know. I don't know 5 if it's been changed. He doesn't work -- Lackey 6 Hershman doesn't exist anymore. It merged with 7 another firm. 8 Q What firm? 9 A You know what, actually, I think I 10 misspoke. I don't think they merged. I think a 11 firm called Stinson took four or five of the 12 partners into their firm. 13 Q Including Paul Lackey? 14 A Yes. 15 Q Did you fire Mr. Lackey from all the 16 representation he had of your various entities? 17 A No, I don't -- no, I don't believe so. 18 Q You had Mr. Lackey replaced as the 19 person in charge of the litigation of the UBS 20 case, correct? 21 A Yes. Yeah, so we -- yes, we use 22 them -- they ran into a lot of personal midlife 23 issues, a couple of partners, and so we started 24 replacing them on a lot of things. 25 Q In other words, you fired them from</p>
<p>218</p> <p>1 is towards the back of the document, I think right 2 before the signature page. And the schedule for 3 the insurance policy says the insurer is Sentinel 4 Reinsurance, Limited. That was your 5 understanding, correct? 6 A Yes. 7 Q And then it says the "Insured," and it 8 lists three entities, "Highland CDO Opportunity 9 Master Fund, LP," "Highland CDO Holding Company" 10 and "Highland Special Opportunities Holding 11 Company." 12 Do you see that? 13 A Yes. 14 Q Does this refresh your recollection 15 that there were three insureds specifically 16 identified in the policy? 17 A Okay, yeah. I didn't know, but yeah, 18 that seems to say it. 19 Q You're claiming that you never knew 20 before today that all three of those entities were 21 listed as the insureds? 22 A Correct. 23 Q Appointed representative is Paul 24 Lackey. Do you see that? 25 A Yes.</p>	<p>220</p> <p>1 most of the cases they were working on for you, 2 correct? 3 A From -- yes, from a bunch of them. 4 Q And you don't know if you've appointed 5 another representative to replace Mr. Lackey in 6 connection with this insurance policy? 7 A I don't know. 8 Q Do you see where it says "Date of 9 commencement of the Period of Insurance" is 10 August 1st, 2017? 11 A Yes. 12 Q And later on it lists the payment date 13 for the premium as August 31st, 2017, correct? 14 A Yes. 15 Q And that's consistent with your 16 recollection that you were approving this policy 17 in approximately August of 2017, correct? 18 A Yes. 19 Q And then do you see where it says 20 "Legal Action"? 21 A Yes. 22 Q And it specifically identifies "UBS 23 Securities LLC and UBS AG, London Branch versus 24 Highland Capital Management, LP; Highland Special 25 Opportunities Holding Company; Highland Financial</p>

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1 Partners, LP; Highland CDO Opportunity Master  
2 Fund, LP; Highland Credit Opportunities CDO, LP;  
3 and Strand Advisors, Inc., Cause Number  
4 650097/2009."  
5 Do you see that?  
6 **A Yes.**  
7 Q That's the only legal action identified  
8 in this schedule to this insurance policy,  
9 correct?  
10 **A The only one identified on this page,**  
11 **yes.**  
12 Q Well, the previous page -- I'll go to  
13 the previous page so you can see it. The previous  
14 page was page 16 of 16 that had a blank signature  
15 page after the end of the policy terms. Do you  
16 see that?  
17 **A Yep.**  
18 Q And then there is the schedule, and  
19 then the next page after the schedule is the  
20 signed signature page. Do you see that?  
21 **A Yep.**  
22 Q Okay. So are you aware of any other  
23 schedule to this policy other than the one that  
24 identifies only the UBS litigation as the legal  
25 action?

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1 **A I'm not aware of anything else.**  
2 Q And it specifically says the opponent  
3 is UBS Securities LLC and UBS AG, London Branch,  
4 right?  
5 **A Yes.**  
6 Q It says the limit of indemnity is  
7 \$100 million in the aggregate, correct?  
8 **A Yes.**  
9 Q And you had remembered it was a  
10 \$100 million insurance policy, correct?  
11 **A Yes.**  
12 Q Then it says the premium is  
13 \$25 million, right?  
14 **A Yes.**  
15 Q Now, fair to say this policy is  
16 directed at potential liability in connection with  
17 the UBS litigation that's been pending in New York  
18 since 2009, correct?  
19 **A I'm sorry, repeat that, please.**  
20 Q Fair to say that this insurance policy  
21 is specifically directed at potential liability  
22 arising out of the UBS litigation that's been  
23 pending in New York since 2009?  
24 **A I'm going to stay consistent with my**  
25 **testimony that I have said all day that I**

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1 **understood this to be a transitional policy. That**  
2 **was the original intent and how it was described**  
3 **to me. If it ended up taking twists and turns and**  
4 **being more focused, I wasn't aware of. And then I**  
5 **see it's only UBS on the schedule -- on the known**  
6 **schedule addendum here. But I haven't seen this**  
7 **before. I haven't looked through it. We haven't**  
8 **gone through the other pages. Whether or not it**  
9 **references other litigation or tax -- potential**  
10 **tax or other litigation stuff, I don't know. So I**  
11 **can't -- I can't say that this is the only thing**  
12 **it represents. I don't know.**  
13 Q Right. But as you sit here today, you  
14 have no basis to say that this policy is directed  
15 at anything other than UBS other than your pure  
16 speculation or wish, correct?  
17 **A Well, as it was described to me, but**  
18 **also, we haven't gone over the rest of the**  
19 **document. And just maybe this was the only action**  
20 **that was known at the time. I -- I --**  
21 Q Right. And --  
22 **A If you want to ask me about the four**  
23 **corners of this document, it says what it says,**  
24 **and you're right, it says -- that's the only legal**  
25 **action it says, but I can't -- I can't comment on**

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1 **the rest of the policy.**  
2 Q That wasn't my question, to ask you to  
3 comment. We're going to go through the policy,  
4 but that's not what I asked you. So please listen  
5 carefully to my question.  
6 As you sit here right now, you have no  
7 basis to say that this policy is directed at  
8 anything other than the UBS litigation other than  
9 pure speculation or a wish on your part, correct?  
10 MR. TAYLOR: Objection. Misstates his  
11 prior testimony.  
12 **A Yeah, I wouldn't say a wish. That's**  
13 **how it was described to me historically. That's**  
14 **what I remember.**  
15 Q Described to you by Scott Ellington.  
16 **A Yes.**  
17 Q And you're saying that Scott Ellington  
18 said that this policy would cover something beyond  
19 the UBS litigation, correct?  
20 **A Yes, I believe that was -- yes, that's**  
21 **what I remember, and I think that was the original**  
22 **intent.**  
23 Q Yeah, but when you signed it, did  
24 you --  
25 MR. CLUBOK: Strike that.



<p>225</p> <p>1 Q You think it was the original intent, 2 in fact, for the policy to not even have a main 3 purpose as the UBS litigation but to have 4 something else, as you previously have stated, 5 right?</p> <p>6 A <b>Yeah, like I said, to provide 7 transition and windup for the HFP funds and 8 subsidiaries.</b></p> <p>9 Q Yeah, but as you sit here today, other 10 than what Mr. Ellington supposedly told you, you 11 have no basis to support your statement that this 12 policy was directed at anything other than the UBS 13 litigation and potential liability related 14 thereto, correct?</p> <p>15 MR. TAYLOR: Objection to the form of 16 the question.</p> <p>17 A <b>I don't have other knowledge of other 18 cases addressed by this insurance.</b></p> <p>19 Q Okay. And we're going to go to the 20 first page again of the policy, and picking up 21 where we left off, we now know the policy is 22 between the insured and the insurer as declared in 23 the schedule, and that -- we've already covered 24 what the schedule says, correct?</p> <p>25 A <b>Yep.</b></p>	<p>227</p> <p>1 Do you see that?</p> <p>2 A <b>Yes.</b></p> <p>3 Q Now, do you know enough to have a 4 general sense of what that means to you? Is that 5 gibberish to you or do you have an 6 understanding --</p> <p>7 A <b>I mean, I think what it's -- I -- it's 8 not gibberish, but what it's really saying, I 9 think, is there's offsets for legal fees, there's 10 offsets for other expenses and other indemnities 11 or assets -- I -- yeah, you know what, I don't 12 understand. I would need -- I would need an 13 actuary or whoever decides these things to explain 14 it to me.</b></p> <p>15 Q Okay. So then we move on. 1.32 just 16 says that there is additional -- whoops, 17 "Additional clauses set out terms, exclusions or 18 limitations that may apply to more than one 19 insured section." And it says, "The following 20 general terms apply to each insured section." And 21 it lists general exclusions and limitations, 22 duties, general terms, and general definitions.</p> <p>23 Then in the next section, sorry, it 24 says the "Policy period and premium." It says, 25 "The policy will provide insurance for a period of</p>
<p>226</p> <p>1 Q So then it says words in bold have 2 specific meanings. Then it says the "Policy 3 Structure," and I'm going to make it a little bit 4 bigger here.</p> <p>5 It says, "Each insured section sets out 6 the scope of the main coverage and the 7 circumstances in which the insurer's liability to 8 the insured is limited or may be excluded. 9 Further, each insured section," and that's -- 10 "insured section" is in bold, "sets out other 11 terms and conditions relevant to that insured 12 section. The cover provided by each insured 13 section is only operative if a limit of indemnity 14 is shown in the schedule. Where the limit of 15 indemnity in respect of any item in the schedule 16 is shown as 'n/a,' 'not applicable' or 'not 17 insured,' then no cover applies for that item. 18 Where the insured comprises more than one person, 19 the limit of indemnity for all claims made by all 20 persons comprising the insured shall apply, but as 21 there is no sublimit of indemnity in relation to 22 each individual person, one or more of those 23 persons will not receive payment of a claim if the 24 limit of indemnity has already been met as a 25 result of the payment of other claims."</p>	<p>228</p> <p>1 insurance provided the premium and other charges 2 are paid." And the premium is \$25 million, 3 correct?</p> <p>4 A <b>That's what it said on the schedule, 5 yes.</b></p> <p>6 Q Okay. We're going to skip down to 7 "Insured section," where it says, "Legal 8 liability," and under "Insured section - Legal 9 liability," it says, "The insurer agrees to 10 indemnify the insured in respect of any legal 11 liability occurring during the period of insurance 12 up to and including but not exceeding the limit of 13 indemnity provided that either the Court (or any 14 appellate court to which the Court's judgment in 15 the legal action is appealed) makes an order of 16 liability relating to the legal action against the 17 insured; or the legal action is (with the prior 18 written agreement of the insured, the appointed 19 representative and the insurer) settled on terms 20 that provide for payment by the insured to the 21 opponent."</p> <p>22 Do you see that?</p> <p>23 A <b>Yes.</b></p> <p>24 Q And when it talks about the legal 25 action, that's a -- "legal action" is a bold</p>

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1 phrase, correct?  
2 **A Yes.**  
3 Q And on the schedule that we looked at  
4 before, which I'm going to skip back to, the legal  
5 action lists the UBS legal action and nothing  
6 else, correct?  
7 **A Yes.**  
8 Q So, do you know if a claim has ever  
9 been made under this policy?  
10 **A I have no idea.**  
11 Q Do you know if there has been any  
12 payments authorized under this policy?  
13 **A I have no idea.**  
14 Q You say you have no idea. Isn't it  
15 true you have authorized payments under this  
16 policy before?  
17 **A I'm willing to be refreshed. Do you**  
18 **mean payment of legal fees or -- I'm willing to be**  
19 **refreshed.**  
20 Q Yeah, have you authorized payment of  
21 legal fees pursuant to this policy?  
22 **A I don't remember. I mean, it sounds**  
23 **logical, but I don't remember.**  
24 Q And you have no idea if a claim has  
25 ever been made under this policy?

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1 **A I have no idea.**  
2 Q You know that this policy on its face  
3 applies to legal liability in connection with the  
4 UBS litigation in New York, correct?  
5 **A Generally, I guess, or maybe that's**  
6 **what you mean by "on its face." But whether and**  
7 **how a claim is paid or whether it's bona fide, you**  
8 **know, there's a whole cottage industry that**  
9 **develops up around that. We --**  
10 Q Have you made any -- oh, sorry. You  
11 can continue.  
12 **A No, I was just going to say we've tried**  
13 **to collect on insurance before too and it's not**  
14 **easy.**  
15 Q Insurance companies don't make it easy  
16 sometimes, correct?  
17 **A That's right.**  
18 Q And is that Sentinel Re's policy, to  
19 not make it easy for someone to collect on a  
20 premium -- on a policy?  
21 MR. TAYLOR: Objection to the form of  
22 the question.  
23 **A No, I'm not making a comment. I'm just**  
24 **saying, especially on a large policy, the**  
25 **insurance company, I think, is always going to**

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1 **make sure it's a bona fide claim.**  
2 Q When you authorized this policy, did  
3 you expect that it could be difficult to collect  
4 under the terms of the policy, given what you have  
5 said about insurance companies?  
6 **A I don't remember having any thoughts on**  
7 **that subject.**  
8 Q How much total legal fees have been  
9 paid out pursuant to this policy?  
10 **A I have no idea.**  
11 MR. CLUBOK: We're going to turn to  
12 what's been -- what's behind Tab number 3, and I  
13 believe it is Exhibit number --  
14 REMOTE TECH: That would be 31.  
15 MR. CLUBOK: 31. Thank you.  
16 (Deposition Exhibit 31 marked for  
17 identification.)  
18 Q We are going to turn to Exhibit 31,  
19 which is a letter from McKool Smith dated  
20 October 19th, 2018, from Gary Cruciani to Jim  
21 Dondero.  
22 Now, do you -- you recall the UBS trial  
23 occurred in late summer of 20-- -- or in the summer  
24 of 2018, correct?  
25 **A Okay.**

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1 Q Did you pay attention to the trial when  
2 it was going on?  
3 **A No.**  
4 Q Did you ever get a report of how the  
5 trial went after it was concluded?  
6 **A Not that I remember.**  
7 Q But you got a report when the decision  
8 was handed down by the judge awarding over a  
9 billion dollars, including interest, correct?  
10 **A You mean the more recent case? Is that**  
11 **what you're -- the 2020 case?**  
12 Q It was in the end of 2019, I believe.  
13 In November of 2019 there was a decision issued in  
14 that case, right after you had gone into  
15 bankruptcy, a few weeks later, in which a decision  
16 was handed down awarding over a billion dollars,  
17 including interest.  
18 Do you remember that?  
19 **A Yes.**  
20 Q And before that decision was handed  
21 down but after the case was tried, so when people  
22 didn't know what the result was, Mr. Cruciani  
23 wrote to you and asked you to pay the legal fees  
24 that had been incurred from trying the case. Do  
25 you remember that?

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1 **A I do not remember, but refresh me. I'm**  
2 **okay.**  
3 Q Okay. So I'm showing you Exhibit 31,  
4 and it lists a number of different actions. It  
5 says, "Re: Redeemer Committee versus Highland  
6 Capital, the Delaware Action."  
7 **A Yeah.**  
8 Q Then "Redeemer Committee versus  
9 Highland Capital, the Crusader Arbitration." Then  
10 it lists the UBS case, which they call "the UBS  
11 Case," in New York. Then they list the case of  
12 Highland versus Acis, which they call "the  
13 Terry/162 case" -- or "Terry/162nd Case." And  
14 then they list the case against Alvarez and  
15 Marsal, which they call "the A&M Case."  
16 Do you see that?  
17 **A Yes.**  
18 Q The letter that's been marked as  
19 Exhibit 31 from Gary Cruciani of McKool Smith  
20 references five separate actions.  
21 Do you see that?  
22 **A Yes.**  
23 Q And Mr. Cruciani says to you,  
24 "Mr. Dondero, With regard to the fees and expenses  
25 that McKool Smith has incurred in the

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1 above-referenced cases, and has billed to Highland  
2 Capital Management, LP and its affiliates  
3 (collectively, 'Highland'), Highland agrees to pay  
4 amounts according to the following schedule  
5 towards the balances owed by Highland. The  
6 Payment Schedule will apply toward the invoiced  
7 balances but shall not be in satisfaction of the  
8 entire amounts. Payments made pursuant to the  
9 Payment Schedule will be without waiver or  
10 prejudice to the entitlement to payment on  
11 remaining unpaid balances" and Highland's right to  
12 contest it, et cetera.  
13 And then there is a payment schedule  
14 which says that Highland will pay McKool Smith  
15 \$2 million by October 31st, 2018, another  
16 \$2 million by November 30th, 2018, and a third  
17 \$2 million by December 31st, 2018.  
18 Do you see that?  
19 **A Yes.**  
20 Q And a little bit farther down it says,  
21 "Agreed on behalf of Highland Capital Management,  
22 LP by Strand Advisors, its general partner," and  
23 it's signed by you.  
24 Do you see that?  
25 **A Yes.**

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1 Q Do you remember negotiating this  
2 payment schedule with Mr. Cruciani?  
3 **A Not specifically.**  
4 Q Mr. Cruciani was a lawyer that you  
5 hired to help you in these five cases that he  
6 identifies in the Re line in Exhibit 31, right?  
7 **A Yes.**  
8 Q And did you think Mr. Cruciani did a  
9 good job for you?  
10 **A It depends matter by matter. I think**  
11 **they know they were weak on the Acis matter, but**  
12 **that might have been Jernigan related.**  
13 Q How about the UBS case?  
14 **A I don't have an opinion. I don't**  
15 **remember.**  
16 Q Okay. But you -- when Mr. Cruciani  
17 sent you this letter, the schedule had already  
18 been agreed upon and he is just sending this to  
19 confirm it, correct?  
20 **A That's right. It would have been**  
21 **negotiated by Ellington and the legal team. I**  
22 **didn't -- I just signed it.**  
23 Q But you signed off on this schedule  
24 that would pay him approximately \$6 million  
25 between October 31st, 2018 and December 31st, 2018

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1 for those five cases that he notes at the top of  
2 Exhibit 31, correct?  
3 **A Yes.**  
4 Q And then you -- there's a note. It  
5 looks like it might have been a Post-it Note that  
6 got copied that says "50/50 Sentinel." Do you see  
7 that?  
8 **A Yes.**  
9 Q Is that your handwriting?  
10 **A No.**  
11 Q Do you know whose it is?  
12 **A No.**  
13 Q Did you ever direct Sentinel to take  
14 responsibility for some of this payment schedule  
15 that you agreed to in Exhibit 31 with  
16 Mr. Cruciani?  
17 **A No. I wouldn't have been the one that**  
18 **decided legal fee allocations.**  
19 Q Now, how much of that \$6 million was as  
20 a result of the UBS case as opposed to all the  
21 other cases? Any idea?  
22 **A No idea.**  
23 Q Any idea, rough percentage? Is it half  
24 the amount? Is it two thirds of the amount? Is  
25 it --

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1 **A No idea.**  
2 Q -- 10 percent?  
3 **A No idea.**  
4 Q Any clue?  
5 **A No idea.**  
6 Q Did you ever make any effort to find  
7 out?  
8 **A No. It's not -- it wasn't my job to**  
9 **allocate legal fees between, you know, items.**  
10 Q Do you know if Sentinel ever paid for  
11 part of the legal fees that McKool Smith agreed to  
12 under this payment schedule in Exhibit 31?  
13 **A If it was allocated, it would have**  
14 **paid. I know McKool -- I know we did pay McKool**  
15 **according to that schedule.**  
16 Q What do you mean, "if it was  
17 allocated"? What does that mean?  
18 **A Well, I'm just saying whoever did the**  
19 **accounting in legal or accounting, if they said**  
20 **X percent was going to be paid by one entity and**  
21 **Y percent was going to get paid by another and**  
22 **Z percent was going to get paid by another, they**  
23 **would have kept to that schedule. And I know**  
24 **McKool Smith was paid the monies outlined here.**  
25 Q And who would have had the respons- --

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1 who would have had the authority to tell Sentinel  
2 they've got to pay a certain allocation of these  
3 fees?  
4 **A Whoever was doing legal fee expense**  
5 **allocations at the time.**  
6 Q Who was that?  
7 **A It would have been somebody in -- it**  
8 **would have either been Ellington or somebody on**  
9 **his team.**  
10 Q The policy, though -- of these five  
11 actions that are identified here, the only one  
12 that's covered by the policy is the UBS case,  
13 correct?  
14 MR. TAYLOR: Objection to the form of  
15 the question.  
16 **A Okay. Yeah, I -- yes, I can see UBS**  
17 **only referenced in the third of the five.**  
18 Q My question is, is it the case that --  
19 MR. CLUBOK: Strike that.  
20 Q There are five matters listed here on  
21 Exhibit 31 that Mr. Cruciani is asking for legal  
22 fees and you're agreeing to pay a total of  
23 \$6 million to, correct?  
24 **A Right.**  
25 Q And of those five, the only one that is

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1 covered by the insurance policy that we have been  
2 talking about today is the UBS case, correct?  
3 **A Yes.**  
4 Q Do you know if Isaac Leventon had  
5 authority to authorize payments from Sentinel Re  
6 to pay for legal fees or costs associated with the  
7 UBS litigation?  
8 **A I don't know.**  
9 Q Would Scott Ellington know? Or would  
10 you expect Scott Ellington to know, I should say?  
11 **A Yes.**  
12 Q Would J.P. Sevilla have anything to do  
13 with arranging for Sentinel Re to pay legal fees  
14 or expenses associated with the UBS litigation, as  
15 far as you know?  
16 **A I don't know.**  
17 Q Would you expect Scott Ellington to be  
18 aware of whether or not Isaac Leventon and J.P.  
19 Sevilla had that authority?  
20 **A Yes, I believe Scott would know.**  
21 Q Do you know your legal team stayed at  
22 the Four Seasons for the UBS litigation?  
23 **A No, I did not know that.**  
24 Q Did they deserve to stay at the Four  
25 Seasons?

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1 **A You know, not based on results to date.**  
2 Q Okay. Let's look at the document  
3 behind Exhibit -- I'm sorry, behind Tab 12, which  
4 has previously been marked as Exhibit 2.  
5 MR. TAYLOR: While we're waiting for  
6 that to pull up, can I get a time check, please?  
7 And I'm going to have, like, five minutes of  
8 questions at the end.  
9 THE VIDEOGRAPHER: Yes, sir. We're at  
10 5 hours and 9 minutes.  
11 MR. TAYLOR: Thank you.  
12 MR. CLUBOK: Plenty of time.  
13 THE WITNESS: You heard me?  
14 MR. CLUBOK: For what it's worth, I  
15 don't think I'll use all that time, Jim, but we'll  
16 keep plugging away. We're making good headway  
17 now. Although I reserve the right to respond and  
18 ask more questions after I hear what Clay has to  
19 say. So I'll save a little bit of time for that.  
20 Q This is -- I'm looking at what's been  
21 marked as Exhibit 2. And I'm going to show you  
22 first the signature page. And do you see where it  
23 says "Seller, Highland CDO Opportunity Master  
24 Fund, by," several entities and ultimately signed  
25 by you as president of Strand Advisors?

<p style="text-align: right;">241</p> <p>1 <b>A Yep.</b> 2 Q Is that your signature? 3 <b>A Yep.</b> 4 Q And did you have authority to sign on 5 behalf of those entities that are listed there 6 under "Seller"? 7 <b>A I believe so.</b> 8 Q And same thing with -- is that also 9 your signature for Highland CDO Opportunity Fund, 10 Limited and Highland CDO Holding Company on this 11 same document? 12 <b>A Yes.</b> 13 Q And you had authority to sign on behalf 14 of those entities as well? 15 <b>A I believe so.</b> 16 Q And then it's also got Highland Special 17 Opportunities Holding Company. Same thing? You 18 had authority to sign on behalf of that entity at 19 the time? 20 <b>A I believe so.</b> 21 Q And then it continues with some other 22 entities on this document, including Highland 23 Financial Corp. Do you see that? 24 <b>A Yep.</b> 25 Q Did you have authority to sign on</p>	<p style="text-align: right;">243</p> <p>1 Reinsurance and each of Highland CDO Opportunity 2 Master Fund, LP; Highland CDO Holding Company and 3 Highland Special Opportunities Holding Company 4 (together, 'Sellers')." 5 Do you see that? 6 <b>A Yes.</b> 7 Q Now, that's what it says up there. And 8 then it says that "Sellers are each a party in a 9 lawsuit styled UBS Securities LLC and UBS AG, 10 London Branch versus Highland Capital Management," 11 et cetera. And that's defined as the "Lawsuit." 12 Do you see that? 13 <b>A Yes.</b> 14 Q And it says, "Whereas, Sellers desire 15 to purchase a Legal Liability Insurance Policy 16 relating to Sellers' potential liability in the 17 Lawsuit" -- capital L, Lawsuit -- "in form 18 substantially as set forth in Exhibit A hereto 19 (the 'Policy')." 20 Do you see that? 21 <b>A Yep.</b> 22 Q Now, does that mention anything about 23 any other litigation? 24 <b>A No.</b> 25 Q Does it mention anything about</p>
<p style="text-align: right;">242</p> <p>1 behalf of Highland Financial Corp. at this time? 2 <b>A I believe so.</b> 3 Q And same thing with Highland Financial 4 Partnership, or HFP? 5 <b>A I believe so.</b> 6 Q So you signed on behalf of all these 7 different entities as the seller for this purchase 8 agreement. Do you see that? 9 <b>A Yes.</b> 10 Q And then the purchaser was an entity -- 11 was Sentinel Reinsurance. Do you see that? 12 <b>A Yes.</b> 13 Q And it was signed by Andrew Dean, 14 right? 15 <b>A Yes.</b> 16 Q Did you ever talk to Andrew Dean about 17 this agreement? 18 <b>A No.</b> 19 Q Have you ever met Andrew Dean? 20 <b>A I don't believe so.</b> 21 Q Have you ever spoken with Andrew Dean? 22 <b>A Not that I can recall.</b> 23 Q Going back to the beginning, this 24 purchase agreement was dated August 7th, 2017, and 25 it was "entered into by and among Sentinel</p>	<p style="text-align: right;">244</p> <p>1 transition services of any kind? 2 <b>A No.</b> 3 Q Does it mention anything about dealing 4 with regulators or dealing with the IRS or dealing 5 with taxes or anything else like that? 6 <b>A No.</b> 7 Q The only reason given for purchasing 8 the legal liability insurance policy is related to 9 the Highland affiliated entities' potential 10 liability in the UBS lawsuit, correct? 11 <b>A Yes.</b> 12 Q And the purchaser under this agreement 13 is an insurance company that is able to provide 14 the sellers insurance coverage pursuant to the 15 terms of the requested policy. Do you see that? 16 <b>A Yes.</b> 17 Q And the policy you understand is the 18 one we have been talking about today, correct? 19 <b>A Yes.</b> 20 Q And then it talks about a payment of 21 premium, and it says the "Purchaser," which is 22 Sentinel Reinsurance, "agrees to accept the assets 23 listed in Schedule A as 100 percent payment of the 24 Premium" -- capital P -- "including any as yet 25 unpaid or contingent financial proceeds or other</p>

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1 benefits related thereto."  
2 Do you see that?  
3 **A Yes.**  
4 Q And, remember, the premium was supposed  
5 to be \$25 million, correct?  
6 **A Yes.**  
7 Q Then it says this is the entire  
8 agreement. It says you can only amend it in  
9 writing. It says you can execute in counterparts.  
10 It says the governing law is the Cayman Islands.  
11 And then it says, "Further Assurances," the  
12 parties agree to do the other things necessary to  
13 execute this agreement. Do you see that?  
14 **A Yes.**  
15 Q And before you signed on behalf of all  
16 these entities, did you make any effort to figure  
17 out what you were signing?  
18 **A No, not beyond that. It was all tied**  
19 **together, I guess.**  
20 Q All tied together with the insurance  
21 policy issuance, correct?  
22 **A Yes.**  
23 Q And it referenced a schedule of what  
24 was being purchased, and I'm going to scroll down  
25 in the document to the page that's entitled

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1 "Schedule A" of Exhibit 2, and this is -- it will  
2 be probably a little bit hard to read. I'm going  
3 to scroll down part of the time so we can keep it  
4 large enough for you to read it on the screen.  
5 But I can change the size if you want to see the  
6 whole thing. I'll change the size briefly so you  
7 can see the whole page and then I'll make it  
8 smaller so you can -- or make it bigger so you can  
9 read it more carefully on the screen.  
10 So Schedule A has two pages, and it  
11 lists a series of assets. Do you see that?  
12 **A Yes.**  
13 Q And these were the assets that this  
14 purchase agreement specifically said are being  
15 transferred from the various Highland affiliates  
16 as satisfaction of the \$25 million premium for the  
17 insurance policy, correct?  
18 **A Yes. Yes.**  
19 Q Let me ask you about some of these  
20 assets. Do you know what "Aberdeen LN FDG LTD  
21 PFD" is?  
22 **A Yeah, some of these are old CLO pieces.**  
23 Q Okay. Do you know specifically -- I  
24 asked you about the first one, the Aberdeen  
25 entity --

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1 MR. CLUBOK: Or strike that.  
2 Q The Aberdeen asset. Do you recognize  
3 that asset?  
4 **A I just -- I recognize the name. It's**  
5 **an old CLO.**  
6 Q Do you know what the fair market value  
7 was at the time it was transferred as part of  
8 the --  
9 **A No.**  
10 Q -- sales option, the \$25 million  
11 premium for the insurance policy?  
12 **A No.**  
13 Q Did you make any effort to figure out  
14 the fair market value of the Aberdeen asset at the  
15 time it was transferred?  
16 **A No.**  
17 Q How about the Southfork CLO? Same  
18 answer?  
19 **A Yes.**  
20 Q Same answer for the -- well, there's  
21 another Aberdeen asset. It looks like it's the  
22 same one, although it's a different ISIN number.  
23 What does the ISIN number mean? Is that like a  
24 CUSIP number?  
25 **A Yeah, it's an identification number for**

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1 **things that aren't CUSIP eligible, I think.**  
2 Q If there's different ISINs for the two  
3 different Aberdeens, does that mean they're  
4 different tranches or something? Or why would  
5 there be different ISINs for the two different  
6 Aberdeen assets?  
7 **A That's what I would guess, but I don't**  
8 **know.**  
9 Q Okay. Do you -- so I'm going to go  
10 from the assets from Aberdeen down to Greenbriar.  
11 So the first six assets listed here, fair to say  
12 you have no idea what their fair market values  
13 were at the time of the transfer?  
14 **A Correct.**  
15 Q And you made no effort to find that  
16 out, correct?  
17 **A Correct.**  
18 Q And then there's two line entries for  
19 Highland Financial Partners LP and Highland  
20 Financial Partners LP NPV. Do you know what that  
21 refers to?  
22 **A No.**  
23 Q Would those be interests in Highland  
24 Financial Partners?  
25 **A I don't know.**

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1 Q Okay. Do you have any idea what the  
2 fair market value of those interests were at that  
3 time?  
4 **A No.**  
5 Q How about Longstreet CDO or NexPoint  
6 C COM? Any idea of the fair market value of those  
7 assets?  
8 **A Nope.**  
9 Q Pam Cap FDG LP? Does that ring a bell?  
10 **A That was one of our -- that was in '98.**  
11 **That was one of our first large CLOs. I think**  
12 **that was 1998.**  
13 Q Any idea what it was worth at the time  
14 of this transfer?  
15 **A Cents. Cents on the dollar.**  
16 Q How about -- what's FRN?  
17 **A I don't know. Floating rate note, I'm**  
18 **guessing. I don't know.**  
19 Q What's a floating rate note?  
20 **A Sometimes CLO tranches are referred to**  
21 **as floating rate notes.**  
22 Q Okay. Any idea what the fair market  
23 value of that floating rate note would have been  
24 at the time of this transfer?  
25 **A I don't know which tranche it is. It**

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1 **says -- is that 0 point -- I don't know. I think**  
2 **it is the equity tranche, but I don't -- I don't**  
3 **know.**  
4 Q How come there is no ISIN next to FRN?  
5 **A I don't know.**  
6 Q Any idea how the value of that asset  
7 would compare with the par value?  
8 **A I have no idea.**  
9 Q Touse Inc.? Any idea about that one?  
10 **A No.**  
11 Q Valhalla or Vertical? Any idea about  
12 those assets, what they were or how much they were  
13 worth at the time of the transfer?  
14 **A No idea. Those are CLOs, but I**  
15 **don't -- I mean, I don't know what Vertical is.**  
16 **That wasn't one of our deals. Valhalla was one of**  
17 **our old deals.**  
18 Q Was it -- did it lose value before it  
19 closed?  
20 **A I have no idea.**  
21 Q Then we get to Highland Credit  
22 Opportunities CDO Limited Partnership Interest.  
23 Do you see that?  
24 **A Yes.**  
25 Q Now, Highland Credit Opportunities is

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1 an entity that's now called Multi Strat, correct?  
2 **A I don't know.**  
3 Q Do you know if Highland Credit  
4 Opportunities changed its name at some point to  
5 Multi Strat?  
6 **A I don't know. I've heard that**  
7 **recently, but I don't know that to be true.**  
8 Q Well, do you know if Highland Credit  
9 Opportunities ever changed its name?  
10 **A I don't know. I mean, I'm willing to**  
11 **be educated, but I don't know.**  
12 Q You've heard of the entity that I've  
13 shorthand called Multi Strat, right?  
14 **A Yes.**  
15 Q Was Multi Strat always called Multi  
16 Strat?  
17 **A I -- we tried to clean up a lot of**  
18 **funds that were small, and, you know, we tried to**  
19 **aggregate assets and strategies after the '08**  
20 **crisis, but I don't remember all of the name**  
21 **changes.**  
22 Q Okay. By the way, I should have  
23 mentioned that all the assets I'm talking about  
24 now on Schedule A of Exhibit 2 are under a big  
25 bold, heading, "Highland CDO Opportunity Master

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1 Fund, LP." Do you see that?  
2 **A Yes.**  
3 Q And there's other entities that have  
4 assets, but we'll get to those in a minute. I'm  
5 just going to continue through the CDO -- Highland  
6 CDO Opportunity Master Fund, LP assets.  
7 And did you know that Highland CDO  
8 Opportunity Master Fund at one point had an  
9 interest in Highland Credit Opportunities?  
10 **A I don't know.**  
11 Q Look, you -- you've offered settlements  
12 in this case that relate to interest in Multi  
13 Strat, correct?  
14 **A Yeah, but that wasn't because of this.**  
15 Q I understand, but just to get the names  
16 straight, you know that Multi Strat was once the  
17 entity that -- without getting all the acronyms at  
18 the end exactly right -- was loosely called  
19 Highland Credit Opportunities or Highland Credit  
20 Opps, right?  
21 **A See, that's what I don't know. I mean,**  
22 **we have offered settlements out of Multi Strat**  
23 **before, but it's because of the life settlements,**  
24 **not because of this.**  
25 Q No, no, but I'm saying -- I'm just

<p>253</p> <p>1 talking about the name. You know -- you have 2 recently -- you recently caused people at Highland 3 to get you the redeemers from Multi Strat, and 4 fair to say that when you did that, you knew that 5 what is now called Multi Strat used to be called 6 an entity that was known as Highland Credit 7 Opportunities; isn't that true? 8 <b>A I don't remember.</b> 9 MR. TAYLOR: Andy, that's been asked 10 and answered, like, five times now, in a row. 11 Q So continuing on the Schedule A, the 12 Highland CDO Opportunity Master Fund assets that 13 were transferred to Sentinel Reinsurance for 14 satisfaction, in part, of the \$25 million premium, 15 do you see there is an entry for "NexPoint Real 16 Estate Strat -Z"? 17 <b>A Yes.</b> 18 Q Do you know what that's worth? 19 <b>A Nope. No, I do not.</b> 20 Q Then there's a Highland Gemini Program 21 \$2.4 million promissory note from the Dugaboy 22 trust as maker and cash of 599,000. 23 Do you see that? 24 <b>A Yes.</b> 25 Q Now, you know what the cash was worth.</p>	<p>255</p> <p>1 100 percent payment of the Premium," which was 2 \$25 million, correct? 3 <b>A Yes.</b> 4 Q Okay. So going back to Schedule A, all 5 of these assets together on Schedule A were to 6 satisfy the \$25 million premium for the insurance 7 policy we have been talking about today, right? 8 <b>A Yes.</b> 9 Q And part of that was \$599,000 in cash 10 from Highland CDO Opportunity Master Fund, right? 11 <b>A Yes.</b> 12 Q And that \$599,000 in cash would have 13 been a liquid asset that was being transferred as 14 partial payment of the premium, correct? 15 <b>A Yes.</b> 16 Q And how about that \$2.4 million 17 promissory note from Dugaboy Investment Trust? 18 Did Dugaboy pay that note, satisfy that note? 19 <b>A Yes.</b> 20 Q So -- and Dugaboy -- do you know if 21 Dugaboy is not going to make good on that note? 22 <b>A I don't know.</b> 23 Q Has Dugaboy made good on that note? 24 <b>A I don't know.</b> 25 Q Do you have any basis to believe that</p>
<p>254</p> <p>1 The cash was worth \$599,999, correct? 2 <b>A Yes.</b> 3 Q So that's not -- that would be a very 4 liquid asset that was held at CDO Opportunity 5 Master Fund prior to the transfer to pay for the 6 premium, correct? 7 <b>A I don't know.</b> 8 Q You don't know if cash is liquid? 9 <b>A No, I know cash is liquid. I don't 10 know if that was used to pay the premium. I don't 11 know.</b> 12 Q Oh. Well, this is -- what we're 13 looking at here on Exhibit 2 is the purchase 14 agreement, and it says that the "Purchaser agrees 15 to accept the assets listed in Schedule A hereto 16 as 100 percent payment of the premium." It is the 17 document you signed on behalf of all of these 18 different entities. 19 Do you see that under "1. Payment of 20 Premium" in this purchase agreement which has been 21 marked as Exhibit 2? 22 <b>A Yes, I see that.</b> 23 Q Okay. And it says that "Purchaser" -- 24 that's Sentinel Reinsurance -- "agrees to accept 25 the assets listed in Schedule A hereto as</p>	<p>256</p> <p>1 they have some excuse for not making good on that 2 note, as you sit here today? 3 <b>A I do not.</b> 4 Q So you would expect that 2.4 million to 5 be worth \$2.4 million? 6 <b>A I don't know. I don't know the terms 7 of it. I don't know the -- I don't know the 8 terms, the tenor. I don't know -- I don't know.</b> 9 Q Okay. What's Cambridge 5 times 10 FLOATING? 11 <b>A I do not know.</b> 12 Q No idea what that asset refers to? 13 <b>A It's not one of our old CLOs. I don't 14 know what it is.</b> 15 Q Okay. And then you see there's "Cash," 16 and there's another 7.8 -- nearly \$7.8 million in 17 cash in addition to the 600,000 previously 18 discussed, right? 19 <b>A Yep. Sure.</b> 20 Q So that's a total of about \$8.4 million 21 in cash from CDO Opportunity Master Fund as 22 partial payment of the \$25 million premium, right? 23 <b>A Yes.</b> 24 Q And that 8.4 million is completely 25 liquid, right?</p>



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1 **A Yes.**  
2 Q So when Highland CDO Opportunity Master  
3 Fund had \$8.4 million in cash and it gave it to  
4 Sentinel for about a third of the premium, was  
5 that making that 8.4 million more liquid or less  
6 liquid?  
7 **A I--**  
8 Q Was CDO Opportunity Master Fund more or  
9 less liquid after this transfer of all of its  
10 assets plus \$8.5 million in cash?  
11 MR. TAYLOR: Objection to the form.  
12 **A I-- I--**  
13 Q Yeah, sorry. To be clear, it's  
14 approximately \$8.4 million in cash. Was CDO  
15 Opportunity Master Fund more or less liquid after  
16 transferring all of these assets listed on  
17 Schedule A, including the roughly \$8.4 million in  
18 cash?  
19 **A I don't -- I don't know. I don't know**  
20 **what the payables -- I don't know what the legal**  
21 **fees were that were accrued. I don't -- you don't**  
22 **know enough of what else is happening at the CDO**  
23 **Master Fund or the rest of HFP. I mean, it could**  
24 **have \$10 million of legal expenses. I just don't**  
25 **know.**

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1 Q As you sit here today, are you aware of  
2 any such legal expenses that CDO Fund transferred  
3 to Sentinel Re?  
4 **A No, I don't. But to the extent that we**  
5 **don't, we don't know whether the cash is spoken**  
6 **for or not.**  
7 Q Okay. By the way, the Highland CDO  
8 Opportunity Fund has another 2.3 million in cash.  
9 Do you see that?  
10 **A Yes.**  
11 Q So now the total cash that's being  
12 transferred to Sentinel Re is over 10 and a half  
13 million dollars, right?  
14 **A Yes.**  
15 Q So that's higher than the threshold  
16 above which you said it would be material as part  
17 of this transaction, correct?  
18 **A I-- obviously, this transaction**  
19 **changed a lot. This transaction does not, you**  
20 **know, correspond with my recollection.**  
21 Q Right. But you would agree that the  
22 fact that there is at least 10 and a half million  
23 dollars in cash being transferred as partial  
24 payment of a \$25 million premium reflects the fact  
25 that cash was a very material part of the payment

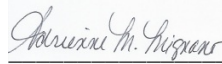
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1 for the premium, correct?  
2 **A No, I-- Andy, I can't say that, and I**  
3 **won't say that because we don't know what**  
4 **outstanding bills might have been due. I mean, I**  
5 **doubt they were 30 million of legal expenses, but**  
6 **if we don't know what they are -- let's say they**  
7 **were 30 million of legal expenses. Then there is**  
8 **no cash going over, right?**  
9 Q Okay. You have no idea, as you sit  
10 here today, if it would -- that 30 million is a  
11 number you just made up out of thin air; isn't  
12 that true?  
13 **A Well, yeah, but you made up that**  
14 **there's zero legal expenses.**  
15 Q No, I haven't said that yet. And I'm  
16 not going to get into an argument with you, but  
17 that 30 million hypothetical legal fees is a  
18 number you made out of totally thin air, correct?  
19 **A Correct.**  
20 Q What, roughly, were the legal fees then  
21 owed by CDO Fund in August of 2017?  
22 **A I have no idea so I don't want to**  
23 **speculate.**  
24 Q You previously said that the litigation  
25 had been dormant for a while in August of 2017;

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1 isn't that right?  
2 **A But you -- you helped refresh me that**  
3 **it wasn't dormant and there was some significant**  
4 **legal expenses due to McKool and other people,**  
5 **right, so I -- I don't know if it was -- I thought**  
6 **it had been dormant for a number of years. I was**  
7 **wrong. Like I said, I didn't refresh myself on**  
8 **this case before the depo so ...**  
9 Q You're not aware of any legal fees that  
10 were owed as of the time of this insurance policy,  
11 as you sit here today; is that true?  
12 **A I have no awareness, correct, of**  
13 **whether there were zero or 30 million or**  
14 **10 million or 5 million.**  
15 Q Well, you have no basis -- you know  
16 they weren't 30 million, right?  
17 **A I think you -- you charged UBS**  
18 **45 million. I mean, they could have been. Right?**  
19 **I mean, the last time we saw -- the last time we**  
20 **saw Latham's bills to UBS, it was 42 or**  
21 **44 million, right?**  
22 Q You know, as you sit here today, that  
23 you never paid your lawyers anything like  
24 \$30 million for the UBS litigation; isn't that  
25 true?

<p style="text-align: right;">261</p> <p>1 <b>A I don't know.</b></p> <p>2 Q Well, do you think in good faith, under</p> <p>3 oath, that you paid your lawyers something like</p> <p>4 \$30 million for the UBS litigation?</p> <p>5 <b>A I'm saying, Andy, I have no idea. I</b></p> <p>6 <b>think there's been -- I think we've over the years</b></p> <p>7 <b>had three or four different law firms working on</b></p> <p>8 <b>UBS. I don't know what they totaled.</b></p> <p>9 Q Okay. Let's continue with what was</p> <p>10 transferred for the insurance policy pursuant to</p> <p>11 Schedule A.</p> <p>12 We now have an entity called "Highland</p> <p>13 CDO Holdings Company." Do you see that?</p> <p>14 <b>A Uh-huh.</b></p> <p>15 Q Is that a yes?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And did that entity -- that's a</p> <p>18 subsidiary of Highland Financial Partners?</p> <p>19 <b>A I don't know.</b></p> <p>20 Q Was -- okay.</p> <p>21 Well, you see that there's a number of</p> <p>22 assets transferred. Fair to say you have no idea</p> <p>23 about the value of "HFT Real Estate," the first</p> <p>24 asset?</p> <p>25 <b>A Correct.</b></p>	<p style="text-align: right;">263</p> <p>1 600,000, plus another \$539,000, for a total of</p> <p>2 over \$11 million just on the first page of</p> <p>3 Schedule A, correct?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And then on the second page we can see</p> <p>6 there is another 539,000 of cash that's being</p> <p>7 transferred from Highland CDO Holdings Company,</p> <p>8 right?</p> <p>9 <b>A Yep.</b></p> <p>10 Q And then there is another \$300,000 in</p> <p>11 cash from Highland Special Opportunities Holding</p> <p>12 Company, right?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And there is another \$80,000 in cash</p> <p>15 from Highland Financial Corp.?</p> <p>16 <b>A Yep.</b></p> <p>17 Q And a tax fund receivable?</p> <p>18 <b>A Yep.</b></p> <p>19 THE WITNESS: Hey, Andy, I'm going to</p> <p>20 have to put a break on this. I'm getting tired.</p> <p>21 We can revisit tomorrow but --</p> <p>22 MR. CLUBOK: Okay. You want to revisit</p> <p>23 tomorrow, huh?</p> <p>24 Let's go off the record.</p> <p>25 THE VIDEOGRAPHER: Off record. 8:35.</p>
<p style="text-align: right;">262</p> <p>1 Q Or the second asset -- the NexPoint</p> <p>2 assets, you have no idea what the value of those</p> <p>3 were at the time of this transfer?</p> <p>4 <b>A Correct.</b></p> <p>5 Q Same with the -- how about the Highland</p> <p>6 Park C 4.93867 asset?</p> <p>7 <b>A Correct.</b></p> <p>8 Q What about the 25 November 51 -- or</p> <p>9 25NOV51 FRN? Do you know what that was worth?</p> <p>10 <b>A No.</b></p> <p>11 Q How about a promissory note from CLO</p> <p>12 Holdco of \$32 million? Do you know what that is</p> <p>13 all about?</p> <p>14 <b>A Nope.</b></p> <p>15 Q Do you know if that is a note that CLO</p> <p>16 Holdco is capable of paying off?</p> <p>17 <b>A I don't know. I don't know who CLO</b></p> <p>18 <b>Holdco is. Is that the Bermuda entity that we</b></p> <p>19 <b>were talking about earlier? I don't know.</b></p> <p>20 Q Oh, you know what, my colleague has</p> <p>21 noted to me that I missed another cash asset of</p> <p>22 539,000 that's right here. So let's just make</p> <p>23 sure we've totaled up all the cash that was</p> <p>24 transferred. It looks like it was 2.3 million,</p> <p>25 plus 7.7, is a little over 10 million, plus about</p>	<p style="text-align: right;">264</p> <p>1 (A recess was taken.)</p> <p>2 THE VIDEOGRAPHER: On record, 8:40.</p> <p>3 MR. CLUBOK: At Mr. Dondero's request,</p> <p>4 we have agreed to continue the deposition</p> <p>5 Wednesday morning at 8:30 Central Time, sharp.</p> <p>6 Mr. Taylor has an appointment he has got to leave</p> <p>7 for at about 10:15, but we only have a little less</p> <p>8 than an hour and a half left on the record of my</p> <p>9 time, and however much time Mr. Taylor has used,</p> <p>10 so we should be able to get that done.</p> <p>11 But we're agreeing that we're going to</p> <p>12 start on the nose at 8:30, meaning people will be</p> <p>13 in their seats a few minutes before with all the</p> <p>14 technical issues resolved so that we can get</p> <p>15 started right at 8:30, correct?</p> <p>16 MR. TAYLOR: I fully intend on being in</p> <p>17 my seat then. I can't promise everything, but</p> <p>18 yes.</p> <p>19 MR. CLUBOK: And that's correct,</p> <p>20 Mr. Dondero?</p> <p>21 THE WITNESS: Yes, I'll be there.</p> <p>22 MR. CLUBOK: And you understand that</p> <p>23 you will not speak to anybody about the substance</p> <p>24 of this deposition between now and then,</p> <p>25 correct --</p>

<p style="text-align: right;">265</p> <p>1 THE WITNESS: Yep. 2 MR. CLUBOK: -- or review any other 3 documents related the deposition unless we ask you 4 to through your lawyer? 5 THE WITNESS: Yep. 6 MR. CLUBOK: Okay. Let's go off the 7 record. 8 THE VIDEOGRAPHER: The time is 9 8:41 p.m. This suspends today's deposition of 10 James Dondero. We're off the record. 11 THE COURT REPORTER: Counsel, are you 12 ordering a copy of the transcript? 13 MS. GEORGE: Yes, we will take a rough 14 and a five-day expedite for the final. 15 MR. FEINSTEIN: Yes, we would like a 16 copy, regular delivery, with a rough to 17 rfeinstein@pszjlaw.com. 18 MR. TAYLOR: We would like a copy, 19 regular delivery, and a rough to 20 clay.taylor@bondsellis.com. 21 (Time noted: 8:42 p.m.) 22 23 24 25</p>	<p style="text-align: right;">267</p> <p>1 CERTIFICATE OF REPORTER - NOTARY PUBLIC 2 I, ADRIENNE MIGNANO, the officer before 3 whom the foregoing deposition was taken, do hereby 4 certify that the foregoing transcript is a true 5 and correct record of the testimony given; that 6 said testimony was taken by me and thereafter 7 reduced to typewriting under my direction; that 8 reading and signing was requested; and that I am 9 neither counsel for, related to, nor employed by 10 any of the parties to this case and have no 11 interest, financial or otherwise, in its outcome. 12 IN WITNESS WHEREOF, I have hereunto set 13 my hand and affixed my notarial seal this 13th day 14 of MAY, 2021. 15 My Commission Expires: June 2022. 16 17  18 _____ 19 Adrienne Mignano 20 21 22 23 24 25</p>
<p style="text-align: right;">266</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 3 I, JAMES DONDERO, do hereby acknowledge 4 that I have read and examined the foregoing 5 testimony, and the same is a true, correct and 6 complete transcription of the testimony given by 7 me and any corrections appear on the attached 8 Errata sheet signed by me. 9 10 _____ 11 (Date) (Signature) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	



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# Transcript of James Dondero, Volume 2

**Date:** May 12, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of James Dondero, Volume 2  
Conducted on May 12, 2021

1 (268 to 271)

268	270
1 IN THE UNITED STATES BANKRUPTCY COURT	1 A P P E A R A N C E S
2 FOR THE NORTHERN DISTRICT OF TEXAS	2
3 DALLAS DIVISION	3 ON BEHALF OF PLAINTIFFS:
4 -----X	4 ANDREW CLUBOK, ESQUIRE
4 In re : Chapter 11	5 SARAH TOMKOWIAK, ESQUIRE
5 HIGHLAND CAPITAL MANAGEMENT, L.P., Case No:	6 KATHRYN GEORGE, ESQUIRE
6 Debtor : 19-34054-SGJ11	7 LATHAM & WATKINS LLP
7 -----:	8 555 Eleventh Street, NW
8 UBS SECURITIES LLC and UBS AG : Adversary No.	9 Suite 1000
9 LONDON BRANCH, : 21-03020-sgi	10 Washington, District of Columbia 20004
10 Plaintiffs, :	11 (202) 637-2200
11 vs. :	12
12 HIGHLAND CAPITAL MANAGEMENT, L.P.:	12
13 Defendant. :	13
14 -----X	14 ON BEHALF OF DEFENDANT-HIGHLAND CAPITAL MGMT.
15	15 ROBERT FEINSTEIN, ESQUIRE
16 CONTINUED DEPOSITION OF JAMES DONDERO	16 JOHN MORRIS, ESQUIRE
17 VOLUME II	17 GREGORY DEMO, ESQUIRE
18 APPEARING REMOTELY FROM DALLAS, TEXAS	18 JEFFREY POMERANTZ, ESQUIRE
19 WEDNESDAY, MAY 12, 2021	19 PACHULSKI STANG ZIEHL & JONES
20 9:30 A.M. EST	20 780 Third Avenue
21	21 34th Floor
22 Job No.: 372911	22 New York, New York 10017
23 Pages 268 - 344	23 (212)561-7700
24 Reported by: Adrienne Mignano, RPR	24
25 Appearing remotely	25
269	271
1 Continued deposition of JAMES DONDERO, held	1 APPEARANCES (Continued)
2 via Zoom videoconferencing, pursuant to Notice, before	2
3 Adrienne M. Mignano, a Registered Professional	3
4 Reporter and a Notary Public in and for the State of	4 ON BEHALF OF WITNESS
5 New York.	5 CLAY TAYLOR, ESQUIRE
6	6 BONDS ELLIS EPPICH SCHAFFER JONES, LLP
7	7 420 Throckmorton Street
8	8 Suite 1000
9	9 Fort Worth, Texas 76102
10	10 (817)405-6900
11	11
12	12
13	13 ALSO PRESENT:
14	14 Drew Halton - Videographer
15	15 Joshua Tubbs - Remote Technician
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25

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1	C O N T E N T S	1	Today's date is May 12, 2021. Time on
2		2	the video monitor is 9:34 a.m. Eastern. The
3	EXAMINATION OF JAMES DONDERO	3	videographer today is Drew Halton, representing
4	By Mr. Clubok	4	Planet Depos. All participants are attending
5	By Mr. Taylor	5	remotely.
6		6	Would counsel please voice identify
7		7	themselves and state whom they represent.
8	E X H I B I T S	8	MR. CLUBOK: On behalf of UBS, Andrew
9	(Not Attached to the Transcript)	9	Clubok, Sarah Tomkowiak and Kathryn George of
10	DEPOSITION EXHIBIT	10	Latham & Watkins, LLP.
11	Exhibit 32 Transfer agreement between	11	MR. TAYLOR: On behalf of the deponent,
12	Highland CDO Opportunity	12	Jim Dondero, Clay Taylor of Bonds Ellis Eppich
13	Master Fund and Sentinel	13	Schafer & Jones, LLP.
14	Reinsurance dated	14	MR. FEINSTEIN: On behalf of the
15	August 24, 2017	15	defendant, Highland Capital Management, you have
16	Exhibit 33 Document dated August 24, 2017	16	got myself, Robert Feinstein; my colleagues,
17	Exhibit 34 Multi Strat Summary Balance	17	Jeffrey Pomerantz and Greg Demo.
18	Sheet	18	THE VIDEOGRAPHER: The court reporter
19	Exhibit 35 E-mail from Tara Loiben to	19	today is Adrienne Mignano, representing Planet
20	Helen Kim	20	Depos.
21	Exhibit 38 Asset Transfer Agreement	21	Would the reporter please swear in the
22		22	witness.
23		23	
24		24	
25		25	
273		275	
1	REMOTE TECH: Thank you to everyone for	1	Whereupon,
2	attending this proceeding remotely, which we	2	JAMES DONDERO,
3	anticipate will run smoothly. Please remember to	3	having been recalled as a witness and having been
4	speak slowly and do your best not to talk over one	4	duly sworn or affirmed to testify to the truth,
5	another.	5	the whole truth, and nothing but the truth, was
6	Please be aware we are recording this	6	examined and testified as follows:
7	proceeding for back-up purposes. Any	7	EXAMINATION BY COUNSEL FOR THE PLAINTIFF
8	off-the-record discussions should be had away from	8	BY MR. CLUBOK:
9	the computer. Please remember to mute your mic	9	Q Mr. Dondero, when we left off before,
10	for those conversations.	10	we had been talking about the cash that was
11	Please have your video enabled to help	11	transferred as part of the purchase of the legal
12	the reporter identify who is speaking. If you are	12	liability insurance policy that we have been
13	unable to connect with video and are connecting	13	discussing. Do you remember that?
14	via phone, please identify yourself each time	14	<b>A Yes.</b>
15	before speaking.	15	Q And I've got up here what's been marked
16	I apologize in advance for any	16	as Exhibit 2, which is the purchase agreement.
17	technical-related interruptions. Thank you.	17	And, specifically, we're looking at Schedule A,
18	THE VIDEOGRAPHER: Here begins Volume	18	which identifies the assets that were transferred
19	II, Tape Number 1 in the videotaped deposition of	19	as payment of the premium for the insurance
20	James Dondero in the matter of UBS Securities,	20	policy. Do you see that?
21	LLC, et al., versus Highland Capital Management,	21	<b>A Yes.</b>
22	LP, in the U.S. Bankruptcy Court, Northern	22	Q And just going to the cash very
23	District of Texas, Dallas Division, Chapter 11,	23	quickly, it looks like there was approximately
24	Case Number 19-34054-SGJ11, and Adversary	24	\$539,000 in cash that's identified sort of in the
25	Proceeding Number 21-03020-SGJ.	25	bottom middle of the page under Highland CDO

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1 Opportunity Fund. I just highlighted it for you.  
 2 Do you see that?  
 3 **A Yes.**  
 4 Q And then there was another \$599,000  
 5 that's marked "Re: Survios interest." It's also  
 6 referenced on this same page, right?  
 7 **A Yes.**  
 8 Q And that adds up to about \$1.1 million,  
 9 correct?  
 10 **A Yes.**  
 11 Q And then there is also a \$7.7 million  
 12 entry for cash that's part of the transfer from  
 13 Highland CDO Opportunity Master Fund to pay for  
 14 the premium, correct?  
 15 **A Yes.**  
 16 Q And that 7.7 added to 1.1 gets you  
 17 about \$8.8 million, correct?  
 18 **A If you're asking me does that**  
 19 **addition -- I can't testify whether they should be**  
 20 **added together or they aren't included already in**  
 21 **that number, but if you're asking does, you know,**  
 22 **7 million and change plus one and change equal**  
 23 **eight and change, the math is correct.**  
 24 Q Okay. And then there is another entry  
 25 for cash under CDO Opportunity Fund on the same

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1 page. It's about 2.3 million, right?  
 2 **A Yes.**  
 3 Q And so 8.8 plus 2.3 is a little -- is  
 4 over 11.1, either 11.1 to 11.2 million in cash  
 5 total reflected on this page with the four  
 6 separate entries, correct?  
 7 **A Same answer. If -- your math is**  
 8 **correct in terms of adding those numbers. But**  
 9 **whether or not they should be added or aren't**  
 10 **already included in this -- like in the 7.7, I**  
 11 **can't testify to. I don't know.**  
 12 Q Well, when we look up we see that there  
 13 is one entry that says, Highland Gemini Program  
 14 (Pollux) \$2.399 million promissory note and cash  
 15 of 599,000 - Re: Survios interest. And there is a  
 16 total there of 2.999995.  
 17 Do you see that?  
 18 **A I do, but I'm just saying that it is**  
 19 **not clear to me that the 599 is not included in**  
 20 **the cash below. I'm not the accountant. I -- and**  
 21 **these statements aren't clear, so I don't want**  
 22 **to --**  
 23 Q It --  
 24 **A I don't want to testify to that.**  
 25 Q Looking at this document -- well, first

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1 of all, you signed this document, correct?  
 2 **A Yes.**  
 3 Q And just looking at it on its face, are  
 4 you saying you have no way to tell whether or not  
 5 the cash that's reflected in what I have currently  
 6 highlighted that says \$2.399 million promissory  
 7 note, Dugaboy, and cash of 599, and has a total of  
 8 2.9995 -- you have no idea one way or the other  
 9 whether that total, which includes about 600,000  
 10 cash is separate from this other entry that says  
 11 7.779 in cash?  
 12 That's what you're testifying to?  
 13 **A That's correct.**  
 14 Q And do you think that that cash also --  
 15 you have no idea if that cash is separate and  
 16 distinct from this 2.349 million that is listed  
 17 under Highland CDO Opportunity Fund?  
 18 **A That appears to be separate. But,**  
 19 **again, I'm not the -- I'm not the accountant.**  
 20 Q Right. And you made no effort to  
 21 consider the values of the assets that you were  
 22 signing off to be transferred in satisfaction of  
 23 the \$25 million premium; is that correct?  
 24 MR. TAYLOR: Objection. Form. The --  
 25 Q It -- okay. Let me ask it again.

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1 Fair to say that prior to signing off  
 2 on the transfer of all these assets reflected on  
 3 Schedule A in satisfaction of the premium for the  
 4 legal liability insurance policy we have been  
 5 discussing, you made no effort to assess the  
 6 actual fair market value of the total assets,  
 7 correct?  
 8 **A Yes. I -- that's correct. I relied on**  
 9 **Scott Ellington, you know. And I think what this**  
 10 **deposition has shown is, you know, I had a**  
 11 **different general understanding, but the**  
 12 **transaction morphed over time.**  
 13 Q You, by the way, are the -- you are an  
 14 owner of Gov Re, correct?  
 15 MR. TAYLOR: Objection. Form.  
 16 Q Sorry. You are an owner of Governance  
 17 Re, Limited, correct?  
 18 **A I believe so.**  
 19 Q And so where it says there is this  
 20 \$2.157 million promissory note from Governance Re,  
 21 Limited, that is an affiliated entity to you,  
 22 correct?  
 23 **A I believe so.**  
 24 Q How much ownership do you have in  
 25 Governance Re, Limited?

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1     **A I do not know.**  
2     Q Roughly.  
3     **A I would guess -- I would guess -- I do**  
4 **not know. I -- you know, generally, most of those**  
5 **entities, old entities, are 75 percent me, 25**  
6 **percent Marco, but I don't know for sure.**  
7     Q Okay. Your -- and in terms of the  
8 Dugaboy Investment Trust, you are an owner of  
9 that, right?  
10  **A It is a -- it is a trust. I think I'm**  
11 **a beneficial owner until my death.**  
12  Q And are you the sole beneficial owner  
13 until your death of the Dugaboy Investment Trust?  
14  **A It is -- I don't -- I believe I'm the**  
15 **sole beneficiary. It is not -- I'm not the owner,**  
16 **but I'm the sole beneficiary, I believe, until my**  
17 **death, yes.**  
18  Q Okay. You're the sole beneficiary of  
19 the Dugaboy Investment Trust until your death,  
20 correct?  
21  **A I believe so.**  
22  Q And so that would also be an affiliated  
23 entity to you in context of this transaction,  
24 correct?  
25  **A Yes.**

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1     Q Do you -- I asked you before about  
2 Sentinel Re's history of issuing policies. And we  
3 know now that the insurance policy at issue in  
4 this case is entitled A Legal Liability Insurance  
5 Policy.  
6     My question to you is: In the history  
7 of Sentinel Re, are you aware of them ever issuing  
8 a legal liability insurance policy other than the  
9 one that we have been discussing in this  
10 deposition?  
11  **A I don't have specific awareness.**  
12  Q Do you have general awareness of  
13 Sentinel Re ever issuing a legal liability  
14 insurance policy other than the one that is at  
15 issue in this case?  
16  **A My general awareness is they evaluated**  
17 **and considered similar-type policies, but I'm**  
18 **not -- I don't have specific awareness that they**  
19 **consummated other ones.**  
20  Q Do you have any awareness, general or  
21 otherwise, that they have ever actually issued  
22 another legal liability insurance policy other  
23 than the one in this case; yes or no?  
24  **A I don't know. I don't have specific --**  
25 **I don't have specific awareness or other -- or**

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1 **general awareness other than a general**  
2 **understanding that they reviewed numerous ones.**  
3     Q You say they review -- you say they --  
4 do you have a specific awareness that they have  
5 reviewed numerous other legal liability insurance  
6 policies to consider whether to issue them?  
7     **A Yeah. Yes. I mean, the answer is yes.**  
8 **They --**  
9     Q Okay. Can you name a single one that  
10 Sentinel Re has ever reviewed?  
11  **A I can't remember the names, but there**  
12 **were judgments out of Canada that they funded or**  
13 **were considering structuring policies on that they**  
14 **were working on as part of the SAS platform.**  
15     I know there was -- I know there was  
16 numerous funding or -- of litigation or sharing of  
17 litigation in multiple cases around the world on  
18 the SAS platform, and they were considering -- and  
19 they would consider doing some of the funding via  
20 insurance products through Sentinel.  
21     So I know they -- I know they were -- I  
22 know they looked at and considered similar-type  
23 structures. But, again, I wasn't the person  
24 directly involved with that stuff. That was  
25 all --

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1     Q How do you know that they did that?  
2     **A Because I would -- it would be**  
3 **conversations with Ellington.**  
4     Q So Scott Ellington told you in words or  
5 substance that Sentinel Reinsurance considered on  
6 numerous occasions entering into a legal liability  
7 insurance policy that is similar to the one that  
8 is at issue in this case?  
9     **A Yes.**  
10  Q And the ones you specifically remember  
11 in connection with that answer relate to some  
12 Canadian judgment?  
13  **A Yeah. I mean, that's all I remember.**  
14 **But, yeah, there was -- there were judgments out**  
15 **of Canada and cases out of Canada that they were**  
16 **considering structuring something similar, but --**  
17  Q And were those --  
18  **A -- I don't know the specifics.**  
19  Q Were those judgments in any way  
20 involving any sort of affiliated entity?  
21  **A No.**  
22  Q What -- who were they involving?  
23  **A I don't know, but it wasn't an -- it**  
24 **wasn't an affiliated entity.**  
25  Q And there was -- was this one occasion



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1 where they considered issuing, according to you, a  
 2 legal liability insurance policy, or is it many  
 3 different, separate occasions?  
 4 **A My recollection is that it was at least**  
 5 **several, but...**  
 6 Q And all related to Canadian judgments?  
 7 **A No. I-- no. That's the one I**  
 8 **remember, but I know there were -- there was a**  
 9 **lightbulb case out of the U.S. that they were**  
 10 **considering, and they were trying to come up with**  
 11 **creative structures. I-- there were -- but I**  
 12 **wasn't involved in the details or the assessments**  
 13 **of those.**  
 14 Q And was the lightbulb case before or  
 15 after this legal liability insurance policy was  
 16 issued?  
 17 **A I don't know.**  
 18 Q Was the Canadian judgment before or  
 19 after this legal liability insurance policy was  
 20 issued?  
 21 **A I don't know.**  
 22 Q When was the last time you recall ever  
 23 hearing that Sentinel Reinsurance was considering  
 24 issuing a legal liability insurance policy other  
 25 than the one that is at issue in this case?

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1 **A I don't know.**  
 2 Q Roughly.  
 3 **A I don't know. I don't remember. Years**  
 4 **ago, but I don't remember when.**  
 5 Q You just testified that you believed  
 6 that the -- sorry.  
 7 You just testified that when you heard  
 8 about the Sentinel Reinsurance potential policies  
 9 relating to the Canadian judgments, they were  
 10 working on as part of the SAS platform, is what  
 11 you said.  
 12 What did you mean by that?  
 13 **A I believe the -- most of the litigation**  
 14 **funding or joint venturing of litigation that**  
 15 **Scott was working on was done off the SAS**  
 16 **platform.**  
 17 Q And you own approximately 70 percent of  
 18 SAS, ultimately, correct?  
 19 **A I believe that's -- oh, I-- no, no,**  
 20 **no. Wait. The SAS platform is separate from the**  
 21 **Sentinel platform. You know, I saw the org charts**  
 22 **from earlier in the deposition, but my**  
 23 **recollection and my understanding is that because**  
 24 **it was a trader business, it wasn't essentially**  
 25 **owned by U.S. persons. I-- my recollection was**

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1 **that it was owned by offshore entities, but there**  
 2 **was some participation.**  
 3 Q Okay.  
 4 **A There was some participation that I had**  
 5 **in it.**  
 6 Q You have roughly 70 percent  
 7 participation in the economic benefits of SAS;  
 8 isn't that true?  
 9 **A I don't know exactly, but I-- I don't**  
 10 **know exactly, but, I mean, that would seem**  
 11 **reasonable to me.**  
 12 Q Okay. And SAS is in the business of  
 13 funding litigation, not insuring against  
 14 litigation losses, correct?  
 15 **A I think funding and joint venturing**  
 16 **litigation is in a broad sense, which sometimes**  
 17 **includes structures that are insurance or resemble**  
 18 **insurance.**  
 19 Q Okay. So the only other policies that  
 20 you believe SAS -- sorry.  
 21 The only other insurance policies that  
 22 you can think of that Sentinel Re ever considered  
 23 issuing in connection with the legal world, or  
 24 legal liability, I should say, relates to deals  
 25 that were being considered by SAS, another

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1 affiliated entity, correct?  
 2 **A I don't know. I mean, Scott Ellington**  
 3 **is your person to talk to regarding the structure**  
 4 **of -- the structure, the business opportunities,**  
 5 **the alternative and similar business**  
 6 **opportunities. I am -- my involvement was not**  
 7 **direct or frequent.**  
 8 Q My question is more specific about what  
 9 your actual knowledge is, okay? So listen to my  
 10 question, please. I'll try to say it more  
 11 clearly.  
 12 The only other insurance policies, as  
 13 you sit here today, that you can think of that  
 14 Sentinel Re ever considered issuing in connection  
 15 with legal liability related to transactions that  
 16 were being considered by SAS, which is another  
 17 affiliated entity of yours, correct?  
 18 **A The Canadian examples are the only**  
 19 **things I can think of at this moment.**  
 20 Q And those Canadian examples were SAS  
 21 transactions, which are transactions of another  
 22 affiliated entity of yours, correct?  
 23 **A I don't know if SAS is an affiliated**  
 24 **entity. I believe the relationship or the**  
 25 **sourcing of the Canadian opportunity came through**

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**1 the SAS platform.**  
**2 Q** Okay. And so the only legal liability  
**3** insurance policies that you can ever recall  
**4** Sentinel Re considering, other than the one that  
**5** was issued that has been the subject of this case,  
**6** relate to business being done by SO -- SAS, in  
**7** which you have a, roughly, 70 percent economic  
**8** interest, fair?  
**9 A** Source through -- source through SAS,  
**10** which I believe I have a material participation  
**11** interest, I -- yes, I would -- but I need to  
**12** clarify it that way because I don't know.  
**13 Q** You don't know the exact interest,  
**14** although you thought it was fair that it might be  
**15** roughly 70 percent, correct?  
**16 A** Yes. And, again, I resisted -- I know  
**17** it is not a specific equity interest, you know. I  
**18** think it is a profit sharing, you know, but I  
**19** don't know what comes out of the profit sharing  
**20** before that, you know. It is --  
**21 Q** Yeah. Okay.  
**22 A** And I don't know what the interest is  
**23** exactly. I don't know if it is a participation,  
**24** but there is some --  
**25 Q** Fair to say --

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**1 A** There is some --  
**2 Q** Okay. Mr. Dondero --  
**3** MR. TAYLOR: Andy, he has got to be  
**4** able to --  
**5** MR. CLUBOK: Wait, wait, wait. No, no.  
**6 Q** For the purposes of trying to get  
**7** through today, I'm going to cut you off if you're  
**8** going off on tangents, and ask you to just focus  
**9** on my questions, okay, just to try to get through  
**10** the last hour here.  
**11** So fair to say you have a substantial  
**12** economic interest in SAS, correct?  
**13 A** Economic participation.  
**14 Q** Okay.  
**15 A** There is --  
**16 Q** By "economic participation," you mean  
**17** the right to obtain the economic benefits of  
**18** SAS --  
**19 A** If there are -- if --  
**20 Q** -- after any -- after expenses?  
**21 A** Yeah, if there are any or if there  
**22** ultimately are. But as far as I know, I have  
**23** gotten nothing from it to date, and I don't know  
**24** if there is any residual or equity value in it at  
**25** all, so I don't want to represent that I have got

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**1 some material interest in it.**  
**2 Q** I understand. But if there is any  
**3** value --  
**4** MR. CLUBOK: Strike that.  
**5 Q** You have a substantial economic  
**6** interest in whatever SAS generates?  
**7 A** I have a potential participation if  
**8** there is any -- a significant potential  
**9** participation if there is any value there some  
**10** day.  
**11 Q** So you have a significant economic  
**12** interest in SA -- in whatever value SAS ultimately  
**13** generates, fair?  
**14 A** Close enough, yes.  
**15 Q** Okay. And other than SAS, you -- for  
**16** the --  
**17** MR. CLUBOK: Strike that.  
**18 Q** Other than transactions that relate to  
**19** SAS deals or the legal liability insurance policy  
**20** that was issued, that's the subject of this case,  
**21** you can't think of any instance where Sentinel Re  
**22** has ever considered another legal liability  
**23** insurance policy, correct?  
**24 A** Yes.  
**25 Q** Okay. So I want to turn to what's been

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1 previously marked as Exhibit 3 if we can put that  
2 up on the screen.  
3 REMOTE TECH: Stand by.  
4 Q Exhibit 3 is a cover e-mail from Shawn  
5 Raver to Rick Swadley attaching a tax compliance  
6 memo dated 2017 re: sale of assets to Sentinel.  
7 Do you see Exhibit -- the first page of  
8 Exhibit 3?  
9 A Yes.  
10 Q Have you ever seen this before?  
11 A No.  
12 Q The attachment is --  
13 MR. CLUBOK: Strike that.  
14 Q Exhibit 3 consists of this cover e-mail  
15 that you see on the first page, along with the  
16 attachment that is a five-page memo from Shawn  
17 Raver to the Tax Files of Highland Capital  
18 Management, dated June 30, 2018, Re: Tax  
19 Consequence of Sentinel Acquisition of HFP/CDO  
20 Opportunity Assets.  
21 Do you see that?  
22 A Yes.  
23 Q Are you aware that a memo was written  
24 regarding the tax consequences of the Sentinel  
25 acquisition of the HFP/CDO Opportunity assets?

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1 **A No.**  
 2 Q Are you aware that there was a concern  
 3 that the IRS could attempt to characterize the  
 4 transaction as a sham?  
 5 **A No.**  
 6 Q Did you know that CDO and SOHC were at  
 7 significant risk of being held liable to UBS at  
 8 the time of the transaction?  
 9 **A No.**  
 10 Q Was it true that CDO and SOHC were at  
 11 significant risk of being held liable to UBS at  
 12 the time the insurance policy was issued?  
 13 MR. TAYLOR: Objection. Form.  
 14 **A Not that I'm aware of.**  
 15 Q Did you -- when you signed off on the  
 16 insurance policy, did you believe that CDO Fund  
 17 and SOHC were at significant risk of being held  
 18 liable to UBS?  
 19 **A No. I believed it was compliance --**  
 20 **compliant, approved by compliance and approved and**  
 21 **structured -- or by the tax department also.**  
 22 Q Okay.  
 23 **A I had no reason to doubt that process**  
 24 **wasn't followed.**  
 25 Q I didn't ask you about that question,

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1 sir, so I'm going to move to strike everything  
 2 after my question. But let me try it again.  
 3 I want you to focus on my question and  
 4 not answer things about what you believed or  
 5 didn't believe that don't respond to my question  
 6 directly.  
 7 At the time you signed off on the legal  
 8 liability insurance policy that's been the subject  
 9 of this proceeding, did you believe that CDO Fund  
 10 and SOHC were at significant risk of being held  
 11 liable to UBS in connection with the litigation  
 12 that was then pending in New York?  
 13 **A No.**  
 14 Q And did you believe when you signed off  
 15 on the legal liability insurance policy that you  
 16 were obtaining \$100 million of liability  
 17 protection for the defendants in the New York  
 18 litigation?  
 19 **A I gave -- I gave my -- my recollection**  
 20 **has been different than the documents presented.**  
 21 **Again, I thought it was a transition policy. I**  
 22 **didn't -- it -- I didn't realize it had morphed**  
 23 **specifically to UBS, but it -- in aggregate, it**  
 24 **makes sense based on what we have seen.**  
 25 Q Did you believe that when you

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1 authorized the transfer of the assets to pay for  
 2 the policy that it was allowing CDO and SOHC to  
 3 obtain legal liability insurance with respect to  
 4 the UBS litigation?  
 5 **A I don't -- you know, like I just said,**  
 6 **I don't recall it that way.**  
 7 Q Did you -- but at the time you  
 8 authorized the transaction, you knew that Sentinel  
 9 was related to the seller entities, correct?  
 10 **A Yes.**  
 11 Q And you knew that there was no  
 12 independence on each side of the transaction at  
 13 the time the policy was issued, correct?  
 14 **A That's not true.**  
 15 Q Oh. So how was -- but Scott Ellington  
 16 provided legal advice to all the parties involved  
 17 in the transaction, correct?  
 18 **A Yes.**  
 19 Q And who acted independently on behalf  
 20 of Sentinel with respect to the transaction, if  
 21 anyone?  
 22 **A The independence role would have been**  
 23 **handled through compliance.**  
 24 Q What do you mean by that?  
 25 **A We talked about this significantly the**

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1 **other day, but when a transaction involves**  
 2 **affiliates, compliance is responsible for**  
 3 **assessing the appropriateness and fairness of the**  
 4 **transaction. And to the extent that independence**  
 5 **or marks or vetting or the transaction changing**  
 6 **from what I thought it was initially, compliance**  
 7 **is the one that, through an iterative process,**  
 8 **usually makes the transaction -- makes sure the**  
 9 **compliance -- makes sure the transaction is**  
 10 **compliant and fair.**  
 11 Q And by compliance, you mean Thomas  
 12 Surgent and his team?  
 13 **A Yes.**  
 14 Q And yesterday, by the way, just -- you  
 15 said at one point -- or not yesterday, but when we  
 16 previously had the deposition, at one point, you  
 17 said that there were a bunch of guys currently  
 18 working with you who talked to Thomas Surgent.  
 19 Who are those guys that you meant?  
 20 **A I still don't remember.**  
 21 Q When you testified that there are a  
 22 bunch of guys who talk to Thomas Surgent to this  
 23 day, you had no specific people in mind; is that  
 24 correct?  
 25 **A Correct.**

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1 Q You said you would think about it and  
 2 get back to me and identify those people, and you  
 3 have not done that in the last couple of days?  
 4 **A No.**  
 5 Q You also said that at the time of the  
 6 policy, you claim that there was buzz around the  
 7 office and a lot of people who were talking about  
 8 it.  
 9 Can you name any of those people at all  
 10 other than Scott Ellington who specifically talked  
 11 about the Sentinel Re insurance policy at the time  
 12 it was being considered?  
 13 **A And Thomas Surgent and his team. It**  
 14 **was a --**  
 15 Q But you --  
 16 **A I know --**  
 17 Q Sorry. You heard Thomas Surgent  
 18 specifically talking about the Sentinel Re  
 19 insurance policy at that time?  
 20 **A Well, I knew he was directly involved,**  
 21 **yes.**  
 22 Q You actually heard Thomas Surgent say  
 23 something about the Sentinel Re insurance policy  
 24 at the time it was being considered?  
 25 **A Yes. Yeah, I can't remember exactly**

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1 **what, but I know he was directly involved and**  
 2 **directly working on it with Scott Ellington.**  
 3 Q What did Mr. Surgent say, if anything,  
 4 about the Sentinel Re insurance policy at the  
 5 time?  
 6 **A That they were working on it and trying**  
 7 **to get it done.**  
 8 Q When did he tell you that?  
 9 **A On or about when it was being worked**  
 10 **on.**  
 11 Q And in what context? In person?  
 12 **A Yeah.**  
 13 Q In your office? In his office? In the  
 14 hallway? Where? In a conference room?  
 15 **A In the area outside his office.**  
 16 Q You were standing in the area outside  
 17 his office and he specifically told you he was  
 18 working on the Sentinel Re insurance policy?  
 19 **A Yeah. I mean, I do remember an update**  
 20 **like that. I -- you know, and historically, I**  
 21 **used to talk to Thomas almost every day.**  
 22 Q I'm sorry. You never mentioned this  
 23 the other day when I asked you repeatedly if you  
 24 remembered anything else at all about anything  
 25 from Sentinel Re other than what Thomas -- Scott

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1 Ellington told you. And you are now saying you  
 2 remember getting an update from Thomas Surgent  
 3 about it?  
 4 **A No, I mean, not an update because I**  
 5 **stay away from any kind of involvement or**  
 6 **interference with compliance so that they can be**  
 7 **independent, but I knew he was working on it**  
 8 **and --**  
 9 Q No. You said you remember an update  
 10 from Thomas Surgent just two minutes ago.  
 11 **A Well -- but the update was that he was**  
 12 **working on it. I -- again, I know they were both**  
 13 **working on it, but I wasn't directly involved, and**  
 14 **nor do I ever get, generally, directly involved**  
 15 **with compliance unless it is a factual**  
 16 **misunderstanding, but I let the business people**  
 17 **handle it with compliance.**  
 18 Q In what context did Mr. Surgent give  
 19 you this supposed update? Did you ask him for an  
 20 update? Did he just pop out of his office and  
 21 just bring it up? What was the context of this  
 22 update, James?  
 23 **A Again, I talked to him -- was talking**  
 24 **to him almost every day, and it would be like,**  
 25 **What are you working on? It would be sometimes**

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1 **the start of a conversation.**  
 2 **And I know he would say -- there were**  
 3 **times where he would say, I'm working on getting**  
 4 **this Sentinel transaction done.**  
 5 Q And did he say anything else beyond  
 6 that?  
 7 **A No. I didn't ask. I knew what he --**  
 8 Q I'm -- okay. Just please listen to my  
 9 question and just answer my question.  
 10 How many times did he say that he was  
 11 working on this, getting the Sentinel transaction  
 12 done?  
 13 **A At least a couple, a few times because**  
 14 **the Sentinel transaction morphed and changed based**  
 15 **on the input and adjustments from compliance based**  
 16 **on what the -- versus what the business people**  
 17 **were doing or originally intended to do. That is**  
 18 **why I think --**  
 19 Q I -- okay. Stop. Stop. Stop. Stop,  
 20 please, just for purposes of trying to get this  
 21 deposition done.  
 22 My specific question was: How many  
 23 times do you recall Thomas Surgent say to you that  
 24 he was working on getting the Sentinel Reinsurance  
 25 transaction done?

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1 **A At least a couple times.**  
 2 Q At least two times?  
 3 **A Yes.**  
 4 Q And perhaps more?  
 5 **A I don't remember. Let me just say, at**  
 6 **least, a couple times.**  
 7 Q And is there anything else that anyone  
 8 other than Scott Ellington ever told you about the  
 9 Sentinel Re insurance, other than Mr. Surgent a  
 10 couple of times say he was working to get it done?  
 11 **A No.**  
 12 Q Did you tell Mr. Surgent that Sentinel  
 13 Re was a related party?  
 14 **A No. I wasn't involved in the process,**  
 15 **so no, I did not tell him. He never -- he didn't**  
 16 **ask me. I wasn't involved in the process.**  
 17 Q But you expected that Thomas Surgent  
 18 would learn at the time the transaction was being  
 19 considered that Sentinel Re was a related party,  
 20 correct?  
 21 **A We talked about this the other -- it**  
 22 **wouldn't have been in front of him if it wasn't a**  
 23 **related-party transaction.**  
 24 Q My question is: Did you expect Thomas  
 25 Surgent to have learned at the time the

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1 transaction was being considered that Sentinel Re  
 2 was a related party; yes or no?  
 3 **A Yes.**  
 4 Q Thank you.  
 5 So did Scott Ellington set all the  
 6 terms of the transaction for both sides?  
 7 **A I think -- as far as I know, he framed**  
 8 **the transaction, and then it was an iterative**  
 9 **approval process through compliance. That's the**  
 10 **way it would typically work. And that's as far as**  
 11 **my understanding goes. I wasn't directly**  
 12 **involved.**  
 13 Q Okay. And you don't know whether or  
 14 not there actually was an arm's-length negotiation  
 15 regarding the consideration to be paid for the  
 16 policy, correct?  
 17 **A I don't know directly, but I believe it**  
 18 **would have been in an -- yes, that would have been**  
 19 **the process.**  
 20 Q You believe that -- well, your process  
 21 required there to have been an arm's-length  
 22 negotiation for a policy like this, correct?  
 23 **A Or arm's-length equivalent,**  
 24 **essentially.**  
 25 Q Or an equivalent.

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1 **A That is what compliance would have been**  
 2 **pushing towards.**  
 3 Q Right. Your policies at the time would  
 4 have required there to be confirmation that there  
 5 was the equivalent of an arm's-length process to  
 6 set the terms of the insurance policy prior to it  
 7 being agreed upon, correct?  
 8 **A That would have been the**  
 9 **back-and-forth, correct.**  
 10 Q And you personally didn't take any  
 11 steps to ensure that those policies were complied  
 12 with, with respect to this insurance policy,  
 13 correct?  
 14 **A I was not directly involved.**  
 15 Q So you personally did not take any  
 16 steps to ensure that there were policies designed  
 17 to ensure the equivalent of an arm's-length  
 18 process with respect to setting the terms of the  
 19 insurance policy, correct?  
 20 **A I did not.**  
 21 Q Is that a yes?  
 22 **A I'm sorry. I may -- I wasn't paying**  
 23 **attention. Perhaps --**  
 24 Q Okay. Please --  
 25 **A Can you rephrase it?**

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1 Q Sure.  
 2 Sir, you personally did not take any  
 3 steps to ensure that the policies designed to  
 4 confirm the equivalent of an arm's-length process  
 5 with respect to setting the terms of the insurance  
 6 policy were actually followed, correct?  
 7 MR. TAYLOR: Andy, I'm going to  
 8 interject here. Literally, he answered the  
 9 question for you. He said, "No, I did not."  
 10 MR. CLUBOK: I --  
 11 MR. TAYLOR: That is a clear answer.  
 12 MR. CLUBOK: It was just a -- it is  
 13 slightly a double negative, so I just wanted to  
 14 ask it again. I think it -- this is -- I think it  
 15 should be very simple. I'm just trying to get a  
 16 simple yes, so let me just ask it again.  
 17 Q Sir, you personally did not take steps  
 18 to ensure that the policies were -- that were in  
 19 place at the time that were designed to confirm  
 20 the equivalent of an arm's-length process with  
 21 respect to setting the terms of the insurance  
 22 policy were actually followed, correct?  
 23 **A I did not take such steps to -- I did**  
 24 **not take any steps to ensure. I was not involved.**  
 25 Q Going back to Exhibit 2 briefly,

304

1 Schedule A.  
 2 MR. CLUBOK: Can we put that back up on  
 3 the screen.  
 4 REMOTE TECH: It should be on screen  
 5 and ready.  
 6 MR. CLUBOK: Okay.  
 7 Q Can you see it, Mr. Dondero?  
 8 **A Yep.**  
 9 Q Unfortunately, that makes one of us.  
 10 Give me a second here.  
 11 REMOTE TECH: Try hovering over your  
 12 Zoom screen at the bottom, and then --  
 13 MR. CLUBOK: I got it now. Thank you.  
 14 Q Do you see the column that says "Traded  
 15 Shares/Par"?  
 16 **A Yes.**  
 17 Q Do you have an understanding what that  
 18 means?  
 19 **A Yeah. I think there is -- there is**  
 20 **an -- I do not -- I've never seen this before. I**  
 21 **believe some of the CLO positions are in shares,**  
 22 **and then some of them are stated in par value.**  
 23 **But in neither case would the actual value be the**  
 24 **number of shares or the par value. There would be**  
 25 **a trading value that would have to get multiplied**

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1 **by either the par value or the number of shares to**  
 2 **get the actual value.**  
 3 Q And where would the records for  
 4 those -- for the information necessary to perform  
 5 those calculations be?  
 6 **A Highland would have all of those.**  
 7 Q Okay. And you would have retained --  
 8 you would -- Highland would have retained all  
 9 those records since August of 2017 if you wanted  
 10 to go find them now?  
 11 **A Yeah. At least seven years. And all**  
 12 **of those are -- they are done at least on a**  
 13 **monthly basis for all of those securities if not**  
 14 **more frequently.**  
 15 Q Do you -- did you or anyone who works  
 16 for you currently have any access to the Highland  
 17 accounting system?  
 18 **A No.**  
 19 Q Let's turn to what is behind tab 14,  
 20 which I guess we'll mark as Exhibit 30 -- somebody  
 21 help me. 32.  
 22 REMOTE TECH: Stand by.  
 23 (Deposition Exhibit 32 marked for  
 24 identification.)  
 25 MR. CLUBOK: We're putting up Exhibit

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1 32, which is a document entitled Highland Multi  
 2 Strategy Credit Fund, L.P., Transfer of Limited  
 3 Partner Interest. And it is a transfer agreement  
 4 between Highland CDO Opportunity Master Fund and  
 5 Sentinel Reinsurance dated August 24, 2017.  
 6 Do we have that up?  
 7 REMOTE TECH: It is on screen and  
 8 ready.  
 9 MR. CLUBOK: Okay.  
 10 Q And, sir, have -- that is your  
 11 signature on Exhibit 32, correct?  
 12 **A Yes.**  
 13 Q And you signed Exhibit 32 and this  
 14 transfer agreement on behalf of Highland CDO  
 15 Opportunity Master Fund and then all the other  
 16 entities that are listed there, including Highland  
 17 Capital Management and Strand Advisors, correct?  
 18 **A Yes.**  
 19 Q And then the transferee is somebody  
 20 named Christopher Watler, Director of Sentinel  
 21 Reinsurance. Do you know who that is?  
 22 **A No.**  
 23 Q Have you ever met or heard of him  
 24 before today?  
 25 **A I think he signed one of the other**

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1 **documents we talked about a couple days ago, but I**  
 2 **haven't met him.**  
 3 Q Other than seeing his signature a  
 4 couple days ago during this deposition, had you  
 5 ever heard his name before?  
 6 **A No.**  
 7 Q The -- as of -- prior to this transfer,  
 8 it appears that Highland CDO Opportunity Master  
 9 Fund had some limited partner interest in Highland  
 10 Multi Strategy Credit Fund, correct?  
 11 **A It appears so.**  
 12 Q And that was then transferred to  
 13 Sentinel Reinsurance, right?  
 14 **A It appears that was, yes, part of the**  
 15 **asset pool.**  
 16 Q So, in other words, Highland CDO  
 17 Opportunity Master Fund's interest in Multi  
 18 Strategy Credit Fund was transferred to an entity  
 19 for which you have approximately 70 percent  
 20 beneficial ownership, correct?  
 21 **A Well, it was transferred as part of an**  
 22 **insurance policy for -- right? For Sentinel,**  
 23 **right? It wasn't just directly transferred.**  
 24 Q Correct. This is part of the payment  
 25 for the insurance policy, correct?

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1 **A Yes.**  
 2 Q And as part of the payment for the  
 3 insurance policy, the legal liability insurance  
 4 policy that Sentinel issued, that we have been  
 5 discussing, an interest in Multi Strat that was  
 6 previously owned by CDO Fund was transferred to  
 7 Sentinel Reinsurance, correct?  
 8 **A Yes.**  
 9 Q And at the time, you owned  
 10 approximately 70 percent of the beneficial  
 11 interest in Sentinel Reinsurance, right?  
 12 **A I ought -- I want to answer that the**  
 13 **way I have answered it before. Yes. I mean --**  
 14 **yes. I --**  
 15 Q Okay.  
 16 **A Yeah. Yes.**  
 17 Q Okay. And then at the time did you  
 18 make any effort to determine the fair market value  
 19 of that partnership interest in Highland Multi  
 20 Strategy Credit Fund?  
 21 **A No. That wasn't -- no, I did not.**  
 22 **That wasn't my role.**  
 23 Q Where -- does Sentinel still own that  
 24 limited partner interest in Highland Multi  
 25 Strategy Credit Fund, to your knowledge?

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1 **A I'm not aware. I'm not aware if it**  
 2 **sold it or transferred -- I have no awareness**  
 3 **of -- I have no awareness of the current Sentinel**  
 4 **balance sheet.**  
 5 MR. CLUBOK: Let's turn to tab 14A for  
 6 an exhibit that's marked 33.  
 7 REMOTE TECH: Stand by.  
 8 (Deposition Exhibit 33 marked for  
 9 identification.)  
 10 REMOTE TECH: Exhibit 33 is on screen  
 11 and ready.  
 12 MR. CLUBOK: Okay.  
 13 Q Exhibit 33 is a document that's also  
 14 dated August 24, 2017, that reflects a transfer of  
 15 limited partner interest from Highland CDO  
 16 Opportunity Fund to Sentinel Reinsurance.  
 17 Do you see that?  
 18 **A Yes.**  
 19 Q And Exhibit 33 shows -- by the way,  
 20 when I call -- can I shorthand Highland Multi  
 21 Strategy Credit Fund as Multi Strat and you'll  
 22 understand what I mean?  
 23 **A Sure.**  
 24 Q Okay. So the previous document showed  
 25 a transfer of partnership interest in Multi Strat

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1 by CDO Opportunity Master Fund. And this shows a  
 2 transfer on the same date of an interest in Multi  
 3 Strat by Highland CDO Opportunity Fund, Ltd.,  
 4 correct?  
 5 **A Yes.**  
 6 Q And you signed off on this as well,  
 7 right?  
 8 **A Yes.**  
 9 Q And you made no effort to determine the  
 10 fair market value of this partnership interest in  
 11 Multi Strat before signing off on the transfer as  
 12 part of the insurance agreement, correct?  
 13 **A I did not under the belief that process**  
 14 **and the accurate marked to market reflection would**  
 15 **have been done by other people as part of the**  
 16 **transaction. And I believe it was done, so...**  
 17 Q Okay. I'm going to put up what we're  
 18 going to -- the next document we're going to put  
 19 up and we are going to mark as Exhibit 34 is a  
 20 Multi Strat Summary Balance Sheet.  
 21 MR. CLUBOK: Ms. George, maybe you can  
 22 help identify -- I don't know what tab we used for  
 23 that or how to easily identify that.  
 24 MS. GEORGE: Hold on a sec, please.  
 25 It should be called the Multi Strat

311

1 Summary Balance Sheet --  
 2 MR. CLUBOK: Okay.  
 3 MS. GEORGE: -- as you described it.  
 4 MR. CLUBOK: Pull up the Multi Strat  
 5 Summary Balance Sheet, please, and we'll mark it  
 6 as Exhibit 34.  
 7 REMOTE TECH: One moment.  
 8 (Deposition Exhibit 34 marked for  
 9 identification.)  
 10 REMOTE TECH: Exhibit 34 is on screen  
 11 and ready.  
 12 MR. CLUBOK: Okay.  
 13 Q Exhibit 34 is a document that you sent  
 14 to me in connection with settlement discussions,  
 15 correct?  
 16 MR. TAYLOR: Andy, we're going to  
 17 reserve any and all rights of your ability to use  
 18 that.  
 19 MR. CLUBOK: Okay.  
 20 Q Mr. Dondero, you recognize Exhibit 34,  
 21 right?  
 22 **A Yes.**  
 23 Q And this is a document that you asked  
 24 someone at Highland to prepare for you to send  
 25 in -- me on behalf of UBS, correct?

312

1 **A Yes.**  
 2 Q And this purports to show the ownership  
 3 or the redemption interest in Multi Strat as of  
 4 today -- or as of October 31, 2020, correct?  
 5 **A Yes.**  
 6 Q And there were -- you listed the top  
 7 six redemption payables outstanding. The first  
 8 one is Quentin Ayers (multiple classes).  
 9 Do you see that?  
 10 **A Yes.**  
 11 Q Who is Quentin Ayers?  
 12 **A It is an Australian fund to funds.**  
 13 Q Are you related in any way to that,  
 14 Quentin Ayers?  
 15 **A No.**  
 16 Q They are completely separate in every  
 17 way, control, economic interest, et cetera, from  
 18 you?  
 19 **A Yes.**  
 20 Q Do you have any ownership interest in  
 21 any Quentin Ayers fund?  
 22 **A No.**  
 23 Q Okay. Then the next highest redemption  
 24 payable is this entity called SS Holdings; do you  
 25 see that?

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1 **A Yes.**  
 2 Q What is SS Holdings?  
 3 **A I don't know.**  
 4 Q It says there is a \$32.8 million  
 5 payable to SS Holdings; do you see that?  
 6 **A Yes.**  
 7 Q SS Holdings relates to Sentinel  
 8 Insurance, correct?  
 9 **A I don't know that.**  
 10 Q There -- Sentinel Insurance -- Sentinel  
 11 Reinsurance had a, roughly, \$32 million interest  
 12 in Multi Strat following the insurance policy  
 13 transaction; isn't that true?  
 14 **A I don't know that. I mean, I did know**  
 15 **that at the time of this.**  
 16 Q You knew that Sentinel Reinsurance had  
 17 a, roughly, \$32 million redemption payable in  
 18 connection with Multi Strat at some point,  
 19 correct?  
 20 **A No.**  
 21 Q You knew that Sentinel Reinsurance had  
 22 a significant interest in Multi Strat at some  
 23 point, correct?  
 24 **A Significant -- I knew it -- at some**  
 25 **point, I knew it had an interest in Multi Strat.**

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1 Q And --  
 2 **A But it -- but I didn't know -- I didn't**  
 3 **know the amount or specifically what kind of**  
 4 **interest.**  
 5 Q Okay.  
 6 And you knew that they -- you  
 7 knew that they -- did you believe they ever  
 8 disposed of that interest?  
 9 **A I didn't have awareness. But I -- at**  
 10 **some point, I was made aware they had some**  
 11 **interest.**  
 12 MR. CLUBOK: Let's turn to Exhibit 28  
 13 that was previously used in this deposition. It  
 14 was at tab 8.  
 15 REMOTE TECH: Stand by.  
 16 MR. CLUBOK: Exhibit 28 has the org  
 17 structures that we previously discussed for SAS  
 18 and for Sentinel Reinsurance.  
 19 REMOTE TECH: One moment. I'm  
 20 double-checking that I have the correct file. You  
 21 said it was --  
 22 MR. CLUBOK: It is Exhibit 28 in this  
 23 deposition. It was previously tab 8, but it is  
 24 Exhibit 28.  
 25 REMOTE TECH: Okay. I found it. One

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1 moment.  
 2 Exhibit 28 is back on screen.  
 3 BY MR. CLUBOK:  
 4 Q We previously showed you Exhibit 28  
 5 and, in particular, the last page, which showed  
 6 the Sentinel structure as of April 2019. And I  
 7 have just zoomed it up a little bit.  
 8 And, again, you are the USP2 here that  
 9 ultimately has about 70 percent of value in  
 10 Sentinel, correct?  
 11 **A I assume so. I don't know. I have**  
 12 **never seen this -- I never saw this before two**  
 13 **days ago.**  
 14 Q Okay. But the only two human beings on  
 15 the planet that you are aware of that have any  
 16 substantial interest in Sentinel Reinsurance are  
 17 Scott Ellington and you, correct?  
 18 **A Yeah. As far as I know, yes.**  
 19 Q And Scott Ellington has a, roughly, 30  
 20 percent interest and you have a, roughly, 70  
 21 percent interest, to the best of your knowledge,  
 22 as you sit here today, correct?  
 23 **A Yes.**  
 24 Q Okay. So on this org chart of Sentinel  
 25 Reinsurance, where it shows USP2 has 70 percent



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1 value and a 91 percent vote, in this complicated  
 2 org chart, almost near the bottom, you see  
 3 SS Holdings, Limited, correct?  
 4 **A Yes.**  
 5 Q Okay. Does that ring a bell that  
 6 SS Holdings is connected to Sentinel Reinsurance?  
 7 **A Again, not to me. I wasn't aware of**  
 8 **this structure and I have never seen it before, so**  
 9 **I wasn't aware of it when I sent you settlement**  
 10 **stuff a year and a half ago, or whatever.**  
 11 Q Did you know what SS was when you  
 12 sent the -- sorry.  
 13 Did you say you sent the settlement  
 14 stuff a year ago to me?  
 15 **A Well, when I -- the settlement stuff**  
 16 **seven months ago, whenever it was.**  
 17 Q Okay.  
 18 **A Whenever it would have been in the**  
 19 **last --**  
 20 Q And when you sent that, did you know --  
 21 did you know what SS -- did you have any idea what  
 22 SS Holdings were?  
 23 **A I had no idea.**  
 24 Q And you represented that SS Holdings  
 25 was a wholly third party, correct?

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1 **A I had no idea what it was. And as far**  
 2 **as I knew --**  
 3 Q Right. And at the time -- at the time  
 4 when we asked you whether SS was in any way  
 5 related, you said, like Quentin Ayers, it was a  
 6 completely third party?  
 7 **A I -- if I said that, that was my belief**  
 8 **at the time, absolutely.**  
 9 Q And was that based on anything, that  
 10 belief?  
 11 **A It was based on no knowledge that it**  
 12 **was part of this.**  
 13 Q Okay. But you had done nothing to  
 14 investigate what SS Holdings was before you  
 15 represented that it was a wholly third party,  
 16 correct?  
 17 **A Correct.**  
 18 MR. CLUBOK: Let's turn to what's  
 19 behind tab 15. Tab 15, we will mark as Exhibit  
 20 35.  
 21 REMOTE TECH: Stand by.  
 22 (Deposition Exhibit 35 marked for  
 23 identification.)  
 24 MR. TAYLOR: Andy, I am back. Sorry,  
 25 we had a power loss and, therefore, that caused

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1 the WiFi to go out.  
 2 MR. CLUBOK: Oh, that's okay. But you  
 3 are -- do you need to go off the record?  
 4 MR. TAYLOR: Yes, please.  
 5 MR. CLUBOK: All right. Let's go off  
 6 the record.  
 7 THE VIDEOGRAPHER: Off record, 10:31.  
 8 (A recess was taken.)  
 9 THE VIDEOGRAPHER: On record, 10:40.  
 10 BY MR. CLUBOK:  
 11 Q Okay. We've got on the screen Exhibit  
 12 35, which is an e-mail from Tara Loiben to Helen  
 13 Kim; subject, "Here is my signed document  
 14 Assignment Agreement - PNotes - CLO Holdco," dated  
 15 August 14, 2017 at approximately 5:07.  
 16 Do you see this?  
 17 **A Yes.**  
 18 Q And Tara Loiben was your executive  
 19 assistant at the time?  
 20 **A Yes.**  
 21 Q Does she still work for you?  
 22 **A Yes.**  
 23 Q So she is now at that office that  
 24 you're in?  
 25 **A Yes.**

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1 Q And what about Helen Kim, did she come  
 2 with you?  
 3 **A Yes.**  
 4 Q Okay. And this cover e-mail says --  
 5 Tara says: "I signed the attached document.  
 6 Thanks." And then it says: "Sorry Tara, Jim  
 7 can't sign for Sentinel. Can you only sign for  
 8 Highland CDO Holding? Thank you." And she says,  
 9 "Sorry yes."  
 10 Do you see that?  
 11 **A Yes.**  
 12 Q Okay. So did you sometimes authorize  
 13 your assistant to sign documents on your behalf?  
 14 **A Yes.**  
 15 Q Would Tara have ever signed a document  
 16 on your behalf without direct authorization from  
 17 you?  
 18 **A I don't believe so.**  
 19 Q Okay. That would -- okay.  
 20 Let's turn to Exhibit 36, which is one  
 21 of the attachments originally to this e-mail. And  
 22 it says, "Assignment Agreement" between Highland  
 23 CDO Opportunity Master Fund and Sentinel  
 24 Reinsurance, and it is to be effective August 7,  
 25 2017; do you see that?

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1     **A Yes.**  
2     Q And on this document, this was another  
3 document that consummated one of the transfers in  
4 connection with the insurance policy that we have  
5 been talking about?  
6     **A I believe so.**  
7     Q And we look at the second page -- or,  
8 sorry, the third page, the signature page.  
9     And, here, it has assignor and  
10 assignee, and we have got Jim Dondero's signature  
11 for both entities, correct?  
12    **A Yes.**  
13    Q And as we noted before in Exhibit 34,  
14 someone pointed out -- Helen Kim pointed out to  
15 Tara that "Jim can't sign for Sentinel." So, now,  
16 let's look at Exhibit 37, please. Exhibit 37 is  
17 an e-mail document that's dated a few minutes  
18 later from Helen Kim on August 14, 2017. It is  
19 now 5:29, according to this e-mail, and it has got  
20 several attachments, including Sentinel -- it  
21 says, "Sentinel (executed), CDO Holdco (executed),  
22 CDO Fund - Dugaboy, Survios (executed)."  
23     It says: "Attached are the docs signed  
24 by JD. I'm waiting on the Dugaboy sign from Nancy  
25 Dondero."

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1     Do you see that?  
2     **A Yes.**  
3     Q And then if we look at page 4 -- or we  
4 see that attached here is the same assignment  
5 agreement that we just saw at Exhibit 36, but now  
6 the signature page just has you signing on behalf  
7 of the assignor and a blank for Sentinel  
8 Reinsurance.  
9     Do you see that?  
10    **A Yes.**  
11    Q Do you know if this -- if Sentinel  
12 Reinsurance ever signed this asset transfer  
13 agreement?  
14    **A I have no idea, but they -- I would**  
15 **have expected, but I have no idea.**  
16    Q The next document -- so, again, Exhibit  
17 37 is an e-mail and it mentions several  
18 attachments. The first is this assignment  
19 agreement that is between Highland CDO Opportunity  
20 Master Fund and Sentinel Reinsurance that you had  
21 previously -- or your assistant had previously  
22 signed your name to both the assignor and the  
23 assignee, and now there is a version with just you  
24 signing it.  
25     The next attachment is an assignment

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1 agreement between Highland CDO Holding Company and  
2 Sentinel Reinsurance, where it also refers to the  
3 asset purchase agreement that was executed in  
4 connection with the insurance policy.  
5     Do you see that?  
6     **A Yes.**  
7     Q And on the next page, or two pages  
8 later, it shows you signing on behalf of Highland  
9 CDO Holding Company as the assignor, correct?  
10    **A Yes.**  
11    Q And, again, there is a blank for  
12 Sentinel Reinsurance, right?  
13    **A Yes.**  
14    Q And you authorized -- you either signed  
15 this or authorized your assistant to sign on your  
16 behalf; is that correct?  
17    **A Yes.**  
18    Q And you had the authority to do that at  
19 the time on behalf of Highland CDO Holding  
20 Company?  
21    **A Yes, I believe so.**  
22    Q Okay. Continuing to the next  
23 attachment to what's been marked as Exhibit 37,  
24 we -- there is a purchase agreement that has the  
25 seller, CDO Opportunity Master Fund, and you

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1 signed on their behalf.  
2     Do you see that?  
3     **A Yes.**  
4     Q And this is -- relates to 269,000  
5 shares of NexPoint Multifamily Capital Trust.  
6     Do you see that?  
7     **A Yes.**  
8     Q And it says that the seller was selling  
9 to purchaser and purchaser purchases from seller  
10 the assets in accordance with the terms hereof for  
11 an aggregate purchase price of 2,693,930, to be  
12 paid for as follows: 20 percent in cash and the  
13 balance pursuant to the promissory note attached  
14 hereto.  
15     Do you see that?  
16    **A Yes.**  
17    Q Did you ever obtain any cash in  
18 connection with this transaction?  
19    **A I'm sorry. I'm not part of the**  
20 **purchase agreement, am I?**  
21    Q Did Highland CDO Opportunity Master  
22 Fund, seller, obtain any cash in connection with  
23 this transaction, as far as you know?  
24    **A I don't have any specific knowledge or**  
25 **reason to think it wasn't performed as stated.**

Conducted on May 12, 2021

<p style="text-align: right;">324</p> <p>1 Q Who owned Highland CDO Opportunity 2 Master Fund, or who was the beneficial owner of 3 Highland CDO Opportunity Master Fund at the time 4 of this transaction in August of 2017, as far as 5 you know? 6 <b>A I don't know.</b> 7 Q You had an economic interest in it, 8 though, right? 9 <b>A I don't know.</b> 10 Q Do you have any idea who has ever owned 11 Highland CDO Opportunity Master Fund? 12 <b>A In -- I don't -- Highland? I don't</b> 13 <b>know. I don't know.</b> 14 Q Okay. And Highland, you -- at some -- 15 through whatever chain, fair to say that you 16 expect you would have had some economic interest 17 in Highland CDO Opportunity Master Fund as of 18 August 7, 2017, correct? 19 <b>A I don't know.</b> 20 Q Well, Highland Capital Management would 21 certainly have had some economic interest in 22 Highland CDO Opportunity Master Fund as of August 23 7, 2017, correct? 24 <b>A Not necessarily. But, typically, it</b> 25 <b>did, but I don't know.</b></p>	<p style="text-align: right;">326</p> <p>1 <b>A Again, all trades that involve</b> 2 <b>affiliates go through compliance. This one would</b> 3 <b>have been easy because they were publicly listed</b> 4 <b>shares at a price on the exchange on the day of</b> 5 <b>transfer. There wouldn't have been controversy</b> 6 <b>regarding the propriety of the amounts.</b> 7 Q Okay. By the way, is -- was Sentinel 8 Reinsurance an advisory fund or an advisory client 9 of Highland Capital Management? 10 <b>A I don't know.</b> 11 Q If there was an entity that was not an 12 advisory client of Highland Capital Management but 13 was nevertheless related to you or affiliated with 14 you, would compliance at Highland Capital 15 Management have needed to be involved? 16 <b>A Yes.</b> 17 Q Why is that? 18 <b>A Because it was an affiliate of me.</b> 19 Q Okay. So any transaction where it is 20 an affiliate of you would require compliance to 21 sign off on if you were on both sides of the 22 transaction or affiliates of you were on both 23 sides of the transaction, correct? 24 <b>A Yes.</b> 25 Q Okay. The last attachment -- or the</p>
<p style="text-align: right;">325</p> <p>1 Q Okay. There is also, here, a signature 2 for the purchaser of this asset by Governance Re, 3 Limited; do you see that? 4 <b>A Yep.</b> 5 Q So on -- and for this document, you 6 signed both of behalf of the seller, Highland CDO 7 Opportunity Master Fund through Highland Capital 8 Management and Strand, and then you sign also on 9 behalf of the purchaser, Governance Re, Limited, 10 as its sole director, correct? 11 <b>A Yes.</b> 12 Q Did you have authority to act on both 13 sides of this transaction at the time? 14 <b>A I believe so.</b> 15 Q Who gave you that authority? 16 <b>A Who gave me that -- I believe I'm an --</b> 17 <b>MR. CLUBOK: Strike that.</b> 18 Q Did -- 19 <b>A I believe I am an authorized signatory</b> 20 <b>or officer of both those entities, I believe.</b> 21 Q Did you make any effort to ensure that 22 it was compliant for you to act on both sides of 23 this transaction that's reflected in this purchase 24 agreement between Governance Re, Limited and 25 Highland CDO Opportunity Master Fund?</p>	<p style="text-align: right;">327</p> <p>1 next attachment here is a promissory note from 2 Governance Re to Highland CDO Fund. And, again, 3 you signed on behalf of Governance Re; do you see 4 that? 5 <b>A Yes.</b> 6 Q And then there is a purchase agreement 7 between Dugaboy Investment Trust and Highland CDO 8 Opportunity Master Fund, and you sign on behalf of 9 the seller, Highland CDO Opportunity Master Fund? 10 <b>A Yes.</b> 11 Q And there is no signature on behalf of 12 Dugaboy Investment Trust. You would have expected 13 the trustee to sign that? 14 <b>A Yes.</b> 15 Q Did you ever direct the trustee of 16 Dugaboy to do anything? 17 <b>A No.</b> 18 Q Do you know whether -- and that -- who 19 was the Dugaboy Investment trustee at the time? 20 <b>A I don't know. It would have been</b> 21 <b>either Grant Scott or my sister. More recently</b> 22 <b>it's been my sister, but I don't know at this</b> 23 <b>point in time.</b> 24 Q Is your sister currently the trustee of 25 Dugaboy Investment Trust?</p>

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1 **A Yes.**  
 2 Q What is your sister's name?  
 3 **A Nancy.**  
 4 Q Where does she live?  
 5 **A In Florida.**  
 6 Q Have you ever directed her in  
 7 connection with anything having to do with  
 8 Sentinel Reinsurance?  
 9 **A Not that I'm aware of.**  
 10 Q Okay. And then there is a final  
 11 document that relates to Dugaboy that looks like  
 12 it is unsigned.  
 13 If we go back to the first page of  
 14 Exhibit 37, Helen Kim says: "Attached are the  
 15 docs signed by JD. I'm waiting on the Dugaboy  
 16 signs from Nancy Dondero."  
 17 Do you see that?  
 18 **A Yes.**  
 19 MR. TAYLOR: Just objection to clarify.  
 20 You said, "signs." I believe you meant to say  
 21 "sigs."  
 22 MR. CLUBOK: I'm so sorry. Thank you.  
 23 Q In Exhibit 37, Helen Kim says:  
 24 "Attached are the docs signed by JD. I'm waiting  
 25 on the Dugaboy sigs," S-I-G-S, "from Nancy

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1 Dondero."  
 2 Do you see that?  
 3 **A Yes.**  
 4 Q And that is an e-mail to J.P. Sevilla,  
 5 correct?  
 6 **A Yes.**  
 7 Q And what that means is that she was  
 8 waiting for Nancy Dondero, your sister, to sign  
 9 off on the Dugaboy transactions where there were  
 10 blanks that we just looked at, correct?  
 11 **A I -- it seems logical, but I don't have**  
 12 **specific awareness.**  
 13 Q How did Nancy Dondero get information  
 14 about this transaction?  
 15 **A I don't know.**  
 16 Q How did Nancy Dondero make the decision  
 17 as to whether or not to sign off on this  
 18 transaction?  
 19 **A I don't know.**  
 20 Q Did you ever talk to Nancy Dondero  
 21 about Dugaboy in connection with this transaction?  
 22 **A Not that I -- not that I recall.**  
 23 Q You had an understanding at the time  
 24 with Nancy that she would pretty much sign  
 25 anything that was put in front of her related to

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1 Dugaboy, correct?  
 2 **A No, I don't.**  
 3 MR. TAYLOR: Objection.  
 4 **A I do not. I did not.**  
 5 Q Okay. Do you know if Sentinel ever  
 6 hired an outside valuation firm to value the  
 7 assets?  
 8 **A I -- Highland does, and I think**  
 9 **Sentinel relied on the Highland marks.**  
 10 Q You think Sentinel relied on the  
 11 Highland marks prior to consummating this  
 12 transaction, correct?  
 13 **A Yes.**  
 14 Q After this transaction, since the  
 15 transaction, since August of 2017, do you know  
 16 whether or not Sentinel has ever hired an outside  
 17 valuation firm to value the assets?  
 18 **A I don't know.**  
 19 MR. CLUBOK: Okay. Turn to tab -- to  
 20 Exhibit 38, please. Exhibit 38 is a document  
 21 entitled Asset Transfer Agreement, dated as of  
 22 December 31, 2019.  
 23 (Deposition Exhibit 38 marked for  
 24 identification.)  
 25 MR. CLUBOK: I'm going to blow it up.

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1 THE WITNESS: Yes, please.  
 2 Q Okay. Do you see that?  
 3 **A Yes.**  
 4 Q And it says the parties are Sentinel  
 5 Reinsurance and Sebastian Clarke; do you see that?  
 6 **A Yes.**  
 7 Q And it says, on December 31, 2019, the  
 8 seller, that is Sentinel Reinsurance, agreed to  
 9 sell certain assets to the purchaser for the  
 10 consideration in this agreement.  
 11 Do you see that?  
 12 **A Yes.**  
 13 Q Were you aware of this transaction  
 14 between Sentinel Reinsurance and Sebastian Clarke  
 15 in approximately December of 2019?  
 16 **A No.**  
 17 Q This would have been after you went  
 18 through bankruptcy for Highland Capital  
 19 Management, correct?  
 20 **A Yes.**  
 21 Q And it -- there is a purchase price  
 22 here of \$3 from purchaser to seller; do you see  
 23 that?  
 24 **A Yes.**  
 25 Q And then there is a schedule that lists

Conducted on May 12, 2021

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1 a series of assets; do you see that?  
 2 **A Yes.**  
 3 Q Do you recognize the Dugaboy Investment  
 4 Trust promissory note amongst those assets of  
 5 approximately 2.4 million?  
 6 **A Yes.**  
 7 Q And do you see where there is a CLO  
 8 Holdco, Limited promissory note of approximately  
 9 32.8 million?  
 10 **A Yes.**  
 11 Q And then there are several other  
 12 assets, correct?  
 13 **A Yes.**  
 14 Q And it says all these assets were  
 15 acquired the same day, August 11, 2017; do you see  
 16 that?  
 17 **A Yes.**  
 18 Q Those assets were all acquired by  
 19 Sentinel Reinsurance in connection with the  
 20 insurance policy issuance that we have been  
 21 talking about, right?  
 22 **A Well, it appears, but I don't know**  
 23 **that for sure.**  
 24 Q Okay. But we could compare this  
 25 document with the schedule in the purchase

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1 agreement to confirm that. But it certainly --  
 2 from a quick glance, it appears that's to be the  
 3 case, correct?  
 4 **A It appears, yes.**  
 5 Q And do you have any idea, is the  
 6 Dugaboy Investment -- does Dugaboy currently have  
 7 the wherewithal to pay off its promissory note  
 8 that's reflected here in Exhibit 38?  
 9 **A Yeah, it has the solvency. I don't**  
 10 **know about the liquidity on a day-to-day basis.**  
 11 Q Okay. But it has solvency such that it  
 12 can make good on this \$2.399 million promissory  
 13 note that is reflected in the assets that were  
 14 sold pursuant to this agreement on December 31,  
 15 2019, correct?  
 16 **A Yes.**  
 17 Q And does CLO Holdco have the  
 18 wherewithal to pay off the, roughly, \$32.8 million  
 19 promissory note that's reflected here?  
 20 **A I don't know. The doc overall has**  
 21 **solvency well beyond 32 million, but I don't know**  
 22 **about CL -- CLO Holdco.**  
 23 Q Do you know about the value of the  
 24 Vertical ABS CDO 2.00 that's reflected here, has a  
 25 Par/Face, 11 million?

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1 **A No.**  
 2 Q Do you know about the Highland Park  
 3 note that's noted as a Par/Face of 17 million?  
 4 **A No. The -- I think we commented on**  
 5 **these before. I think Highland Park and Aberdeen**  
 6 **are old CLOs, tranches that would be cents on the**  
 7 **dollar in terms of value versus those numbers.**  
 8 **The Vertical ABS CDO, I believe, is a third-party**  
 9 **CLO.**  
 10 Q Is that worth cents on the dollar or is  
 11 that money good right now?  
 12 **A No, well, they are all cents on the**  
 13 **dollar --**  
 14 Q What about Pam Cap FTG?  
 15 **A That is a very old CLO, and that would**  
 16 **be literally a couple, few cents on the dollar.**  
 17 Q Okay. You wouldn't expect, though, the  
 18 CLO Holdco note to be cents on the dollar, would  
 19 you?  
 20 **A It shouldn't be.**  
 21 Q Okay. Sebastian Clarke is an entity  
 22 that's ultimately -- that you have economic  
 23 interest in, correct?  
 24 **A I have never heard of Sebastian Clarke**  
 25 **before unless you refresh or educate me.**

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1 MR. CLUBOK: Let's go to -- what was  
 2 it? Tab 6?  
 3 REMOTE TECH: Is that Exhibit 39?  
 4 MR. CLUBOK: Sorry. Sorry. Tab 8,  
 5 Exhibit 28. Back to Exhibit 28.  
 6 Q Exhibit 28 had the charts for SAS and  
 7 Sentinel. And you can see in the SAS chart,  
 8 Sebastian Clarke is identified as one of the  
 9 entities that rolls up to SAS, or did roll up to  
 10 SAS as of the date of this chart.  
 11 Do you see that?  
 12 **A Yes.**  
 13 Q And you have an economic interest in  
 14 the SAS entity, correct?  
 15 **A Participation interest, right? Anyway,**  
 16 **but yes.**  
 17 MR. CLUBOK: All right. I think that's  
 18 all I have for now. Let's go off the record.  
 19 THE VIDEOGRAPHER: Off record, 11  
 20 o'clock.  
 21 (A recess was taken.)  
 22 THE VIDEOGRAPHER: On the record,  
 23 11:06.  
 24 MR. CLUBOK: If we could, put up  
 25 Exhibit 2, Schedule A, please.

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1 Q Exhibit 2 was the purchase agreement in  
 2 connection with the legal liability insurance  
 3 policy that we have been discussing.  
 4 And as you know, Schedule A is a  
 5 two-page document that lists all the assets that  
 6 were transferred in connection with the purchase  
 7 of that policy, correct, Mr. Dondero?  
 8 **A Yes.**  
 9 Q My question is -- and I think you said  
 10 that you have -- sitting here today, you have no  
 11 idea what the value of any of these assets are  
 12 today, correct?  
 13 **A Correct.**  
 14 Q Other than with respect to the  
 15 promissory notes, you have testified that you  
 16 believe that various entities we have talked about  
 17 have the capacity to pay the -- to the extent you  
 18 have testified; is that fair?  
 19 **A Yes.**  
 20 Q Okay. So my only other question is:  
 21 Do you know if any of these assets have ever  
 22 generated cash since they were transferred?  
 23 And I'll give you a chance to just look  
 24 over Schedule A, the first page. And tell me when  
 25 you're ready, and I'll move to the second page.

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1 **A Yeah, I would expect that some of the**  
 2 **CLOs would have generated some cash.**  
 3 Q Which ones on page 1?  
 4 **A I would have expected the first six to**  
 5 **generate cash.**  
 6 Q Okay. So you would have expected the  
 7 Aberdeen, the two South Forks, the other Aberdeen,  
 8 the GSC and the Greenbriar --  
 9 **A Yes.**  
 10 Q -- that are all listed at the top of  
 11 Schedule A to generate cash since the time they  
 12 were transferred?  
 13 **A Yes.**  
 14 Q Do you expect that some of them are  
 15 still continuing to generate cash?  
 16 **A I don't know, but I would have expected**  
 17 **them to generate some cash, but I don't know if**  
 18 **they currently are.**  
 19 Q And do you have any idea how much cash  
 20 you would have expected them to generate when you  
 21 authorized their transfer as part of the insurance  
 22 policy premium?  
 23 **A I don't know.**  
 24 Q Anything else on Schedule A here?  
 25 Looking down, do you see any other assets that you

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1 would expect to have generated cash?  
 2 **A The Valhalla and the Vertical.**  
 3 Q Okay. And I -- the ones that are  
 4 marked Valhalla CLO, Limited and Vertical ABS CDO  
 5 were two other assets that you would have expected  
 6 to generate cash after the time they were  
 7 transferred?  
 8 **A Yes.**  
 9 Q Okay. Anything else?  
 10 **A So I don't know what the Cambridge note**  
 11 **is, so I -- some of these -- yeah, that -- well,**  
 12 **that's it on that page that I would comment on.**  
 13 Q And, again, with those last two, you  
 14 don't know how much cash you would have expected  
 15 to generate when you authorized their transfer as  
 16 part of the insurance policy, correct?  
 17 **A That's right.**  
 18 Q So on the second page, any assets that  
 19 you would have expected to generate cash when you  
 20 transferred the assets?  
 21 **A Under Special Opportunities Fund,**  
 22 **everything there other than -- everything other**  
 23 **than Tousa, I would have expected to generate some**  
 24 **cash. The --**  
 25 Q Okay. So Delphi Corp., Longstreet and

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1 Vertical ABS CDO 2 and the 144A, you would have  
 2 all expected to generate cash?  
 3 **A Yeah. I think that -- I think the**  
 4 **Vertical and the -- I think that the -- that looks**  
 5 **to be a repeat. It looks like it is 5 million,**  
 6 **but it was repeated twice. That's what it looks**  
 7 **like there, but --**  
 8 Q Okay.  
 9 **A But anyway --**  
 10 Q But those entries are ones that you  
 11 would have expected to generate cash subsequent to  
 12 the transfer, right?  
 13 **A Yeah. And then going back --**  
 14 Q But, again, you have no idea how much  
 15 cash, correct?  
 16 **A Yeah, going back above, I would say the**  
 17 **Stratford CLO also.**  
 18 Q Okay. The Stratford CLO listed under  
 19 Highland CDO Holdings Company --  
 20 **A Yeah.**  
 21 Q -- is another asset that you would have  
 22 expected to generate cash subsequent to the  
 23 transfer, correct?  
 24 **A Yes.**  
 25 Q And you don't know the amount?

340

1     **A No.**

2     Q And then in terms of the tax refund

3     receivable from Highland Capital, would you have

4     expected that to be paid in full?

5     **A I have no awareness on the details on**

6     **that.**

7     Q And the dividends receivable from

8     Highland Capital in August of 2017, would you have

9     expected that to have been paid in full?

10    **A I have no awareness of the details on**

11    **that.**

12    MR. CLUBOK: Okay. That's all I have

13    subject to Mr. Taylor's questions.

14    EXAMINATION BY COUNSEL FOR NON-PARTY WITNESS

15    BY MR. TAYLOR:

16    Q Jim, you're appearing here today

17    pursuant to a subpoena that was issued to you,

18    correct?

19    **A Yes.**

20    Q Are you -- you're not the plaintiff in

21    this action, are you?

22    **A No.**

23    Q You're not a defendant in this action,

24    are you?

25    **A No.**

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1     Q You're not a third-party defendant in

2     this action, are you?

3     **A I don't believe so.**

4     Q In fact, you're not a party at all in

5     this litigation, are you?

6     **A No.**

7     Q But for the subpoena, you would not

8     have appeared in this -- for this deposition,

9     correct?

10    **A Correct.**

11    MR. TAYLOR: Okay. I have no further

12    questions.

13    MR. CLUBOK: Perfect. Neither do I.

14    Thank you very much, Mr. Taylor. Looks like we

15    got done just in the nick of time.

16    THE VIDEOGRAPHER: Anything else before

17    we close?

18    MR. CLUBOK: Oh, I should ask, anything

19    from Highland Capital?

20    MR. FEINSTEIN: No, thank you.

21    THE VIDEOGRAPHER: Anything else?

22    MR. CLUBOK: Okay.

23    THE VIDEOGRAPHER: Mr. Clubok?

24    The time is 1:12. This concludes the

25    deposition of James Dondero. We are off the

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1     record.

2     (Time noted: 1:12 p.m.)

3     THE COURT REPORTER: Counsel, do you

4     want to keep the same order from the first

5     deposition of Mr. Dondero?

6     MR. CLUBOK: Yes, please.

7     MR. FEINSTEIN: Yes.

8     MR. TAYLOR: Yes.

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2                    ACKNOWLEDGMENT OF DEPONENT

3

4                    I, JAMES DONDERO, do hereby acknowledge

5     that I have read and examined the foregoing

6     testimony, and the same is a true, correct and

7     complete transcription of the testimony given by

8     me and any corrections appear on the attached

9     Errata sheet signed by me.

10

11                    \_\_\_\_\_

12                    (Date)                    (Signature)

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Conducted on May 12, 2021

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1  
2 CERTIFICATE OF REPORTER - NOTARY PUBLIC

3 I, ADRIENNE MIGNANO, the officer before  
4 whom the foregoing deposition was taken, do hereby  
5 certify that the foregoing transcript is a true  
6 and correct record of the testimony given; that  
7 said testimony was taken by me and thereafter  
8 reduced to typewriting under my direction; that  
9 reading and signing was requested; and that I am  
10 neither counsel for, related to, nor employed by  
11 any of the parties to this case and have no  
12 interest, financial or otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 18th day  
15 of MAY, 2021.

16 My Commission Expires: June 2022.

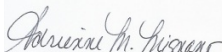
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# Transcript of Jean Paul Sevilla

**Date:** July 21, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Jean Paul Sevilla  
Conducted on July 21, 2021

<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION</p> <p>3 In re § 4 HIGHLAND CAPITAL § Chapter 11 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 5 Debtor. § 6 § 7 UBS SECURITIES LLC AND § UBS AG LONDON BRANCH, § 8 Plaintiffs, § 9 vs. § Adversary Proceeding 10 HIGHLAND CAPITAL § No. 21-03020-sgj MANAGEMENT, L.P., § 11 Defendant. § 12 § 13</p> <p>16 Videotaped Deposition of 17 JEAN PAUL SEVILLA 18 Dallas, Texas 19 Wednesday, July 21, 2021 20 9:40 a.m.</p> <p>23 Job No.: 386776 24 Pages: 1 - 318 25 Reported by: Micheal A. Johnson, RDR, CRR</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS 3 UBS SECURITIES LLC AND UBS AG LONDON BRANCH:</p> <p>4 Sarah Tomkowiak Andrew B. Clubok (Via Zoom) 5 LATHAM &amp; WATKINS LLP 555 Eleventh Street, N.W., Suite 1000 6 Washington, D.C. 20004 (202) 637-2200 7 sarah.tomkowiak@lw.com andrew.clubok@lw.com</p> <p>8 Shannon E. McLaughlin 9 LATHAM &amp; WATKINS LLP 885 Third Avenue 10 New York, New York 10022-4834 (212) 906-4612 shannon.mclaughlin@lw.com</p> <p>12 ON BEHALF OF DEFENDANT 13 HIGHLAND CAPITAL MANAGEMENT, L.P.:</p> <p>14 Robert J. Feinstein (Via Zoom) 15 PACHULSKI STANG ZIEHL &amp; JONES LLP 780 Third Avenue, 34th Floor 16 New York, New York 10017-2024 (212) 561-7700 rfeinstein@pszjlaw.com</p> <p>17</p> <p>18 ON BEHALF OF THE WITNESS:</p> <p>19 Frances A. Smith ROSS &amp; SMITH, PC 20 700 N. Pearl Street, Suite 1610 Dallas, Texas 75201 21 (214) 377-7879 frances.smith@judithwross.com</p> <p>22 Debra A. Dandeneau 23 BAKER &amp; MCKENZIE, LLP 452 Fifth Avenue 24 New York, New York 10018 (212) 626-4875 debra.dandeneau@bakermckenzie.com</p>
<p>1 Deposition of JEAN PAUL SEVILLA, held at 2 the location of: 3 4 Butler Snow LLP 5 2911 Turtle Creek Boulevard, Suite 1400 6 Dallas, Texas 75219 7 (469) 680-5500 8 9 10 Pursuant to Notice, before Micheal A. 11 Johnson, Registered Diplomat Reporter and 12 Certified Realtime Reporter. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 VIDEOGRAPHER: 3 Brian Krieger 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

Transcript of Jean Paul Sevilla  
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<p>1 PREVIOUSLY MARKED EXHIBITS</p> <table border="1"><thead><tr><th>2 NUMBER</th><th>DESCRIPTION</th><th>PAGE</th></tr></thead><tbody><tr><td>3 Exhibit 2</td><td>.....</td><td>208</td></tr><tr><td>4 Exhibit 3</td><td>.....</td><td>226</td></tr><tr><td>5 Exhibit 9</td><td>.....</td><td>234</td></tr><tr><td>6 Exhibit 19</td><td>.....</td><td>237</td></tr><tr><td>7 Exhibit 26</td><td>.....</td><td>65</td></tr><tr><td>8 Exhibit 28</td><td>.....</td><td>72</td></tr><tr><td>9 Exhibit 38</td><td>.....</td><td>263</td></tr></tbody></table> <p>10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	2 NUMBER	DESCRIPTION	PAGE	3 Exhibit 2	.....	208	4 Exhibit 3	.....	226	5 Exhibit 9	.....	234	6 Exhibit 19	.....	237	7 Exhibit 26	.....	65	8 Exhibit 28	.....	72	9 Exhibit 38	.....	263	<p>1 MR. FEINSTEIN: Via Zoom, Robert</p> <p>2 Feinstein, Pachulski Stang Ziehl &amp; Jones, counsel</p> <p>3 for defendant Highland Capital Management, LP.</p> <p>4 THE VIDEOGRAPHER: The court reporter</p> <p>5 today is Micheal Johnson also representing</p> <p>6 PlanetDepos. If the court reporter would please</p> <p>7 swear in the witness.</p> <p>8 JEAN PAUL SEVILLA,</p> <p>9 called as a witness, having been duly sworn by a</p> <p>10 Notary Public, was examined and testified as</p> <p>11 follows:</p> <p>12 EXAMINATION</p> <p>13 BY MS. TOMKOWIAK:</p> <p>14 Q Good morning, Mr. Sevilla.</p> <p>15 A <b>Good morning.</b></p> <p>16 Q Have you ever been deposed before?</p> <p>17 A <b>I have.</b></p> <p>18 Q Okay. So we will skip a lot of the ground</p> <p>19 rules and we'll get right into it. I will just</p> <p>20 ask that if you do not answer -- if you don't</p> <p>21 understand my question, please ask me to clarify.</p> <p>22 Otherwise, I'm going to assume that you do</p> <p>23 understand my question. Is that fair?</p> <p>24 A <b>Yes.</b></p> <p>25 Q Okay. And you understand that you're</p>
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<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins disk No. 1</p> <p>3 in the videotaped deposition of Jean Paul Sevilla.</p> <p>4 This is regarding the Highland Capital Management,</p> <p>5 LP. This is in the matter of UBS Securities LLC</p> <p>6 and UBS AG London Branch versus Highland Capital</p> <p>7 Management, LP in the United States Bankruptcy</p> <p>8 Court for the Northern District of Texas, Dallas</p> <p>9 Division, filed as Case No. 19-34054-SGJ11.</p> <p>10 Today's date is Wednesday, July 21st,</p> <p>11 2021. Our time on the video monitor is 9:40 a.m.</p> <p>12 Videographer today is Brian Krieger representing</p> <p>13 PlanetDepos. This video deposition is taking</p> <p>14 place at Butler Snow, 2911 Turtle Creek Boulevard,</p> <p>15 Suite 1400 in Dallas, Texas.</p> <p>16 Would counsel please voice identify</p> <p>17 themselves and whom they represent.</p> <p>18 MS. SMITH: Frances Smith with Ross &amp;</p> <p>19 Smith on behalf of JP Sevilla.</p> <p>20 MS. DANDENEAU: Debra Dandeneau from the</p> <p>21 firm of Baker McKenzie here on behalf of Jean Paul</p> <p>22 Sevilla.</p> <p>23 MS. TOMKOWIAK: Sarah Tomkowiak and</p> <p>24 Shannon McLaughlin on behalf of -- of Latham &amp;</p> <p>25 Watkins on behalf of UBS.</p>	<p>1 testifying today here under oath?</p> <p>2 A <b>Yes.</b></p> <p>3 Q How many times have you been deposed?</p> <p>4 A <b>Three or four.</b></p> <p>5 Q And generally speaking, what types of</p> <p>6 matters?</p> <p>7 A <b>Both commercial litigation. One -- both</b></p> <p>8 <b>commercial litigation cases.</b></p> <p>9 Q Okay. Are you an attorney?</p> <p>10 A <b>Yes.</b></p> <p>11 Q What type of law do you practice?</p> <p>12 A <b>Corporate, transactional for the most</b></p> <p>13 <b>part.</b></p> <p>14 Q Where are you barred?</p> <p>15 A <b>New York, Texas and California.</b></p> <p>16 Q Where did you obtain your law degree?</p> <p>17 A <b>University of North Carolina at Chapel</b></p> <p>18 <b>Hill.</b></p> <p>19 Q And when did you get your JD?</p> <p>20 A <b>2007.</b></p> <p>21 Q Do you have any other professional</p> <p>22 licenses?</p> <p>23 A <b>I don't believe so.</b></p> <p>24 Q And you have a bachelor's degree, correct?</p> <p>25 A <b>Yes.</b></p>																								

<p>13</p> <p>1 Q From the United States Naval Academy?</p> <p>2 A <b>Correct.</b></p> <p>3 Q Did you serve in the Navy?</p> <p>4 A <b>Yes.</b></p> <p>5 Q Approximately when did your service end?</p> <p>6 A <b>2006.</b></p> <p>7 Q Were you honorably discharged?</p> <p>8 A <b>Yes.</b></p> <p>9 Q Where are you currently employed?</p> <p>10 A <b>Skyview Group.</b></p> <p>11 Q What does Skyview Group do?</p> <p>12 A <b>Skyview Group is a -- effectively a</b></p> <p>13 <b>consultancy, but a back and middle office services</b></p> <p>14 <b>provider to financial services firms, banks -- and</b></p> <p>15 <b>banks in the financial services industry.</b></p> <p>16 Q What does it mean to provide back and</p> <p>17 middle services?</p> <p>18 A <b>So Skyview provides accounting support,</b></p> <p>19 <b>recruiting, HR, IT. I'm sure I'm forgetting some,</b></p> <p>20 <b>but generally that sort of back and middle office</b></p> <p>21 <b>functionality that you would find at a financial</b></p> <p>22 <b>services firm.</b></p> <p>23 Q When did you start at Skyview?</p> <p>24 A <b>March 1st of this year.</b></p> <p>25 Q Okay. And what's your title?</p>	<p>15</p> <p>1 said it was a relatively new company, I think.</p> <p>2 A <b>Early this year. I don't know exactly</b></p> <p>3 <b>when.</b></p> <p>4 Q Do you know who owns Skyview?</p> <p>5 A <b>Yes.</b></p> <p>6 Q Who?</p> <p>7 A <b>Scott Ellington.</b></p> <p>8 Q Anyone else?</p> <p>9 A <b>No.</b></p> <p>10 Q Do you work with anybody at Skyview who</p> <p>11 also used to work at Highland Capital Management?</p> <p>12 A <b>Yes.</b></p> <p>13 Q And who is that?</p> <p>14 A <b>It's a long list.</b></p> <p>15 Q Go for it.</p> <p>16 A <b>Just start hitting names?</b></p> <p>17 Q Yeah.</p> <p>18 A <b>Brian Collins, Frank Waterhouse, Will</b></p> <p>19 <b>Mabry, Matt DiOrio, Stephanie Vitiello, Isaac</b></p> <p>20 <b>Leventon, Brad McKay. The employee count is north</b></p> <p>21 <b>of 30 and most of those -- most, if not all, were</b></p> <p>22 <b>ex-Highland employees, so it's a substantial</b></p> <p>23 <b>percentage of my coworkers are ex-Highland people.</b></p> <p>24 Q Were they all recruited by Mr. Ellington?</p> <p>25 A <b>I wouldn't characterize it that way.</b></p>
<p>14</p> <p>1 A <b>Managing director.</b></p> <p>2 Q Who hired you at Skyview?</p> <p>3 A <b>I don't know if it was an individual</b></p> <p>4 <b>per se. Mr. Ellington owns Skyview, so I would</b></p> <p>5 <b>say it's his decision to employ me ultimately.</b></p> <p>6 Q And by Mr. Ellington, you're referring to</p> <p>7 Scott Ellington?</p> <p>8 A <b>Yes.</b></p> <p>9 Q As managing director, what are your duties</p> <p>10 and responsibilities, generally speaking?</p> <p>11 A <b>Fairly varied at this point. I support</b></p> <p>12 <b>our clients' private equity investments, I work on</b></p> <p>13 <b>internal Skyview matters as the business is being</b></p> <p>14 <b>sort of built up. It's a fairly new enterprise.</b></p> <p>15 <b>And then tasks that can come from our clients,</b></p> <p>16 <b>ranging from, you know, questions related to</b></p> <p>17 <b>potentially compliance questions or things of that</b></p> <p>18 <b>ilk.</b></p> <p>19 Q Are you in the legal department?</p> <p>20 A <b>I guess technically. Yeah. Yes.</b></p> <p>21 Q Who do you report to?</p> <p>22 A <b>Mr. Ellington.</b></p> <p>23 Q And what's his title?</p> <p>24 A <b>President, I believe.</b></p> <p>25 Q Do you know when Skyview was formed? You</p>	<p>16</p> <p>1 Q How would you characterize it? Were they</p> <p>2 all hired by him?</p> <p>3 A <b>They were hired by Skyview, so by</b></p> <p>4 <b>extension, if you want to say it that way, I guess</b></p> <p>5 <b>that's fair.</b></p> <p>6 Q Does Ms. Katie Lucas work there?</p> <p>7 A <b>Yes. She is on leave, though. She has</b></p> <p>8 <b>not worked on anything, as far as I know, though.</b></p> <p>9 <b>Does she work there? I think she's technically an</b></p> <p>10 <b>employee, but she's not actively doing stuff, as</b></p> <p>11 <b>far as I know.</b></p> <p>12 Q I appreciate the clarification. Is</p> <p>13 Mr. Dondero affiliated at all with Skyview?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 A <b>What do you mean by affiliated?</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q In the broadest sense possible. Does he</p> <p>18 own it? Does he work there? Does he have any</p> <p>19 connection to Skyview?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 A <b>He doesn't own it. He doesn't work there.</b></p> <p>22 <b>I think he's in control of entities that are</b></p> <p>23 <b>Skyview clients, currently.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q What do you mean by control?</p>

<p>17</p> <p>1 <b>A For example, he's the president of</b> 2 <b>NexPoint Advisors and NexPoint Advisors is a</b> 3 <b>client.</b> 4 Q Let me put it this way. Does Mr. Dondero 5 have any financial interest in Skyview? 6 <b>A He does not.</b> 7 Q Who sets your salary? 8 <b>A Mr. Ellington.</b> 9 Q And is Skyview your only source of income 10 currently? 11 <b>A Yes. No, it is not.</b> 12 Q What other source of income do you have? 13 <b>A Well, actually it is. I'm on -- I still</b> 14 <b>serve on several portfolio company boards and I'm</b> 15 <b>correcting myself because those board fees are</b> 16 <b>going back to the funds that own the equity</b> 17 <b>interest, so my original answer stands. My only</b> 18 <b>source of income is Skyview.</b> 19 Q Okay. And how much do you make? 20 <b>A There's a deferred component. My base is</b> 21 <b>275,000 and my annual bonus thus far for this</b> 22 <b>year, I believe I've been paid 350,000.</b> 23 Q Who decides whether and how much you get 24 for a bonus? 25 <b>A It's a new company, so I'm not sure going</b></p>	<p>19</p> <p>1 <b>A Sure. I was hired into the legal group.</b> 2 <b>My title was corporate counsel. I reported to</b> 3 <b>Thomas Surgent. And you asked for the</b> 4 <b>progression; is that right?</b> 5 Q Yes. And I'm happy if you'd like to step 6 through it myself, but if you -- 7 <b>A Yeah, yeah. About a year in, my duties</b> 8 <b>expanded and so my title was changed to assistant</b> 9 <b>general counsel from corporate counsel. That</b> 10 <b>would have been in 2013.</b> 11 Q Did you still report to Mr. Surgent at 12 that time? 13 <b>A Yes. Assistant general counsel was a</b> 14 <b>title that I would then have until the end of my</b> 15 <b>time at Highland. But I would say in 2018, in</b> 16 <b>addition to my duties in the legal group and sort</b> 17 <b>of consistent with my duties within the legal</b> 18 <b>group, portions of the private equity business</b> 19 <b>were transferred to legal, but I started working</b> 20 <b>more on the portfolio companies within the private</b> 21 <b>equity business, culminating in, I guess the</b> 22 <b>beginning of 2020, where my title changed to</b> 23 <b>cohead of private equity and assistant general</b> 24 <b>counsel all within the legal group.</b> 25 Q Did you report to Thomas Surgent for that</p>
<p>18</p> <p>1 <b>forward, but I would say the president of the</b> 2 <b>company decided.</b> 3 Q That's Mr. Ellington? 4 <b>A Yes.</b> 5 Q And how does that salary compare to your 6 salary at Highland Capital Management? If I say 7 HCM, is that -- 8 <b>A Sure.</b> 9 Q How is your salary compared to your salary 10 at HCM? 11 <b>A Consistent with what I was paid at HCM.</b> 12 Q So let's turn to HCM. During what period 13 of time were you employed by HCM? 14 <b>A From 2012 through 2021.</b> 15 Q How did you come to start working for HCM? 16 <b>A Can you be a little more specific?</b> 17 Q Sure. Did you apply? Did someone reach 18 out to you? How did you get that job? 19 <b>A It was through a headhunter.</b> 20 Q Through a headhunter? 21 <b>A Yes.</b> 22 Q Can you -- nine years is a long period of 23 time, so can you just walk me through your roles 24 at HCM from when you started through when you 25 left?</p>	<p>20</p> <p>1 entire period of time or did that ever change? 2 <b>A I believe I reported to him for most of</b> 3 <b>the time. There may have been a period in maybe</b> 4 <b>2018 that I didn't. But at the end of my tenure,</b> 5 <b>I reported to him and certainly during the first</b> 6 <b>several years at Highland, I reported to him as</b> 7 <b>well.</b> 8 Q Did you have any dotted line reporting 9 relationships? 10 MS. SMITH: Objection, form. 11 BY MS. TOMKOWIAK: 12 Q Do you know what I mean by dotted line? 13 <b>A If you could tell me what you mean by it.</b> 14 Q Sure. Like on a corporate org chart, 15 sometimes you have a direct report but then you 16 also have like somebody you indirectly report to. 17 Is there anybody like that? 18 <b>A I don't remember there being a dotted line</b> 19 <b>as it relates to me. But practically speaking, I</b> 20 <b>would work with Mr. Ellington directly,</b> 21 <b>irrespective of whether I was Mr. Surgent's direct</b> 22 <b>report, as well as Mr. Dondero from time to time.</b> 23 Q Did anyone report to you? 24 <b>A At different times in -- at Highland, yes.</b> 25 Q And to the best of your recollection, who</p>

<p>1 reported to you? 2 <b>A Cameron Baynard, Sean Fox. I think those</b> 3 <b>would have been my only direct reports.</b> 4 Q And generally speaking, what were your 5 duties as associate general counsel? 6 <b>A Assistant general counsel.</b> 7 Q I'm sorry, assistant general counsel. I 8 apologize. 9 <b>A It's okay. Generally anything in the</b> 10 <b>legal group that required assistance. It could be</b> 11 <b>corporate matters relating to fund -- fund</b> 12 <b>documents or launching new funds, it could have</b> 13 <b>been managing some litigation, but kind of a wide</b> 14 <b>range of sort of a mishmash of both kind of legal</b> 15 <b>and sometimes nonlegal workflows and tasks.</b> 16 Q When did you leave HCM? 17 <b>A I believe my last day was February 28th of</b> 18 <b>2021.</b> 19 Q Why did you leave? 20 <b>A I was terminated.</b> 21 Q Okay. Who terminated you? 22 <b>A Mr. Seery.</b> 23 Q While you were employed, you mentioned 24 working with portfolio companies. Did you work 25 with specific Highland funds?</p>	<p>21 23 1 Q And when I say Highland, I mean HCM. 2 <b>A Yes. Understood.</b> 3 Q So you didn't divide up your time spent 4 working for different Highland entities or funds? 5 <b>A What do you mean by that?</b> 6 Q And that was vague. You didn't, like, 7 write down your time or somehow submit an invoice 8 or something like that? 9 <b>A No.</b> 10 Q Okay. Were you paid by HCM on an hourly 11 basis or just a salary arrangement? 12 <b>A Salaried.</b> 13 Q And you said it was relatively consistent 14 with the -- your salary at Skyview? 15 <b>A Yes.</b> 16 Q And you also had an opportunity to receive 17 a bonus? 18 <b>A Yes.</b> 19 Q Are you familiar with an entity called 20 CPCM LLC? 21 <b>A Yes.</b> 22 Q What is that? 23 <b>A That is an entity that is a wholly owned</b> 24 <b>subsidiary of Skyview. Skyview's legal name is</b> 25 <b>Highgate Consulting Group, Inc. It uses a dba in</b></p>
<p>22 1 <b>A Yes.</b> 2 Q Okay. 3 <b>A Sorry, what do you mean -- work with</b> 4 <b>specific Highland funds, what do you mean by that?</b> 5 Q Like would you have done, just picking a 6 fund, CDO Opportunity Master Fund, would you have 7 done work specifically for that fund or would you 8 say that your work was undertaken on behalf of 9 HCM, as opposed to any particular fund? 10 <b>A I mean, my work was -- I mean, HCM was my</b> 11 <b>employer. HCM is in the business of managing</b> 12 <b>funds, among other things, so I don't necessarily</b> 13 <b>distinguish between the two. But you mentioned</b> 14 <b>portfolio companies, you know, to the extent a</b> 15 <b>fund had an interest, an equity interest or some</b> 16 <b>other interest in a portfolio company, my work for</b> 17 <b>that portfolio company would have been in</b> 18 <b>connection with managing -- Highland managing that</b> 19 <b>fund.</b> 20 Q Who paid you at Highland? Was it just 21 Highland? 22 <b>A Yes.</b> 23 Q Okay. So you weren't paid by any entity 24 other than Highland? 25 <b>A No.</b></p>	<p>24 1 <b>Texas, but that is an entity owned by Skyview that</b> 2 <b>essentially houses Skyview employee claims,</b> 3 <b>compensation claims.</b> 4 Q So just so I understand. So Skyview's 5 legal name is Highgate Consulting Group; is that 6 right? 7 <b>A Yes.</b> 8 Q And it does business as Skyview in Texas? 9 <b>A Correct.</b> 10 Q And CPCM is a wholly owned subsidiary of 11 Highgate? 12 <b>A Yes.</b> 13 Q You submitted a claim in the underlying 14 bankruptcy case in this matter; is that right? 15 <b>A Yes.</b> 16 Q And you've since transferred that claim to 17 CPCM? 18 <b>A Yes.</b> 19 Q Okay. 20 (Deposition Exhibit 46 marked for 21 identification.) 22 BY MS. TOMKOWIAK: 23 Q I'm going to hand you what has been 24 previously marked as Exhibit 46. To be clear, 25 what we have just marked as Exhibit 46, it has not</p>

<p>25</p> <p>1 been an exhibit in this case to date. 2 MS. SMITH: Sarah, I'm going to object on 3 this. What is the relevance of this to the motion 4 for a temporary retraining order and preliminary 5 injunction? 6 MS. TOMKOWIAK: I just want to understand 7 this particular witness's financial stake in this 8 matter. I'll be super brief. It will just be 9 five minutes. I just want to clarify -- 10 MS. SMITH: I just want to note my 11 objection on the record. Okay. 12 BY MS. TOMKOWIAK: 13 Q Mr. Sevilla, do you recognize this 14 document? 15 <b>A I do.</b> 16 Q Okay. And this is the document 17 transferring your claim to CPCM on March 22nd, 18 2021? 19 <b>A Yes.</b> 20 Q And that's your signature on the second 21 page? 22 <b>A Yes.</b> 23 Q Okay. Did you approach CPCM or did it 24 approach you? 25 MS. SMITH: Objection, relevance.</p>	<p>27</p> <p>1 <b>A I believe they were one and the same.</b> 2 <b>They changed it from HCMLP to Highland Capital at</b> 3 <b>some point, but to me they're synonymous.</b> 4 Q Any others? 5 <b>A Those are the only Highland e-mail</b> 6 <b>addresses I had.</b> 7 Q Did you ever use your personal e-mail 8 address in connection with your work for HCM? 9 <b>A No.</b> 10 Q After you were terminated in 11 February 2021, did you have a chance to clean out 12 your office? 13 <b>A After I was terminated?</b> 14 Q Uh-huh. 15 <b>A Not after. It was before.</b> 16 Q Okay. So you -- 17 <b>A I didn't have an office. I had a desk.</b> 18 Q Okay. But you did have a chance to clean 19 out your desk? 20 <b>A I did.</b> 21 Q So any files that you had on your desk 22 were left at HCM? 23 <b>A To the -- not every file.</b> 24 Q Okay. That's a better question. Did you 25 take any files with you?</p>
<p>26</p> <p>1 <b>A I don't think either side approached the</b> 2 <b>other. Transferring my compensation claim to this</b> 3 <b>entity was an expectation of my employer.</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q I see. So that's why you sold your claim 6 to CPCM? 7 MS. SMITH: Objection, relevance. 8 <b>A I wouldn't characterize it as sold. I</b> 9 <b>assigned it.</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q Based on your testimony, it's fair to say 12 you assigned it as a condition of your employment? 13 MS. SMITH: Objection, form. 14 <b>A Yes.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Okay. You can set that aside. 17 MS. SMITH: What was the exhibit number on 18 that? 19 MS. TOMKOWIAK: 46. 20 BY MS. TOMKOWIAK: 21 Q While you were at HCM, what e-mail address 22 did you use? 23 <b>A jsevilla@hcmlp.com was my Highland e-mail.</b> 24 Q Did you ever use 25 jsevilla@highlandcapital.com?</p>	<p>28</p> <p>1 <b>A I took some files with me, yes.</b> 2 Q What did you take with you? 3 <b>A Information relating to portfolio</b> 4 <b>companies that I was still on the board on --</b> 5 <b>board of. To the extent I had any personal</b> 6 <b>effects or personal files, data, you know, in my</b> 7 <b>files, or information or -- information related to</b> 8 <b>NexPoint or HCMFA, which were shared services</b> 9 <b>recipients that I was still going to be working</b> 10 <b>on. I would say that's the -- that's the</b> 11 <b>universe.</b> 12 Q What companies do you still sit on the 13 board of? 14 <b>A CCS Medical, TerreStar, Lake Las Vegas. I</b> 15 <b>believe that's it.</b> 16 Q And are all of those still affiliated with 17 HCM? 18 MS. SMITH: Objection, form. 19 <b>A No.</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q No? 22 <b>A No.</b> 23 Q Were they ever? 24 <b>A What do you mean by affiliated?</b> 25 MS. SMITH: Objection.</p>



<p style="text-align: right;">29</p> <p>1 BY MS. TOMKOWIAK: 2 Q Well, again, were they owned directly or 3 indirectly? Were they a portfolio company of a 4 Highland fund? Were they -- 5 MS. SMITH: Objection, form. 6 A CCS -- 7 MS. TOMKOWIAK: Sorry, just let me finish 8 my question -- and I know I paused there -- before 9 you object. 10 BY MS. TOMKOWIAK: 11 Q Go ahead. 12 A <b>CCS is owned, Highland's funds don't own 13 an interest in CCS, as do NexPoint and HCMFA fund. 14 TeraStar, Highland has no fund interest in 15 TerreStar. However, Highland did provide shared 16 services at times, such that Highland would have 17 had touchpoints to TerreStar, but those are no 18 longer. And similarly with Lake Las Vegas, it's 19 NexPoint and HCMFA funds that own the interest in 20 that portfolio company. No Highland funds do. 21 But Highland's touchpoint would have been 22 providing shared services to those other advisors 23 in connection with that investment.</b> 24 Q So when I've used the word affiliated, you 25 don't understand providing shared services to be</p>	<p style="text-align: right;">31</p> <p>1 Q Since you left HCM. 2 A Yes. 3 Q About what, generally speaking? 4 A <b>Signing new business at Skyview, so 5 Skyview's financial performance and prospects. 6 Internal Skyview policies as they were being 7 determined just because Skyview is in the nature 8 of a start-up at this point. Updates as to what 9 I'm working on with respect to the aforementioned 10 portfolio companies and retail funds. I think 11 that would be a comprehensive universe.</b> 12 Q Have you had any communications with 13 Mr. Ellington about this matter? 14 A No. 15 Q Same question for Isaac Leventon. Have 16 you had any communications with him since you left 17 Highland? 18 A Yes. 19 Q And generally speaking, were the nature of 20 those communications also related to your work at 21 Skyview? 22 A Yes. 23 Q Have you had any communications with him 24 about this matter? 25 A No.</p>
<p style="text-align: right;">30</p> <p>1 an affiliation; is that right? 2 A <b>I do now, if we'd like to use -- I was --</b> 3 Q I'm trying to understand how you use the 4 word. 5 A <b>I was thinking like under common control 6 or something like that, but if -- I mean, that's a 7 much broader, I think, way to describe it.</b> 8 Q Okay. And I did it too so let's try not 9 to talk over each other. That was also my fault. 10 Okay. Since leaving HCM, have you had any 11 communications with Mr. Dondero? 12 A Yes. 13 Q Generally what was the nature of those 14 communications? 15 A <b>Financial performance and prospects of 16 portfolio companies, financial performance of 17 funds advised by NexPoint and HCMFA, potential 18 initiatives regarding those funds. I think that 19 would be -- that's pretty comprehensive.</b> 20 Q Have you had any communications with 21 Mr. Dondero about this matter? 22 A No. 23 Q What about Mr. Ellington? Have you had 24 any communications with him? 25 A <b>About what?</b></p>	<p style="text-align: right;">32</p> <p>1 Q What about Matt DiOrio? Have you had any 2 communications with him since you left Highland? 3 A Yes. 4 Q And have those communications also related 5 to your work at Skyview? 6 A Yes. 7 Q And same question for Ms. Lucas. Have you 8 had any communications with her since you left 9 Highland? 10 A Yes. 11 Q Okay. And have those communications also 12 been about your work at Skyview? 13 A No. 14 MS. SMITH: Objection, form. 15 A No. 16 BY MS. TOMKOWIAK: 17 Q What were those communications about? 18 A <b>Inquiring about her newborns. Personal 19 pleasantries.</b> 20 Q Have you had any communications with her 21 about this matter? 22 A No. 23 Q Do you have a -- outside of your 24 professional relationship with the individuals 25 that I just mentioned, do you have a personal</p>

<p>33</p> <p>1 relationship with any of them? 2 MS. SMITH: Objection, form. 3 <b>A I would say so.</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q Which ones? 6 <b>A Mr. DiOrio, Mr. Leventon, to some degree</b> 7 <b>Mr. Ellington, but I mean, I would say in the</b> 8 <b>nature of colleagues who inquire about each</b> 9 <b>other's personal lives.</b> 10 Q Since leaving Highland, have you had any 11 communications with any current employees of 12 Highland? 13 MS. SMITH: Objection, form. 14 <b>A Yes.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Who? 17 <b>A I sit on the board of CCS Medical with</b> 18 <b>Cameron Baynard and Sean Fox. So in connection</b> 19 <b>with board functionality, I would say we have</b> 20 <b>communicated. I have communicated with Mr. Seery.</b> 21 <b>I have communicated with Tim Cournoyer. I think</b> 22 <b>that would be it.</b> 23 Q What were the nature of your 24 communications with Mr. Seery? 25 <b>A Relating to a portfolio company called</b></p>	<p>35</p> <p>1 Highland should settle that litigation? 2 <b>A No.</b> 3 Q What is your general understanding of that 4 litigation? 5 <b>A It began in -- around the time of the</b> 6 <b>economic crisis, 2008, 2009, related to a</b> 7 <b>warehouse facility, or something like it. I mean,</b> 8 <b>that's pretty much the extent of it.</b> 9 Q That's the extent of your knowledge, that 10 it began around the time of the economic crisis 11 related to a warehouse facility or something like 12 that? 13 <b>A Yes. I mean, generally that's my</b> 14 <b>understanding of what the adversity is about, a</b> 15 <b>failed loan warehouse or some sort of warehouse</b> 16 <b>facility that resulted in financial losses.</b> 17 Q Do you have any idea what the potential 18 liability was that Highland faced in that matter? 19 MS. SMITH: Objection, form. 20 <b>A Only anecdotally from the Highland BK,</b> 21 <b>having listened to certain things in the Highland</b> 22 <b>bankruptcy.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q So to the best of your recollection, you 25 weren't aware of that at the time?</p>
<p>34</p> <p>1 <b>Cornerstone Healthcare Group.</b> 2 Q And what were the nature of your 3 communications with Mr. Cournoyer? 4 <b>A Cournoyer.</b> 5 Q Cournoyer. 6 <b>A Personal.</b> 7 Q I'm going to transition topics to the 8 litigation between Highland and UBS in New York 9 State court. Are you familiar with that 10 litigation? 11 <b>A I've heard of it.</b> 12 Q You've heard of it? 13 <b>A Yes.</b> 14 Q Okay. So what role, if any, did you play 15 in managing that litigation for Highland? 16 MS. SMITH: Objection, form. 17 <b>A None.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q None? 20 <b>A None.</b> 21 Q What role did you play, if any, in 22 responding to discovery requests from UBS in that 23 matter? 24 <b>A None.</b> 25 Q Did you play any role in analyzing whether</p>	<p>36</p> <p>1 <b>A At which time? I'm sorry.</b> 2 Q During the time that you were employed at 3 Highland. 4 <b>A Well, I--</b> 5 MS. SMITH: Objection, form. 6 <b>A My last year of employment was during the</b> 7 <b>pendency of the bankruptcy, so I would have</b> 8 <b>learned more about the UBS lawsuit. But prior to</b> 9 <b>that, I had no real knowledge or understanding</b> 10 <b>about what it was about.</b> 11 MS. TOMKOWIAK: Can you mark that as 47. 12 (Deposition Exhibit 47 marked for 13 identification.) 14 <b>BY MS. TOMKOWIAK:</b> 15 Q Okay. I've handed you what we have marked 16 as Exhibit 47. It's an e-mail from Isaac Leventon 17 to you, dated April 19th, 2017, subject: 18 UBS_Settlement_Structure_(9.pptx). 19 Is that your Highland Capital e-mail 20 address at the top? 21 <b>A It is.</b> 22 Q Do you have any reason to doubt that you 23 received this e-mail on April 19th, 2017? 24 <b>A No.</b> 25 MS. SMITH: I'm going to raise an</p>

<p>37</p> <p>1 objection here. To the extent this is going to 2 require Mr. Sevilla to divulge privileged 3 information, as he was counsel for -- in the 4 general counsel's office for Highland at the time, 5 I'm going to assume that the debtor will make the 6 privilege or make the privilege objections or say 7 that it's waived so that Mr. Sevilla can answer. 8 MR. FEINSTEIN: We will waive the 9 privilege. This is Robert Feinstein on behalf of 10 the debtor. To the extent it applies at all. 11 BY MS. TOMKOWIAK: 12 Q Okay. So have you had a chance to look 13 through that attachment? Take your time, let me 14 know when you're ready. 15 (Witness reviews document.) 16 A Okay. I've looked at it. 17 BY MS. TOMKOWIAK: 18 Q Do you recall receiving this UBS Highland 19 Settlement Analysis in April 2017? 20 A I don't. 21 Q No recollection at all? 22 A No. 23 Q If you take a look at this -- if you turn 24 to slide 1, the Bates number -- if I say that, do 25 you know what I'm talking about?</p>	<p>39</p> <p>1 Q Do you have any idea what was going on in 2 the UBS litigation in New York State court in 3 April of 2017? 4 A I don't think so, no. 5 Q Who at Highland had authority to settle a 6 litigation matter of the magnitude of the UBS 7 matter? 8 A I don't know. I assume Mr. Dondero would 9 have had to sign off, but I don't know what 10 authority had been granted at any given moment. 11 Q Okay. And similarly, you don't know 12 whether Mr. Ellington had that authority? 13 A I don't know. 14 Q Did you have that authority? 15 A No. 16 Q Okay. If you look at slide 2, Bates 17 ending in 53, if you see the -- halfway down, it 18 says, Or Highland Wins in bold underline. 19 Do you see that? 20 A Yes. 21 Q Okay. And then underneath it it says: 22 HFP is solvent. Reverses 2008's 257 million tax 23 write-off by HCMLP. 24 Do you know anything about that 25 257 million tax write-off?</p>
<p>38</p> <p>1 A Yes. 2 Q Okay. So Bates ending in 52. 3 A Yeah. 4 Q Is this type of document familiar to you? 5 A Not really. 6 MS. SMITH: Objection, form. 7 BY MS. TOMKOWIAK: 8 Q Okay. So you don't know whether Highland 9 prepared other settlement analyses like this? 10 A I have no direct knowledge if that's -- if 11 it's something Highland would have done. No. 12 Q Do you know who prepared this settlement 13 analysis? 14 A I don't. 15 Q Did you have any role in preparing it? 16 A No, not that I remember. 17 Q Do you know why Mr. Leventon is sending 18 this to you? 19 A I do not. 20 Q Do you know who would be the recipient of 21 a presentation like this? 22 A I'm not familiar with this sort of 23 presentation, so I really don't have -- I don't 24 recall any context around it. So, no, I guess the 25 answer's no to that.</p>	<p>40</p> <p>1 A No, I don't. 2 MS. SMITH: Objection, form. 3 A I do not. 4 BY MS. TOMKOWIAK: 5 Q All right. If you could turn to slide 6, 6 Bates ending in 57. 7 A Okay. 8 Q The title here is If Highland Settles. 9 And then No. 1, it says: Sentinel controls 10 HFP/CDO assets (currently 94 million) (see 11 Slide 10). 12 Do you see that? 13 A I do. 14 Q Are you familiar with the entity Sentinel? 15 A Yes. 16 Q Okay. And that was a Cayman insurance 17 company that was owned by Mr. Dondero and 18 Mr. Ellington, correct? 19 MS. SMITH: Objection, form. 20 A At one point, yes, I think they had an 21 economic interest. I'm not certain if that 22 changed. 23 BY MS. TOMKOWIAK: 24 Q Okay. And if you'd flip to slide 8, which 25 is Bates ending in 59.</p>

<p style="text-align: right;">41</p> <p>1 <b>A Yes.</b></p> <p>2 Q So this is UBS Settlement: Structure</p> <p>3 Summary. Are you familiar with any of the steps</p> <p>4 that are listed on this slide, in terms of a</p> <p>5 settlement structure for settling the UBS matter?</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 <b>A I'm not familiar with the context of</b></p> <p>8 <b>settlement, but these steps -- I have some</b></p> <p>9 <b>familiarity with the steps, sort of without --</b></p> <p>10 <b>without that context, without a settlement</b></p> <p>11 <b>backdrop or context of settlement.</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q Okay. And which steps are those?</p> <p>14 <b>A The ATE policy from Sentinel. I mean,</b></p> <p>15 <b>really Step 1. I mean, the rest of the steps sort</b></p> <p>16 <b>of, I guess, intuitively make sense, but I never</b></p> <p>17 <b>really -- I'm not familiar with the context here.</b></p> <p>18 Q Okay. So you are -- and I'll talk about</p> <p>19 this later today, but you're familiar with the ATE</p> <p>20 policy from Sentinel, but you were unaware that</p> <p>21 was in connection --</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 MS. TOMKOWIAK: Hang on. Let me just</p> <p>24 finish the question.</p> <p>25</p>	<p style="text-align: right;">43</p> <p>1 <b>A Yes.</b></p> <p>2 Q Do you believe that refers to Scott</p> <p>3 Ellington?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 <b>A Yes.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Were you part of Mr. Ellington's team?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And so it says here that the plan in</p> <p>10 Step 1 is for HFP/CDO Fund to send their assets</p> <p>11 (94 million) as ATE premium payments to Sentinel,</p> <p>12 and then the other arrow says, Sentinel writes</p> <p>13 100 million policy for UBS liability.</p> <p>14 Is that your understanding of the ATE</p> <p>15 policy?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 <b>A I'm not certain of the \$94 million part.</b></p> <p>18 <b>The \$100 million ATE policy does -- I am familiar</b></p> <p>19 <b>with. So, yes, generally I'm familiar with this.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q Okay. And if you look at the next slide,</p> <p>22 slide 11 that's ending in Bates 62, this is UBS</p> <p>23 Settlement Step 2 - Negotiate Settlement Amount.</p> <p>24 And then the box up top says: Scott to negotiate</p> <p>25 with Andy.</p>
<p style="text-align: right;">42</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Let me do that again.</p> <p>3 You were familiar with the ATE policy from</p> <p>4 Sentinel, but you were unaware that this was in</p> <p>5 connection with a potential settlement with UBS;</p> <p>6 is that what you're saying?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 <b>A I guess it's intuitive that there would be</b></p> <p>9 <b>a settlement step, but I don't recall this context</b></p> <p>10 <b>being explained to me or otherwise knowing of it</b></p> <p>11 <b>in real time, if that makes sense.</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q Do you know whether any of the steps on</p> <p>14 this page actually happened?</p> <p>15 <b>A I believe the ATE policy was entered into.</b></p> <p>16 <b>I don't know the rest.</b></p> <p>17 Q And this slide contemplates buying a</p> <p>18 \$100 million policy; is that right?</p> <p>19 <b>A Yes.</b></p> <p>20 Q If you go to slide 10, and that's Bates</p> <p>21 ending 61.</p> <p>22 <b>A Yes.</b></p> <p>23 Q It says: UBS Settlement Step 1 - ATE</p> <p>24 Policy, and then there's a box there that says,</p> <p>25 Actor: Scott's Team?</p>	<p style="text-align: right;">44</p> <p>1 Do you know if that refers to my partner</p> <p>2 Andy Clubok?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 <b>A I'm assuming it does.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q Did you have any communications with</p> <p>7 Mr. Clubok in the course of the UBS litigation?</p> <p>8 <b>A No.</b></p> <p>9 Q Do you know whether any of those</p> <p>10 negotiations between Mr. Ellington and Mr. Clubok</p> <p>11 actually occurred?</p> <p>12 <b>A I don't.</b></p> <p>13 Q You weren't part of those, if they did?</p> <p>14 <b>A No.</b></p> <p>15 Q Who else was on Scott's team?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 <b>A Thomas Surgent, Tim Cournoyer, Stephanie</b></p> <p>18 <b>Vitiello, Lauren Thedford, Helen Kim. Obviously</b></p> <p>19 <b>the team changed over time. I'm sort of</b></p> <p>20 <b>mentioning the individuals towards the end there.</b></p> <p>21 <b>There were other litigators over time who came --</b></p> <p>22 <b>you know, who came and went and corporate</b></p> <p>23 <b>attorneys as well. But it's the legal group. It</b></p> <p>24 <b>was the Highland legal group.</b></p> <p>25</p>

<p style="text-align: right;">45</p> <p>1 BY MS. TOMKOWIAK: 2 Q What about Mr. Leventon? 3 <b>A Mr. Leventon.</b> 4 Q What about Mr. DiOrio? 5 <b>A Mr. DiOrio, Ms. Irving.</b> 6 Q If you could keep that exhibit open to 7 slide 10, which is at Bates 61, I'm going to also 8 hand you what we will mark as Exhibit 48. 9 (Deposition Exhibit 48 marked for 10 identification.) 11 BY MS. TOMKOWIAK: 12 Q Go ahead and take your time to flip 13 through that. This is another version of the same 14 settlement analysis that we were just looking at. 15 <b>A Sorry, the pages are upside down, so I'm</b> 16 <b>having to --</b> 17 Q Yeah, for me too. That's not ideal. I 18 think we're all out of practice printing out hard 19 copies. I apologize for that. 20 (Witness reviews document.) 21 BY MS. TOMKOWIAK: 22 Q Let me know when you've had a chance to 23 look through that. 24 <b>A Okay.</b> 25 Q So this is, again, another version of the</p>	<p style="text-align: right;">47</p> <p>1 policy, the assignment of assets and related 2 matters. 3 MS. SMITH: That doesn't exactly resolve 4 my objection. This is an internal settlement 5 analysis document, and I don't want Mr. Sevilla to 6 be in any kind of trouble for discussing it. 7 This, as far as I know, was not an attachment to 8 the complaint and I don't know what, if anything, 9 she's going to ask that's related to the 10 complaint. 11 MR. FEINSTEIN: Then maybe we should take 12 it question by question for now. 13 MS. TOMKOWIAK: Question by question or 14 document by document? 15 MR. FEINSTEIN: Document by document. 16 We're not going to assert the privilege on this 17 document. 18 MS. SMITH: Okay. 19 BY MS. TOMKOWIAK: 20 Q So, Mr. Sevilla, my question was, do you 21 have any idea what the date of this document would 22 be? 23 <b>A I don't.</b> 24 Q So you don't know if this is the final 25 version or not?</p>
<p style="text-align: right;">46</p> <p>1 settlement analysis that we just looked at, but it 2 doesn't have a date. It looks to us to be a later 3 version in time, but do you have any idea what the 4 date of this document would be? 5 MS. SMITH: I'm going to object first on 6 the privilege. If you're going to ask him 7 questions about this exhibit, I want to make sure 8 that Highland is going to waive the privilege on 9 this so that he can answer. 10 MS. TOMKOWIAK: Sure. Mr. Feinstein, I 11 don't know if it would make sense to do this on a 12 piecemeal basis or if there's -- you know, if you 13 want to articulate if there's going to be a 14 broader privilege waiver. I don't care how we do 15 it. I can do it either way. It's up to you. 16 It's your privilege. 17 MR. FEINSTEIN: Why don't we do this the 18 way we have in prior depositions in this action, 19 which is to say that the debtor is not going to -- 20 chooses not to assert the privilege to the extent 21 that it may apply to questions that deal with the 22 basic factual matters that are laid out in the 23 complaint and in the motion to approve settlement, 24 where we disclose over the course of several 25 paragraphs, the facts surrounding the insurance</p>	<p style="text-align: right;">48</p> <p>1 MS. SMITH: Objection, form. 2 <b>A I don't.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q If you look at slide 8 on this version. 5 So slide 8 contains a structure summary that is 6 similar to the one that we just looked at, except 7 for in Step 1, HFP/CDO fund by a \$90 million ATE 8 policy from Sentinel. Do you know why that would 9 have changed from 100 to 90? 10 MS. SMITH: Objection, form. 11 <b>A I don't.</b> 12 <b>BY MS. TOMKOWIAK:</b> 13 Q And it says here that the ATE premium is 14 all assets in HFP CDO fund. Do you see that? 15 <b>A Yes.</b> 16 Q And if you look at the very last page of 17 this exhibit -- well, the very last two pages, I 18 guess, the second-to-last page is Appendix 1 and 19 then Appendix 1 is what appears to be a list of 20 assets. Do you see that? 21 <b>A Yes.</b> 22 Q Okay. Is it your understanding that these 23 were the assets that were planned to be used to 24 buy the premium for the ATE policy? 25 MS. SMITH: Objection, form.</p>

49	<p>1 <b>A These look familiar. I don't know if this</b></p> <p>2 <b>is the final asset list or if this is</b></p> <p>3 <b>comprehensive. I can take it at face value, but I</b></p> <p>4 <b>don't have personal knowledge about the</b></p> <p>5 <b>completeness or incompleteness of it.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Okay. Do you know who would?</p> <p>8 <b>A Sorry, we're referring to what? Can you</b></p> <p>9 <b>restate what we're -- exactly what we're talking</b></p> <p>10 <b>about.</b></p> <p>11 Q Who would have knowledge about this list</p> <p>12 of assets?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A I mean, Highland accounting, I guess,</b></p> <p>15 <b>relating to these entities.</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q Who would have pulled together something</p> <p>18 like this?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 <b>A In what year? Like when?</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q In 2017.</p> <p>23 <b>A Probably Mr. Stoops, the chief accounting</b></p> <p>24 <b>officer. Mr. Klos. I think he was -- I don't</b></p> <p>25 <b>know if he was the controller then, but he -- I</b></p>	51
50	<p>1 <b>remember him as the controller. I don't know who</b></p> <p>2 <b>else they would have consulted, but that's who I</b></p> <p>3 <b>would sort of assume.</b></p> <p>4 Q Okay. And you don't know who put this</p> <p>5 specific list together?</p> <p>6 <b>A Not that I know of, no. Not that I</b></p> <p>7 <b>recall.</b></p> <p>8 Q I am going to switch topics.</p> <p>9 MS. TOMKOWIAK: I'm good to keep going,</p> <p>10 but does anybody else want to take a break now?</p> <p>11 MS. SMITH: I could actually go to the</p> <p>12 ladies room.</p> <p>13 MS. TOMKOWIAK: We can go off the record.</p> <p>14 THE VIDEOGRAPHER: We are off the record</p> <p>15 at 10:30 a.m.</p> <p>16 (Recess taken from 10:30 a.m. CDT to</p> <p>17 10:41 a.m. CDT)</p> <p>18 THE VIDEOGRAPHER: The time is 10:41 a.m.</p> <p>19 We are back on the record.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Mr. Sevilla, earlier in the day you said</p> <p>22 that you were familiar with an entity named</p> <p>23 Sentinel; is that right?</p> <p>24 <b>A Yes.</b></p> <p>25 Q What is Sentinel?</p>	52
	<p>1 <b>A An insurance company.</b></p> <p>2 Q Do you recall when Sentinel was formed?</p> <p>3 <b>A 2011 -- or 2012, I believe.</b></p> <p>4 Q Were you involved in that?</p> <p>5 <b>A I was.</b></p> <p>6 Q Do you recall at the time what the purpose</p> <p>7 was of forming Sentinel?</p> <p>8 <b>A The purpose was for it to be an insurance</b></p> <p>9 <b>company was my understanding.</b></p> <p>10 Q What type of insurance would it provide?</p> <p>11 <b>A You're saying at formation?</b></p> <p>12 Q Yes.</p> <p>13 <b>A Like what was the intention? I don't know</b></p> <p>14 <b>what exactly the strategic intention was. I know</b></p> <p>15 <b>the name -- the legal name has the word</b></p> <p>16 <b>reinsurance in it, but I -- at the time of</b></p> <p>17 <b>incorporation, I don't know what the strategic</b></p> <p>18 <b>vision was for it so I don't know what was</b></p> <p>19 <b>intended.</b></p> <p>20 Q Or what types of policies it would issue</p> <p>21 or anything like that?</p> <p>22 <b>A Correct.</b></p> <p>23 MS. TOMKOWIAK: We're on 49, right?</p> <p>24 <b>A Should I set these to the side?</b></p> <p>25</p>	

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1 Q Okay. And you can -- do you want to take  
2 a minute to flip through this or the  
3 attachments --  
4 **A Do you want me to? It's long.**  
5 Q -- to see if it's familiar to you?  
6 **A Sorry. It's been a long time. I would**  
7 **need to -- I mean, generally, I kind of know what**  
8 **it's about, but I haven't looked at this in a long**  
9 **time. But you tell me, do you want me to go page**  
10 **10 by page?**  
11 Q No. I have questions about specific  
12 pages, but if at any time you want to look at a  
13 different page or you want to look for other  
14 context before you answer my question, just let me  
15 know.  
16 **A Yeah.**  
17 Q So the -- my first question is on --  
18 relates to the e-mail dated November 30th, 2012,  
19 from Ms. Galletly to you. That's the first  
20 that -- first time that you're copied into this  
21 e-mail chain, as far as I can tell.  
22 **A Okay.**  
23 Q Okay. And she says she is attaching draft  
24 forms of memorandum and articles of association,  
25 or M&A, for each of the following. And then the

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1 entities listed there are Patton, Nimitz, Sentinel  
2 Re Holdings and Sentinel Reinsurance. Do you see  
3 that?  
4 **A Yes.**  
5 Q Are you familiar with each of those  
6 entities?  
7 MS. SMITH: Objection, form.  
8 **A I've heard their names, so I have a**  
9 **general recollection of them.**  
10 **BY MS. TOMKOWIAK:**  
11 Q Okay. Do you understand that Mr. Dondero  
12 is the beneficial owner of Patton?  
13 MS. SMITH: Objection, form.  
14 **A I'd need to confirm that. I don't know if**  
15 **it's in here, but -- I don't know if that's the**  
16 **case.**  
17 **BY MS. TOMKOWIAK:**  
18 Q If you look at, I believe that it's page  
19 ending in 349.  
20 **A Yes.**  
21 Q Does that confirm that Mr. Dondero is the  
22 sole member of Patton?  
23 MS. SMITH: Objection, form.  
24 **A Yes.**  
25

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1 BY MS. TOMKOWIAK:  
2 Q With respect to Nimitz, do you understand  
3 that Mr. Ellington is the owner of Nimitz?  
4 MS. SMITH: Objection, form.  
5 **A If you have something like this for that,**  
6 **I think that would be helpful.**  
7 **BY MS. TOMKOWIAK:**  
8 Q I do. It's on Bates 312, I think.  
9 **A Okay.**  
10 Q Is that consistent with your recollection?  
11 MS. SMITH: Objection, form.  
12 **A I take this at face value. I don't have a**  
13 **direct recollection, but I'll -- I believe this is**  
14 **what it purports to be.**  
15 **BY MS. TOMKOWIAK:**  
16 Q So you don't recall learning at the time  
17 that Mr. Dondero owned Patton and Mr. Ellington  
18 owned Nimitz?  
19 MS. SMITH: Objection, form.  
20 **A I'm sure I knew at time and I'll take this**  
21 **at face value that it was the case.**  
22 **BY MS. TOMKOWIAK:**  
23 Q Okay. If you look at the page before  
24 that, both the sole director of Nimitz is  
25 Caledonian Directors Ltd.?

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1 **A Yes.**  
2 Q And you can look back at -- there's a  
3 similar document for Patton. Do you know what  
4 that entity is, Caledonian Directors Ltd.?  
5 **A A directorship in Cayman, a corporate**  
6 **directorship in Cayman.**  
7 Q Was it related at all to Highland?  
8 MS. SMITH: Objection, form.  
9 **A No.**  
10 **BY MS. TOMKOWIAK:**  
11 Q Do you know how it was selected to be the  
12 director?  
13 **A I don't.**  
14 Q Do you know who Nathan Smith is?  
15 **A The name sounds familiar, but I'm drawing**  
16 **a blank.**  
17 Q Okay. If you go back to the November 30th  
18 e-mail that we were discussing.  
19 MS. SMITH: What page is that?  
20 MS. TOMKOWIAK: Sure.  
21 Do you have the Bates for that?  
22 Should be the third page.  
23 **BY MS. TOMKOWIAK:**  
24 Q My question is, do you know why you're  
25 being copied here?

<p>57</p> <p>1 <b>A I was working on the Sentinel</b> 2 <b>incorporation with outside counsel.</b> 3 Q Do you recall who asked you to work on 4 that? 5 <b>A Yes.</b> 6 Q Who is that? 7 <b>A Mr. Ellington.</b> 8 Q Anybody else? 9 <b>A Not that I recall.</b> 10 Q Do you know who came up with this 11 structure for Sentinel? 12 MS. SMITH: Objection, form. 13 <b>A My recollection is outside counsel.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q Outside counsel at where? 16 <b>A I don't remember whether it was at</b> 17 <b>Sutherland or at Maples. I don't recall.</b> 18 Q So the -- to the best of your knowledge, 19 it was outside counsel and not in-house, that came 20 up with the ownership structure for Sentinel? 21 MS. SMITH: Objection, form. 22 <b>A I don't recall.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q Did you have any role in reviewing the M&amp;A 25 that are attached to this e-mail?</p>	<p>59</p> <p>1 remaining 30 percent. 2 Do you see that? 3 <b>A Yes.</b> 4 Q And above, it says that: The Class A 5 shares are held by Patton and the Class B shares 6 are held by Nimitz. 7 Correct? 8 <b>A Yes.</b> 9 MS. SMITH: Objection, form. 10 <b>A I see that.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Okay. So you agree this means that if 13 Sentinel Holdings was somehow wound up, any 14 surplus assets that remained at the company, at 15 least according to this e-mail, would be divided 16 up 70/30 between Patton and Nimitz; is that right? 17 MS. SMITH: Objection, form. 18 <b>A I believe that's what the e-mail says.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q Do you know whether these economic rights 21 were actually incorporated into the final articles 22 of association for SS Holdings? 23 MS. SMITH: Objection, form. 24 <b>A I'd need to see them.</b> 25</p>
<p>58</p> <p>1 <b>A I'm sure I would have reviewed them, but</b> 2 <b>it's a Cayman document so I wouldn't have had had</b> 3 <b>much to say about it.</b> 4 Q Do you know why Sentinel was incorporated 5 in the Caymans? 6 <b>A I don't know the reasoning behind it.</b> 7 Q As you sit here today, you can't think of 8 any reason that they would've been incorporated in 9 the Cayman Islands? 10 MS. SMITH: Objection, form. 11 <b>A Again, I don't know what the strategic</b> 12 <b>thought process was. At least I don't recall as</b> 13 <b>to why Cayman.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q If you look at Ms. Galletly's e-mail, 16 about halfway down through her e-mail, she's 17 discussing the voting ratio and the different 18 classes of shares that Patton and Nimitz will 19 receive. Do you see that? 20 <b>A Yes.</b> 21 Q Okay. And then there's a sentence here 22 that says: The economic rights entitle the 23 Class A shares to 70 percent of any dividends or 24 distributions of surplus assets on a winding up 25 and the Class B shares are entitled to the</p>	<p>60</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q Do you know who would have those? 3 <b>A The entity --</b> 4 MS. SMITH: Objection, form. 5 <b>A The entities themselves. I don't have</b> 6 <b>them.</b> 7 <b>BY MS. TOMKOWIAK:</b> 8 Q So do you mean the Sentinel entities? 9 <b>A Yes.</b> 10 Q Did Sentinel have an office? 11 <b>A I believe it had a registered office.</b> 12 Q Did it have a physical office? 13 <b>A Not that I know of.</b> 14 Q Did it have employees? 15 <b>A Not that I know of.</b> 16 Q If you flip back a page, it looks like 17 you -- a couple e-mails up, you write on 18 December 10th, 2012: Please update as to filing 19 status on this. 20 Do you see that? 21 <b>A Yes.</b> 22 Q Do you recall if there was any urgency at 23 the time surrounding the formation of Sentinel or 24 these other entities? 25 <b>A Not that I recall.</b></p>



<p>61</p> <p>1 Q So to the best of your recollection, 2 you're just asking for an update? 3 <b>A I don't recall there being urgency per se.</b> 4 <b>I don't know -- I don't remember much other than</b> 5 <b>that.</b> 6 Q And you don't recall there being a 7 specific time frame or deadline by which you were 8 supposed to -- 9 <b>A I don't think so.</b> 10 Q Who is Tabor? Tabor. How do I say that? 11 <b>A Tabor Pittman.</b> 12 Q Tabor Pittman, who is that? 13 <b>A He was a lawyer in the Highland legal</b> 14 <b>group.</b> 15 Q To your knowledge, did Mr. Dondero or 16 Mr. Ellington make any investment in Sentinel? 17 MS. SMITH: Objection, form. 18 <b>A I recall that they did, yes.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q In what form? 21 <b>A I don't recall exactly in what form, but I</b> 22 <b>have a general recollection that they did</b> 23 <b>capitalize the entity. I don't remember the</b> 24 <b>amount or the form, but I have a general</b> 25 <b>recollection that that was done.</b></p>	<p>63</p> <p>1 <b>A No, not that I recall.</b> 2 Q Did anybody ever tell you to keep Sentinel 3 confidential? 4 <b>A I don't recall being told that.</b> 5 Q Did anybody ever tell you not to widely 6 discuss the existence of Sentinel within Highland? 7 <b>A I don't remember getting direction like</b> 8 <b>that, no.</b> 9 Q Not in words or substance? 10 <b>A No. No, I don't recall it being a secret.</b> 11 Q Do you recall it being kept to a small 12 group of people? 13 <b>A I think a limited group of people provided</b> 14 <b>services to it, but I don't remember a mandate</b> 15 <b>that said keep it a secret.</b> 16 Q Did that ever change at any point after 17 2012? 18 <b>A I'm sorry, what?</b> 19 Q Keeping it a secret or keeping it limited 20 to a smaller group of people. 21 MS. SMITH: Objection, form. 22 <b>A I don't remember that being a directive,</b> 23 <b>to keep it a secret.</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q Even if it wasn't a directive, if it was</p>
<p>62</p> <p>1 Q That they put capital into the entity? 2 <b>A Yes.</b> 3 Q I believe you testified that you didn't 4 know what type of insurance Sentinel was intended 5 to provide at the time; is that right? 6 MS. SMITH: Objection, form. 7 <b>A I don't think that's exactly right. Yes,</b> 8 <b>that's true. I wasn't sure exactly what kind of</b> 9 <b>insurance they intended to write in the -- I think</b> 10 <b>initially -- actually, I think initially there was</b> 11 <b>a thought of what kind of policies it would write,</b> 12 <b>D&amp;O policies and the like, but as far as more than</b> 13 <b>that, I don't recall.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q Okay. And just to go back to my question 16 about the capitalization, when you said that they 17 capitalized the entity, you were referring to 18 Mr. Dondero and Mr. Ellington; is that right? 19 <b>A Yes.</b> 20 MS. SMITH: Objection, form. 21 <b>BY MS. TOMKOWIAK:</b> 22 Q Did anybody else capitalize Sentinel? 23 <b>A Not that I recall.</b> 24 Q Did anybody ever tell you to keep Sentinel 25 a secret?</p>	<p>64</p> <p>1 an understanding or anything else like that. 2 MS. SMITH: Objection, form. 3 <b>A No, I don't remember that.</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q What about its ownership? Did anybody 6 instruct you to keep its ownership structure a 7 secret? 8 <b>A No, no one instructed me, but I do recall</b> 9 <b>there being confidentiality rules in Cayman around</b> 10 <b>ownership, so I think it would have been</b> 11 <b>some things that was -- wasn't particularly, you</b> 12 <b>know, widely disseminated, just in light of that,</b> 13 <b>but I don't -- that would be the only sort of --</b> 14 <b>when you mention that, that's what I think of.</b> 15 Q Is that the reason that Sentinel was 16 incorporated in the Cayman Islands? 17 <b>A I don't know.</b> 18 MS. SMITH: Objection, form. 19 <b>A I don't know.</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q So at some point between December 2012 and 22 August 2017, the ownership structure of Sentinel 23 became more complex. Do you recall that? 24 MS. SMITH: Objection, form. 25 <b>A I don't know if I would call it more</b></p>

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1 complex. I have a general recollection that the  
2 ownership structure changed.  
3 **BY MS. TOMKOWIAK:**  
4 Q Did you play any role in that?  
5 **A I'm sure I -- I'm sure I had knowledge of**  
6 **it. I don't remember what role I played, but I do**  
7 **recall it happening. Yeah, I'm sure I did some**  
8 **things on it.**  
9 MS. TOMKOWIAK: We're on Exhibit 50; is  
10 that right?  
11 **A Am I done with this?**  
12 **BY MS. TOMKOWIAK:**  
13 Q Yes, sir.  
14 MS. TOMKOWIAK: Okay. I'm handing the  
15 court reporter, to mark as Exhibit 50, the cover  
16 e-mail.  
17 (Deposition Exhibit 50 marked for  
18 identification.)  
19 **BY MS. TOMKOWIAK:**  
20 Q And then I'm also handing you one of the  
21 attachments, which was previously marked as a  
22 deposition exhibit in this case as Exhibit 26.  
23 **A Okay.**  
24 Q But there's several attachments to this  
25 document. That is one of them and that's been

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1 previously marked as Exhibit 26.  
2 That is Exhibit 50. Do you want to take a  
3 moment, look through that and let me know when  
4 you're ready?  
5 **A Sure.**  
6 (Witness reviews document.)  
7 **A Okay.**  
8 **BY MS. TOMKOWIAK:**  
9 Q This is an e-mail from Daniel Bowen,  
10 Bowen, Bowen, to you, dated August 29th, 2017.  
11 Any reason to doubt that you received this e-mail?  
12 **A No.**  
13 Q Okay. And he's attaching the beneficial  
14 ownership information for Sentinel Re Holdings  
15 LTD. Do you see that?  
16 **A Yes.**  
17 Q And we'll talk about this a little bit  
18 later, but do you recall at the time working on a  
19 transfer of interest in the Multi Strat fund to  
20 Sentinel Re Holdings in 2017?  
21 **A I remember that.**  
22 Q Okay. And if you look at the attachment,  
23 which is Exhibit 26.  
24 **A Okay. This?**  
25 Q Yes. So at the top it shows the --

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1 **A I'm sorry, so can I take it at face value**  
2 **that this was the attachment to this?**  
3 MS. SMITH: No.  
4 **BY MS. TOMKOWIAK:**  
5 Q Well, I am representing to you that this  
6 is one of the attachments that is in the zip file  
7 that is attached to this. If you have a question  
8 to doubt that or if your answers to my questions  
9 would change, let me know. We just didn't want to  
10 kill --  
11 **A I just didn't see the connection. Okay.**  
12 Q It's on an Excel file, so it's difficult  
13 to print it out with --  
14 **A Understood.**  
15 Q -- one of the stamps.  
16 **A Understood.**  
17 Q With that representation, at the top --  
18 MS. SMITH: I'm sorry, Sarah, can I ask a  
19 question? Does this have a corresponding Bates,  
20 or is that what you are saying was difficult  
21 because it was an Excel? This is not Bates'd.  
22 MS. McLAUGHLIN: The Bates is -- the cover  
23 sheet would be a Bates number, but this is the  
24 native file.  
25 MS. TOMKOWIAK: Can we go off the record

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1 briefly?  
2 THE VIDEOGRAPHER: Sure. We are off the  
3 record at 11:02 a.m.  
4 (Recess taken from 11:02 a.m. CDT to  
5 11:03 a.m. CDT)  
6 THE VIDEOGRAPHER: 11:03 a.m., we are back  
7 on the record.  
8 **BY MS. TOMKOWIAK:**  
9 Q So do you see at the top, the top entity  
10 is the investor and that's Sentinel Reinsurance  
11 Ltd.?  
12 **A Yes.**  
13 Q And then below that, we have the two  
14 beneficial owners, Patton and Nimitz, that we  
15 discussed earlier?  
16 **A Yes.**  
17 Q And then with respect to each of Patton  
18 and Nimitz, there are now other entities that have  
19 been inserted in between each of those entities  
20 and Mr. Dondero and Mr. Ellington. Do you see  
21 that?  
22 **A I do.**  
23 MS. SMITH: Objection, form.  
24 **BY MS. TOMKOWIAK:**  
25 Q Okay. So Patton is now owned by

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1 Mainspring, which is owned by Loyal which is owned  
2 by Mr. Dondero?  
3 MS. SMITH: Objection, form.  
4 **A That's what the document says, yes.**  
5 **BY MS. TOMKOWIAK:**  
6 Q Okay. And with respect to Mr. Nimitz, the  
7 document reflects that it is owned by Montage,  
8 which is then 100 percent owned by HAL Holdings,  
9 which is then 99 percent owned by Elderflower,  
10 which is 100 percent owned by Mr. Ellington?  
11 **A I see that.**  
12 Q Do you know what the purpose was in  
13 putting all of those other entities into this  
14 Sentinel structure?  
15 MS. SMITH: Objection, form.  
16 **A I don't recall.**  
17 **BY MS. TOMKOWIAK:**  
18 Q Do you know what any of those entities do?  
19 MS. SMITH: Objection, form.  
20 **A The names are familiar to me. I don't**  
21 **know what they do.**  
22 **BY MS. TOMKOWIAK:**  
23 Q Do you know if any of them have  
24 operations?  
25 MS. SMITH: Objection, form.

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1 **A I don't know.**  
2 **BY MS. TOMKOWIAK:**  
3 Q Okay. Do you know if any of them are just  
4 holding companies?  
5 MS. SMITH: Objection, form.  
6 **A I don't know for certain.**  
7 **BY MS. TOMKOWIAK:**  
8 Q Do you know if any of them are just dummy  
9 entities?  
10 MS. SMITH: Objection, form.  
11 **A I don't know what a -- what do you mean by**  
12 **a dummy entity?**  
13 **BY MS. TOMKOWIAK:**  
14 Q Or a fictitious entity?  
15 MS. SMITH: Objection, form.  
16 **A No, I don't know.**  
17 **BY MS. TOMKOWIAK:**  
18 Q And you don't know whether or not this was  
19 done to separate Mr. Ellington or Mr. Dondero from  
20 Sentinel in any way?  
21 MS. SMITH: Objection, form.  
22 **A When you say this, you mean what?**  
23 **BY MS. TOMKOWIAK:**  
24 Q Changing the beneficial ownership  
25 structure of Sentinel so that there were

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1 additional entities in between Sentinel and  
2 Mr. Dondero on one hand and Mr. Ellington on the  
3 other hand.  
4 **A I don't recall that being a reason for**  
5 **changing the structure. I don't recall that being**  
6 **a reason.**  
7 Q Do you know who would have made the  
8 decision to restructure Sentinel in this way?  
9 **A I guess ultimately the Sentinel directors**  
10 **and the -- Sentinel directors is what I would**  
11 **think of. I don't know who else they would take**  
12 **direction from, but...**  
13 Q So you would assume that the Sentinel  
14 directors would have made that decision?  
15 **A I think they would have had approval**  
16 **authority over changes like that.**  
17 Q You don't know whether or not they, in  
18 fact, approved or authorized this?  
19 MS. SMITH: Objection, form.  
20 **A I'm going to take this at face value. And**  
21 **I do have a recollection of there being a change**  
22 **in the structure and so -- and my recollection is**  
23 **that that would have been approved according to**  
24 **whatever the governing law is, but a more specific**  
25 **recollection, I can't -- I don't have.**

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1 **BY MS. TOMKOWIAK:**  
2 Q You can set that aside. I'm handing you  
3 what's previously been marked as Exhibit 21 -- I'm  
4 sorry, 28. Go ahead and take a minute to  
5 familiarize yourself with that and let me know  
6 when you're ready.  
7 (Witness reviews document.)  
8 **A Okay.**  
9 MS. SMITH: This appears to be an e-mail  
10 regarding legal perspective. Does the debtor  
11 waive the privilege on this document before  
12 Mr. Sevilla answers questions?  
13 MR. FEINSTEIN: We are not going to assert  
14 the privilege, to the extent it applies.  
15 **BY MS. TOMKOWIAK:**  
16 Q Okay. This is an e-mail -- skipping ahead  
17 a couple of years here to April 2019. This is an  
18 e-mail from Katie Irving, who I understand is now  
19 Katie Lucas; is that right?  
20 **A Yes.**  
21 Q To Sam Dawson, Dylan Wiltermuth, and then  
22 a CC to you and Mr. DiOrio. The date is  
23 April 10th, 2019, and the subject is Forward  
24 Entity Restructure - Sentinel.  
25 And Ms. Irving is forwarding an e-mail

<p style="text-align: right;">73</p> <p>1 from Stephen Beck. Do you know who Stephen Beck 2 is? 3 <b>A I have a general recollection that he's a</b> 4 <b>tax practitioner, an accounting practitioner.</b> 5 Q External to Highland? 6 <b>A Yes.</b> 7 Q And do you know why you're being copied on 8 this? 9 <b>A I don't know why exactly.</b> 10 Q Katie writes to Mr. Beck in the earlier 11 e-mail in the chain, which is also CC'd to you and 12 she says: Hi, Steve. Further to entity 13 liquidation discussions last year, the Sentinel 14 Reinsurance Ltd. regulator, Cayman Islands 15 Monetary Authority (CIMA) is asking that the 16 Sentinel structure be simplified. 17 I'm not reading the rest of that sentence. 18 Do you recall having discussions with CIMA, or the 19 Cayman Islands Monetary Authority, asking that the 20 Sentinel structure be simplified, at any time 21 between 2017 and 2019? 22 MS. SMITH: Objection, form. 23 <b>A I recall this happening. I recall hearing</b> 24 <b>about that feedback.</b> 25</p>	<p style="text-align: right;">75</p> <p>1 chain, Ms. Irving writes: I believe we looked at 2 the impact of GP's structure for these topcos 3 previously. 4 Do you know what a topco is? 5 <b>A Sorry, I'm trying to find where she writes</b> 6 <b>that.</b> 7 Q At the top. 8 <b>A Yeah.</b> 9 Q Top e-mail, second sentence. 10 <b>A GP structure, I don't recall what that --</b> 11 <b>general partner. I don't recall.</b> 12 Q Do you know what a topco is? 13 <b>A The entity at the top of the structure is</b> 14 <b>what I would refer to as a topco.</b> 15 Q Okay. If you can look at the second page 16 of the attachment first. So this appears to be an 17 organizational chart of Sentinel as of April 9th, 18 2019. 19 MS. SMITH: Objection, form. And this is 20 the third page. 21 MS. TOMKOWIAK: Okay. 22 BY MS. TOMKOWIAK: 23 Q Bates ending 26. 24 <b>A I'm there.</b> 25 Q Okay. At the top it says: CFC</p>
<p style="text-align: right;">74</p> <p>1 BY MS. TOMKOWIAK: 2 Q Do you recall why they wanted the 3 structure to be simplified? 4 <b>A I don't recall --</b> 5 MS. SMITH: Objection, form. 6 THE WITNESS: Sorry. 7 <b>A I don't remember the reason.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q In that same e-mail, Ms. Irving says that: 10 We have a five-year taint issue as Montage, 11 Anthem, and Mainspring used to be CFCs. 12 Do you know what CFC means? 13 <b>A At a high level.</b> 14 Q What does it stand for? 15 <b>A Controlled Foreign Corporation.</b> 16 Q And at a high level, what is that? 17 <b>A It's a tax moniker. I don't -- I don't</b> 18 <b>remember -- I don't purport to be a specialist in</b> 19 <b>this. It's a company control -- a foreign company</b> 20 <b>controlled by another company, but that's pretty</b> 21 <b>much all I remember about what a CFC is.</b> 22 Q And then do you remember anything about 23 why they de-CFC'ed in October 2014? 24 <b>A I don't.</b> 25 Q In the chain -- in the later e-mail in the</p>	<p style="text-align: right;">76</p> <p>1 Restructure, Sentinel Structure as at 9 April 2 2019. 3 To the best of your recollection, did this 4 reflect Sentinel's ownership structure in 5 April 2019? 6 MS. SMITH: Objection, form. 7 <b>A I'll take it at face value. I don't have</b> 8 <b>direct recollection of the exact structure chart.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Okay. And taking it at face value, 11 there's other entities that appear to have been 12 added as well. Do you know when, for example, 13 Anthem was added to this structure? 14 MS. SMITH: Objection, form. 15 <b>A Anthem. No, I don't recall that.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q Or Brave? 18 <b>A I don't recall when that was added.</b> 19 Q USP2 at the top right there, that refers 20 to Mr. Dondero, correct? 21 MS. SMITH: Objection, form. 22 <b>A I don't know whether it refers to him.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q Well, would you expect that USP means US 25 person?</p>

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1 **A I believe that.**  
2 Q Okay. And we discussed earlier that  
3 Mr. Dondero was the beneficial owner of Patton,  
4 right?  
5 MS. SMITH: Objection, form.  
6 **A Yeah, okay. I see it now.**  
7 **BY MS. TOMKOWIAK:**  
8 Q Okay. So reasonable to infer that USP2 is  
9 Mr. Dondero?  
10 MS. SMITH: Objection, form.  
11 **A I can't be certain.**  
12 **BY MS. TOMKOWIAK:**  
13 Q Okay. Can't be certain, but it appears  
14 that way based on what we've looked at before?  
15 MS. SMITH: Objection, form.  
16 **A I know we looked at something referring to**  
17 **Patton as Mr. Dondero. Again, I didn't have**  
18 **specific recollection of that, but I know you**  
19 **showed that to me and I'm seeing it here, but as**  
20 **far as personal knowledge, I don't want to**  
21 **speculate.**  
22 **BY MS. TOMKOWIAK:**  
23 Q Same question with respect to US person 1,  
24 that refers to Mr. Ellington, correct?  
25 MS. SMITH: Objection, form.

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1 **A Same answer as to Mr. Dondero. I know you**  
2 **showed me something that referenced Nimitz and**  
3 **Mr. Ellington, but I don't recall having personal**  
4 **knowledge enough to, you know, agree to that, as I**  
5 **sit here.**  
6 **BY MS. TOMKOWIAK:**  
7 Q And then at the top of all of this, so  
8 maybe this would be the topco, is a company called  
9 SAS Holdings. Do you see that?  
10 **A Yes.**  
11 Q So at this point in time, Sentinel is part  
12 of the structure of SAS Holdings; is that right?  
13 MS. SMITH: Objection, form.  
14 **A I'm sorry, can you say that again?**  
15 **BY MS. TOMKOWIAK:**  
16 Q Sure. I'm just trying to understand. So  
17 it looks to me like Sentinel Reinsurance is part  
18 of this SAS Holdings ownership structure; is that  
19 right?  
20 MS. SMITH: Objection, form.  
21 **A I see SAS Holdings there at the top. I**  
22 **mean, I see that there. So I'll accept that it's**  
23 **in the structure.**  
24 **BY MS. TOMKOWIAK:**  
25 Q Okay. And I mean, assuming that

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1 Ms. Irving, who -- she's the one who looks like --  
2 looks like she attached it to this structure. So  
3 assuming that it was put together correctly, you  
4 would agree with me that SAS Holdings is here at  
5 the top and Sentinel is part of that structure,  
6 right?  
7 MS. SMITH: Objection, form.  
8 **A I think that's fair.**  
9 **BY MS. TOMKOWIAK:**  
10 Q And if you turn back to the chart before  
11 this, this reflects the SAS structure as of  
12 April 9th, 2019?  
13 MS. SMITH: Objection, form.  
14 **A That's what it says.**  
15 **BY MS. TOMKOWIAK:**  
16 Q Okay. What is SAS?  
17 **A A litigation funding business.**  
18 Q What does SAS stand for?  
19 **A I don't know.**  
20 Q Sword and Shield?  
21 **A Possibly.**  
22 Q Did you come up with that or who came up  
23 with the name SAS Holdings, if you know?  
24 MS. SMITH: Objection, form.  
25 **A I did not.**

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1 **BY MS. TOMKOWIAK:**  
2 Q Do you know when SAS was formed?  
3 **A I don't know when it was formed.**  
4 Q Do you know who formed it?  
5 **A I don't know who formed it.**  
6 Q What is the relationship between SAS  
7 Litigation Management, which is down here on -- in  
8 the very lower right-hand corner, and SAS Asset  
9 Recovery?  
10 MS. SMITH: Objection, form.  
11 **BY MS. TOMKOWIAK:**  
12 Q If you know.  
13 **A Other than being on the same structure**  
14 **chart, I don't know of any other -- was the**  
15 **question relationship or --**  
16 Q Yeah.  
17 **A I don't know of any other relationship,**  
18 **other than being on a structure chart together.**  
19 Q Well, is -- you said it was a litigation  
20 funding company. Is that what you said?  
21 **A The enterprise was a -- when you asked**  
22 **what's SAS, I -- my response is it's a litigation**  
23 **funding enterprise business, series of businesses.**  
24 Q Yeah. Do you know which of these  
25 businesses, SAS businesses, are actually in the

<p style="text-align: right;">81</p> <p>1 litigation funding business? 2 <b>A I would say all of them at different times</b> 3 <b>were litigation funders or contemplated litigation</b> 4 <b>funders. I don't want to represent that, but when</b> 5 <b>I -- when you asked what's SAS, litigation funding</b> 6 <b>business. And, you know, these are the entities</b> 7 <b>that effectuated that business.</b> 8 Q Do you know whose idea it was to form SAS? 9 <b>A I don't.</b> 10 Q Do you know when it was formed? 11 MS. SMITH: Objection, form. 12 <b>A It predated my time at Highland. I don't</b> 13 <b>know exactly when it was formed.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q When you arrived at Highland, it was 16 already in existence? 17 MS. SMITH: Objection, form. 18 <b>A That's my recollection.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q What was the relationship between SAS and 21 Highland? 22 MS. SMITH: Objection, form. 23 <b>A The relationship between the two?</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q Yes.</p>	<p style="text-align: right;">83</p> <p>1 <b>A I don't know specifics as to bank</b> 2 <b>accounts.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q Did they have any common ownership between 5 SAS and any Highland entity? 6 MS. SMITH: Objection, form. 7 <b>A Any Highland entity?</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q Any Highland entity. 10 MS. SMITH: Objection, form. 11 <b>A I can't recall directly. I know the</b> 12 <b>Highland ownership structure changed over time, so</b> 13 <b>I don't want to represent that I know Highland's</b> 14 <b>ownership structure at any moment.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Did Mr. Ellington form SAS? 17 <b>A I don't --</b> 18 MS. SMITH: Objection, form. 19 <b>A I don't know exactly.</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q Did Mr. Ellington own SAS? 22 MS. SMITH: Objection, form. 23 <b>A Did he own it? I don't think he owned it.</b> 24 <b>No, I don't think he owned it.</b> 25</p>
<p style="text-align: right;">82</p> <p>1 <b>A Is that the question?</b> 2 Q Yeah. 3 <b>A I don't think there was -- I mean, I don't</b> 4 <b>think there was a relationship between Highland</b> 5 <b>and SAS, other than Highland employees providing</b> 6 <b>services to SAS from time to time, but I -- that's</b> 7 <b>about as much as I knew.</b> 8 Q So there's no affiliation between Highland 9 and SAS? 10 MS. SMITH: Objection, form. 11 <b>A When you say affiliation, you mean --</b> 12 <b>BY MS. TOMKOWIAK:</b> 13 Q So is -- I guess let me back up. Let me 14 ask it in a series of questions. 15 Did SAS have separate offices from HCM? 16 <b>A I believe SAS had offices.</b> 17 Q Do you know where? 18 <b>A In Cayman. In the Cayman Islands.</b> 19 Q In the US? 20 <b>A In the Cayman Islands.</b> 21 Q Just in the Cayman Islands? 22 <b>A Yeah.</b> 23 Q Okay. Did they have separate bank 24 accounts from Highland? 25 MS. SMITH: Objection, form.</p>	<p style="text-align: right;">84</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q Do you know who owned SAS? 3 MS. SMITH: Objection, form. 4 <b>A I believe Mr. Ellington had a beneficial</b> 5 <b>interest. I don't know if I would consider that</b> 6 <b>the owner or I would break it down that way, but I</b> 7 <b>know he had a beneficial interest in the</b> 8 <b>litigation funding enterprise.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q What does a beneficial interest mean? 11 <b>A I'd refer to it as economics, an economic</b> 12 <b>interest.</b> 13 Q What does that mean? 14 <b>A I mean, nothing -- I mean, I mean it in</b> 15 <b>the simplest possible terms. I think he had an</b> 16 <b>ownership interest in the economics of whatever</b> 17 <b>the entity created or whatever the fruits of the</b> 18 <b>business were, I think he had an economic interest</b> 19 <b>in that.</b> 20 Q So are you saying he got paid by SAS? 21 MS. SMITH: Objection, form. 22 <b>A I don't know if he got paid by SAS.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q So I'm still struggling to understand what 25 you mean by ownership interest in the economics of</p>

<p>85</p> <p>1 SAS. How did he benefit from SAS? 2 <b>A I mean, I think one can own shares in</b> 3 <b>something without necessarily being paid by them</b> 4 <b>or being their employee, is sort of what I mean.</b> 5 Q So was he a shareholder of SAS? 6 MS. SMITH: Objection, form. 7 <b>A I don't know if I would consider him a</b> 8 <b>shareholder. I think -- the extent of what I know</b> 9 <b>is that he had a beneficial interest in the</b> 10 <b>litigation funding business.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q What about Mr. Dondero? Did he also have 13 a beneficial interest in the litigation funding 14 business? 15 <b>A I believe so.</b> 16 Q What about Mr. Leventon? Did he have a 17 beneficial interest in the litigation funding 18 business? 19 <b>A I don't know.</b> 20 Q What about you? Did you have a beneficial 21 interest in the litigation funding business? 22 <b>A I did not.</b> 23 Q What about Mr. DiOrio? 24 <b>A I don't know.</b> 25 Q What services did Highland employees</p>	<p>87</p> <p>1 <b>A He is not.</b> 2 Q Did you ever receive payments from SAS for 3 these services? 4 MS. SMITH: Objection, form. 5 <b>A I never received payment from SAS.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Did anybody else? 8 MS. SMITH: Objection, form. 9 <b>A I don't know.</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q Why would Highland employees, including 12 yourself, provide services for free? 13 MS. SMITH: Objection, form. 14 <b>A I don't know if they were for free. I</b> 15 <b>know my only paycheck was from Highland.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q And did that paycheck from Highland 18 include any compensation for the services that you 19 provided to SAS? 20 MS. SMITH: Objection, form. 21 <b>A I don't know. My paycheck from Highland</b> 22 <b>was compensation for the services that I was</b> 23 <b>assigned to work on.</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q And were you assigned to work on projects</p>
<p>86</p> <p>1 provide to SAS? 2 MS. SMITH: Objection, form. 3 <b>A Diligence on potential litigation funding</b> 4 <b>matters. That's largely the -- that's what I</b> 5 <b>would consider the kind of material services</b> 6 <b>provided were relating to kind of the litigation</b> 7 <b>funding of cases of different cases as they arose</b> 8 <b>from time to time.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Which Highland employees provided those 11 services? 12 <b>A I don't have an exact -- I don't know the</b> 13 <b>exact universe at any given time. I know I did</b> 14 <b>from time to time.</b> 15 Q And to the best of your recollection, who 16 else? 17 <b>A I believe Mr. Leventon did from time to</b> 18 <b>time. I believe Ms. Irving did. Different</b> 19 <b>Highland litigators at different points. Like I</b> 20 <b>said, you'd have to narrow it down temporally.</b> 21 Q Mr. DiOrio? 22 MS. SMITH: Objection, form. 23 <b>A I think he may have. I'm not certain.</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q Is he a lawyer?</p>	<p>88</p> <p>1 for SAS? 2 MS. SMITH: Objection, form. 3 <b>A I was.</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q Who assigned you to work on them? 6 <b>A Mr. Ellington.</b> 7 Q Anybody else? 8 <b>A Assigned me? No, just him.</b> 9 Q Anybody else tell you to work on SAS 10 projects? 11 <b>A Tell me to?</b> 12 Q Ask you to. Anybody besides Mr. Ellington 13 say, hey, here's something for SAS, can you help 14 work on it? 15 <b>A No.</b> 16 Q Did you have an SAS management e-mail 17 address? 18 <b>A Yes.</b> 19 Q And why is that? 20 <b>A To work on SAS litigation matters,</b> 21 <b>litigation funding matters.</b> 22 Q Even though those were being done in your 23 capacity as a Highland employee? 24 MS. SMITH: Objection, form. 25 <b>A Yes.</b></p>

<p style="text-align: right;">89</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q Was there a shared services agreement 3 between Highland and SAS? 4 <b>A I don't know.</b> 5 MS. SMITH: Objection, form. 6 <b>BY MS. TOMKOWIAK:</b> 7 Q I'm sorry, what? 8 <b>A Sorry. I don't know.</b> 9 Q Were you personally involved in finding 10 claims to fund? 11 <b>A No.</b> 12 Q Were you personally involved in doing 13 diligence, as you said? 14 <b>A I had -- I have done that.</b> 15 Q Do you recall any specific claims or 16 matters? 17 <b>A Vaguely I have a recollection. It's been</b> 18 <b>quite some time since I did that.</b> 19 Q In her e-mail, Ms. Irving refers to a 20 Mexican case. Was that something that SAS was 21 funding? 22 MS. SMITH: Objection, form. 23 <b>A Yes.</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q In brief, what is that case?</p>	<p style="text-align: right;">91</p> <p>1 MS. SMITH: Objection, form. 2 <b>A Again, the names look familiar, sound</b> 3 <b>familiar. I don't recall exactly what any of them</b> 4 <b>did in any -- at any given moment.</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q Do you know who came up with names like 7 Helpful or Clean or Courteous? 8 <b>A No.</b> 9 Q You don't? 10 <b>A I don't.</b> 11 Q To your knowledge, is SAS still a 12 functioning entity today? 13 MS. SMITH: Objection, form. 14 <b>A I don't know if it is.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Do you still have an SAS management e-mail 17 account? 18 <b>A I don't know.</b> 19 Q When was the last time you used it? 20 <b>A December of '20 was the last time I</b> 21 <b>recall.</b> 22 Q When was the last time that you performed 23 services for SAS? 24 MS. SMITH: Objection, form. 25 <b>A Summer of '19, I would say is the last</b></p>
<p style="text-align: right;">90</p> <p>1 <b>A It was a case from 2003 involving a sale</b> 2 <b>of securities of a Mexican -- sale of shares of a</b> 3 <b>Mexican company.</b> 4 Q Why were you talking about it in 2019? 5 MS. SMITH: Objection, form. 6 <b>A I don't know why it would be brought up in</b> 7 <b>2019. I don't know what the relevance was to</b> 8 <b>Katie to Sam Dawson -- I need to remember to</b> 9 <b>brief -- I don't know what she had in mind when</b> 10 <b>she said that. I don't know.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Did SAS make any money off of that case? 13 <b>A No.</b> 14 Q In the organizational structure of SAS, 15 there's an entity in the lower right that's 16 Sebastian Clarke Ltd. Do you see that? 17 <b>A Yes.</b> 18 Q Do you know anything about that entity? 19 MS. SMITH: Objection, form. 20 <b>A The name looks familiar, but I don't have</b> 21 <b>specific knowledge of it.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q What about any of the other entities in 24 here? Do you have any specific knowledge about 25 what any of them do?</p>	<p style="text-align: right;">92</p> <p>1 <b>time I remember doing work on SAS.</b> 2 <b>BY MS. TOMKOWIAK:</b> 3 Q Does anybody at Skyview provide services 4 to SAS? 5 MS. SMITH: Objection, form. 6 <b>A Not that I know of.</b> 7 <b>BY MS. TOMKOWIAK:</b> 8 Q You can set that aside. 9 Mr. Sevilla, did you have any role in 10 preparing financial statements for Sentinel? 11 <b>A Any role? I did not prepare financial</b> 12 <b>statements for Sentinel.</b> 13 Q Did you review them? 14 <b>A I think from time to time I've seen them,</b> 15 <b>but I wouldn't consider myself qualified to review</b> 16 <b>them in an official capacity. I'm sure I've seen</b> 17 <b>them from time to time.</b> 18 MS. TOMKOWIAK: So I'm going to ask the 19 court reporter to mark this as Exhibit 51. 20 (Deposition Exhibit 51 marked for 21 identification.) 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Let me know when you're ready. And when 24 the court reporter is ready. 25 <b>A Go ahead.</b></p>



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1 Q So this is -- Exhibit 51 is an e-mail from  
2 Ms. Irving, now Lucas, to Abbie Stonecypher. Who  
3 is Abbie Stonecypher, if I'm saying that  
4 correctly?  
5 **A I recall she was an employee in the**  
6 **accounting group.**  
7 Q And there's a CC to you and the subject is  
8 Financials, and the date of the e-mail is  
9 August 16th, 2017. Any reason to doubt that you  
10 received this e-mail at the time?  
11 **A No.**  
12 Q And I think you said earlier that you  
13 recall receiving financial statements for Sentinel  
14 from time to time?  
15 **A I've -- yes, I've seen them.**  
16 Q What did you do, if anything, with them  
17 when you received them?  
18 **A Nothing, unless someone else was asking me**  
19 **for them or there was a discrete question related**  
20 **to them. I didn't do anything with them.**  
21 Q Were you ever employed by Sentinel?  
22 **A No.**  
23 Q If you turn the page to the page ending in  
24 Bates number 1067, this is a cover letter  
25 addressed to you from Mr. Kranz at Beecher

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1 Carlson?  
2 **A Yes.**  
3 Q And he says: Dear JP, Enclosed please  
4 find the revised unaudited financial statements of  
5 Sentinel Reinsurance, Ltd. as of, and for the  
6 year-ended December 31st, 2016.  
7 **A Yes.**  
8 Q Do you know why Mr. Kranz is sending these  
9 to you at SAS Asset Recovery?  
10 **A I don't know.**  
11 Q Well, what was the relationship between  
12 SAS and Sentinel at this time?  
13 MS. SMITH: Objection, form.  
14 **A I don't recall there being one. I don't**  
15 **recall there being one.**  
16 **BY MS. TOMKOWIAK:**  
17 Q Okay. Did you ever -- did SAS have an  
18 office in the Caymans?  
19 **A Yes.**  
20 MS. SMITH: Objection, form.  
21 **BY MS. TOMKOWIAK:**  
22 Q Okay.  
23 **A Yes.**  
24 Q Did you ever work there?  
25 **A No.**

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1 Q But you received mail there?  
2 MS. SMITH: Objection, form.  
3 **A It appears that way, although this looks**  
4 **like this was e-mailed, but...**  
5 **BY MS. TOMKOWIAK:**  
6 Q If you turn to the -- turn to the page  
7 ended 1069.  
8 **A Yes.**  
9 Q And under the heading Income Statement, it  
10 says that: Through December 31st, 2016, Sentinel  
11 had premiums earned of 2.6 million.  
12 **A Yes.**  
13 Q Do you know what those premiums related  
14 to?  
15 **A A series of D&O insurance policies.**  
16 Q For what types of clients?  
17 **A Corporate entities. Corporate entities on**  
18 **the SAS side.**  
19 Q So Sentinel issued D&O policies for  
20 corporate entities within the SAS structure?  
21 **A That's correct.**  
22 Q Any other types of clients?  
23 **A Not that I recall.**  
24 Q Okay. And then if you look at Bates  
25 ending 1071.

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1 **A Okay.**  
2 Q It shows that Sentinel had approximately  
3 19.2 million in total assets as of the end of  
4 December 2016. Do you agree with that?  
5 MS. SMITH: Objection, form.  
6 **A I agree that's what it says. Again, I'm**  
7 **not qualified to attest to the accuracy. I'll**  
8 **take it at face value.**  
9 **BY MS. TOMKOWIAK:**  
10 Q Okay. And approximately \$5.9 million in  
11 cash?  
12 MS. SMITH: Objection, form.  
13 **A Yes.**  
14 **BY MS. TOMKOWIAK:**  
15 Q With respect to the shareholders' equity,  
16 it has a line for dividends declared and paid.  
17 Who are the shareholders that would have received  
18 those dividends?  
19 **A I don't recall.**  
20 Q Would that be Mr. Dondero and  
21 Mr. Ellington?  
22 MS. SMITH: Objection, form.  
23 **A I don't recall where dividends flowed to.**  
24 **BY MS. TOMKOWIAK:**  
25 Q If you look at the supporting schedules,

<p style="text-align: right;">97</p> <p>1 and page 1081. 2 <b>A Yes.</b> 3 Q This is a little small, so let me -- 4 I'm -- 5 <b>A Yeah.</b> 6 Q Let me know if you can't see something. 7 <b>A No. I see it.</b> 8 Q It's a detailed investment schedule for 9 Sentinel as of December 31st, 2016. And then it 10 lists four different CLOs? 11 <b>A Okay.</b> 12 Q What's a CLO? 13 <b>A Collateralized Loan Obligation.</b> 14 Q And the acquisition dates for three of 15 them are January 7th, 2014, and then for Grayson, 16 it looks like it's December 30th, 2013. Do you 17 see that? 18 MS. SMITH: Objection, form. 19 <b>A I see that.</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q Do you know who Sentinel acquired these 22 securities from? 23 <b>A I don't recall.</b> 24 Q Did you have any role in that? 25 <b>A I have a recollection of when the CLO</b></p>	<p style="text-align: right;">99</p> <p>1 <b>don't want to lead you astray.</b> 2 Q Do you recall that Asset Holdings was a 3 wholly owned subsidiary of Sentinel? 4 MS. SMITH: Objection, form. 5 <b>A I don't recall if that's true.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q All right. You can set that aside and we 8 will hand you what we're going to mark as 9 Exhibit 52. 10 (Deposition Exhibit 52 marked for 11 identification.) 12 <b>BY MS. TOMKOWIAK:</b> 13 Q Exhibit 52 is an e-mail with attachments, 14 and if you want to take a couple minutes, then let 15 me know when you're ready. 16 (Witness reviews document.) 17 <b>A Okay. Go ahead.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q Okay. So these appear to be another copy 20 of the consolidated financial statements of 21 Sentinel, but there's an independent auditor's 22 report attached from Crowe Horwath, if I'm saying 23 that correctly. Are you familiar with this type 24 of document for Sentinel? 25 <b>A I've seen it before.</b></p>
<p style="text-align: right;">98</p> <p>1 <b>assets were acquired. I don't remember who the</b> 2 <b>seller was, but I have a general recollection of</b> 3 <b>the circumstances around that purchase.</b> 4 Q What is your general recollection? 5 <b>A That the seller was Morgan Stanley or</b> 6 <b>Merrill Lynch. A bulge bracket bank. I don't</b> 7 <b>remember much more than that.</b> 8 Q Not a Highland-affiliated entity? 9 <b>A Not that I recall.</b> 10 Q Do you recall anything else about the 11 circumstances around those purchases? 12 <b>A I don't.</b> 13 Q There's also a line here for Investment at 14 Cost and then it says SS Holdings. Do you see 15 that? 16 <b>A Yes, I do. I do.</b> 17 Q Do you know what an investment at cost is? 18 <b>A At a high level.</b> 19 Q At a high level, what is that? 20 <b>A I think you would mark the investment at</b> 21 <b>what it cost you not to mark it. I could be</b> 22 <b>wrong. I could be wrong.</b> 23 Q Do you have any investment background? 24 <b>A Not directly, no, not -- not to speak</b> 25 <b>authoritatively on a term of art like that. I</b></p>	<p style="text-align: right;">100</p> <p>1 Q Okay. And so you've also seen before 2 reports from this independent auditor regarding 3 Sentinel? 4 <b>A I'm sure I have.</b> 5 Q This document reflects that the auditor is 6 providing a qualified opinion. Do you have a 7 general understanding of what that means? 8 <b>A Generally.</b> 9 Q What does that mean? 10 <b>A There is an issue that they feel the need</b> 11 <b>to articulate to make sure that the -- that their</b> 12 <b>findings and that their report are as accurate as</b> 13 <b>possible.</b> 14 Q And then at the middle of this page, they 15 describe the basis for that qualified opinion, 16 right? 17 MS. SMITH: Objection, form. 18 <b>A That's what it says.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q And they refer to the group's investment 21 in SeaOne Holdings, LLC, and then in the second 22 sentence of that paragraph under Basis for 23 Qualified Opinion, they say: We were unable to 24 obtain sufficient appropriate audit evidence for 25 the carrying amount and classification of the</p>

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1 Group's Investment in SeaOne Holdings, LLC as at  
2 December 31st, 2016.  
3 And then I'm not going to read the rest of  
4 the sentence, which is very lengthy.  
5 Do you know what Sentinel's investment was  
6 in SeaOne Holdings?  
7 MS. SMITH: Objection, form.  
8 **A I don't remember the exact amount.**  
9 **BY MS. TOMKOWIAK:**  
10 Q Do you know what SeaOne Holdings is?  
11 **A It's a liquid natural gas company.**  
12 Q In the United States?  
13 **A Yes.**  
14 Q Do you know why Sentinel invested in a  
15 liquid natural gas company in the United States?  
16 MS. SMITH: Objection, form.  
17 **A I don't recall -- I don't recall the**  
18 **reasoning. I know nothing -- I know next to**  
19 **nothing about the company, so I don't know.**  
20 **BY MS. TOMKOWIAK:**  
21 Q Did you have any involvement in that  
22 investment?  
23 **A I did, insofar as connecting the company**  
24 **with Sentinel and essentially facilitating the**  
25 **investment. So I'd largely considered clerical,**

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1 **connecting the -- I guess the CFO of SeaOne with**  
2 **the directors of Sentinel and then essentially**  
3 **closing -- consummating the investment.**  
4 Q Who are the directors at Sentinel that  
5 you're referring to at this time?  
6 **A When was this? At the time of SeaOne --**  
7 Q Uh-huh.  
8 **A -- investment?**  
9 Q Yeah.  
10 **A I want to say one gentleman was Andrew**  
11 **Dean and then Christopher Watkins -- Andrew Dean**  
12 **and then there was a second one, but I'm fuzzy on**  
13 **the name.**  
14 Q To the best of your recollection, does  
15 Sentinel still have this investment in SeaOne  
16 Holdings?  
17 **A I don't know.**  
18 Q Do you know if this company still exists?  
19 MS. SMITH: Objection, form.  
20 **A I do believe it still exists.**  
21 **BY MS. TOMKOWIAK:**  
22 Q Same question for the CLOs that we looked  
23 at before, do you know whether Sentinel still has  
24 that investment in those CLOs?  
25 MS. SMITH: Objection, form.

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1 **A I can't be certain. I don't know.**  
2 **BY MS. TOMKOWIAK:**  
3 Q At the time you left Highland, did  
4 Sentinel still have an investment in those CLOs?  
5 MS. SMITH: Objection, form.  
6 **A I had not reviewed financials or an**  
7 **investment portfolio on Sentinel in quite some**  
8 **time. So I don't want to represent to that time.**  
9 **I know at one point they did. I can't -- I don't**  
10 **want to speak to more current times.**  
11 MS. TOMKOWIAK: I have some more questions  
12 about this document, but we need to switch out the  
13 videotape, so we can -- let's take a short break  
14 to do that.  
15 THE VIDEOGRAPHER: This ends disk 1. The  
16 time is 11:45 a.m. We are off the record.  
17 (Recess taken from 11:45 a.m. CDT to  
18 11:57 a.m. CDT)  
19 THE VIDEOGRAPHER: Here begins disk No. 2  
20 in the videotaped deposition of Jean Paul Sevilla.  
21 The time is 11:57 a.m. We are back on the record.  
22 MS. TOMKOWIAK: Before we get back to the  
23 questioning, I wanted to do just two housekeeping  
24 things on the record. One, I just wanted to note  
25 that Mr. Feinstein has a copy of these exhibits so

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1 that when he -- he's been provided with a copy of  
2 them so that when he's making these privilege  
3 determinations, he is doing so with a copy of the  
4 document, in case that wasn't --  
5 MR. FEINSTEIN: I can confirm that.  
6 MS. TOMKOWIAK: In case that wasn't clear,  
7 for the record. And then second, with respect to  
8 Exhibit 26, we did want to note that there are two  
9 black boxes on that document and that is because  
10 we redacted Mr. Ellington and Mr. Dondero's Social  
11 Security numbers. So you asked if that was  
12 exactly how it was -- you know, if that attachment  
13 was exactly what was attached to the e-mail. So  
14 with that caveat that we redacted for their  
15 confidential information. Yes.  
16 MS. SMITH: Okay.  
17 **BY MS. TOMKOWIAK:**  
18 Q So, Mr. Sevilla, one quick question about  
19 SAS. When you -- if somebody called SAS, did that  
20 call go to the Cayman Islands or was it routed to  
21 Highland's office in Texas?  
22 MS. SMITH: Objection, form.  
23 **A I don't know.**  
24 **BY MS. TOMKOWIAK:**  
25 Q You don't remember?

<p>105</p> <p>1 <b>A I don't remember.</b></p> <p>2 Q Okay. Did you ever answer the phone on</p> <p>3 behalf of SAS?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 <b>A I did not.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Do you know who did?</p> <p>8 <b>A I do not.</b></p> <p>9 Q If you look at -- if you turn to page 2230</p> <p>10 of this document, it's page 7 but Bates-numbered</p> <p>11 2230. At the bottom of the page it says there's a</p> <p>12 supplemental noncash disclosure. Well, I think</p> <p>13 disclosure is spelled wrong, but it should say</p> <p>14 disclosure, and then it says settlement of demand</p> <p>15 note with dividend. Do you know what that's</p> <p>16 referring to?</p> <p>17 <b>A No, I don't.</b></p> <p>18 Q If you look at the next page that's ending</p> <p>19 in 2231.</p> <p>20 <b>A Okay.</b></p> <p>21 Q This first paragraph is providing a little</p> <p>22 bit of background information about Sentinel and</p> <p>23 it says in the second paragraph that the company</p> <p>24 provides directors and officers (D&amp;O) coverage to</p> <p>25 SAS Asset Recovery structure and its subsidiaries</p>	<p>107</p> <p>1 there were policies that were provided outside of</p> <p>2 that structure?</p> <p>3 <b>A I don't recall exactly.</b></p> <p>4 Q And if you look at page 13, which is Bates</p> <p>5 ending in 2236, Note 5 is titled Related Party</p> <p>6 Transactions. And it says: As outlined in</p> <p>7 Note 1, the Group issues insurance coverage to</p> <p>8 policyholders under common ownership and therefore</p> <p>9 all insurance-related transactions are with</p> <p>10 related parties.</p> <p>11 Do you agree with that?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 <b>A I agree that's what it says.</b></p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q Well, do you agree that Sentinel issued</p> <p>16 coverage to policy owners under common ownership?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 <b>A I don't want to opine on what common</b></p> <p>19 <b>ownership means in Cayman, so I'll leave it as to</b></p> <p>20 <b>what it says. I don't have any further knowledge.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q So you don't know one way or the other if</p> <p>23 Sentinel's insurance-related transactions with SAS</p> <p>24 Asset Recovery were with related parties?</p> <p>25 <b>A I think, based on this, it's the position</b></p>
<p>106</p> <p>1 (SAS).</p> <p>2 Is that consistent with the understanding</p> <p>3 that you articulated earlier in your testimony?</p> <p>4 <b>A Yes. Yes.</b></p> <p>5 Q And then it says that effective March 1st,</p> <p>6 2015, limits of D&amp;O coverage were US\$ million per</p> <p>7 occurrence. Do you see that?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Is that consistent with your recollection</p> <p>10 of the types of policies and coverage that</p> <p>11 Sentinel provided to the SAS entities?</p> <p>12 <b>A Generally, yes.</b></p> <p>13 Q And again, to the best of your knowledge,</p> <p>14 SAS -- I'm sorry, Sentinel did not provide</p> <p>15 coverage to any entities outside of the SAS</p> <p>16 structure?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 <b>A I'm not -- I don't recall exactly. By SAS</b></p> <p>19 <b>structure, you mean? I know there were universal</b></p> <p>20 <b>policies. I don't know exactly which entities</b></p> <p>21 <b>were covered, so I don't want to...</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q Okay. Yeah, when I say SAS Asset Recovery</p> <p>24 structure, I was just reading from here. Again,</p> <p>25 to the best of your knowledge, you don't know if</p>	<p>108</p> <p>1 <b>that the auditor took.</b></p> <p>2 Q Okay. Who would be most knowledgeable</p> <p>3 about Sentinel's financials?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 <b>A Its auditors.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Its auditors?</p> <p>8 <b>A I would think so.</b></p> <p>9 Q So those would be the folks at Crowe</p> <p>10 Horwath?</p> <p>11 <b>A I don't know who -- what firm Sentinel</b></p> <p>12 <b>uses today. It appears this was issued by that</b></p> <p>13 <b>firm, Crowe.</b></p> <p>14 Q Okay. I'm going to hand you what we are</p> <p>15 going to mark as Exhibit 53, I believe.</p> <p>16 (Deposition Exhibit 53 marked for</p> <p>17 identification.)</p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Let me know when you're ready.</p> <p>20 (Witness reviews document.)</p> <p>21 <b>A Okay.</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q Okay. So this is an e-mail from -- the</p> <p>24 top of the e-mail chain is an e-mail from</p> <p>25 Mr. Leventon to Mr. DiOrio with a copy to you and</p>

<p>109</p> <p>1 Ms. Irving. He's forwarding a legal rep letter 2 and the subject is FW: Sentinel Re - Legal Rep. 3 If you look a couple of e-mails down, Mr. Kemp 4 sends an e-mail to Mr. Leventon and he says: I'm 5 the auditor working on the Sentinel Re engagement 6 for the year ended December of 2018, and then he 7 asks for an update as to any actions that occurred 8 during 2018 and asked when do you believe the 9 issues will be wrapped up by the courts. 10 Do you believe that Mr. Kemp is referring 11 to the UBS litigation? 12 <b>A I don't know.</b> 13 Q Okay. At this point in time, Sentinel had 14 already issued the ATE policy that covered the UBS 15 litigation that we briefly spoke about earlier; is 16 that right? 17 <b>A At which -- sorry, at which point?</b> 18 Q In May 24, 2019. 19 <b>A Yes.</b> 20 Q Okay. And at this point in time, UBS -- 21 are you aware that the trial between UBS and 22 Highland had occurred? 23 MS. SMITH: Objection, form. 24 <b>A I was not.</b> 25</p>	<p>111</p> <p>1 judgment? 2 <b>A I don't.</b> 3 Q Okay. Who would be the primary persons in 4 charge of providing the auditors with the 5 information that they would request about 6 Sentinel? 7 MS. SMITH: Objection, form. 8 <b>A Sorry, say -- who would provide the</b> 9 <b>auditors information requested about Sentinel?</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q Yes. 12 <b>A I don't know. I mean, the -- I don't</b> 13 <b>know. The directors I assume would manage</b> 14 <b>information flow. I don't know who would answer</b> 15 <b>what or what you -- exactly you're referring to,</b> 16 <b>as far as updates or information and it's pretty</b> 17 <b>broad.</b> 18 Q Sure. I mean, like we looked at an 19 exhibit earlier where the auditor said that they 20 were unable to obtain sufficient information, and 21 now we have an e-mail that's being sent to 22 Mr. Leventon asking for information regarding the 23 Sentinel audit. 24 So my question is, who, if you know, would 25 be the persons responsible for responding to those</p>
<p>110</p> <p>1 BY MS. TOMKOWIAK: 2 Q Okay. Were you involved in that trial at 3 all? 4 <b>A No.</b> 5 Q And then Mr. Kemp sends Mr. Leventon 6 another e-mail about a year later, June 16th, 7 2020, again, trying to wrap up the audit and 8 asking for a brief update on what happened during 9 that year. Are you aware that at this time -- by 10 this time UBS had obtained a \$1.2 billion judgment 11 against Highland? 12 MS. SMITH: Objection, form. 13 <b>A I don't remember the exact timing of when</b> 14 <b>that happened, but I have a general recollection</b> 15 <b>that it happened.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q And I should be more precise. It was 18 actually a judgment against certain of Highland's 19 funds, but with that -- with that -- 20 <b>A Again, I don't have specific knowledge</b> 21 <b>about what was awarded to whom or the exact</b> 22 <b>timing. I have a general recollection that there</b> 23 <b>was a verdict of some sort.</b> 24 Q Okay. Do you know whether Sentinel's 25 auditors were provided information regarding that</p>	<p>112</p> <p>1 types of inquiries from Sentinel's auditors? 2 MS. SMITH: Objection, form. 3 <b>A Depends when you're asking temporally. I</b> 4 <b>don't have personal knowledge of, for example,</b> 5 <b>this time frame. I don't know what the</b> 6 <b>information flow would have been.</b> 7 <b>BY MS. TOMKOWIAK:</b> 8 Q And is that true in 2017 as well? 9 <b>A I had been asked in 2017 for information</b> 10 <b>and so I would have answered questions to the</b> 11 <b>extent they were posed to me, which they were a</b> 12 <b>few times, but I don't know the entire universe of</b> 13 <b>who was providing what.</b> 14 Q So who posed questions to you in 2017? 15 MS. SMITH: Objection, form. 16 <b>A And I'm sorry, let's narrow this. When</b> 17 <b>you say information, we're referring to what?</b> 18 <b>What are you referring to?</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q Information relevant to the audit of 21 Sentinel. 22 <b>A I recall being asked by the administrator.</b> 23 Q Who was the administrator? 24 <b>A Beecher Carlson Cayman.</b> 25 Q So Beecher Carlson was the administrator</p>

<p>113</p> <p>1 of Sentinel; is that what you're saying? 2 <b>A Yes.</b> 3 Q And you recall that they would reach out 4 to you with questions relating to the audit of 5 Sentinel? 6 <b>A They had in the past.</b> 7 Q In what time frame? 8 <b>A Over the course of 2012 through -- I mean,</b> 9 <b>at different times, but starting in 2012.</b> 10 Q Through approximately when? 11 <b>A '17 I would say.</b> 12 Q Do you know why they stopped reaching out 13 to you for questions after 2017? 14 <b>A I don't. I don't.</b> 15 Q Did your role change? 16 MS. SMITH: Objection, form. 17 <b>A My role with respect to what?</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q To your duties at Highland. Did anything 20 about your role change such that you would no 21 longer be the person who would provide them with 22 that information that they requested from you? 23 <b>A I mean, I ended up working on a range of</b> 24 <b>matters over my time at Highland, so I don't know</b> 25 <b>if my role would have changed. I just know that</b></p>	<p>115</p> <p>1 the following table with the likely outcomes of 2 the case. 3 Do you see that sentence? 4 <b>A Yes.</b> 5 Q Do you know who the actuary is? 6 <b>A I don't recall.</b> 7 Q And by the case, looking at this chart, 8 does this look like it refers to the UBS matter? 9 <b>A I don't want to speculate.</b> 10 Q Is there any other -- any other litigation 11 that Highland had going on at the time related to 12 synthetic warehouse losses? 13 <b>A I have no personal knowledge. I don't</b> 14 <b>want to -- I don't know.</b> 15 Q And in the column that says expected 16 payout, do you know, payout, from whom is that 17 referring to; do you know? 18 MS. SMITH: Objection, form. 19 <b>A I'm sorry, I'm not -- where is that?</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q Sure. In the chart there's -- the header 22 is Outcome Probability and then Expected Payout is 23 the last column. 24 <b>A Oh, no, I -- no, I don't know.</b> 25 Q And when Mr. Kemp says to Mr. Leventon in</p>
<p>114</p> <p>1 <b>the questions stopped -- I stopped receiving the</b> 2 <b>questions. Yeah.</b> 3 Q What types of questions did they ask? 4 <b>A I recall there had been questions about --</b> 5 <b>for example, in 2013 or '14, there had been</b> 6 <b>questions about distributions from CLOs and so I</b> 7 <b>would connect them with the indentured trustee,</b> 8 <b>for example. That sort of connecting information</b> 9 <b>flow.</b> 10 Q Distributions from CLOs to Sentinel? 11 <b>A Uh-huh. Yes.</b> 12 Q The CLOs that we looked at earlier or 13 different CLOs? 14 MS. SMITH: Objection, form. 15 <b>A I don't remember which exact ones. I just</b> 16 <b>remember that as an example of being asked a</b> 17 <b>question at Highland with respect to Sentinel.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q Grayson or Greenbriar? 20 <b>A Could have been any of those.</b> 21 Q Do you know why Mr. Leventon is forwarding 22 this to you? 23 <b>A I don't.</b> 24 Q In the first -- in the June 16th e-mail, 25 Mr. Kemp references an actuary who has provided</p>	<p>116</p> <p>1 that second sentence there -- or the sentence 2 after point 2, per their report, you have agreed 3 that these estimates are reasonable. 4 Do you know if that's referring to anybody 5 besides Mr. Leventon? 6 <b>A I don't have personal knowledge of the</b> 7 <b>e-mail. I don't know.</b> 8 Q You don't recall today, as we sit here 9 today, getting a copy of this e-mail in June of 10 last year? 11 <b>A I'm just not agreeing or disagreeing with</b> 12 <b>what Kemp tells -- Kemp says in this e-mail.</b> 13 Q Did you -- do you recall agreeing at the 14 time that any of these estimates were reasonable? 15 MS. SMITH: Objection, form. 16 <b>A I don't recall that. I was never asked</b> 17 <b>any of that.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q And just to be clear, because I'm not sure 20 that it is clear, do you recall receiving this in 21 June of 2020? 22 <b>A I'm CC'd on a lot of e-mails. I don't --</b> 23 <b>I believe I got it. I don't recall exactly</b> 24 <b>getting it.</b> 25 Q Do you recall that during this time</p>

<p>117</p> <p>1 period, any analysis of the likely outcomes of the 2 UBS matter in June of 2020? 3 MS. SMITH: Objection, form. 4 <b>A I have no personal knowledge or 5 recollection of that.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Did you have any role in preparing legal 8 rep letters? 9 MS. SMITH: Objection, form. 10 <b>A No.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Do you know what a legal rep letter is? 13 <b>A Generally.</b> 14 Q And with respect to Sentinel, did you have 15 any role preparing legal rep letters? 16 <b>A Not that I recall.</b> 17 Q After 2016 who -- who would have 18 Sentinel's financial statements and audits for 19 2017 through the present? 20 MS. SMITH: Objection, form. 21 <b>A I don't know. Sentinel.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Meaning its directors? 24 <b>A I don't know.</b> 25 Q You can set that aside. Okay. Let's talk</p>	<p>119</p> <p>1 <b>A Christopher Watler.</b> 2 Q And then you also mentioned Highland 3 personnel. Who from Highland worked on the 4 Sentinel UBS policy? 5 MS. SMITH: Objection, form. 6 <b>A I don't -- I don't want to speak to -- I 7 don't know the entire universe. I recall working 8 with the compliance team, the accounting team. 9 Maples and Calder also was outside counsel that 10 worked on the matter. The accounting team, 11 trading and settlement team, I believe the tax 12 team.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q Let's take those in turn. So who's on the 15 compliance team that you recall working on the UBS 16 policy with? 17 MS. SMITH: Objection, form. 18 <b>A Mr. Surgent was the chief compliance 19 officer. I don't know who else he may have worked 20 with, but I recall working with him on sort of 21 compliance approval.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Compliance approval generally or 24 compliance approval of the -- what I'll refer to 25 today as the UBS policy? Do you understand what I</p>
<p>118</p> <p>1 about the ATE policy that Sentinel issued in 2 connection with the UBS litigation. What role did 3 you have in procuring that policy? 4 <b>A In procuring the policy?</b> 5 Q Yeah. 6 <b>A I worked with outside counsel. I had a 7 general understanding of what the goal was. I 8 worked with outside counsel, the administrator, 9 the board -- the directors, Highland personnel, in 10 connection with that being put into place.</b> 11 Q Who's outside counsel? 12 <b>A Solomon Harris.</b> 13 Q Anyone else? 14 <b>A Not that I recall.</b> 15 Q Who is the administrator? Is that Beecher 16 Carlson? 17 <b>A Beecher Carlson Cayman.</b> 18 Q The directors, do you mean the directors 19 of Sentinel? 20 <b>A Yes.</b> 21 Q And then who were they in August of 2017, 22 if you recall? 23 <b>A Again, the name I remember is Andrew Dean. 24 I don't remember the other person's name.</b> 25 Q Christopher Watler?</p>	<p>120</p> <p>1 mean by that? 2 <b>A I don't know the distinction you're trying 3 to draw.</b> 4 Q With the policy or with respect to 5 approval? Let's back up. 6 <b>A Sorry.</b> 7 Q That's okay. That's all right. So you 8 said that Mr. Surgent was the chief compliance 9 officer, right? 10 <b>A Yes.</b> 11 Q And you recall working with him on sort of 12 compliance approval? 13 <b>A Oh, okay. Yeah.</b> 14 Q Were you referring to compliance approvals 15 in general or were you referring to compliance 16 approval of the Sentinel policy that was issued in 17 connection with the UBS matter? 18 <b>A Compliance approval of the transaction in 19 the Sentinel policy.</b> 20 Q So you recall that Mr. Surgent approved 21 that? 22 <b>A Yes.</b> 23 Q Did he do that orally? Did he do that in 24 writing? Do you recall how he approved that? 25 <b>A I believe both ways.</b></p>

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1 Q Did he do that to you personally or was  
2 that just your understanding?  
3 MS. SMITH: Objection, form.  
4 **A I remember personally being in a meeting**  
5 **where he approved of the transaction.**  
6 **BY MS. TOMKOWIAK:**  
7 Q And when you say the transaction, what do  
8 you mean by that?  
9 **A The UBS ATE policy.**  
10 Q Tell me everything you remember about that  
11 meeting.  
12 MS. SMITH: Objection, form.  
13 **A I believe Mr. Ellington was present. I**  
14 **believe --**  
15 MS. SMITH: Before you answer anything,  
16 this sounds like it's going to go into an area  
17 that might be privileged, so I want to make sure  
18 that Mr. Feinstein is fine with this line of  
19 questioning and waives the privilege on behalf of  
20 the debtor.  
21 MR. FEINSTEIN: To the extent that the  
22 privilege may apply to these conversations, we  
23 would not assert.  
24 **A Yeah, I believe Mr. Ellington was present,**  
25 **representatives from the accounting and tax -- or**

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1 **accounting team, excuse me.**  
2 **BY MS. TOMKOWIAK:**  
3 Q Who was that?  
4 **A I don't recall exactly. Mr. Stoops, plus**  
5 **another individual, I believe. I was present.**  
6 **And I don't recall if there was an additional**  
7 **person from the compliance team. There may have**  
8 **been, but I don't recall specifically.**  
9 Q Anybody from the tax team?  
10 **A Not that I recall.**  
11 Q Was Rick Swadley there?  
12 **A Not that I recall.**  
13 Q Okay. So to the best of your  
14 recollection, the people in the room were  
15 Mr. Surgent, Mr. Ellington, Mr. Stoops, you, one  
16 other individual who worked with Mr. Stoops and  
17 possibly one other individual who worked with  
18 Mr. Surgent; is that right?  
19 MS. SMITH: Objection, form.  
20 **A I believe that's right.**  
21 **BY MS. TOMKOWIAK:**  
22 Q Where did this meeting take place?  
23 **A In the -- at Highland offices in the Bois**  
24 **d'Arc conference room.**  
25 Q Where is the Bois d'Arc conference room?

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1 **A Where, in the Highland offices?**  
2 Q Yeah.  
3 **A Do you know the Highland offices?**  
4 Q I don't. That's why I'm asking.  
5 **A In the Highland offices. It's one of the**  
6 **larger conference rooms at Highland.**  
7 Q How many floors does Highland have on --  
8 **A Just one.**  
9 Q Just one?  
10 **A Yeah.**  
11 Q Okay. So it's one of the main conference  
12 rooms --  
13 **A That's right.**  
14 Q -- on Highland's only floor?  
15 **A That's correct.**  
16 MS. TOMKOWIAK: Apologies. Sorry.  
17 **BY MS. TOMKOWIAK:**  
18 Q So this meeting took place in the  
19 Bois d'Arc conference room. Whose office was that  
20 conference room near?  
21 **A I think the closest office would have been**  
22 **Mr. Surgent's.**  
23 Q Okay. Was Mr. Ellington next door?  
24 **A Mr. Ellington --**  
25 MS. SMITH: Objection, form.

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1 **A Mr. Ellington's office is next door to**  
2 **Mr. Surgent's.**  
3 **BY MS. TOMKOWIAK:**  
4 Q What about Mr. Stoops? Where did he sit  
5 at the time in relation to that conference room?  
6 **A Farther away. On kind of a different wing**  
7 **of the building, let's call it.**  
8 Q Do you recall when this meeting took  
9 place?  
10 **A I don't recall the exact date.**  
11 Q Are you able to estimate it as it relates  
12 to the date of the insurance policy?  
13 **A I would estimate July of 2017.**  
14 Q Do you recall what day of the week this  
15 was?  
16 **A I don't.**  
17 Q Do you recall approximately what time this  
18 meeting took place?  
19 **A I don't.**  
20 Q Do you recall if it was in the morning?  
21 **A I don't. I don't recall the time of day.**  
22 Q Do you recall approximately how long it  
23 lasted?  
24 **A I recall it being somewhat involved and**  
25 **then spilling over into Mr. Surgent's office**



<p style="text-align: right;">125</p> <p>1 afterwards, directly, where Mr. Ellington and I 2 sat with Mr. Sargent. I think -- no less than 3 one hour, I think, in total. 4 Q So just to be clear, no less than one hour 5 meeting in the conference room? 6 A Correct. 7 Q And then you said it spilled over to 8 Mr. Sargent's office. And in that meeting is it 9 your recollection that that was only you, 10 Mr. Ellington and Mr. Sargent? 11 A That's my recollection. 12 Q And do you recall how long you met with 13 those other -- two other individuals? 14 A I don't. 15 Q More than an hour? 16 A I don't recall. 17 Q Who organized this meeting? 18 A I don't recall who set the -- who set the 19 meeting. 20 Q Did you? 21 A It's possible. 22 Q Do you recall how you did that? Was that 23 by e-mail? Did you go around to people's offices 24 and just say, hey, can we have a meeting? 25 MS. SMITH: Objection, form.</p>	<p style="text-align: right;">127</p> <p>1 potentially weeks, but I don't recall exactly how 2 much in advance I learned about it. 3 Q Who told you about it? 4 A About? 5 Q The policy. 6 A Mr. Ellington. 7 Q Anybody else? 8 A No. 9 Q And I want to come back to that. As to 10 the other people in the room, was everybody else 11 in the room aware of the policy and the 12 transaction underlying the policy prior to this 13 meeting? 14 MS. SMITH: Objection, form. 15 A I don't know what anyone else knew at any 16 given moment. I knew I had previous knowledge of 17 it. 18 BY MS. TOMKOWIAK: 19 Q So based on what happened in the meeting, 20 you didn't learn one way or the other if this was 21 anybody else's first time hearing about that? 22 A I don't recall remembering -- I don't 23 remember that being the case. 24 Q And you said that you learned about it 25 from Mr. Ellington. Was that in a -- well, how</p>
<p style="text-align: right;">126</p> <p>1 A I don't recall exactly how it came 2 together. It could have been an admin sending 3 around a calendar. I don't recall. 4 BY MS. TOMKOWIAK: 5 Q Who decided who to invite to the meeting? 6 A I don't recall. I don't recall, but the 7 meeting focused on the compliance component of it, 8 so by definition, the sort of compliance 9 department needed to be there. I don't recall -- 10 again, I don't recall who set the meeting. I just 11 recall it happening. 12 Q What was the purpose of the meeting? 13 A To ensure that there were no compliance 14 issues related to the policy, to make sure there 15 was approval, necessary compliance approval, 16 concerning the policy, the transaction. 17 Q Was this meeting the first time that you 18 learned of the ATE policy? 19 A No. 20 Q When did you first hear about that? 21 A I don't recall the exact date, but prior 22 to that. 23 Q Do you have an estimate? A couple days 24 before that? Weeks before that? 25 A I would say -- I would say several days or</p>	<p style="text-align: right;">128</p> <p>1 did you learn about it from Mr. Ellington? 2 A I believe he was in the office and he came 3 by my desk. 4 Q Again, days or weeks prior to this 5 meeting? 6 A Yes. I don't -- I mean, it could have 7 been weeks. I don't recall exactly the gap in 8 time, let's call it. 9 Q But it was -- you recall that it was an 10 oral conversation? 11 A It was. 12 Q Was anybody else present? 13 A Not that I remember. 14 Q Do you recall how long that conversation 15 lasted? 16 A Twenty, 30 minutes. 17 Q What did Mr. Ellington say? 18 A He just made me aware that the intention 19 was to create an ATE policy, an after-the-event 20 policy relating to the UBS case and that Sentinel 21 would be the insurance company. 22 Q Okay. And when you say with respect to 23 the UBS case, do you mean that the intention was 24 to create an insurance policy that would cover 25 Highland's liability to UBS in connection with the</p>

<p>129</p> <p>1 litigation in the New York State court? 2 MS. SMITH: This is getting into an area 3 that may be privileged. Again, I just want to 4 make sure that Mr. Feinstein and the debtor is not 5 objecting to this or the debtor's going to waive 6 the privilege as to this. 7 MR. FEINSTEIN: You keep speaking in terms 8 of waiver, and I guess maybe we're talking past 9 one another. With respect to many of these 10 conversations, it's more than arguable that the 11 privilege doesn't apply. And I'm sure you're well 12 aware of the exceptions to the attorney-client 13 privilege. So if you hear me object, you can 14 assume that I have a problem with the question 15 being asked. If I don't object, I would suggest 16 that you let counsel continue with the deposition. 17 BY MS. TOMKOWIAK: 18 Q Do you want me to repeat my question? 19 A <b>Sure, please.</b> 20 Q Do you mean that the intention was to 21 create an insurance policy that would cover 22 Highland's liability to UBS in connection with the 23 litigation in state court? 24 A <b>That wasn't -- that overarching strategy</b> 25 <b>or end that you're describing was not part of a</b></p>	<p>131</p> <p>1 <b>A I don't recall hearing that. No, I don't</b> 2 <b>think that's the case. I believe it was just</b> 3 <b>related to the UBS action.</b> 4 Q Had Sentinel ever issued an 5 after-the-event policy before? 6 A <b>No.</b> 7 Q So this was the first? 8 A <b>This was the first.</b> 9 Q Going back to the meeting. So you said 10 that it occurred -- I'm sorry, you said that it 11 lasted just over an hour? 12 A <b>Again, rough estimate. I remember --</b> 13 MS. SMITH: Objection, form. Which 14 meeting are we on now? 15 BY MS. TOMKOWIAK: 16 Q The meeting that you estimated occurred in 17 July 2017 in the Bois d'Arc conference room. 18 A <b>I remember it being a lengthy meeting. I</b> 19 <b>don't recall the exact time.</b> 20 Q What happened during the meeting? 21 A <b>The policy was discussed, the -- sort of</b> 22 <b>the compliance component included whether -- or</b> 23 <b>compliance approval of a -- of a transaction of a</b> 24 <b>policy that was being written by an insurance</b> 25 <b>company in which Mr. Dondero and Ellington had an</b></p>
<p>130</p> <p>1 <b>conversation that I had with Mr. Ellington.</b> 2 Q So I don't understand. What was the 3 purpose? What did Mr. Ellington tell you was the 4 purpose of getting an insurance policy? 5 A <b>That the intention of the policy would be</b> 6 <b>to essentially have Sentinel issue a policy to</b> 7 <b>insure the defendants in the UBS case.</b> 8 Q To insure the defendants in the UBS case 9 against losses that they incurred in connection 10 with the UBS case, right? 11 MS. SMITH: Objection, form. 12 A <b>Insure defendants in the UBS case related</b> 13 <b>to the litigation. I didn't -- again, the</b> 14 <b>overarching strategy or the -- we didn't get into</b> 15 <b>that. That's not something we discussed or I</b> 16 <b>asked about.</b> 17 BY MS. TOMKOWIAK: 18 Q Did you ask whether there was a pending 19 settlement on the horizon of the UBS case? 20 A <b>I did not.</b> 21 Q Did you know whether there was? 22 A <b>No, I did not know. I do not know.</b> 23 Q Was it your understanding that the policy 24 was intended to cover any other matter other than 25 the UBS litigation?</p>	<p>132</p> <p>1 <b>interest, whether the policy was acceptable from a</b> 2 <b>compliance perspective, things of that nature.</b> 3 Q So what is the compliance component of 4 that transaction? 5 A <b>Again, I -- well, I think the compliance</b> 6 <b>component largely turned on whether Sentinel was</b> 7 <b>some sort of affiliate or related party and</b> 8 <b>whether there was a conflict of interest and</b> 9 <b>whether from -- and again, I don't know the entire</b> 10 <b>regulatory framework applicable. I don't want to</b> 11 <b>say -- represent that I was in the compliance --</b> 12 <b>on the compliance team, but the acceptability and</b> 13 <b>the -- whether there were any compliance issues</b> 14 <b>related to the policy being put into place.</b> 15 Q Related to this being a related party 16 transaction? 17 A <b>Potential --</b> 18 MS. SMITH: Objection, form. 19 A <b>Potentially. That was one of the</b> 20 <b>questions.</b> 21 BY MS. TOMKOWIAK: 22 Q Well, was that question answered during 23 the meeting? 24 A <b>I believe so.</b> 25 Q And what was the answer?</p>

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1 **A That Sentinel was not an affiliate under**  
2 **common control with Highland.**  
3 Q Who reached that conclusion?  
4 **A I believe Mr. Surgent did.**  
5 Q Anybody else?  
6 **A I don't recall.**  
7 Q And to the best of your recollection,  
8 was -- well, start with -- Mr. Surgent aware  
9 that -- aware of Mr. Dondero and Mr. Ellington's,  
10 I'll say relationship to Sentinel?  
11 MS. SMITH: Objection, form.  
12 **A I believe so.**  
13 **BY MS. TOMKOWIAK:**  
14 Q To the best of your recollection, was  
15 everybody in the room aware of that fact?  
16 MS. SMITH: Objection, form.  
17 **A I believe so.**  
18 **BY MS. TOMKOWIAK:**  
19 Q You say that's what you were discussing,  
20 so if everybody was in the room, they would have  
21 heard that discussion, right?  
22 **A Yes, I think that's correct.**  
23 Q Why was Mr. Stoops in the room?  
24 **A My recollection is he -- he could speak to**  
25 **the, sort of trading and settlement component to**

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1 **the assets being transferred to Sentinel in**  
2 **connection with the policy. And I think he had --**  
3 **he was the person who had the most accounting**  
4 **knowledge and background on some of these**  
5 **defendant entities.**  
6 Q Did you ask Mr. Stoops to do anything  
7 during that meeting?  
8 **A I don't recall. I don't think so.**  
9 Q You mentioned earlier that -- when we were  
10 talking about Highland personnel, you talked about  
11 Mr. Surgent, you talked about accounting, you  
12 talked about trading and settlement and tax.  
13 Outside of the individuals that we have discussed  
14 were at this meeting, who else falls within that  
15 group of people that you worked on with respect to  
16 this policy?  
17 MS. SMITH: Objection, form.  
18 **A I don't understand the question. Can**  
19 **you --**  
20 **BY MS. TOMKOWIAK:**  
21 Q Sure. Let me just break it down. So who  
22 did you work on it from the compliance group  
23 besides Mr. Surgent?  
24 MS. SMITH: Objection, form.  
25

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1 BY MS. TOMKOWIAK:  
2 Q As it relates to this -- let me just be  
3 clear. As it relates to this insurance policy and  
4 transaction.  
5 **A In July 2017 -- July, August 2017 time**  
6 **frame.**  
7 Q July, August 2017?  
8 **A Ms. Thedford, Lauren Thedford. I believe**  
9 **that's it.**  
10 Q Okay. And then the same question with  
11 respect to accounting. Who did you work on in  
12 accounting -- who did you work with in accounting  
13 related to this policy and transaction?  
14 **A Mr. Stoops. A gentleman named Carter**  
15 **Chism. He was more on the trading and settlement**  
16 **side, but I sort of consider that part of the**  
17 **accounting function.**  
18 Q And anybody else?  
19 **A Those are the two I recall. Possibly**  
20 **others, but I'm not remembering exactly.**  
21 Q Anybody else from the trading settlement  
22 group?  
23 **A I'm forgetting some of the gentlemen's**  
24 **names, but, yes, others. There was a gentleman on**  
25 **the retail side. Mr. Fuentes, I believe,**

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1 **addressed some settlement questions. I believe**  
2 **that's it.**  
3 Q Who did you work with on this policy and  
4 transaction from the tax group?  
5 **A Mr. Swadley and Mr. Patrick.**  
6 Q Anybody else?  
7 **A Not that I recall.**  
8 Q Okay. And then you said that in this  
9 meeting in the conference room, that a conclusion  
10 was reached with respect to whether this was a  
11 conflict of interest; is that fair?  
12 **A Whether there was compliance approval.**  
13 Q Well, let me back up.  
14 So I think you said that there was a  
15 question about whether or not doing this  
16 particular type of transaction with Sentinel,  
17 because of Mr. Ellington and Mr. Dondero,  
18 presented some type of -- I don't want to put  
19 words in your mouth, but I think you said a  
20 conflict of interest; is that right?  
21 **A That was one of the issues I think that**  
22 **required compliance review.**  
23 Q Okay. And did they review that during  
24 this meeting?  
25 **A During that meeting and during subsequent**

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1 meetings, yes.  
2 Q Okay. And what was the outcome of that  
3 review?  
4 A The conclusion was that the ATE policy  
5 wasn't an impermissible conflict of interest and  
6 there was compliance sort of approval that that  
7 was not -- that that was not a problem or that was  
8 not an issue that needed to somehow change the  
9 policy or the transaction.  
10 Q And who specifically reached that  
11 conclusion?  
12 A The compliance team, Mr. Surgent.  
13 Q Anybody else?  
14 A I don't know who he consulted. I wasn't  
15 privy; but as far as I knew, Mr. Surgent approved  
16 the transaction.  
17 Q During this meeting, was -- did anybody  
18 direct you or anybody else in the room to keep  
19 this policy a secret?  
20 A No.  
21 Q Did anybody instruct you or anybody else  
22 in the room to keep the transaction a secret?  
23 A No, I don't remember that.  
24 Q Or to keep it confidential or limited to a  
25 small group of people in any way?

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1 MS. SMITH: Objection, form.  
2 A No. I never considered it a secret.  
3 BY MS. TOMKOWIAK:  
4 Q Do you recall anything else about that  
5 meeting?  
6 A Other than the topics I mentioned were  
7 covered, there were subsequent meetings. But from  
8 that meeting, no, I remember the compliance  
9 approval component is what I remember most.  
10 Q And you also mentioned some discussion  
11 about the -- on the assets at the funds?  
12 A Yes.  
13 Q Are there any other topics that you  
14 remember being discussed at that meeting?  
15 A Not that I recall.  
16 Q Did you have any experience with ATE  
17 policies prior to this?  
18 A I had knowledge of ATE policies because  
19 several years before, Sentinel applied to the  
20 regulator to write this sort of policy. And so I  
21 recall that process and I recall understanding in  
22 general what ATE is.  
23 Q But you said this was Sentinel's first ATE  
24 policy, right?  
25 A That's correct.

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1 Q So do you recall why Sentinel had applied  
2 years earlier to the regulators to write this kind  
3 of policy?  
4 A My recollection is that in the UK  
5 litigation funding industry, ATE is fairly common  
6 and in the SAS, the litigation funding business  
7 was encountering situations where this ATE concept  
8 was in play. I believe that's what resulted in  
9 Sentinel applying to be able to write this  
10 business.  
11 Q Do you recall approximately when Sentinel  
12 made that application?  
13 A 2015, perhaps. I don't recall exactly,  
14 but that -- I believe it was 2015.  
15 Q Were you involved in that application?  
16 A I was not directly involved. I had  
17 knowledge that it was occurring, but I was not  
18 directly involved.  
19 Q Do you know who was directly involved?  
20 A The directors, Beecher Carlson Cayman. I  
21 believe that's it.  
22 Q Do you know whether it was approved?  
23 MS. SMITH: Objection, form.  
24 A I understand that it was approved.  
25

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1 BY MS. TOMKOWIAK:  
2 Q Going back briefly to the meeting and  
3 Mr. Surgent's conclusion and approval. Did he say  
4 that directly during the meeting or did you hear  
5 that from someone else?  
6 A I heard it directly -- I don't know if  
7 there were subsequent meetings where he reiterated  
8 that, but I heard that from him during that  
9 meeting and the subsequent meeting in his office.  
10 Q And what was discussed at the subsequent  
11 meeting in Mr. Ellington's office -- I mean, I'm  
12 sorry, you said it was Mr. Surgent's office?  
13 A Mr. Surgent's office.  
14 Q Yeah. What was discussed at that meeting?  
15 A Specifics about the policy and the  
16 documentation. I think a rehash of what had been  
17 discussed in the broader meeting. But from my  
18 perspective, it was all sort of -- it was all the  
19 same topics that were being discussed, perhaps in  
20 different ways, but it was all the same universe  
21 of topics and kind of compliance approval  
22 components.  
23 Q Do you know why you met as a smaller group  
24 after the larger group meeting?  
25 A I don't recall. I kind of -- I believe I

<p style="text-align: right;">141</p> <p><b>1 followed Mr. Ellington and Mr. Surgent.</b> <b>2 Q</b> So to the best of your recollection, that <b>3</b> just sort of happened informally; you guys just <b>4</b> walked into Mr. Surgent's office? <b>5 A I believe so.</b> <b>6 Q</b> Do you know whether the funds who are <b>7</b> insured under the policy got quotes from any other <b>8</b> insurance companies? <b>9 A I don't know.</b> <b>10 MS. SMITH:</b> Objection, form. <b>11 THE WITNESS:</b> Sorry. <b>12 A I don't know.</b> <b>13 BY MS. TOMKOWIAK:</b> <b>14 Q</b> Was that discussed at either of the <b>15</b> meetings that you described? <b>16 A No.</b> <b>17 Q</b> Did you ask whether you should get quotes <b>18</b> from other insurance companies? <b>19 MS. SMITH:</b> Objection, form. <b>20 A I did not ask.</b> <b>21 BY MS. TOMKOWIAK:</b> <b>22 Q</b> And who was going to negotiate this policy <b>23</b> on behalf of Sentinel? <b>24 A Sentinel had outside counsel drafting the</b> <b>25 policy and it also had its own directors and</b></p>	<p style="text-align: right;">143</p> <p><b>1 Q</b> Okay. Ms. Irving? <b>2 A I don't recall.</b> <b>3 MS. TOMKOWIAK:</b> Why don't we take another <b>4</b> break, if it's okay. Let's go off the record. <b>5 THE VIDEOGRAPHER:</b> The time is 12:49 p.m. <b>6</b> We are off the record. <b>7 (Recess taken from 12:49 p.m. CDT to</b> <b>8 1:39 p.m. CDT)</b> <b>9 THE VIDEOGRAPHER:</b> The time is 1:39 p.m. <b>10</b> We are back on the record. <b>11 BY MS. TOMKOWIAK:</b> <b>12 Q</b> Mr. Sevilla, before lunch we were talking <b>13</b> about a meeting that occurred in the Bois d'Arc <b>14</b> conference room that you believe occurred around <b>15</b> July 2017. Do you remember that? <b>16 A Yes.</b> <b>17 Q</b> And you testified that you recall <b>18</b> Mr. Ellington was in the room, Mr. Stoops was in <b>19</b> the room, Mr. Surgent was in the room, you were in <b>20</b> the room and then you believed that there might <b>21</b> have been one other person with Mr. Stoops and one <b>22</b> other person with Mr. Surgent in the room; is that <b>23</b> right? <b>24 A Yes.</b> <b>25 Q</b> And you don't have any recollection of who</p>
<p style="text-align: right;">142</p> <p><b>1 administrator.</b> <b>2 Q</b> So at the time that you had this meeting, <b>3</b> to the best of your recollection, was the policy <b>4</b> already being drafted? <b>5 MS. SMITH:</b> Objection, form. <b>6 A Yes. It had been -- the proposed policy</b> <b>7 had been drafted by this point.</b> <b>8 BY MS. TOMKOWIAK:</b> <b>9 Q</b> And how had that already happened? <b>10 A Again, I had come to learn that the</b> <b>11 intention was for this policy to be put into</b> <b>12 place. Sentinel's outside counsel drafted the</b> <b>13 proposed policy and that was part and parcel to</b> <b>14 the meeting as approval of that policy.</b> <b>15 Q</b> By outside counsel, do you mean Maples? <b>16 A No. The Solomon Harris firm.</b> <b>17 Q</b> So Solomon Harris is the one that drafted <b>18</b> the policy? <b>19 A Correct.</b> <b>20 Q</b> Was Mr. DiOrio in the meeting in <b>21</b> Mr. Surgent's office? <b>22 A I don't think so. I don't recall him</b> <b>23 being in any of those meetings.</b> <b>24 Q</b> How about Mr. Leventon? <b>25 A I don't think so. I don't recall.</b></p>	<p style="text-align: right;">144</p> <p><b>1</b> those other two individuals were? <b>2 A Yeah, it's a vague recollection and I</b> <b>3 don't remember who. And it -- I may be mistaken,</b> <b>4 but that's sort of my recollection is it was a</b> <b>5 larger group in that conference room.</b> <b>6 Q</b> And you don't recall Mr. Leventon being <b>7</b> there? <b>8 A I don't.</b> <b>9 Q</b> And you don't recall Mr. DiOrio being <b>10</b> there? <b>11 A I do not.</b> <b>12 Q</b> You don't recall Ms. Irving being there? <b>13 A Correct.</b> <b>14 Q</b> You don't recall Mr. Dondero being there? <b>15 A Correct.</b> <b>16 Q</b> When you say you have a vague <b>17</b> recollection, does that mean you have a <b>18</b> recollection of someone you think was in the room <b>19</b> but you don't know if they were in the room? <b>20 A Mr. Post, who was on the compliance team,</b> <b>21 may have been in the room. I know there were</b> <b>22 issues that he weighed in on, not necessarily at</b> <b>23 that meeting, but in -- at different times. But</b> <b>24 that's my best recollection of that one meeting</b> <b>25 you're referencing.</b></p>

<p>145</p> <p>1 Q And you don't recall who was there with 2 Mr. Stoops? 3 <b>A That's right.</b> 4 Q Do you recall that there were -- there was 5 definitely somebody else there with Mr. Stoops, 6 you just don't remember who? 7 <b>A No. It could be that there wasn't, that 8 it was just Mr. Stoops from the accounting side.</b> 9 Q So the only four people you know were in 10 the room were yourself, Mr. Leventon, Mr. Surgent, 11 and Mr. Stoops? 12 MS. SMITH: Objection, form. 13 <b>A Ellington, Surgent and me, and I believe 14 Mr. Stoops and then it kind of goes foggier with 15 respect to the others.</b> 16 MS. SMITH: Can we go off just really 17 quick, please? 18 THE VIDEOGRAPHER: We are off the record 19 at 1:41 p.m. 20 (Recess taken from 1:41 p.m. CDT to 21 1:42 p.m. CDT) 22 THE VIDEOGRAPHER: 1:42 p.m., we're back 23 on the record. 24 BY MS. TOMKOWIAK: 25 Q Mr. Sevilla, let's clear up the record.</p>	<p>147</p> <p>1 Q And then what do you mean by transaction 2 documents? 3 <b>A I believe the purchase agreement.</b> 4 Q Anything else? 5 <b>A That would have been it.</b> 6 Q So to the best of your recollection, the 7 two documents that were in the room were the 8 insurance policy draft form and the purchase 9 agreement? 10 <b>A I think that's right.</b> 11 Q Was that also in draft form? 12 <b>A It would have been in draft form, yeah.</b> 13 Q Do you know who drafted that? 14 <b>A Outside counsel. I believe Mr. Stoops 15 would have also had the asset listing, the 16 spreadsheet of assets.</b> 17 Q Who asked him to bring that? 18 <b>A I don't know.</b> 19 Q Did you? 20 <b>A I don't think so.</b> 21 Q Did anybody make a presentation at this 22 meeting? 23 <b>A I don't think it was a presentation, but 24 it -- it was more of a discussion.</b> 25 Q Who led the discussion?</p>
<p>146</p> <p>1 So the only four people that you know were in that 2 meeting were yourself, Mr. Surgent, Mr. Ellington 3 and Mr. Stoops; is that right? 4 <b>A Correct.</b> 5 Q And were there any notes taken at this 6 meeting? 7 MS. SMITH: Objection, form. 8 <b>A I don't recall.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Did you take any notes? 11 <b>A I don't recall.</b> 12 Q Did you see anybody else taking notes? 13 <b>A I don't recall.</b> 14 Q Were there any documents reviewed at this 15 meeting? 16 <b>A Yes.</b> 17 MS. SMITH: Objection, form. 18 THE WITNESS: Sorry. 19 <b>A Yes, the proposed -- the insurance policy, 20 the document, transaction documents.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q So by insurance policy, do you mean there 23 was a copy of the draft insurance policy in the 24 room? 25 <b>A Correct.</b></p>	<p>148</p> <p>1 <b>A Mr. Ellington.</b> 2 Q Who brought the insurance policy to the 3 meeting? 4 <b>A I did.</b> 5 Q And did you also bring the purchase 6 agreement? 7 <b>A Yes.</b> 8 Q Did you bring any other documents? 9 <b>A Not that I recall.</b> 10 Q Did anybody else bring any other 11 documents? 12 <b>A Not that I recall.</b> 13 Q Were there any reports that were written 14 about this meeting afterwards? 15 <b>A Not that I have knowledge of.</b> 16 Q Were there any reports written about any 17 of the conclusions that were reached at this 18 meeting? 19 <b>A Not that I know of.</b> 20 Q Was it specifically discussed at this 21 meeting that Mr. Dondero owned 70 percent of 22 Sentinel? 23 MS. SMITH: Objection, form. 24 <b>A Ownership was discussed. I don't know if 25 it was on a percentage basis to the exact number</b></p>

<p>149</p> <p>1 that you're referencing. 2 <b>BY MS. TOMKOWIAK:</b> 3 Q But it was specifically discussed that 4 Mr. Dondero owned part of Sentinel? 5 MS. SMITH: Objection, form. 6 <b>A Yes. Yes.</b> 7 <b>BY MS. TOMKOWIAK:</b> 8 Q Who said that? 9 <b>A I don't recall exactly who. Mr. Ellington</b> 10 <b>and myself both would have conveyed that to -- I</b> 11 <b>certainly mentioned it.</b> 12 Q You mentioned it? 13 <b>A Yes.</b> 14 Q Okay. Did you also mention that 15 Mr. Ellington also owned part of Sentinel? 16 MS. SMITH: Objection, form. 17 <b>A I don't know if I mentioned that or not.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q Did Mr. Ellington mention that? 20 <b>A I don't know.</b> 21 Q So you -- 22 <b>A I don't recall.</b> 23 Q -- don't know if the folks in the room 24 knew that Mr. Ellington owned part of Sentinel? 25 MS. SMITH: Objection, form.</p>	<p>151</p> <p>1 that's largely what was discussed. The proposed 2 terms of the policy, the proposed terms of the -- 3 you know, proposed terms of the insurance policy 4 and the purchase agreement. 5 Q Did you think it was not relevant that 6 Mr. Ellington also owned part of Sentinel? 7 MS. SMITH: Objection, form. 8 <b>A Again, it may have been discussed. It's</b> 9 <b>not something I recall, but I think it's -- I do</b> 10 <b>think it's relevant.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q You do think it's relevant sitting here 13 today? 14 <b>A I think it's a fact around the ownership</b> 15 <b>of the company. So if there are questions about</b> 16 <b>the ownership of the company, I think that would</b> 17 <b>be something discussed. And it very well might --</b> 18 <b>might well have, I just -- what I recall is</b> 19 <b>Dondero's ownership component.</b> 20 Q Who asked you to bring those documents to 21 the meeting? 22 <b>A I don't recall. I don't know if anyone</b> 23 <b>did.</b> 24 Q And what was the specific question posed 25 to Mr. Surgent during that meeting?</p>
<p>150</p> <p>1 <b>A I don't have direct recollection of that</b> 2 <b>being discussed.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q You knew it at the time, right? 5 <b>A Yes.</b> 6 Q And Mr. Ellington knew it at the time? 7 <b>A I suppose. I presume he did.</b> 8 Q But to the best of your recollection, 9 neither you nor Mr. Ellington mentioned that fact 10 in the room? 11 MS. SMITH: Objection, form. 12 <b>A I don't recollect one way or the other</b> 13 <b>that that came up.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q So then was the discussion of the 16 compliance issues, as you said, around 17 Mr. Dondero's ownership of Sentinel? 18 MS. SMITH: Objection, form. 19 <b>A It was a discussion of a broad range of</b> 20 <b>facts and -- about the policy and about Sentinel</b> 21 <b>itself.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q What about Sentinel itself? 24 <b>A Its ownership, Mr. Dondero's connection</b> 25 <b>with it, and that's large -- that's largely --</b></p>	<p>152</p> <p>1 <b>A The specific -- I don't think it was one</b> 2 <b>question. I think it was a number of questions</b> 3 <b>and discussion points. I don't think there was</b> 4 <b>just one thing.</b> 5 Q When it came to Sentinel's ownership -- 6 when it came to Sentinel's ownership, was there a 7 specific question posed to Mr. Surgent? 8 <b>A I don't -- I don't remember the meeting in</b> 9 <b>those terms to break it down into one question or</b> 10 <b>another. It was a meeting that covered a broad</b> 11 <b>variety of topics, including ownership, commercial</b> 12 <b>terms, documentation, et cetera. So I apologize.</b> 13 <b>I can't break it down the way you're asking me to.</b> 14 Q You mentioned earlier that there was a 15 discussion of the potential conflict of interest. 16 What was the conflict of interest that was 17 discussed? 18 <b>A Well, there was an ownership interest on</b> 19 <b>the part of Sentinel, Mr. Dondero's ownership</b> 20 <b>interest on the Sentinel side, and where Highland</b> 21 <b>sat in relation to the insureds and also being a</b> 22 <b>defendant in the case.</b> 23 Q So was the question whether it was a 24 conflict of interest for these funds to enter into 25 this transaction and insurance policy with</p>

<p>153</p> <p>1 Sentinel?</p> <p>2 <b>A Again, it was a series of discussions and</b></p> <p>3 <b>questions around these facts. I can't break it</b></p> <p>4 <b>into -- you know, a discrete question set, but it</b></p> <p>5 <b>was a comprehensive discussion around all of these</b></p> <p>6 <b>salient facts.</b></p> <p>7 Q You testified earlier that there was a</p> <p>8 conclusion reached around all of those salient</p> <p>9 facts of the meeting; is that right?</p> <p>10 <b>A I think at this meeting and subsequent</b></p> <p>11 <b>meetings, certainly.</b></p> <p>12 Q Right. But when you say that, was there a</p> <p>13 conclusion reached at this meeting and then that</p> <p>14 was repeated in subsequent meetings or are you</p> <p>15 saying there were additional decisions made in</p> <p>16 subsequent meetings?</p> <p>17 <b>A I think there was a conclusion at this</b></p> <p>18 <b>meeting that it was -- it was an acceptable</b></p> <p>19 <b>transaction from a compliance perspective and that</b></p> <p>20 <b>that was reinforced and discussed in subsequent</b></p> <p>21 <b>meetings, touching on topics like the actual block</b></p> <p>22 <b>and tackle of transferring the assets and the</b></p> <p>23 <b>like. So it was a series of meetings, but this</b></p> <p>24 <b>was certainly one where approval from a compliance</b></p> <p>25 <b>perspective, I think -- I think that was the gist</b></p>	<p>155</p> <p>1 would have been sufficient from your perspective</p> <p>2 to move forward with the transaction?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 <b>A I don't think it was up to me to move</b></p> <p>5 <b>forward with the transaction. It would have been</b></p> <p>6 <b>up to others, but that was my -- certainly my</b></p> <p>7 <b>takeaway.</b></p> <p>8 <b>BY MS. TOMKOWIAK:</b></p> <p>9 Q Who was it up to to move forward with the</p> <p>10 transaction?</p> <p>11 <b>A Mr. Surgent, Mr. Ellington, Mr. Dondero.</b></p> <p>12 Q Why Mr. Dondero?</p> <p>13 <b>A I think as just -- because of his</b></p> <p>14 <b>relationship and control of Highland and</b></p> <p>15 <b>Highland's relationship to those insureds.</b></p> <p>16 Q Do you know whether that conclusion was</p> <p>17 ever conveyed to Mr. Dondero?</p> <p>18 <b>A Which conclusion?</b></p> <p>19 Q The conclusion that it was an acceptable</p> <p>20 transaction from a compliance perspective.</p> <p>21 <b>A I don't have firsthand -- I did not convey</b></p> <p>22 <b>to him, so I don't have firsthand knowledge of</b></p> <p>23 <b>that.</b></p> <p>24 Q Okay. Did Mr. -- well, we'll look at it.</p> <p>25 What was your role with respect to the</p>
<p>154</p> <p>1 <b>of that meeting.</b></p> <p>2 Q So was the conclusion that the transaction</p> <p>3 was approved from a compliance perspective or was</p> <p>4 the conclusion that it didn't need to be approved</p> <p>5 from a compliance perspective?</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 <b>A I'm not following the distinction.</b></p> <p>8 <b>BY MS. TOMKOWIAK:</b></p> <p>9 Q Well, was the conclusion that this is not</p> <p>10 the type of transaction that compliance needs to</p> <p>11 review or approve?</p> <p>12 <b>A I don't think that's right.</b></p> <p>13 Q Okay. So was the conclusion that</p> <p>14 compliance has reviewed and approved this</p> <p>15 transaction?</p> <p>16 <b>A That was my takeaway.</b></p> <p>17 Q Why was that your takeaway?</p> <p>18 <b>A Because I believe in form and substance,</b></p> <p>19 <b>that -- spirit and substance, that's what was said</b></p> <p>20 <b>and discussed at the meeting and in subsequent</b></p> <p>21 <b>meetings.</b></p> <p>22 Q And do you know whether that spirit and</p> <p>23 substance was ever recorded in any other manner?</p> <p>24 <b>A Not that I know of.</b></p> <p>25 Q So that oral approval at that meeting</p>	<p>156</p> <p>1 policy? What was your specific role?</p> <p>2 <b>A I think I provided some interface with</b></p> <p>3 <b>outside counsel, with the insurance administrator,</b></p> <p>4 <b>with the board. To the extent there were</b></p> <p>5 <b>questions from Sentinel with respect to the assets</b></p> <p>6 <b>and in what form they were, whether it was</b></p> <p>7 <b>certificated securities or otherwise. So I think</b></p> <p>8 <b>I consider the tasks in the nature of interface</b></p> <p>9 <b>between all of these different subject matter</b></p> <p>10 <b>experts, whether on the Highland side or the</b></p> <p>11 <b>Sentinel side.</b></p> <p>12 Q I don't mean to diminish that role, but</p> <p>13 did you have any substantive responsibilities with</p> <p>14 respect to the terms of the policy or the terms of</p> <p>15 the purchase agreement?</p> <p>16 <b>A I don't believe I did. I had -- I didn't</b></p> <p>17 <b>have a say in the commercial -- or the -- no, I</b></p> <p>18 <b>don't -- I don't think so. I certainly</b></p> <p>19 <b>communicated with outside counsel, but I left it</b></p> <p>20 <b>to all of them to do their respective jobs.</b></p> <p>21 Q So outside counsel were the ones that were</p> <p>22 responsible for that?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q So in your -- from your perspective,</p>



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1 outside counsel was the one who had the  
2 substantive responsibility for negotiating the  
3 terms of the policy and the purchase agreement?  
4 **A The directors, I would add to that.**  
5 Q Okay.  
6 **A The administrator or the actuaries, I**  
7 **think they all played their separate parts in**  
8 **putting it together.**  
9 Q Do you know who the actuary was?  
10 **A I don't remember the name.**  
11 Q All right. I'm going to hand you what we  
12 will mark as Exhibit 54.  
13 (Deposition Exhibit 54 marked for  
14 identification.)  
15 BY MS. TOMKOWIAK:  
16 Q Go ahead and take a minute to look at  
17 that. Exhibit 54 is an e-mail with attachments  
18 and let me know when you're ready.  
19 (Witness reviews document.)  
20 **A Okay.**  
21 **BY MS. TOMKOWIAK:**  
22 Q Okay. This is an e-mail from you to  
23 Ms. Irving and Ms. Kim, dated August 10th, 2017,  
24 subject Sentinel Reinsurance Proposed ATE Policy.  
25 Do you see that?

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1 **A Yes.**  
2 Q All right. And this looks like you are  
3 sending to Ms. Irving and Ms. Kim a draft of the  
4 insurance policy that we've been discussing and  
5 also a draft of the resolutions of the board of  
6 directors of Sentinel. Do you see that second  
7 attachment?  
8 **A Yes.**  
9 Q What is Ms. Kim's role at the time? What  
10 was her role at the time?  
11 **A Paralegal.**  
12 Q Why are you sending this to Ms. Irving and  
13 Ms. Kim?  
14 **A Ms. Irving was assisting with -- assisting**  
15 **with the transaction with closing the -- some of**  
16 **the security transfers. I'm not sure why I sent**  
17 **it to Ms. Kim. I don't remember.**  
18 Q When did Ms. Irving learn about the  
19 insurance policy, to the best of your  
20 recollection?  
21 **A I don't know.**  
22 Q But at the time you were sending this,  
23 you -- she knew about it?  
24 MS. SMITH: Objection, form.  
25 **A I don't know. I don't know one way or the**

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1 **other. I don't remember.**  
2 **BY MS. TOMKOWIAK:**  
3 Q Okay. Well, your e-mail doesn't provide  
4 any explanation, correct?  
5 **A Correct.**  
6 Q Did you draft either of the attachments to  
7 this e-mail?  
8 **A I may have put the Schedule A, dropped it**  
9 **into Word form from an Excel. I remember --**  
10 Q Just for our record, you're talking about  
11 Schedule A to the purchase agreement?  
12 **A Schedule A to the purchase agreement. I**  
13 **think ultimately outside counsel put all of this**  
14 **together. I may have proposed the first draft of**  
15 **the purchase agreement before handing it off to**  
16 **them. I don't know what they changed, but I**  
17 **remember reviewing the documents as well.**  
18 Q What about the resolutions? Is that  
19 something you would have put together?  
20 MS. SMITH: Objection, form.  
21 **A I don't think so. I don't recall doing**  
22 **so.**  
23 **BY MS. TOMKOWIAK:**  
24 Q Did somebody tell you to put together this  
25 purchase agreement?

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1 **A No, I don't think anyone told me. I think**  
2 **I was working with outside counsel. I may have --**  
3 **I may have prepared this schedule. Sorry, I**  
4 **didn't see it at the end here.**  
5 Q The schedule to the insurance policy?  
6 **A Insurer, Insured, Appointed**  
7 **Representative. No, other than the instruction to**  
8 **work on this project, I wasn't instructed to**  
9 **prepare this schedule. I mean, it was sort of a**  
10 **matter of putting the documents together.**  
11 Q Do you know what was going on in the UBS  
12 litigation in August 2017?  
13 **A No.**  
14 Q Was -- did you receive any directions or  
15 guidance as to why the policy was being purchased  
16 at this particular point in time?  
17 **A No.**  
18 Q You were aware that the US -- UBS  
19 litigation had been going on for several years at  
20 this point?  
21 **A That was my colloquial understanding, yes,**  
22 **that it had been.**  
23 Q But you weren't given any context as to  
24 why this insurance policy was being -- why they  
25 were just now receiving -- or getting an insurance

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1 policy?  
2 **A No, not that I recall.**  
3 Q Was there any urgency around doing this at  
4 the time?  
5 **A No, I don't remember urgency one way or**  
6 **the other, other than being timely with getting**  
7 **tasks completed. I don't remember any sort of**  
8 **urgency or exigency surrounding this.**  
9 Q Okay. You can put that aside. I'm going  
10 to hand you what is --  
11 MS. SMITH: Need some water?  
12 THE WITNESS: I'm good. Maybe.  
13 BY MS. TOMKOWIAK:  
14 Q I'm going to ask the court reporter to  
15 mark that as Exhibit 55 and hand that to you.  
16 (Deposition Exhibit 55 marked for  
17 identification.)  
18 BY MS. TOMKOWIAK:  
19 Q Let me know when you're ready.  
20 (Witness reviews document.)  
21 **A Okay.**  
22 **BY MS. TOMKOWIAK:**  
23 Q So this is an e-mail from Katie Irving to  
24 Helen Kim with a CC to you. Subject is Forward  
25 Sentinel Reinsurance Proposed ATE Policy. The

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1 date is August 10th, 2017, and Ms. Irving writes:  
2 Helen - request JD execution of the attached,  
3 please, thank you.  
4 Do you understand JD to be referring to  
5 Mr. Dondero?  
6 **A Yes.**  
7 Q And was that Ms. Kim's role to get  
8 Mr. Dondero to sign these documents?  
9 MS. SMITH: Objection, form.  
10 **A I don't think it was her role per se. I**  
11 **think in this case she was asked to.**  
12 **BY MS. TOMKOWIAK:**  
13 Q The e-mail one down in the chain is from  
14 Lesley Thompson to you. What was Lesley  
15 Thompson's role with respect to Sentinel and this  
16 policy specifically?  
17 **A I don't remember exactly what her function**  
18 **was. I'd say a facilitator for the Maples side.**  
19 Q And Ms. Thompson writes: Hi JP. Please  
20 find attached the Signed directors resolution  
21 along with the signature pages for the ATE policy  
22 and Purchase Agreement.  
23 And then she attaches signature pages from  
24 the Sentinel side. And if you turn to those last  
25 few pages --

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1 **A Yes.**  
2 Q -- it looks like Andrew Dean has signed  
3 all three agreements --  
4 **A Yeah.**  
5 Q -- the policy, the purchase agreement and  
6 the board resolutions?  
7 MS. SMITH: Objection, form.  
8 BY MS. TOMKOWIAK:  
9 Q Do you agree with that?  
10 **A I see -- I see that.**  
11 Q And to your recollection, Mr. Dean was a  
12 director of Sentinel on August 10th, 2017?  
13 **A That's my recollection.**  
14 Q And he was authorized to sign these  
15 documents?  
16 MS. SMITH: Objection, form.  
17 **A I defer to what the resolutions say. I**  
18 **don't want to take the view of Cayman law, but it**  
19 **certainly looks like that.**  
20 **BY MS. TOMKOWIAK:**  
21 Q You don't recall anybody saying that these  
22 were invalid and we need to go get somebody else  
23 to sign them?  
24 **A I don't recall that.**  
25 Q And then Christopher Watler, is that the

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1 individual that we discussed earlier today that  
2 you believed was a director of Sentinel?  
3 **A Yes.**  
4 Q Do you know when Mr. Dean became a  
5 director of Sentinel?  
6 **A I don't remember the exact date.**  
7 Q Do you recall roughly?  
8 **A He may have been on from the beginning. I**  
9 **believe -- but other than that -- other than that**  
10 **recollection, I can't be more specific.**  
11 Q What about with respect to Mr. Watler?  
12 **A I think the same.**  
13 Q Do you know who chose the board of  
14 directors of Sentinel?  
15 **A I don't.**  
16 Q If you look on the page with the Bates  
17 ending 350.  
18 **A Yeah.**  
19 Q There's an e-mail from Ms. Thompson at  
20 17:01. She writes to you and Ms. Irving and she  
21 says in the second paragraph: Can you please  
22 confirm that in the event of an adverse loss which  
23 exceeds the existing assets equity of the company,  
24 the shareholders will inject the necessary capital  
25 in order for the company to meet its obligations

<p>165</p> <p>1 and maintain its solvency. 2 <b>A Yes.</b> 3 Q Who are those shareholders that she's 4 referring to? 5 MS. SMITH: Objection, form. 6 <b>A I believe she was referring to</b> 7 <b>Mr. Ellington and Mr. Dondero.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q You respond to her and you say: Lesley, 10 The shareholders have made a fundamental 11 commitment, both fiscally and governance-wise, to 12 Sentinel Reinsurance for the long term, including 13 in the situation of an adverse loss. 14 What did you mean by that? 15 <b>A That the shareholders were committed to</b> 16 <b>the -- committed to the company and committed to</b> 17 <b>seeing it succeed.</b> 18 Q By shareholders, were you referring to 19 Mr. Dondero and Mr. Ellington? 20 <b>A Yes.</b> 21 Q How did you know that they had made this 22 fundamental commitment? 23 <b>A I had spoken to Mr. Ellington about</b> 24 <b>Ms. Thompson's inquiry and he had authorized me to</b> 25 <b>make this comment.</b></p>	<p>167</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q Did you ask him? 3 <b>A I don't recall asking him. I don't have</b> 4 <b>personal knowledge of what they discussed.</b> 5 Q And so is it your understanding that if 6 there was an adverse loss which exceeded the 7 existing assets of Sentinel, that Mr. Dondero and 8 Mr. Ellington would put additional capital into 9 Sentinel in order for it to remain solvent and 10 meet its obligations? 11 MS. SMITH: Objection, form. 12 <b>A I don't think that's what my response</b> 13 <b>commits to on their behalf. I think the -- no, I</b> 14 <b>don't think that's what my response conveys.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q So are you saying your response didn't 17 actually answer her question? 18 <b>A You'd have to ask her, but this is what I</b> 19 <b>was authorized to convey.</b> 20 Q So you -- did you ask Mr. Ellington if you 21 were authorized to convey that he would, in fact, 22 provide additional capital to Sentinel in order 23 for it to meet its obligations and maintain its 24 solvency? 25 <b>A My recollection is that that was a -- that</b></p>
<p>166</p> <p>1 Q So after you received Ms. Thompson's 2 e-mail, you reached out to Mr. Ellington? 3 <b>A Yes. Although I had spoken to</b> 4 <b>Ms. Thompson, she may have previewed this issue,</b> 5 <b>so I may have spoken to him before she sent the</b> 6 <b>e-mail, but I remember her conveying to me this</b> 7 <b>concept and me connecting with Mr. Ellington about</b> 8 <b>it.</b> 9 Q Okay. And why was this an issue? 10 <b>A I didn't think it was an issue. I just</b> 11 <b>didn't want to speak out of school.</b> 12 Q When you spoke to Mr. Ellington about this 13 inquiry, what did he say? 14 <b>A He authorized me to make this comment.</b> 15 Q Were these his words? 16 <b>A Substantially. I may have formalized them</b> 17 <b>a little bit, but he authorized me to convey that</b> 18 <b>there was a commitment on his part and</b> 19 <b>Mr. Dondero's part to the company's long-term</b> 20 <b>success.</b> 21 Q Do you know whether Mr. Ellington spoke 22 with Mr. Dondero before he authorized you to 23 convey this commitment? 24 MS. SMITH: Objection, form. 25 <b>A I don't know.</b></p>	<p>168</p> <p>1 <b>seemed to be a bit of an aggressive ask and</b> 2 <b>unorthodox to ask of a shareholder. And so this</b> 3 <b>response tried to convey comfort. That was the</b> 4 <b>thrust of the communication between he and I</b> 5 <b>around this.</b> 6 Q Did Mr. Ellington tell you that he would 7 not, in fact, be willing to inject additional 8 necessary capital in order for Sentinel to meet 9 its obligations? 10 MS. SMITH: Objection, form. 11 <b>A We did not speak to that point, so I -- he</b> 12 <b>never told me that.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q So did it seem to be a bit of an 15 aggressive ask from your perspective or from his? 16 <b>A I think from mine, certainly. You'll have</b> 17 <b>to ask him how he thought of it.</b> 18 Q And under the policy, an adverse loss 19 would be a loss with respect to the UBS 20 litigation, right? 21 MS. SMITH: Objection, form. 22 <b>A I don't know if -- I think it's related to</b> 23 <b>UBS, but I wouldn't say globally. I would say</b> 24 <b>more on a micro perspective from the ATE policy</b> 25 <b>perspective.</b></p>

<p>169</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q So a loss related to the New York State 3 litigation that was covered by this policy? 4 <b>A The topic of the policy or the -- yeah,</b> 5 <b>the lawsuit referred to in the policy is how I</b> 6 <b>would think about it.</b> 7 Q And if we look at the schedule -- well, 8 Schedule A is not in this document. Okay. Let's 9 look at the -- by the way, is -- do you have any 10 understanding of whether Mr. Ellington or 11 Mr. Dondero has still made that same commitment 12 today? 13 MS. SMITH: Objection, form. 14 <b>A I haven't discussed any matters -- any</b> 15 <b>Sentinel matters with them on this topic. I don't</b> 16 <b>know.</b> 17 MS. TOMKOWIAK: Okay. I am going to have 18 the court reporter mark this next document as 19 Exhibit 56. 20 (Deposition Exhibit 56 marked for 21 identification.) 22 BY MS. TOMKOWIAK: 23 Q Take a moment to review that and let me 24 know when you're ready. 25 (Witness reviews document.)</p>	<p>171</p> <p>1 <b>A Generally.</b> 2 Q Anywhere else that you would have possibly 3 pulled this from? 4 <b>A I don't think so.</b> 5 Q Would you have had like a specific folder 6 about the UBS policy? 7 <b>A Most likely. E-mail folder.</b> 8 Q I realize this is testing your memory, but 9 do you know what that folder would be called? 10 <b>A Oh, gosh. No, I don't remember.</b> 11 Q Okay. Let's look at one more document and 12 then we'll take a look at the policy. So I'm 13 handing you what we are going to mark as 14 Exhibit 57. 15 (Deposition Exhibit 57 marked for 16 identification.) 17 BY MS. TOMKOWIAK: 18 Q Let me know when you're ready. 19 (Witness reviews document.) 20 <b>A Okay.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q This is an e-mail from Mr. Leventon to 23 Chris Dunn. Who is Chris Dunn? 24 <b>A The name rings a bell. I don't remember</b> 25 <b>what he did at Highland.</b></p>
<p>170</p> <p>1 <b>A Okay.</b> 2 <b>BY MS. TOMKOWIAK:</b> 3 Q So this is an e-mail chain between you and 4 Mr. Leventon, dated October 25th, 2017. In the 5 earlier e-mail chain, Mr. Leventon is asking you 6 for a copy of the final executed insurance 7 agreement and then it looks like you provide him 8 with that in the attached. Do you agree this 9 looks like a copy of the final executed insurance 10 policy? 11 MS. SMITH: Objection, form. 12 <b>A Doesn't look to be executed.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q It doesn't? 15 <b>A No.</b> 16 Q Well, there are signatures on the back. 17 <b>A Oh, I'm sorry. Yes, there are. Yes.</b> 18 Q Okay. Do you know why Mr. Leventon was 19 asking you for a copy of the final insurance 20 policy in October 2017? 21 <b>A I really don't.</b> 22 Q Do you know where you would have pulled 23 this document from? 24 <b>A My e-mails.</b> 25 Q Is that where you stored your documents?</p>	<p>172</p> <p>1 Q Was he in the legal department? 2 <b>A No.</b> 3 Q Was he in the -- do you remember what 4 department he was in? 5 <b>A No.</b> 6 Q And Mr. Leventon says: Please see 7 attached. Please label all communications related 8 to this project as Privileged as all documents are 9 being drafted at the request of the Legal Team. 10 Do you know what project he's talking to? 11 MS. SMITH: Objection, form. 12 <b>A I don't.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q This is the day after Mr. Leventon asked 15 you to send him the policy in Exhibit 56. Does 16 Exhibit 57 help refresh your recollection at all 17 as to why Mr. Leventon was asking you for the 18 policy on that day? 19 <b>A I don't recall the context.</b> 20 MS. SMITH: Objection, form. 21 <b>A I don't recall the context.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Do you know what Mr. Leventon is referring 24 to when he says documents are being drafted at the 25 request of the legal team?</p>

<p>173</p> <p>1 MS. SMITH: Objection, form. 2 <b>A I don't.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q At this point, October 2017, all of the 5 documents related to the ATE policy had already 6 been drafted and signed, right? 7 <b>A I think that's true. Yeah.</b> 8 Q Same answer with respect to the purchase 9 agreement? 10 MS. SMITH: Objection, form. 11 <b>A From what I recall. From what I recall.</b> 12 <b>BY MS. TOMKOWIAK:</b> 13 Q Would you consider yourself a member of 14 the legal team at this time? 15 <b>A Yes.</b> 16 Q Did you make any request to Mr. Dunn or 17 others, related to a project in October 2017 18 regarding the UBS insurance policy? 19 <b>A Not that I recall.</b> 20 Q If we look at the attachment, it's titled 21 Legal Liability Insurance Policy. Is this the ATE 22 policy that we've been talking about today? 23 <b>A I believe so, yes.</b> 24 Q And if you turn to schedule -- the 25 schedule on the back, I believe it's Bates ending</p>	<p>175</p> <p>1 representative is Paul Lackey. Do you know who 2 decided that Mr. Lackey would be the appointed 3 representative. 4 <b>A No, I don't. I don't know. I don't</b> 5 <b>remember who would have made that decision.</b> 6 Q Do you know what Mr. Lackey's role was 7 with respect to the UBS litigation at this time? 8 <b>A I believe he was trial counsel for the</b> 9 <b>insureds.</b> 10 Q Okay. And then the period of insurance 11 commences August 1st, 2017. Do you see that? 12 <b>A Yes.</b> 13 Q And the legal action, is this referring to 14 the New York State action between UBS and Highland 15 that's listed here? 16 <b>A I don't know how that case is styled.</b> 17 Q Did this policy relate to any other 18 litigation matter other than the litigation 19 between UBS and Highland in New York State court? 20 <b>A Not that I know of.</b> 21 Q And then, in fact, it says here, Supreme 22 Court of the State of New York, County of 23 New York, right? 24 <b>A It does say that, yes.</b> 25 Q And the opponent is UBS Securities LLC and</p>
<p>174</p> <p>1 3070. 2 <b>A Yes.</b> 3 Q You testified earlier that you think you 4 might have drafted this? 5 <b>A I may have aggregated this information</b> 6 <b>into a schedule.</b> 7 Q Where would you have aggregated it from? 8 <b>A Information I received from others working</b> 9 <b>on the litigation.</b> 10 Q Others working on the litigation or 11 working on the policy or both? 12 <b>A Both.</b> 13 Q Do you remember anybody specifically 14 sending you information for this schedule? 15 <b>A No, I don't remember -- I don't -- no, I</b> 16 <b>don't remember.</b> 17 Q Okay. And there are three Highland 18 entities that are insured under this policy? 19 MS. SMITH: Objection, form. 20 <b>BY MS. TOMKOWIAK:</b> 21 Q There's three funds that are listed as 22 being insured, correct? 23 <b>A I see the insureds, the three entities,</b> 24 <b>yes.</b> 25 Q Okay. And then the appointed</p>	<p>176</p> <p>1 UBS AG, London Branch? 2 <b>A Yeah.</b> 3 Q And again, you don't know what was going 4 on in that litigation as of August 1st, 2017? 5 <b>A No.</b> 6 Q So the coverage here is US \$100 million in 7 aggregate. Do you see that? 8 <b>A Yes.</b> 9 Q I know earlier we looked at some 10 presentations that mentioned a policy of 11 90 million or 100 million. Do you know how it was 12 determined that the coverage would be 100 million? 13 <b>A I don't recall.</b> 14 Q Would you agree with me that this is the 15 largest policy that Sentinel had written to date? 16 MS. SMITH: Objection, form. 17 <b>A Yes. That's my understanding.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q In fact, it was significantly higher than 20 the D&amp;O policy that it had written for the SAS 21 entities, correct? 22 <b>A Yes.</b> 23 Q Do you see that the premium is 24 \$25 million? 25 <b>A Yes.</b></p>

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1 Q Do you know how -- who set that figure?  
2 **A My recollection, it was a combination of**  
3 **input from the actuary, input from the**  
4 **administrator, input from outside counsel.**  
5 Q Did anybody from Highland have any input  
6 into that?  
7 MS. SMITH: Objection, form.  
8 **A I don't recall -- I don't recall others at**  
9 **Highland having input. No, I don't recall.**  
10 **BY MS. TOMKOWIAK:**  
11 Q Who decided on behalf of the insured  
12 entities, that \$25 million was a fair premium to  
13 pay for this policy?  
14 MS. SMITH: Objection, form.  
15 **A I guess it would have been a -- the result**  
16 **of the review of the different -- of the different**  
17 **Highland groups that reviewed this: Compliance,**  
18 **accounting, ultimately the -- Mr. Dondero.**  
19 **BY MS. TOMKOWIAK:**  
20 Q So within those groups, who, to your  
21 recollection, would have reviewed this policy?  
22 **A The names I've been -- the names I've been**  
23 **mentioning throughout. I don't know who else**  
24 **within those groups would have reviewed it. I**  
25 **assume others. I don't have firsthand knowledge**

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1 **of-- you know, other than Mr. Swadley and**  
2 **Mr. Patrick, for example, I don't know if their**  
3 **colleagues reviewed it, but I would assume several**  
4 **others at Highland would have reviewed more than I**  
5 **have firsthand knowledge of.**  
6 Q And pursuant to the purchase agreement,  
7 the assets that were being transferred from the --  
8 pursuant to the purchase agreement were being  
9 transferred to pay this premium, correct?  
10 **A Right.**  
11 Q And is it your understanding that the  
12 assets being transferred were worth \$25 million?  
13 **A I didn't have -- I didn't have an**  
14 **independent view on the value. I know we had**  
15 **the -- there were Highland valuations, but I had**  
16 **no valuation -- I made no valuation myself.**  
17 Q So you don't know if the assets, that were  
18 transferred to Sentinel in exchange for the  
19 policy, were substantially more or less than  
20 \$25 million?  
21 MS. SMITH: Objection, form.  
22 **A I don't know the valuation methodology**  
23 **relevant for insurance companies, so I don't have**  
24 **an independent view of that.**  
25

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1 BY MS. TOMKOWIAK:  
2 Q Do you recall any discussions around that  
3 in any of the meetings that you attended about  
4 this policy?  
5 **A I know it was discussed. I don't remember**  
6 **the -- who said what or the date of any given**  
7 **meeting, but I know it was a topic of discussion.**  
8 Q And again, the point of this policy was to  
9 cover the insureds with respect to legal liability  
10 occurring from the UBS litigation, right?  
11 **A I'd refer to what the policy says as to**  
12 **what the -- what the point here was.**  
13 Q Okay. Well, in Section 2.1, if you want  
14 to take a look at that, it's on page Bates ended  
15 3056.  
16 **A Yes.**  
17 Q Okay. So the -- under Section 2.1. It  
18 says: The insurer -- that means Sentinel, right?  
19 **A Yes.**  
20 Q -- agrees to indemnify the insured as it's  
21 defined in the schedule in respect to any legal  
22 liability occurring during the period of insurance  
23 up to and including but not exceeding the limit of  
24 indemnity.  
25 And then they have two conditions there,

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1 provided that. Do you see that?  
2 **A Yes.**  
3 Q Okay. And the limit of indemnity that we  
4 just looked at was \$100 million, right?  
5 **A Yes.**  
6 Q And if you go to Section 9.13, which is on  
7 page ended 3066. So this defines legal liability  
8 and I'm going to paraphrase, but as the aggregate  
9 of the total sum awarded by the court in the legal  
10 action or the aggregate of the total sum to be  
11 paid by the insured to the opponent pursuant to a  
12 settlement of the legal action.  
13 **A Okay.**  
14 Q So wouldn't you agree that the point of  
15 this policy is to pay up to \$100 million in the  
16 event that the insureds were ordered by the  
17 New York State court to pay some judgment in the  
18 New York State action or reached a settlement with  
19 UBS in the New York State action?  
20 MS. SMITH: Objection to form. The  
21 document speaks for itself.  
22 **A Yeah, I would -- I would -- I can read it**  
23 **out loud too. I would defer to what the document**  
24 **says as to what it's supposed to mean.**  
25

<p>181</p> <p>1 BY MS. TOMKOWIAK: 2 Q So this is \$100 million insurance policy, 3 the first one that Sentinel ever wrote and you 4 worked on it, and you have no idea what the 5 purpose of the policy was other than what the 6 words say on the page? 7 MS. SMITH: Objection, form. 8 <b>A I think that mischaracterizes what I said.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Well, then, what is the purpose of this 11 policy? 12 <b>A For the insurer to indemnify the insured</b> 13 <b>in respect to any legal liability, et cetera,</b> 14 <b>et cetera.</b> 15 Q Okay. And indemnify meaning pay up to 16 \$100 million if the insureds get a judgment 17 entered against it or settles with UBS in the 18 New York State court, right? 19 <b>A Again, I'd defer to the language. I don't</b> 20 <b>want to summarize it and use some legal term of</b> 21 <b>art the wrong way. I think this speaks for</b> 22 <b>itself.</b> 23 Q So if UBS won a \$1.2 billion judgment in 24 the New York State action, does this policy apply? 25 MS. SMITH: Objection, form.</p>	<p>183</p> <p>1 <b>A I believe so.</b> 2 Q Who would have done that? 3 <b>A The valuation group.</b> 4 Q Who is the valuation group? 5 <b>A In 2017, I don't remember who was on the</b> 6 <b>valuation group, but I think it was a subset of</b> 7 <b>the accounting team.</b> 8 Q Do you remember discussing with anybody in 9 the valuation group what the value was of the 10 assets that were being transferred for this 11 insurance policy? 12 MS. SMITH: Objection, form. 13 <b>A I don't remember discussions to that</b> 14 <b>effect, other than knowing that they did -- they</b> 15 <b>did evaluate -- excuse me -- a valuation</b> 16 <b>methodology. I don't know exactly what that</b> 17 <b>methodology was.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q And in the earlier settlement presentation 20 we looked at, it's suggested that these assets 21 were worth \$94 million. Is that consistent with 22 your recollection? 23 MS. SMITH: Objection, form. 24 <b>A I don't remember what the date or the</b> 25 <b>timing of that was, so I don't want to commit to,</b></p>
<p>182</p> <p>1 <b>A I'd refer to counsel as to the</b> 2 <b>applicability and what these words mean. These</b> 3 <b>words seem clear to me on their face, but, you</b> 4 <b>know, I can read them the same way. They seem --</b> 5 <b>they speak for themselves.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Yeah, but -- so you were counsel to 8 Highland and I believe you testified earlier that 9 you did work for these funds and you certainly had 10 a role in this particular insurance policy. So 11 setting aside what the words say, what was your 12 understanding? Why did the funds get this policy? 13 <b>A To insure against a loss in a lawsuit.</b> 14 Q In a lawsuit against UBS? 15 <b>A In the UBS lawsuit.</b> 16 MS. SMITH: Objection, form. 17 <b>BY MS. TOMKOWIAK:</b> 18 Q Do you know whether there were any 19 endorsements to this policy? 20 <b>A I have knowledge that there might have</b> 21 <b>been subsequently, but I don't have direct</b> 22 <b>recollection of them.</b> 23 Q Okay. Would Highland have conducted its 24 own valuation of the assets prior to entering into 25 this policy?</p>	<p>184</p> <p>1 <b>but I know there was a number -- I know there was</b> 2 <b>a number in time. I don't know what time you're</b> 3 <b>referring to, but...</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q Well, that settlement analysis was in 6 April 2019. 7 MS. SMITH: Objection, form. 8 <b>A Okay.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q So that was a few months before this 11 policy. 12 <b>A Agreed.</b> 13 Q But sitting here today, you don't recall 14 if these assets were worth approximately 15 \$94 million, at least as someone at Highland had 16 valued them? 17 <b>A I know I saw that for April. I don't know</b> 18 <b>what it was in July, August, subsequent before</b> 19 <b>that. Yeah, I...</b> 20 Q Could have gone up, could have gone down? 21 <b>A I wouldn't know.</b> 22 Q And that wouldn't be relevant to know 23 before you entered into this policy? 24 MS. SMITH: Objection, form. 25 <b>A I guess I don't understand the question.</b></p>

<p style="text-align: right;">185</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q That's a double negative. Would that be 3 relevant to know before you entered into this 4 policy? 5 <b>A I think that valuation methodology was an</b> 6 <b>input. As to its relevance, that was outside of</b> 7 <b>my -- the scope of my involvement.</b> 8 MS. TOMKOWIAK: Okay. I'm going to ask 9 this to be marked as Exhibit 58. 10 (Deposition Exhibit 58 marked for 11 identification.) 12 BY MS. TOMKOWIAK: 13 Q Exhibit 58 is another version of the 14 insurance policy that we've been looking at, but 15 it has two endorsements. So if you want to focus 16 on the Bates ended 27 and 28. 17 <b>A Okay.</b> 18 Q Are you familiar with either of these 19 endorsements? 20 MS. SMITH: Objection, form. 21 <b>A Not directly.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Okay. Well, I think you testified that 24 you thought there were endorsements to the policy. 25 Do you have any -- are these the endorsements that</p>	<p style="text-align: right;">187</p> <p>1 <b>that -- I remember her becoming a director at some</b> 2 <b>point. I don't remember exactly when.</b> 3 Q And this endorsement says that the premium 4 as stated in this schedule is adjusted to 5 \$68,362,333.62, to include the total fair value of 6 received assets. 7 Are you with me? 8 <b>A Yes.</b> 9 Q Okay. Do you know who would have 10 calculated the total fair value of received 11 assets? 12 <b>A No.</b> 13 Q Do you know why that number would have -- 14 do you know why that number would not have been 15 calculated before you entered into -- the 16 premium into the policy? 17 MS. SMITH: Objection, form. 18 <b>A I don't know. I don't recall.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q Do you know whether that number is 21 consistent with any valuation that anybody did 22 before signing the insurance policy? 23 <b>A No. I don't know. And I don't know the</b> 24 <b>timing of this either, so I -- no.</b> 25 Q Well, it has to come after the insurance</p>
<p style="text-align: right;">186</p> <p>1 you thought you recalled? 2 <b>A Yes. I came to know that there was a</b> 3 <b>question about endorsements. I didn't work on it,</b> 4 <b>so I -- these don't seem particularly -- I don't</b> 5 <b>have a direct recollection of these. I kind of</b> 6 <b>anecdotally knew that there had been these</b> 7 <b>endorsements.</b> 8 Q Do you know when these endorsements were 9 entered into? 10 <b>A I don't.</b> 11 Q Let's take a look at the first one. The 12 first one is -- again, it's not dated and it's 13 signed by Lesley Thompson, director. Do you know 14 when Ms. Thompson became a -- well, do you know 15 whether Ms. Thompson was ever a director of 16 Sentinel? 17 <b>A I guess she elevated to a director at some</b> 18 <b>point from whatever she was before. I don't</b> 19 <b>recall when that would've been.</b> 20 Q You don't know when that took place? 21 <b>A No.</b> 22 Q And are you basing that assumption on 23 anything besides the fact that it's stamped 24 director here? 25 <b>A That -- seeing that stamp recollects</b></p>	<p style="text-align: right;">188</p> <p>1 policy because it's an endorsement, right? 2 <b>A Yes.</b> 3 Q And then this further breaks down the 4 premium into cash, miscellaneous receivables. Do 5 you know what the miscellaneous receivables are? 6 <b>A No.</b> 7 Q And an investment portfolio, and it 8 provides a number of \$55,525,457.88 as measured at 9 fair value on the transfer date. Do you know what 10 the transfer date would be? 11 <b>A August of some -- August of 2017 at some</b> 12 <b>point is what I would think as the transfer date.</b> 13 Q Do you know why the estimate of 14 \$94 million that we saw in April 2019 has gone 15 down to 68 million? 16 <b>A I don't.</b> 17 Q And then it says here that all other terms 18 and conditions remain unchanged? 19 <b>A Yes.</b> 20 Q So is it your understanding that the 21 amount of coverage would remain the same? 22 <b>A I don't want to interpret a Cayman Islands</b> 23 <b>insurance document. It speaks for itself.</b> 24 Q You would agree that one term of the 25 insurance policy is the indemnity limit, correct?</p>



<p>189</p> <p>1 <b>A Yes.</b></p> <p>2 Q So why would the premium increase by</p> <p>3 150 percent but the amount of coverage would</p> <p>4 remain the same?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 <b>A I don't know.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Does that seem reasonable to you?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 <b>A I don't have a view as to what the</b></p> <p>11 <b>auditors or anyone else -- what conclusions they</b></p> <p>12 <b>came to. I wouldn't know.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q Was there any other insurance policy that</p> <p>15 you were aware of, where Sentinel had agreed to</p> <p>16 provide an amount of coverage for a premium</p> <p>17 consisting of over two-thirds of the amount of</p> <p>18 coverage?</p> <p>19 <b>A I'm sorry, can you repeat that?</b></p> <p>20 Q Are you aware of any other policy that was</p> <p>21 issued by Sentinel, where the premium was over</p> <p>22 two-thirds of the coverage amount?</p> <p>23 <b>A Not that I recall.</b></p> <p>24 Q Do you know why the insured didn't sign</p> <p>25 this endorsement?</p>	<p>191</p> <p>1 Q Yeah, an additional \$9 million are being</p> <p>2 prepaid by the insured to the insurer. Is that on</p> <p>3 top of the money assets that were already</p> <p>4 transferred to Sentinel?</p> <p>5 <b>A I don't know.</b></p> <p>6 Q You don't know. If that was an additional</p> <p>7 \$9 million, is there any reason why the amount of</p> <p>8 liability or the amount of coverage would be</p> <p>9 lowered?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 <b>A I don't have a view on this. I'm not</b></p> <p>12 <b>familiar with it.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q Okay. So you're not -- looking at</p> <p>15 Endorsement No. 1, looking at Endorsement No. 2,</p> <p>16 you have no idea, you were not involved at all in</p> <p>17 these endorsements and you don't understand the</p> <p>18 context behind either of them?</p> <p>19 <b>A I don't recall being involved in this. I</b></p> <p>20 <b>don't know what the dates were, so I -- I can't</b></p> <p>21 <b>speak to them with any authority.</b></p> <p>22 Q Would the same valuation team have come up</p> <p>23 with the \$68 million total fair value here?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 <b>A I don't know. I don't know.</b></p>
<p>190</p> <p>1 <b>A I don't.</b></p> <p>2 Q If you look at the second endorsement,</p> <p>3 Endorsement No. 2. This is also undated and I</p> <p>4 take it you don't know when this was signed</p> <p>5 either?</p> <p>6 <b>A I don't.</b></p> <p>7 Q Okay. And it looks like this is also</p> <p>8 signed by Lesley Thompson, but she's not listed as</p> <p>9 a director. Do you know if Ms. Thompson ceased</p> <p>10 being a director at some point in time?</p> <p>11 <b>A I don't recall.</b></p> <p>12 Q And then in this endorsement, the premium</p> <p>13 has been further reduced to 59,362,333.62;</p> <p>14 9 million has been prepaid by the insured to the</p> <p>15 insurer and then the limit of indemnity is reduced</p> <p>16 to 91 million. Is that a fair reading of this</p> <p>17 endorsement?</p> <p>18 MS. SMITH: Objection as to form.</p> <p>19 <b>A It says what it says.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q So you don't have an understanding one way</p> <p>22 or the other if this reflects that the insureds</p> <p>23 are paying an additional \$9 million to Sentinel?</p> <p>24 <b>A Sorry, say that last part, the insureds</b></p> <p>25 <b>are paying an additional --</b></p>	<p>192</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q Okay. So you don't know who calculated</p> <p>3 that as the total fair value?</p> <p>4 <b>A I don't.</b></p> <p>5 Q And you don't recall anybody having any</p> <p>6 discussions around increasing the premium or</p> <p>7 decreasing the premium at any point after the</p> <p>8 policy was signed?</p> <p>9 <b>A Not that I recall being a part of.</b></p> <p>10 Q And you don't recall being part of any</p> <p>11 discussions in which the amount of coverage was</p> <p>12 being adjusted after the policy was signed?</p> <p>13 <b>A Not that I remember, no.</b></p> <p>14 Q Okay. So after the policy and the</p> <p>15 purchase agreement were signed, did you have any</p> <p>16 involvement with Sentinel going forward?</p> <p>17 <b>A It became minimal. Not a lot of</b></p> <p>18 <b>involvement.</b></p> <p>19 Q Do you know why?</p> <p>20 <b>A I started focusing on other matters.</b></p> <p>21 Q Are you aware that there was a trial in</p> <p>22 the UBS litigation?</p> <p>23 <b>A I'm sorry, when?</b></p> <p>24 Q Pardon me?</p> <p>25 <b>A When?</b></p>

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1 Q Are you aware there was a trial in 2018 in  
2 the UBS litigation?  
3 **A Am I aware of that today or was I aware of**  
4 **that then?**  
5 Q Well, were you aware of it at the time?  
6 **A No.**  
7 Q When did you become aware of it?  
8 **A In the past several months.**  
9 Q Was it before you left Highland?  
10 **A I think it would've been during the**  
11 **pendency of Highland's bankruptcy, I probably**  
12 **would've learned more about the UBS matter, just**  
13 **because it was front and center in the Highland**  
14 **bankruptcy. I don't recall knowing that at the**  
15 **time.**  
16 Q Okay. So you don't recall knowing at the  
17 time that there was a trial that could potentially  
18 generate an adverse loss that would trigger  
19 coverage under this policy?  
20 MS. SMITH: Objection, form.  
21 **A I knew at a high level that that was in**  
22 **the works. I didn't know anything about the**  
23 **timing or anything about that.**  
24 **BY MS. TOMKOWIAK:**  
25 Q What do you mean that you knew that it was

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1 in the works?  
2 **A I knew there was a lawsuit referred to in**  
3 **the policy, so I knew there was some sort of**  
4 **litigation progressing. I didn't know where it**  
5 **was at any given moment, is my point.**  
6 Q And you had no role in the trial?  
7 **A No.**  
8 Q Are you aware, sitting here today, that a  
9 judgment in UBS's favor was entered in the first  
10 quarter of 2020?  
11 **A I have heard that.**  
12 Q Do you recall when you heard that?  
13 **A No.**  
14 Q Was it while you were still employed at  
15 Highland?  
16 MS. SMITH: Objection.  
17 If this has anything to do with  
18 conversations with your counsel, then it's  
19 privileged.  
20 **BY MS. TOMKOWIAK:**  
21 Q Yeah, I agree. I'm not interested in your  
22 conversations with your counsel. But outside of  
23 those conversations, and I don't want to know  
24 specifics, but do you recall when -- not from who  
25 or the substance, do you recall when you heard

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1 that?  
2 **A I don't. I came to know it anecdotally**  
3 **and I can't pinpoint as to when that may have**  
4 **been.**  
5 Q Not even as before or after you left  
6 Highland?  
7 **A I honestly don't know what date the**  
8 **actual -- when this was in 2020. No, I can't**  
9 **pinpoint it. I don't know. I certainly came to**  
10 **know it, though.**  
11 Q Before you left Highland, was there any --  
12 to your knowledge, was there any claim made on  
13 this insurance policy?  
14 **A Before I left Highland?**  
15 Q Uh-huh.  
16 **A Was there a claim -- I don't know.**  
17 MS. TOMKOWIAK: I've been told we need to  
18 switch tapes again.  
19 THE VIDEOGRAPHER: This ends disk 2. The  
20 time is 2:46 p.m. We are off the record.  
21 (Recess taken from 2:46 p.m. CDT to  
22 3:00 p.m. CDT)  
23 THE VIDEOGRAPHER: Here begins disk No. 3  
24 in the deposition of Jean Paul Sevilla. The time  
25 is 3 p.m. We are back on the record.

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1 **BY MS. TOMKOWIAK:**  
2 Q Okay. Mr. Sevilla, so if you go back to  
3 the schedule of the insurance policy that we've  
4 been looking at.  
5 **A Yes.**  
6 Q So for the first insured Highland CDO  
7 Opportunity Master Fund LP, who negotiated this  
8 insurance agreement on behalf of that entity?  
9 **A Highland.**  
10 Q Who with Highland? Who at Highland?  
11 **A I don't know if I can point to an**  
12 **individual, but I would consider Highland as**  
13 **authorizing that entity intent to enter into the**  
14 **policy.**  
15 Q Well, did Mr. Dondero have a role?  
16 **A I think he signed the -- he signed the**  
17 **policy.**  
18 Q I see that he signed it, but did he have a  
19 role negotiating the policy for Highland CDO  
20 Opportunity Master Fund?  
21 **A I'm not sure what negotiation there was.**  
22 **I don't know.**  
23 Q Was there any negotiation?  
24 **A I don't know. I don't know what the level**  
25 **of negotiation was.**

<p>197</p> <p>1 Q What about Mr. Ellington? Would he have 2 had a role? 3 <b>A I'm not sure.</b> 4 Q Okay. So you just have no clue who 5 negotiated this agreement on behalf of Highland 6 CDO Opportunity Master Fund? 7 <b>A I don't know if there were discussions 8 that I'm not privy to, so I don't know.</b> 9 Q Okay. Yeah, you only know what you know, 10 but you don't know? 11 <b>A Correct.</b> 12 Q Same question with respect to Highland CDO 13 Holding Company. Do you know who negotiated this 14 policy on their behalf? 15 <b>A It would be the same answer, Highland.</b> 16 Q But you don't know who at Highland? 17 <b>A I can't point to a single person, no.</b> 18 Q You have no idea? 19 <b>A I don't know.</b> 20 Q And what about with respect to Highland 21 Special Opportunities Holding Company? Who 22 negotiated this policy on its behalf? 23 <b>A Same answer.</b> 24 Q And just for the record, the same answer 25 meaning, you don't know?</p>	<p>199</p> <p>1 about that at all? 2 <b>A I learned of it anecdotally. I can't 3 point to the date when I came to know that 4 information. It was not on November -- 5 Q 2019? 6 A It was not then.</b> 7 Q Okay. So there's a \$1.2 billion decision, 8 but you don't recall learning about it at the 9 time? 10 <b>A I can't point to when I came to know of 11 it.</b> 12 Q But to the best of your recollection, it 13 was not in November 2019? 14 <b>A Correct. It was not in real time. Let's 15 put it that way.</b> 16 Q And are you aware that that decision was 17 not made public for a period of time so that UBS 18 and the Highland defendants in that action could 19 try to negotiate a settlement? 20 MS. SMITH: Objection to form. 21 <b>A I know nothing about that.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q You know nothing about that? 24 <b>A No.</b> 25 Q You weren't part of those discussions?</p>
<p>198</p> <p>1 <b>A I believe Highland negotiated on their 2 behalf.</b> 3 Q But you don't know who at Highland? 4 <b>A I don't.</b> 5 Q What about Sentinel Reinsurance? Do you 6 know who specifically negotiated this policy on 7 its behalf? 8 <b>A Same answer. I don't know. Sentinel on 9 its behalf.</b> 10 Q But you don't know the specific 11 individuals? 12 <b>A No.</b> 13 Q You said you can't point to a single 14 person. Is there a combination of persons you can 15 point to? 16 <b>A I can't identify names, if that's the 17 question.</b> 18 Q I guess the question is, can you be any 19 more specific than Highland? 20 <b>A I don't think so.</b> 21 Q Are you aware that in November 2019, the 22 judge in the New York State court issued a 23 judgment in Phase 1 of the trial with UBS? 24 <b>A No.</b> 25 Q So at the time you don't recall hearing</p>	<p>200</p> <p>1 <b>A If you're representing that that's what 2 happened, I don't know.</b> 3 MS. SMITH: Objection. 4 <b>BY MS. TOMKOWIAK:</b> 5 Q Oh, no, you weren't -- yeah, you were not 6 part of any settlement negotiations or discussions 7 in the late 2019-2020 time period? 8 <b>A No.</b> 9 Q And were you aware that any such 10 settlement discussions were occurring? 11 <b>A No.</b> 12 Q Did you hear that there was roughly a 13 \$1 billion judgment? 14 MS. SMITH: Objection, form. 15 <b>A When? Sorry, this feels like a question 16 I've already -- but I came to know it at some 17 point.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q But at some point you came to know it, 20 right? 21 <b>A Yeah.</b> 22 Q And I -- a few months ago? Five month 23 ago? Six months ago? Before you left Highland? 24 <b>A It wasn't in real time. I can't point to 25 when I came to know it. But as I sit here today,</b></p>

<p style="text-align: right;">201</p> <p>1 <b>that sounds familiar to me and it sounds like I</b> 2 <b>have heard that. I can't point to when I learned</b> 3 <b>it. I don't know.</b> 4 Q Whenever you came to learn it, did you say 5 to anybody, hey, there's an insurance policy that 6 could help pay that judgment? 7 <b>A I did not say that.</b> 8 Q Why not? 9 <b>A Nobody asked me and it was outside of -- I</b> 10 <b>don't know. I just -- I don't know.</b> 11 Q Well, did you think of the insurance 12 policy when you heard that there was a \$1 billion 13 judgment in UBS's favor? 14 <b>A Did I think of it?</b> 15 Q Yeah. 16 <b>A I'm sure I did.</b> 17 Q Did you raise it with anybody at the time? 18 <b>A No.</b> 19 MS. SMITH: Objection to form. 20 <b>A No.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q After Highland declared bankruptcy, what 23 was your role? 24 MS. SMITH: Objection to form. 25 <b>A I was largely focused on the private</b></p>	<p style="text-align: right;">203</p> <p>1 Q Correct. 2 <b>A I don't recall.</b> 3 Q Do you recall if you were aware of it 4 after the -- sorry, after the board was put in 5 place? 6 MS. SMITH: Objection to form. 7 <b>A Again, I can't point to a date. I can't</b> 8 <b>point to it.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q And when you -- you said you thought of 11 it, did you discuss it with anybody? 12 <b>A No, I did not.</b> 13 Q Well, if you knew that there was 14 \$100 million in coverage available for this 15 \$1 billion judgment, why wouldn't you raise that 16 with somebody? 17 MS. SMITH: Objection to form. 18 <b>A It's not something I worked on. Others</b> 19 <b>were working on those matters. I had my own job</b> 20 <b>to worry about, my own tasks.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q Well, you worked on the policy, right? 23 <b>A When?</b> 24 Q In 2017. 25 <b>A Yes.</b></p>
<p style="text-align: right;">202</p> <p>1 <b>equity business at that point.</b> 2 <b>BY MS. TOMKOWIAK:</b> 3 Q And in that role, did you understand that 4 after the bankruptcy that you were -- that you 5 reported to the indirect -- sorry, the independent 6 board of the Highland then debtor? 7 MS. SMITH: Objection to form. 8 <b>A Can you repeat that?</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Yeah. So after Highland filed for 11 bankruptcy, did you understand that Highland was 12 being managed by an independent board of 13 directors? 14 <b>A I think there was a gap between when</b> 15 <b>Highland filed and the board came in.</b> 16 Q Do you recall when the board came in? 17 <b>A Beginning of 2020. I can't point to the</b> 18 <b>date, but sometime in early -- very early 2020.</b> 19 Q Okay. So between when Highland filed for 20 bankruptcy and the independent board came in, do 21 you recall being aware in that time period of the 22 \$1 billion judgment against Highland in UBS's 23 favor? 24 <b>A Sorry, between when Highland filed and</b> 25 <b>when the board came in?</b></p>	<p style="text-align: right;">204</p> <p>1 Q Okay. But by 2019, '20, is it your 2 testimony that that was somebody else's job? 3 MS. SMITH: Objection to form. 4 <b>A No. My job was what I was working on at</b> 5 <b>the time, which was largely trying to turn the</b> 6 <b>portfolio companies around. Other people did</b> 7 <b>their jobs.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q Did anybody ever tell you to disclose this 10 policy to UBS? 11 <b>A Did anyone ever tell me that? No.</b> 12 Q Did anybody ever tell you not to disclose 13 the existence of this policy to UBS? 14 <b>A No.</b> 15 Q Did anybody ever tell you not to disclose 16 the existence of this policy to any of the 17 independent directors? 18 <b>A Nobody ever told me that.</b> 19 Q Did you ever disclose this policy to any 20 of the independent directors? 21 <b>A No.</b> 22 Q Why not? 23 <b>A It wasn't my job. I was never asked and I</b> 24 <b>had plenty of other things to do that were within</b> 25 <b>my lane.</b></p>

<p>205</p> <p>1 Q Did you ever discuss the -- disclose the 2 existence of this policy to any of the outside 3 counsel that was representing Highland or the 4 independent board? 5 <b>A I did not.</b> 6 Q Did anybody ever instruct you not to do 7 that? 8 <b>A No.</b> 9 Q Before you left Highland, do you recall 10 Mr. Ellington ever raising this policy again? 11 MS. SMITH: Objection to form. 12 BY MS. TOMKOWIAK: 13 Q Let me rephrase that. After -- at any 14 point in time after you learned that UBS had 15 obtained a \$1 billion judgment, do you recall 16 Mr. Ellington raising the ATE policy? 17 <b>A No.</b> 18 Q Do you recall anybody else raising it? 19 <b>A No.</b> 20 Q Do you recall receiving any communications 21 from Sentinel or any of its auditors following the 22 judgment? 23 <b>A No.</b> 24 Q Did you think that it was strange that 25 nobody had made a claim on the policy?</p>	<p>207</p> <p>1 vendors in connection with their representation of 2 the insureds in the UBS litigation? 3 MS. SMITH: Objection to form. 4 <b>A And during what time frame?</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q Between 2017 and 2020. 7 <b>A I think over the course of '17, I recall</b> 8 <b>there being expenses that I passed through to the</b> 9 <b>Sentinel board and the administrator. I don't</b> 10 <b>remember what the expenses were or the size, but I</b> 11 <b>remember them -- I remember being told that they</b> 12 <b>were related to the litigation. But after that,</b> 13 <b>no, I don't recall. After 2017, I don't recall</b> 14 <b>that workflow or being asked to do that.</b> 15 Q And other than your lawyers sitting here 16 today, have you ever spoken with anybody on this 17 planet about this policy since you heard about the 18 \$1 billion judgment in UBS's favor? 19 MS. SMITH: Objection to form. 20 <b>A Since I came to learn of the</b> 21 <b>billion-dollar judgment and what, and now?</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Uh-huh. 24 <b>A And now?</b> 25 Q Yeah.</p>
<p>206</p> <p>1 MS. SMITH: Objection to form. 2 <b>A I didn't have an opinion one way or the</b> 3 <b>other. I was focused on my job.</b> 4 <b>BY MS. TOMKOWIAK:</b> 5 Q At this point in time, did you know 6 whether any part of that policy had been written 7 down or used to pay other costs in connection with 8 the UBS litigation? 9 MS. SMITH: Objection to form. 10 <b>A Can you ask -- sorry, can you ask that</b> 11 <b>again?</b> 12 <b>BY MS. TOMKOWIAK:</b> 13 Q Sure. Were you aware if the -- was there 14 still \$100 million in coverage left on the policy 15 in 2020, or do you know whether part of that had 16 been used to pay for other costs that were covered 17 by the policy? 18 <b>A I don't have -- sorry, I don't have direct</b> 19 <b>knowledge as to what had -- what, if anything, had</b> 20 <b>been -- you said paid for legal -- for legal</b> 21 <b>expenses.</b> 22 Q Did you have any role in paying outside 23 counsel or other vendors -- let me rephrase that. 24 Did you have any role in facilitating 25 payment from Sentinel to outside counsel or other</p>	<p>208</p> <p>1 <b>A Have I spoken about the policy to anyone</b> 2 <b>other than my lawyers?</b> 3 Q Correct. Other than to your lawyers who 4 are representing you in your personal -- 5 <b>A Yeah, I get it. No, not that I can</b> 6 <b>recall.</b> 7 Q So you thought about it, but you didn't 8 discuss it with anyone? 9 MS. SMITH: Objection to form. 10 <b>A Yeah. I guess, I -- I made the connection</b> 11 <b>briefly but, no, I didn't bring it up to anyone</b> 12 <b>and I didn't -- no, I didn't talk about it with</b> 13 <b>anyone.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q I'm handing you what has been marked 16 previously in this case as Exhibit 2. 17 <b>A Okay.</b> 18 Q Exhibit 2 is the seven-page document 19 titled Purchase Agreement, dated August 7, 2017. 20 Is this the purchase agreement that we've been 21 referring to today? 22 <b>A I believe so.</b> 23 Q And I think you said, and I just wanted to 24 clarify, that you might have drafted this and then 25 provided it to outside counsel for review; is that</p>

<p style="text-align: right;">209</p> <p>1 right?</p> <p>2 <b>A So I worked on this Schedule A,</b></p> <p>3 <b>transferring it into Word form. And I recall</b></p> <p>4 <b>working on the purchase agreement with outside</b></p> <p>5 <b>counsel -- I believe I -- I worked on it</b></p> <p>6 <b>initially, sent it to outside counsel just from a</b></p> <p>7 <b>form and they added to it. It's pretty -- it's</b></p> <p>8 <b>pretty short.</b></p> <p>9 Q From a form -- was this a Highland form?</p> <p>10 <b>A I don't recall. I don't recall if it was</b></p> <p>11 <b>a Highland form.</b></p> <p>12 Q Do you recall who asked you to put an</p> <p>13 initial draft of this together?</p> <p>14 <b>A Again, I don't -- I don't recall who</b></p> <p>15 <b>asked. It was sort of on the list of things that</b></p> <p>16 <b>needed to be done. I don't recall who asked.</b></p> <p>17 Q If you look at Section 1, it says</p> <p>18 Purchaser, and that is Sentinel, agrees to accept</p> <p>19 the assets listed in Schedule A hereto as</p> <p>20 100 percent payment of the premium.</p> <p>21 And then it goes on to say, skipping a</p> <p>22 clause, that: with the explicit undertaking that</p> <p>23 if anything of value is received by the Sellers,</p> <p>24 such cash or other item of value shall be held in</p> <p>25 trust for the Purchaser and promptly remitted</p>	<p style="text-align: right;">211</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Okay. The purchaser is Sentinel</p> <p>3 Reinsurance, right?</p> <p>4 <b>A Yes.</b></p> <p>5 Q We're in the first paragraph or the</p> <p>6 preamble. And then the sellers are Highland CDO</p> <p>7 Opportunity Master Fund, Highland CDO Holding</p> <p>8 Company and Highland Special Opportunities Holding</p> <p>9 Company, right?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And these sellers are the same three</p> <p>12 entities that are the insureds under the policy?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I'd have to --</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q You can take a look at the -- if you want</p> <p>17 to compare, match them up.</p> <p>18 <b>A Yeah. Yes, they are the same.</b></p> <p>19 Q If you'd turn to Schedule A. So the</p> <p>20 assets listed in Schedule A are what the purchaser</p> <p>21 Sentinel has agreed to accept as payment for the</p> <p>22 premium, right?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A It's whatever the document says.</b></p> <p>25</p>
<p style="text-align: right;">210</p> <p>1 thereto.</p> <p>2 And then you define that as the</p> <p>3 transferred interest. Do you see that?</p> <p>4 <b>A I see that.</b></p> <p>5 Q Is that meant to say that if the sellers</p> <p>6 receive anything of value not listed in</p> <p>7 Schedule A, that they commit to remitting those</p> <p>8 interests to Sentinel as well?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 BY MS. TOMKOWIAK:</p> <p>11 Q A simpler question would be, what did you</p> <p>12 mean by that?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I don't recall exactly. I don't know if</b></p> <p>15 <b>outside counsel drafted the -- what is it, the</b></p> <p>16 <b>explicit undertaking. My view would be that</b></p> <p>17 <b>anything deriving from the assets in Schedule A,</b></p> <p>18 <b>but I -- that's my understanding.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q What would that be? Like cash</p> <p>21 distributions? Do you have any understanding of</p> <p>22 that?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A Not particularly. I don't really recall.</b></p> <p>25</p>	<p style="text-align: right;">212</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Right. That's what the document says.</p> <p>3 That's what we just read: The Purchaser agrees to</p> <p>4 accept the assets listed in Schedule A hereto as</p> <p>5 100 percent payment of the Premium.</p> <p>6 <b>A Okay.</b></p> <p>7 Q Okay. And there's six different entities</p> <p>8 listed here, right?</p> <p>9 <b>A Yes.</b></p> <p>10 Q Why are entities -- you agree with me that</p> <p>11 at least three of these entities are not covered</p> <p>12 insureds under the insurance policy, right?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A I don't know if that's true or not. I</b></p> <p>15 <b>can't agree with that.</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q Well, Highland CDO Opportunity Master</p> <p>18 Fund, that's an insured under the policy, right?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Okay. And Highland CDO Opportunity Fund,</p> <p>21 is that an insured under the policy?</p> <p>22 <b>A I don't know. I don't know how these</b></p> <p>23 <b>entities are related to each other or whether --</b></p> <p>24 <b>the answer is I don't know if they're an insured</b></p> <p>25 <b>or not.</b></p>

<p>213</p> <p>1 Q Well, I mean, the insurance policy that 2 you worked on lists three companies that are 3 insured, right, three I should say entities, three 4 funds? 5 <b>A I agree that there are three entities 6 listed as insured.</b> 7 Q Okay. So are you saying that there might 8 have been other entities that were insured under 9 the policy that weren't listed in the schedule to 10 the policy? 11 <b>A I'm saying I'm not certain as to how these 12 entities are related to own each other or not such 13 that they are insureds as well. I don't know if 14 that's a matter of insurance law or what. I just 15 don't want to represent to that because I'm not 16 certain.</b> 17 Q Okay. And you don't know why entities 18 that don't appear to be insureds would be 19 transferring assets to pay a premium on a policy 20 that they're not insured under? 21 <b>A Again, I know they're related to each 22 other in some way. I don't know how and I don't 23 know what the structure chart looks like, so I 24 can't speak to that.</b> 25 Q But for purposes of paying the premium on</p>	<p>215</p> <p>1 <b>premium. That's where I would -- that's how I 2 would say it.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q Where did the list of assets on the 5 schedule come from? 6 <b>A The accounting team.</b> 7 Q And the assets that are listed under 8 Highland -- I'm sorry, who on the accounting team? 9 Is that Mr. Stoops that would have provided this? 10 <b>A Mr. Stoops or one of his colleagues. I 11 don't know exactly who.</b> 12 Q And Highland CDO Opportunity Master Fund, 13 is this all of the assets at that fund in 14 August 2017? 15 <b>A I don't know for certain.</b> 16 Q So you don't know one way or the other if 17 this is a complete list of all of the assets at 18 Highland CDO Opportunity Master Fund in 19 August 2017? 20 <b>A Yeah, I -- I can't represent to the 21 accuracy of this. It's something I received from 22 another team at Highland. I didn't check line by 23 line and tick-and-tie them.</b> 24 Q Was the intent that all of the assets of 25 each of these entities would be used to pay the</p>
<p>214</p> <p>1 the policy, all of these entities commingled their 2 assets together and that's what was used to pay 3 the premium? 4 MS. SMITH: Objection to form. 5 <b>A I'm not going to opine on the commingled 6 part. The purchase agreement says what it says. 7 These are the assets in Schedule A.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q That will be used to pay the premium on 10 the insurance policy? 11 <b>A That's what the -- yes, the policy says.</b> 12 Q Who negotiated the purchase agreement on 13 behalf of Sentinel? 14 <b>A Sentinel.</b> 15 Q Who at Sentinel? 16 <b>A I can't point to a specific advisor or 17 outside counsel.</b> 18 Q If your issue is with my word commingled, 19 would you agree with me that all of these entities 20 pooled their assets to pay the premium on the 21 insurance policy? 22 MS. SMITH: Objection to form. 23 <b>A I wouldn't editorialize it one way or 24 another. The schedule is what it says and the 25 schedule is a list of assets used to pay for a</b></p>	<p>216</p> <p>1 premium on the insurance policy? 2 <b>A That was the intent.</b> 3 Q So when you say you don't know, you mean 4 you just don't know if something was inadvertently 5 left off, but if -- the intent was that all of the 6 assets of each of the entities listed on 7 Schedule A were supposed to be transferred to 8 Sentinel to pay the premium on the insurance 9 policy? 10 MS. SMITH: Objection to form. 11 <b>A I just don't want to represent to the 12 accuracy of this just -- because I haven't done 13 the work to tick-and-tie. But you have my answer 14 as to the intent.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q So to your knowledge, after the transfers 17 were made pursuant to this purchase agreement, the 18 entities listed on Schedule A had no assets left? 19 <b>A Again, I can't -- I don't know personally 20 whether that's the case or not. I never checked. 21 I never did that.</b> 22 Q But that was the intent? 23 MS. SMITH: Objection to form. 24 <b>A The intent was for the assets on this 25 schedule provided to me to be transferred.</b></p>

<p style="text-align: right;">217</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q Would you say this transaction was in the 3 ordinary course of business? 4 MS. SMITH: Objection to form. 5 <b>A Whose ordinary course of business?</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Highland's. 8 <b>A I don't think I would say one way or the</b> 9 <b>other.</b> 10 Q Well, was it common to transfer all of the 11 assets out of multiple funds on one day to another 12 entity? 13 MS. SMITH: Objection to form. 14 <b>A Again, I can't speak to what's common or</b> 15 <b>not. I'm just -- I'm not able to speak to what's</b> 16 <b>common or not.</b> 17 <b>BY MS. TOMKOWIAK:</b> 18 Q Can you recall working on another transfer 19 of assets of this scope or magnitude in the time 20 that you worked at Highland? 21 <b>A I mean, when you have a fund launch,</b> 22 <b>you're selling securities into the market and it's</b> 23 <b>at a high -- it's at a high volume, a high level.</b> 24 <b>I can't say -- this is the only policy -- ATE</b> 25 <b>policy I worked on while I was at Highland.</b></p>	<p style="text-align: right;">219</p> <p>1 <b>A I think that's probably true.</b> 2 <b>BY MS. TOMKOWIAK:</b> 3 Q You know that's true, or you just believe 4 that to be the case? 5 <b>A I believe at the time that was true.</b> 6 Q Why do you believe that? 7 <b>A Because they provided the schedule.</b> 8 Q Would they have needed somebody else's 9 approval to do that before sending you the 10 schedule? 11 MS. SMITH: Objection to form. 12 <b>A I don't know.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q Did the accounting team have any questions 15 about why they were providing this to you? 16 <b>A Not that they asked me, no.</b> 17 Q Do you know whether there were multiple 18 versions of this schedule? 19 <b>A I don't recall.</b> 20 Q Do you know whether the list of assets 21 that were to be transferred were changed or 22 adjusted at any time before this was finalized? 23 <b>A Not that -- no, not that I recall.</b> 24 Q Anything about these assets that made them 25 particularly illiquid?</p>
<p style="text-align: right;">218</p> <p>1 Q And who directed the accounting team to 2 provide this list of assets? 3 MS. SMITH: Objection to form. 4 <b>A I'm not sure.</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q It wasn't you? 7 MS. SMITH: Objection to form. 8 <b>A Initially, no. No, it wasn't -- no, it</b> 9 <b>wasn't.</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q What do you mean by initially? 12 <b>A I'm sure I asked for a schedule, but I</b> 13 <b>distinguish that from directing the accounting</b> 14 <b>team to send me information. I don't know who</b> 15 <b>originally -- I don't know where the directive</b> 16 <b>came from originally.</b> 17 Q But there was a directive originally? 18 <b>A I know the policy contemplated the</b> 19 <b>schedule of assets. How it came to be that that</b> 20 <b>asset group was identified, I'm not certain.</b> 21 Q So when you reached out to the accounting 22 team to give this to you, they had already been 23 given guidance from somebody else on what that 24 list needed to include? 25 MS. SMITH: Objection to form.</p>	<p style="text-align: right;">220</p> <p>1 MS. SMITH: Objection to form. 2 <b>A Not that I have direct knowledge of. That</b> 3 <b>would have been a valuation question, valuation</b> 4 <b>team question.</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q Was it your understanding that these 7 assets were being transferred to Sentinel so that 8 Sentinel could turn them into cash? 9 MS. SMITH: Objection to form. 10 <b>A I don't remember being told that.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Do you remember telling anybody that? 13 <b>A I don't recall telling anyone that either.</b> 14 Q On the face of this schedule, are you able 15 to tell what the fair value is of these assets? 16 <b>A I am not.</b> 17 MS. TOMKOWIAK: I'm going to ask the court 18 reporter to mark this next document as Exhibit 59. 19 <b>BY MS. TOMKOWIAK:</b> 20 Q It printed out a little bit small, so -- 21 and let me know if there's something that you 22 cannot read when you see it. 23 (Deposition Exhibit 59 marked for 24 identification.) 25</p>



<p style="text-align: right;">221</p> <p>1 BY MS. TOMKOWIAK: 2 Q Take a few minutes to study it and let me 3 know when you're ready. 4 (Witness reviews document.) 5 A Okay. 6 BY MS. TOMKOWIAK: 7 Q So Exhibit 59 is an e-mail and an 8 attachment. The attachment is also a native file, 9 so that's why, like the other attachment that we 10 looked at, it doesn't have a Bates stamp on it. 11 The top e-mail is from Carter Chism to Vishal 12 Patel, and it's dated August 11th, 2017. And if 13 you go back earlier in time in the chain, the very 14 first e-mail is from Mr. Stoops to Mr. Ringheimer, 15 yourself and other individuals. And here 16 Mr. Stoops is asking Mr. Ringheimer to send 17 custodial admin details for the following entities 18 to JP Sevilla and Isaac copied. And then he lists 19 the entities that are on Schedule A at that 20 purchase agreement. 21 MS. SMITH: Sarah, is this attachment the 22 attachment to the top e-mail, Carter to Vishal 23 Patel? 24 MS. TOMKOWIAK: Yes. 25 MS. SMITH: And is this the complete</p>	<p style="text-align: right;">223</p> <p>1 being done at your direction or at somebody else's 2 direction? 3 MS. SMITH: Objection to form. 4 A <b>This would not have been done at my 5 direction.</b> 6 BY MS. TOMKOWIAK: 7 Q Do you know why Mr. Stoops is asking 8 Mr. Ringheimer to send the information to you and 9 Mr. Leventon? 10 MS. SMITH: Objection to form. 11 A <b>I don't know who directed him to do it.</b> 12 BY MS. TOMKOWIAK: 13 Q Okay. And then at the bottom of that 14 first e-mail from Mr. Stoops where he says: JP, 15 Isaac, Please forward custodial admin details from 16 the counterparty at your earliest convenience, as 17 we will need to share those with BNY to settle the 18 trades. 19 Do you know who the counterparty is that 20 he's referring to? 21 A <b>I believe it would be Sentinel.</b> 22 Q And above that he says that he has 23 included the feeder funds for CDO fund on here 24 just in case there is also cash held at these 25 entities.</p>
<p style="text-align: right;">222</p> <p>1 attachment? 2 MS. TOMKOWIAK: That's my understanding. 3 Is that right? Yes. 4 BY MS. TOMKOWIAK: 5 Q So do you recall asking Mr. Stoops to send 6 you custodial admin details for these entities? 7 A <b>Do I recall asking Mr. Stoops that?</b> 8 Q Yeah. 9 A <b>I don't.</b> 10 Q Okay. Do you think that that -- this 11 e-mail would have been after the meeting that you 12 described in the conference room? 13 A <b>Yes. This would have been subsequent to 14 that.</b> 15 Q Okay. And so -- and take as much time as 16 you need, but does it appear to be that this is 17 Mr. Stoops and the accounting team gathering the 18 asset information for Schedule A to the purchase 19 agreement? 20 MS. SMITH: Objection to form. 21 A <b>I'd need to look at what's listed here.</b> 22 <b>It appears to be that. I can't -- I mean, I can't 23 read part of this, so I -- you know.</b> 24 BY MS. TOMKOWIAK: 25 Q Yeah, understood. And was all of this</p>	<p style="text-align: right;">224</p> <p>1 So was the idea here to -- that any cash 2 that was held at any of these entities should be 3 included as part of the assets that were 4 transferred to Sentinel in exchange for the 5 insurance policy? 6 MS. SMITH: Objection to form. 7 A <b>I don't recall that.</b> 8 BY MS. TOMKOWIAK: 9 Q Okay. So at the various meetings that you 10 had that you testified to where you discussed the 11 policy and the terms, you don't recall anybody 12 saying that we should take all of the cash held at 13 these entities and transfer it to Sentinel in 14 exchange for the policy? 15 MS. SMITH: Objection to form. 16 A <b>Again, I don't remember it being said that 17 way. I remember there being a list of assets, and 18 I did not identify the assets.</b> 19 BY MS. TOMKOWIAK: 20 Q Do you recall if any of these entities 21 entered into purchase agreements with any other 22 entities around the same time frame? 23 MS. SMITH: Objection to form. 24 A <b>Sorry, which entities?</b> 25</p>

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1 BY MS. TOMKOWIAK:  
2 Q Well, the ones that -- who are listed on  
3 Schedule A. Did they sell any of their assets to  
4 anybody besides Sentinel in August 2017?  
5 **A I don't know.**  
6 Q You don't know. One more question on that  
7 document. There is an e-mail from Chris Dunn to  
8 you that is the one that Mr. Chism is then  
9 forwarding and he says: JP, See attached for the  
10 summary of assets and liabilities by fund as  
11 discussed.  
12 Do you recall what discussion you had with  
13 Mr. Dunn regarding this summary of assets and  
14 liabilities?  
15 **A I do not.**  
16 Q Would that discussion have occurred by  
17 phone or e-mail, if you know?  
18 MS. SMITH: Objection to form.  
19 **A I don't know.**  
20 **BY MS. TOMKOWIAK:**  
21 Q Or in person?  
22 **A Could have been any of the above.**  
23 Q Did anybody ever instruct you to limit  
24 written communications about Sentinel or this  
25 policy?

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1 **A No.**  
2 Q Okay. I'm going to hand you what's been  
3 previously marked as Exhibit 3. Take a few  
4 minutes and let me know when you're ready.  
5 (Witness reviews document.)  
6 **A Should I read the whole memo?**  
7 **BY MS. TOMKOWIAK:**  
8 Q You don't need to. I will point you to  
9 specific parts of it, but you can take as much  
10 time as you need or if you're ready now, that's  
11 fine.  
12 **A Why don't I read it, then.**  
13 Q Okay.  
14 MS. SMITH: Sarah, while he's reading, can  
15 I take a second and ask a housekeeping question?  
16 On this Exhibit 26 that you represented was  
17 redacted as Social Security numbers, did Highland  
18 redact those before producing it to you or did you  
19 redact those before preparing the exhibit for  
20 today's deposition?  
21 MS. TOMKOWIAK: We did. Did we? We did.  
22 MS. SMITH: You did?  
23 MS. TOMKOWIAK: We did.  
24 (Witness reviews document.)  
25 **A Okay.**

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1 **BY MS. TOMKOWIAK:**  
2 Q Exhibit 3 is a e-mail from Shawn Raver to  
3 Rick Swadley and he's attaching a tax compliance  
4 memo. The date is September 12th, 2018. Before  
5 today, have you ever seen this memo?  
6 **A No.**  
7 Q So just now was the first time that you've  
8 seen it?  
9 **A Yes.**  
10 Q Do you know who Shawn Raver is?  
11 **A Yes.**  
12 Q Who is he?  
13 **A He was a tax counsel at Highland.**  
14 Q And who is Rick Swadley?  
15 **A He also worked on the tax team at**  
16 **Highland.**  
17 Q And before when we talked about who worked  
18 on the Sentinel policy, you mentioned tax. Is  
19 Mr. Swadley one of the people who worked on the  
20 Sentinel policy and the purchase agreement?  
21 **A Yes.**  
22 Q Okay. Do you know whether Mr. Raver did  
23 as well?  
24 **A I don't recall.**  
25 Q Okay. Did you have any interactions with

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1 Mr. Raver regarding the UBS policy?  
2 **A I don't think so. Not that I recall.**  
3 Q What about with respect to Mr. Swadley?  
4 **A Did I have any interaction with him --**  
5 **sorry, can you ask the question again?**  
6 Q Sure. With respect to the legal liability  
7 policy.  
8 **A Yes.**  
9 Q What was the nature of those interactions?  
10 **A I remember discussing the policy with him**  
11 **in July or August of 2017.**  
12 Q What did you discuss?  
13 **A The nature of the policy. He asked for a**  
14 **copy of it. That's all I remember.**  
15 Q Do you know why he was asking for a copy  
16 of the policy?  
17 **A I don't.**  
18 Q Was that before the policy was finalized  
19 or after the policy was finalized?  
20 MS. SMITH: Objection to form.  
21 **A I want to say both. Both, before and**  
22 **after, I had discussions with him about it.**  
23 **BY MS. TOMKOWIAK:**  
24 Q Did your discussions relate to the tax  
25 implications of the transaction and entering into

<p style="text-align: right;">229</p> <p>1 the policy? 2 <b>A I don't recall exactly what the substance</b> 3 <b>was, but he was on the tax team and it was tax</b> 4 <b>stuff.</b> 5 Q Do you recall that there were tax 6 implications of doing -- entering into this 7 purchase agreement and policy? 8 <b>A I didn't know of any. I have no knowledge</b> 9 <b>of whether there were or not. No one discussed</b> 10 <b>that with me.</b> 11 Q Would Mr. Swadley have been involved if 12 there weren't any tax issues? 13 MS. SMITH: Objection to form. 14 <b>A I'm sorry?</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Would Mr. Swadley be involved if there 17 were no tax issues? 18 <b>A I think Mr. Swadley works on all manner of</b> 19 <b>topics. I wouldn't assume that.</b> 20 Q Do you know why Mr. Raver would be putting 21 together a memorandum regarding the tax 22 consequences of the Sentinel acquisition of the 23 assets that we just looked at in June of 2018? 24 MS. SMITH: Objection to form. 25 <b>A No.</b></p>	<p style="text-align: right;">231</p> <p>1 the date of the Transaction was 105,647,679. 2 Do you see that? 3 <b>A Yes.</b> 4 Q Do you know where Mr. Raver would have 5 gotten that number? 6 <b>A No.</b> 7 Q So we've seen several calculations today. 8 I guess I wouldn't call them calculations. We've 9 seen several statements today regarding the fair 10 value of the assets that were transferred to 11 Sentinel, including 94 million, 68 million, 12 105 million. Do you have any idea which of those 13 valuations is right? 14 MS. SMITH: Objection to form. 15 <b>A No.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q Well, at least according to this memo, the 18 value of those assets was approximately four times 19 the premium price; is that right? 20 MS. SMITH: Objection to form. 21 <b>A I don't know. I mean, it says what it</b> 22 <b>says. I don't know what -- I don't know. Are you</b> 23 <b>asking if -- sorry, what was the question?</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q Well, by -- at least by Mr. Raver's memo,</p>
<p style="text-align: right;">230</p> <p>1 <b>BY MS. TOMKOWIAK:</b> 2 Q In the other matters that you've worked on 3 at Highland, have you received similar memorandum 4 regarding the tax consequences of a particular 5 transaction or acquisition that you've worked on? 6 MS. SMITH: Objection to form. 7 <b>A Have I received memos like this? No.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q Do you know if others have? 10 <b>A I don't.</b> 11 Q If you look at page 2 of the memo and the 12 last full paragraph, it says: The aggregate 13 purchase price paid by Sentinel for the Assets was 14 \$25 million. 15 That's the amount of the premium on the 16 policy, right? 17 <b>A The premium --</b> 18 Q On the UBS policy was \$25 million? 19 MS. SMITH: Objection to form. 20 <b>A In the 2017 policy, yes.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q Yes. 23 <b>A That's correct.</b> 24 Q Okay. And then the -- he writes here: 25 The aggregate fair market value of the assets on</p>	<p style="text-align: right;">232</p> <p>1 the value of the assets was at least four times 2 the premium paid, right? 3 MS. SMITH: Objection to form. 4 <b>BY MS. TOMKOWIAK:</b> 5 Q 105 million is at least four times greater 6 than 25 million? 7 <b>A I agree that's what it says.</b> 8 Q Did the fair market value of the assets 9 that were being transferred to Sentinel really 10 matter? 11 <b>A I don't understand the question.</b> 12 MS. SMITH: Objection to form. 13 <b>BY MS. TOMKOWIAK:</b> 14 Q Was the premium going to stay 25 million 15 regardless of what the value of the assets were 16 that Sentinel received for the premium? 17 <b>A I don't know.</b> 18 Q Who would know that? 19 <b>A I don't know. I'm not sure I understand</b> 20 <b>the question, but -- I don't know what -- I don't</b> 21 <b>know. Can you ask it again?</b> 22 Q Sure. Under the policy -- 23 <b>A Yes.</b> 24 Q -- the premium was \$25 million, right? 25 <b>A Yes.</b></p>

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1 Q And the insureds and other Highland  
2 entities were using assets to -- and they were  
3 transferring those assets to Sentinel as payment  
4 for the premium, right?  
5 **A Yes.**  
6 Q So did it matter what the fair value or  
7 market value or any value of those assets were?  
8 Was it going to -- was there -- did it matter in  
9 terms of what the premium was or was the premium  
10 set and the fair market value of the assets  
11 would -- didn't matter?  
12 MS. SMITH: Objection to form.  
13 **A So, yeah, so it's compounded. I don't**  
14 **know the answer to both of those. I don't know if**  
15 **the premium would have changed and I don't know to**  
16 **the first part as well. I have no basis to have**  
17 **an opinion on that. I never heard anyone say that**  
18 **to me.**  
19 **BY MS. TOMKOWIAK:**  
20 Q Did the fair market value of the assets  
21 matter when it came to the amount of coverage that  
22 Sentinel would provide?  
23 MS. SMITH: Objection to form.  
24 **A I don't know.**  
25

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1 **BY MS. TOMKOWIAK:**  
2 Q Okay. So you don't recall anybody saying  
3 that if the value of the assets being provided to  
4 Sentinel was greater than the coverage amount,  
5 that maybe the coverage amount should be  
6 increased?  
7 **A I don't remember hearing that or**  
8 **discussing that with anyone.**  
9 THE VIDEOGRAPHER: Your microphone, sir.  
10 THE WITNESS: Shoot. I'm sorry.  
11 **BY MS. TOMKOWIAK:**  
12 Q What role did you play in transferring the  
13 assets pursuant to the purchase agreement?  
14 MS. SMITH: Objection to form.  
15 **A I connected the Highland trading and**  
16 **settlements team with Sentinel's personnel.**  
17 **BY MS. TOMKOWIAK:**  
18 Q Handing you what's been previously marked  
19 in this case as Exhibit 9. Exhibit 9 is an e-mail  
20 chain between Mr. Stoops and yourself, amongst  
21 several other Highland individuals. Just take a  
22 minute with that and let me know when you're  
23 ready.  
24 (Witness reviews document.)  
25 **A Okay.**

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1 **BY MS. TOMKOWIAK:**  
2 Q So this e-mail exchange is discussing the  
3 transfers of assets to Sentinel pursuant to the  
4 purchase agreement; is that fair?  
5 MS. SMITH: Objection to form.  
6 **A Sorry, say -- can you say it again?**  
7 **BY MS. TOMKOWIAK:**  
8 Q Sure. The e-mail starts with Ms. Irving  
9 providing Sentinel wiring information and she  
10 says: Sentinel wiring instructions for cash  
11 arising from the transaction are below, thank you.  
12 And that's on Bates ending 575.  
13 **A Yes, I see that.**  
14 Q Okay. And by transaction, she's referring  
15 to the purchase agreement. Do you agree?  
16 **A I don't know for certain.**  
17 Q Was there another transaction with  
18 Sentinel that was occurring in August 2017?  
19 **A No, there wasn't.**  
20 Q And then Mr. Chism writes to Ms. Irving:  
21 Please confirm this serves as instruction to wire  
22 cash from all HFP funds and all CDO funds to the  
23 account listed in the instructions below.  
24 Do you know who he's asking for  
25 instruction from?

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1 **A I don't.**  
2 Q Okay. And then Mr. Stoops responds and he  
3 says: All cash has been sent. Working on DTC  
4 securities. Still waiting on delivery  
5 instructions for physicals from Legal.  
6 Do you know who he's referring to there  
7 when he says from legal?  
8 MS. SMITH: Objection, form.  
9 **A No, I don't.**  
10 **BY MS. TOMKOWIAK:**  
11 Q Were you in charge of providing delivery  
12 instructions for physicals to Mr. Stoops or  
13 anybody else on his team?  
14 **A I don't think I was in charge of that, no.**  
15 Q Did you, in fact, provide any of those  
16 instructions?  
17 **A I don't recall whether I did or not.**  
18 Q Do you know what he means by physicals?  
19 MS. SMITH: Objection, form.  
20 **A Physical certificates.**  
21 **BY MS. TOMKOWIAK:**  
22 Q Physical stock certificates or physical  
23 certificates of what?  
24 **A Securities.**  
25 Q This e-mail chain is August 11th, which is

<p style="text-align: right;">237</p> <p>1 the day after the insurance policy is signed. Do 2 you recall whether there is any urgency or 3 deadline for transferring these assets to 4 Sentinel? 5 <b>A I don't recall any urgency or deadline.</b> 6 Q So to the best of your recollection, there 7 was no time frame by which the assets needed to be 8 transferred to Sentinel? 9 <b>A Not that I know of.</b> 10 Q I'm handing you what has been previously 11 marked in this case as Exhibit 19. And if you can 12 take a minute to look through that. 13 (Witness reviews document.) 14 <b>A Okay.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Earlier today we looked at certain of 17 Sentinel's financial statements and that showed 18 that there were certain investments in certain 19 CLOs. Do you recall that? 20 <b>A Yes.</b> 21 Q And this e-mail chain and attachments 22 appears to reflect that there were certain issues 23 with the certificates for certain CLOs that were 24 supposed to be registered in Sentinel's name that 25 were not, in fact, registered in Sentinel's name.</p>	<p style="text-align: right;">239</p> <p>1 Q Do you know who those certificates were 2 incorrectly registered to? 3 <b>A No. I'd have to look at them.</b> 4 Q On the page ending 2523, there is an 5 e-mail from you to Lesley Thompson that says: Can 6 the directors please review and execute the 7 attached - these are related to the November 8 waterfall distributions for the CLO securities 9 held by Sentinel. These should be the last manual 10 applications - hopefully State Street has 11 acknowledged the transfers into Sentinel's name. 12 What was State Street's role in this? 13 <b>A Indentured trustee.</b> 14 Q So was the mistake on their part? 15 MS. SMITH: Objection to form. 16 <b>A I'm not sure on whose part the mistake</b> 17 <b>was. I don't know when -- no, I don't know.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q Do you know whether Sentinel received 20 additional distributions from these CLOs after 21 November 2016? 22 <b>A I don't recall offhand.</b> 23 Q Okay. 24 MS. TOMKOWIAK: Let's take a break. 25 THE WITNESS: Are we done with this?</p>
<p style="text-align: right;">238</p> <p>1 Do you recall this issue at all? 2 <b>A I do.</b> 3 Q What do you recall about it? 4 <b>A Just as you said, certificates -- an</b> 5 <b>investment was made in certain CLOs and the</b> 6 <b>certificates were never reregistered and so there</b> 7 <b>was administrative friction around waterfall</b> 8 <b>payments from time to time.</b> 9 Q And what are waterfall payments as they 10 relate to CLOs? 11 <b>A To the extent there's residual cash on a</b> 12 <b>quarterly basis, the CLO will pay that cash to the</b> 13 <b>bondholder of the relative tranche.</b> 14 Q And do you recall whether these CLOs 15 regularly made those types of distributions to 16 Sentinel? 17 <b>A I don't know if they did so regularly.</b> 18 <b>They did from time to time.</b> 19 Q Do you recall whether this issue was ever 20 resolved? 21 <b>A I don't recall whether it was ever</b> 22 <b>resolved.</b> 23 Q So you don't know if the certificates were 24 ever registered in Sentinel's name? 25 <b>A I don't.</b></p>	<p style="text-align: right;">240</p> <p>1 MS. TOMKOWIAK: Yeah. 2 THE VIDEOGRAPHER: The time is 4:03 p.m. 3 We are off the record. 4 (Recess taken from 4:03 p.m. CDT to 5 4:26 p.m. CDT) 6 THE VIDEOGRAPHER: Disk -- the next -- 7 disk No. 4 in the videotaped deposition of Jean 8 Paul Sevilla. The time is 4:26 p.m. We are back 9 on the record. 10 (Deposition Exhibit 60 marked for 11 identification.) 12 BY MS. TOMKOWIAK: 13 Q Mr. Sevilla, we've handed you what we've 14 marked as Exhibit 60 in this case. Have you had a 15 chance to look at that? We're handing it to you 16 now. So take a look at it and let me know when 17 you're ready. 18 (Witness reviews document.) 19 <b>A Okay.</b> 20 <b>BY MS. TOMKOWIAK:</b> 21 Q I believe you testified earlier that you 22 recalled transferring an interest in the 23 Multi Strategy Credit fund, or if I refer to that 24 as Multi Strat; is that okay? 25 <b>A Yes.</b></p>

<p style="text-align: right;">241</p> <p>1 Q Okay. And I believe you testified earlier 2 that you recalled transferring certain limited 3 partnership interests from one of the CDO funds to 4 Sentinel around August 2007; is that right? 5 <b>A 2017.</b> 6 Q 2017, yes. 7 <b>A Yes.</b> 8 Q Okay. And what role did have you in that 9 transfer? 10 <b>A Connected Highland SEI and Sentinel's</b> 11 <b>personnel to effectuate and settle the transfer.</b> 12 Q Was this transfer part of the broader 13 transfer of assets that was -- that Sentinel 14 exchanged for the insurance policy or was this 15 something separate from that? 16 MS. SMITH: Objection to form. 17 <b>A This was part of that.</b> 18 <b>BY MS. TOMKOWIAK:</b> 19 Q And if you -- who is -- what is SEI-IS 20 Highland? It says there this -- the cover e-mail 21 here at Bates 616 is an e-mail from you to looks 22 like a Listserv, SEI-IS Highland. 23 <b>A SEI is the fund administrator for</b> 24 <b>Multi Strat.</b> 25 Q Okay. And if you look at the next page,</p>	<p style="text-align: right;">243</p> <p>1 <b>A No, I don't.</b> 2 Q Were you aware when you sent these 3 documents to the administrator that you were 4 listed as a contact for Sentinel? 5 <b>A No, not at the time.</b> 6 Q Is there any reason why you would have 7 been listed as a secondary contact for Sentinel? 8 <b>A Highland's the manager of Multi Strat. I</b> 9 <b>was at Highland, but...</b> 10 Q Have you, in fact, ever received 11 communications pursuant to your role here as 12 secondary contact for notices and communications? 13 <b>A I have not.</b> 14 Q Do you know who filled out this form? 15 <b>A I don't.</b> 16 Q Was it you? 17 <b>A I may have filled out portions of it, but</b> 18 <b>certainly not all of it.</b> 19 Q If you go to Section 9, which starts at 20 page 6 which is Bates ending 627. 21 <b>A Okay.</b> 22 Q Section 9 is asking about common 23 beneficial ownership with other investors. And 24 then it asks: Does the subscriber have any 25 affiliated investors in the fund?</p>
<p style="text-align: right;">242</p> <p>1 which is Bates ended 617, the amount of the 2 subscription is 24,313 shares? 3 <b>A Yes.</b> 4 Q And then that's signed by Mr. Watler? 5 <b>A Yes.</b> 6 Q Turning to the description -- subscription 7 agreement itself, which starts at Bates ending 8 616. 9 MS. SMITH: Objection to form. 618? 10 1618? 11 MS. TOMKOWIAK: I'm sorry, 1618. You're 12 right. 13 <b>BY MS. TOMKOWIAK:</b> 14 Q 1618, are you there? 15 <b>A Yes.</b> 16 Q My first question is on page 3, which is 17 the Bates number ending 624. 18 <b>A Yes.</b> 19 Q So this lists contact information and I 20 see that Mr. Kranz at Beecher Carlson is listed as 21 the primary contact for Sentinel Reinsurance and 22 that you're listed as the secondary contact. Why 23 were you listed as the contact for Sentinel? 24 <b>A I have no idea. I don't know.</b> 25 Q Do you know who made that decision?</p>	<p style="text-align: right;">244</p> <p>1 And the subscriber in this context is 2 Sentinel Reinsurance, right? 3 <b>A Yes.</b> 4 Q And the box here is checked yes. Do you 5 recall if this is a section that you filled out? 6 <b>A I don't recall.</b> 7 Q And then on the next page ending in 628, 8 it asks to identify the affiliated investor or 9 investors with which it has agreed to act 10 together. And two investors are identified there, 11 Starck, Ltd. and Sentinel Re Holdings Ltd. Do you 12 see that? 13 <b>A Yes.</b> 14 Q Do you know how Starck, Ltd. is affiliated 15 with Sentinel Reinsurance? 16 <b>A I don't recall.</b> 17 Q Do you know how Sentinel Re Holdings is 18 affiliated with Sentinel Reinsurance? 19 <b>A It's in the same organizational structure</b> 20 <b>as Sentinel, either a parent or a subsidiary, but</b> 21 <b>they're in the same structure.</b> 22 Q And is Starck, Ltd. affiliated with 23 Highland Capital Management? 24 <b>A I don't know. I don't recall.</b> 25 Q If you look at the footnote 7 on the</p>

<p style="text-align: right;">245</p> <p>1 preceding page, it defines affiliated investor as: 2 any investor who would be deemed to be a 3 Controlling Person with respect to the Interests 4 held by the Subscriber or who would have an 5 indirect Controlling Person in common. 6 Do you know if Starck, Ltd. and Sentinel 7 Reinsurance had an indirect controlling person in 8 common? 9 <b>A I don't.</b> 10 Q Do you know if Starck, Ltd. would be 11 deemed to be a controlling person with respect to 12 the interests held by Sentinel Reinsurance? 13 MS. SMITH: Objection, form. 14 <b>A I don't -- I have no direct knowledge. I</b> 15 <b>don't see -- it doesn't -- I don't know the -- an</b> 16 <b>entity Stark Limited. It doesn't ring a bell.</b> 17 <b>BY MS. TOMKOWIAK:</b> 18 Q As you sit here today, you don't know how 19 these -- how Starck, Ltd. would fit within the 20 definition of an affiliated investor? 21 <b>A As I sit here, I don't.</b> 22 Q Do you recall if you reviewed this e-mail 23 before you sent it to the administrator? I'm 24 sorry, do you recall if you reviewed this 25 subscriber information form before you sent it to</p>	<p style="text-align: right;">247</p> <p>1 BY MS. TOMKOWIAK: 2 Q Exhibit 61 is also an e-mail with an 3 attachment that was -- it's an Excel spreadsheet. 4 It was also produced in native form without a 5 Bates number. Let me know when you're ready. 6 MS. SMITH: Is this the complete Excel 7 sheet? 8 MS. TOMKOWIAK: Yes. 9 (Witness reviews document.) 10 <b>A Okay.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q So in this e-mail chain, which starts with 13 an e-mail from Taylor Colbert, is that how you say 14 it, or Colbert or Colbert? Do you know who Taylor 15 Colbert is? 16 <b>A I've always said Colbert, but that may be</b> 17 <b>wrong.</b> 18 Q Do you know who Taylor Colbert is? 19 <b>A Generally.</b> 20 Q And who is he or she? 21 <b>A He worked in the accounting group.</b> 22 Q At Highland? 23 <b>A At Highland.</b> 24 Q And he is sending Trey Parker a 25 Multi Strat cash projection. Who is Trey Parker?</p>
<p style="text-align: right;">246</p> <p>1 the administrator? 2 <b>A I don't.</b> 3 Q If you didn't fill out the whole thing, do 4 you know who else would have? 5 <b>A Sentinel, the directors would have filled</b> 6 <b>out portions of it. I don't recall exactly which</b> 7 <b>portions, but things like Section 3 and the like.</b> 8 Q Do you know when Sentinel Re Holdings 9 obtained its interest in the Multi Strat fund? 10 <b>A I believe it was sometime in 2015.</b> 11 Q Were you involved in that? 12 <b>A I recall being involved in that, yeah.</b> 13 Q Do you recall who it received that 14 interest from? 15 <b>A I don't recall exactly.</b> 16 Q Do you recall if it was another Highland 17 entity? 18 <b>A I don't recall. I would need to look at</b> 19 <b>the underlying document.</b> 20 Q You can set that aside. 21 MS. TOMKOWIAK: I'm going to ask the court 22 reporter to mark the next document as Exhibit 61. 23 (Deposition Exhibit 61 marked for 24 identification.) 25</p>	<p style="text-align: right;">248</p> <p>1 <b>A Trey Parker was the ex-head of private</b> 2 <b>equity.</b> 3 Q And when you say ex, do you mean -- 4 <b>A Previously -- until February of '20.</b> 5 Q Okay. But at the time he was the head of 6 private equity at the time of this e-mail? 7 <b>A Yeah. Yes. He was the -- he was head of</b> 8 <b>credit research at this time, I believe, in</b> 9 <b>December of 2017.</b> 10 Q Okay. And then the next e-mail in the 11 chain is another e-mail from Mr. Colbert to 12 Mr. Parker, where the file has been updated to 13 include Sentinel being presented as an affiliated 14 investor. Do you see that? 15 <b>A Yes.</b> 16 Q Okay. And if you look at the attachment, 17 the first -- the first document in the attachment, 18 and it looks like this is taking the master fund 19 and dividing it into Highland affiliates and 20 nonaffiliates. 21 <b>A Yes.</b> 22 Q Do you agree with that? 23 <b>A That's what it -- well, I'm sorry.</b> 24 MS. SMITH: Objection, form. 25 <b>A I don't see that.</b></p>

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**1 BY MS. TOMKOWIAK:**  
**2 Q** Okay. Your copy might be -- certain lines  
**3** are shaded. Are you able to tell that in your  
**4** copy?  
**5 A** **Shaded lines, yes.**  
**6 Q** Yes. Okay. And it looks like the shaded  
**7** lines are the non-Highland affiliates; whereas the  
**8** nonshaded lines are the Highland affiliates.  
**9** Based on what you know about the Highland  
**10** structure, do you agree with that?  
**11 A** **I can't agree with it. I don't know**  
**12** **enough -- I don't know what Core Credit Holdings**  
**13** **is, I don't know what Japanese Unit Trust is. No,**  
**14** **I can't attest to the accuracy of this.**  
**15 Q** Okay. But this document with Sentinel  
**16** being presented as an affiliated investor is  
**17** consistent with the subscriber agreement that we  
**18** just looked at, right?  
**19** MS. SMITH: Objection, form.  
**20 A** **I don't -- I'm sorry, I don't -- I see**  
**21** **Starck here and I see Sentinel here, but -- or**  
**22** **Sentinel Re and Sentinel. What --**  
**23 BY MS. TOMKOWIAK:**  
**24 Q** Do you agree that Sentinel Reinsurance was  
**25** an affiliated investor in the Multi Strat fund?

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**1 A** **Affiliated to who?**  
**2 Q** Affiliated to Highland.  
**3** MS. SMITH: Objection, form.  
**4 A** **I don't -- my understanding was that**  
**5** **Sentinel was not an affiliate of Highland. So**  
**6** **I -- no, I -- and I don't see that in this -- I**  
**7** **apologize. I don't see that in this spreadsheet.**  
**8 BY MS. TOMKOWIAK:**  
**9 Q** Okay. Well, The Dugaboy Investment Trust,  
**10** did that have an affiliation with Highland?  
**11 A** **I don't know.**  
**12 Q** Highland Capital Management, LP 2, did  
**13** that have an affiliation with Highland?  
**14** MS. SMITH: Objection, form.  
**15 A** **I've never heard of that entity.**  
**16 BY MS. TOMKOWIAK:**  
**17 Q** Okay. And how -- when you said my  
**18** understanding was that Sentinel was not an  
**19** affiliate of Highland, what's that understanding  
**20** based on?  
**21 A** **Compliance.**  
**22 Q** What do you mean by compliance?  
**23 A** **My recollection is that compliance had**  
**24** **made the determination that Highland and Sentinel**  
**25** **were not affiliates under common control.**

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**1 Q** And so is that what the term affiliates  
**2** means to you when you're using it, entities under  
**3** common control?  
**4 A** **I'm sorry, I thought you said affiliates**  
**5** **under common control. Perhaps I misheard.**  
**6 Q** No, I'm just looking at your -- you said  
**7** my understanding was that Sentinel was not an  
**8** affiliate of Highland, so I was asking how you  
**9** were using that term.  
**10 A** **Oh, okay. Can you start the question**  
**11** **over?**  
**12 Q** Sure. Is it your --  
**13 A** **Okay.**  
**14 Q** Is it your understanding that Sentinel was  
**15** an affiliate of Highland?  
**16** MS. SMITH: Objection, form.  
**17 A** **Depends on your definition of affiliate.**  
**18 BY MS. TOMKOWIAK:**  
**19 Q** Okay. So if affiliate means that they  
**20** share an owner in common, was Sentinel an  
**21** affiliate of Highland?  
**22 A** **I don't know Highland's ownership**  
**23** **structure. It changed over time, so I can't**  
**24** **attest to it at any given moment.**  
**25 Q** Was there ever a point in time in which

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**1** Mr. Dondero did not own part of Highland?  
**2 A** **I believe so.**  
**3 Q** When was that?  
**4 A** **I don't know the exact time. I don't know**  
**5** **exactly when that changed, but I think -- Highland**  
**6** **has had different ownership structures over years.**  
**7 Q** Well, if there -- at any particular point  
**8** over the course of the years when Mr. Dondero  
**9** owned part of Highland and Mr. Dondero owned part  
**10** of Sentinel, would you say that they were  
**11** affiliated?  
**12** MS. SMITH: Objection, form.  
**13 A** **I don't know if that's the definition of**  
**14** **affiliate.**  
**15 BY MS. TOMKOWIAK:**  
**16 Q** Well, you asked me what my definition was  
**17** and I said if my definition is that they share an  
**18** owner and at one point in time Highland was owned  
**19** in part by Mr. Dondero and Sentinel was owned in  
**20** part by Mr. Dondero, then --  
**21 A** **Is this a hypothetical?**  
**22 Q** Well, if we're using that definition of  
**23** affiliate.  
**24 A** **Again, I don't know Highland's ownership**  
**25** **structure at any given moment. When you say**



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1 **affiliate, I think of affiliate under common**  
2 **control or the definition of affiliate. So that's**  
3 **what I was answering.**  
4 Q And by common control, do you mean that  
5 the control has to be identical?  
6 **A No.**  
7 Q So you just don't know if Sentinel was an  
8 affiliate of Highland?  
9 MS. SMITH: Objection, form.  
10 **A It's my understanding that compliance --**  
11 **the compliance group determination was that they**  
12 **were not affiliates under common control.**  
13 **BY MS. TOMKOWIAK:**  
14 Q And who in the compliance group made that  
15 determination?  
16 **A Mr. Surgent.**  
17 Q Anybody else?  
18 **A I don't know who else he would have**  
19 **consulted.**  
20 Q And do you know when he made that  
21 determination?  
22 **A I can't point to an exact date.**  
23 Q Was it before or after the insurance  
24 policy was executed?  
25 **A My recollection is it was around the same**

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1 **time.**  
2 Q And did he make that determination during  
3 the meeting in the conference room that you  
4 referenced earlier?  
5 **A I don't recall that being a conclusion**  
6 **from that meeting, the meeting in Bois d'Arc, no.**  
7 Q And how did you learn of that conclusion?  
8 **A Over the course of time after I came to**  
9 **understand from compliance that Sentinel was not**  
10 **a -- an affiliate under common control. I'm not**  
11 **sure how the question initially had been posed to**  
12 **them, but I remember learning that from --**  
13 **directly from Mr. Surgent, let's call it August --**  
14 **August of 2017.**  
15 Q And did Mr. Surgent provide you anything  
16 in writing?  
17 **A I don't know if there are e-mails to that**  
18 **effect. There might be, but certainly verbally**  
19 **around the group, that was made clear.**  
20 Q Around what group?  
21 **A The group that had worked on the ATE**  
22 **policy that I had referenced earlier, the**  
23 **accounting and settlement and ops and et cetera.**  
24 Q So was that conclusion that was made by  
25 Mr. Surgent in connection with the UBS policy?

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1 **A I don't know if it was in connection with**  
2 **it. It was temporally around the same time. I**  
3 **don't -- I can't state that one followed the other**  
4 **necessarily.**  
5 Q And you said that you remember learning it  
6 directly from Mr. Surgent?  
7 **A Yes.**  
8 Q Was there anybody else in compliance that  
9 you remember discussing that conclusion with?  
10 **A Jason Post.**  
11 Q Anybody else?  
12 **A Lauren Thedford.**  
13 Q Anybody else?  
14 **A Well, Mr. Ellington was not in compliance,**  
15 **but Mr. Ellington.**  
16 Q Anybody else?  
17 **A That's probably it.**  
18 Q When did you discuss that conclusion with  
19 Mr. Post?  
20 **A Same time frame, August of '17.**  
21 Q And was this separate from your  
22 conversation with Mr. Surgent?  
23 **A No, it would have been simultaneous.**  
24 **Mr. Post would have been in the conversation or**  
25 **nearby. He's the deputy CCO. So he was often**

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1 **present.**  
2 Q And what about Ms. Thedford? Would you  
3 have had a separate conversation with her about  
4 that conclusion?  
5 **A I don't recall.**  
6 Q What about Mr. Ellington? Would you have  
7 had a separate -- did you have a separate  
8 conversation with him regarding that conclusion?  
9 **A We discussed it separately, yes.**  
10 Q What was the context of that discussion?  
11 **A We confirmed our understanding of**  
12 **Mr. Surgent -- Mr. Surgent and the compliance**  
13 **group's determination that Sentinel was not an**  
14 **affiliate of Highland.**  
15 Q And when you say the compliance group, are  
16 you referring to anybody besides Mr. Post and  
17 Ms. Thedford?  
18 **A Whoever Mr. Surgent consulted in the**  
19 **compliance group.**  
20 Q Okay. And so -- do you know that he  
21 consulted with Mr. Post?  
22 MS. SMITH: Objection to form.  
23 **A I believe Mr. Post was in the conversation**  
24 **where Mr. Surgent let me know that that was their**  
25 **determination.**

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1 **BY MS. TOMKOWIAK:**  
2 Q Is that the same with respect to  
3 Ms. Thedford, or you don't recall?  
4 **A I don't recall the specifics of**  
5 **Ms. Thedford.**  
6 Q And when you had that conversation with  
7 Mr. Surgent and Mr. Post, was that a conversation  
8 that you had at the office?  
9 **A Yes.**  
10 Q And where was that?  
11 **A On the floor of the legal group. It's**  
12 **like a trading floor environment, so in between**  
13 **one of our desks.**  
14 Q Was this a scheduled conversation? Was  
15 this an impromptu conversation?  
16 **A I don't recall.**  
17 Q And you don't recall what prompted  
18 Mr. Surgent to convey that conclusion to you?  
19 **A Again, it was around the time of the ATE**  
20 **compliance analysis. I don't recall what -- what**  
21 **came first or if one necessarily was a result of**  
22 **the other. I just remember them being around the**  
23 **same time.**  
24 Q So do you know who asked him that  
25 question?

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1 MS. SMITH: Objection to form.  
2 **A I had asked him. I'm not sure who else**  
3 **asked him.**  
4 **BY MS. TOMKOWIAK:**  
5 Q When did you ask him?  
6 **A Around this time.**  
7 Q How did you ask him?  
8 **A I don't remember the exact words, but the**  
9 **question was that -- the discussion was about**  
10 **whether Sentinel was an affiliate of Highland.**  
11 Q Was it in connection with this Multi Strat  
12 transfer?  
13 **A I don't recall.**  
14 Q Was this an in-person conversation?  
15 **A Yes.**  
16 Q And what about the conversation that you  
17 had referenced with respect to Mr. Ellington? Was  
18 that an in-person conversation?  
19 **A Yes.**  
20 Q Did that also take place in the office?  
21 **A Yes.**  
22 Q And what did you and Mr. Ellington  
23 discuss?  
24 **A I can't speak to the -- you know, the**  
25 **entirety of the conversation, but I remember**

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1 **confirming with Scott that compliance had come**  
2 **back to say that Sentinel was not an affiliate of**  
3 **Highland and he said, yeah, that's my**  
4 **understanding.**  
5 Q So were you confirming that to Scott?  
6 **A I was confirming what I had heard to Scott**  
7 **and confirming that he had understood the same**  
8 **thing and he -- we confirmed that to each other.**  
9 Q And you don't recall if that conversation  
10 took place in the context of taking any specific  
11 action?  
12 **A I don't remember what backdrop it was**  
13 **against.**  
14 Q Going back to this document. Mr. Surgent  
15 forwards this to Mr. Ellington and then  
16 Mr. Ellington forwards these attachments to you  
17 and Mr. Leventon and asked him to call him  
18 tomorrow on this.  
19 Do you recall if you, in fact, called  
20 Mr. Ellington?  
21 **A I don't recall.**  
22 Q Do you recall having a conversation with  
23 Mr. Ellington at any point in time regarding  
24 Sentinel being presented as an affiliated investor  
25 in the Multi Strat fund?

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1 **A I can't point to a specific conversation,**  
2 **other than the one in the August time frame. So**  
3 **I -- and I don't remember this e-mail, this**  
4 **particular e-mail, but...**  
5 Q And you don't recall, again, if that  
6 conversation that you had with Mr. Ellington was  
7 in the specific context of Multi Strat?  
8 **A I'm sorry, which conversation?**  
9 Q The one that you described to me earlier  
10 in the office.  
11 **A No, I don't remember that it was in the**  
12 **context of Multi Strat at all.**  
13 Q Okay. You can set that aside. I'm  
14 handing you what I will ask the court reporter to  
15 mark as Exhibit 62.  
16 (Deposition Exhibit 62 marked for  
17 identification.)  
18 **BY MS. TOMKOWIAK:**  
19 Q Let me know when you're ready.  
20 (Witness reviews document.)  
21 **A Okay.**  
22 **BY MS. TOMKOWIAK:**  
23 Q Okay. Exhibit 61 [sic] is an e-mail  
24 exchange between Carter Chism, you, Mr. Leventon,  
25 Mr. DiOrio and Mr. Stoops, dated February 7th,

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1 2019, and some of the earlier e-mails go back to  
2 January 2019.  
3 **A Yeah.**  
4 Q Do you recall the issue that's being  
5 described in this e-mail regarding the Bank of  
6 New York accounts?  
7 **A I do recall this.**  
8 Q What was going on here?  
9 **A I believe there were some amounts**  
10 **outstanding to the Bank of New York, some fees**  
11 **that were outstanding on the part of CDO ops and**  
12 **HFP.**  
13 Q Those were custodial funds or --  
14 **A I don't know exactly what they were. I**  
15 **don't know what the funds were in relation to.**  
16 Q Okay. In the e-mail chain from  
17 Mr. Leventon to Mr. Chism on February 7th at  
18 7:59 a.m. he says: Jason -- not sure why. Jason,  
19 CDO Fund is and has been insolvent since the  
20 financial crisis in 2009.  
21 Do you agree that in February 2019, do you  
22 agree with the statement that CDO fund was and had  
23 been insolvent since 2009?  
24 MS. SMITH: Objection to form.  
25 **A I don't know.**

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1 **BY MS. TOMKOWIAK:**  
2 Q You don't know one way or the other?  
3 **A I have no opinion -- yeah, I have no**  
4 **opinion one way or the other.**  
5 Q And then at the top of it, the --  
6 Mr. Chism writes: Should we have Bank of New York  
7 close the accounts and sweep the cash in full  
8 resolution of the amounts BNY claims are owed?  
9 Do you recall if that proposal -- do you  
10 recall if that happened?  
11 **A I don't know if it happened one way or the**  
12 **other.**  
13 Q So you don't know if you had Bank of  
14 New York close those accounts?  
15 **A I did not take this for action or do**  
16 **anything with it.**  
17 Q And when Mr. Chism says, I believe the CDO  
18 ops fund was included in the transfer to Sentinel,  
19 is that referring to the transfer of assets to pay  
20 the premium in the insurance policy?  
21 **A I'm not sure exactly what he meant there.**  
22 Q Do you recall a transfer of assets to  
23 Sentinel from CDO or any of the CDO funds at any  
24 other point in time?  
25 MS. SMITH: Objection, form.

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1 **A I don't know what you mean by CDO fund.**  
2 **CDO ops fund, I'm not sure what he means. You**  
3 **know, certainly one of the insurers is CDO, but I**  
4 **don't -- CDO fund, but I don't -- again, I don't**  
5 **know what he means exactly.**  
6 **BY MS. TOMKOWIAK:**  
7 Q Other than the transfers to Sentinel  
8 pursuant to the purchase agreement that we looked  
9 at earlier, did you have any role in making any  
10 other transfers of assets from any Highland fund  
11 to Sentinel?  
12 MS. SMITH: Objection to form.  
13 **A No.**  
14 **BY MS. TOMKOWIAK:**  
15 Q You can set that aside. I'm handing you  
16 what's been previously marked as Exhibit 38. Take  
17 a look at Exhibit 38 and let me know when you're  
18 ready.  
19 (Witness reviews document.)  
20 **A Okay.**  
21 **BY MS. TOMKOWIAK:**  
22 Q Have you ever seen this document before?  
23 **A No.**  
24 Q Do you have any knowledge at all about a  
25 transfer -- a sale and purchase between Sentinel

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1 Reinsurance and Sebastian Clarke Ltd. in 2019?  
2 **A No, not that I recall.**  
3 Q Don't remember hearing about it?  
4 **A No.**  
5 Q Did you have any role in any transaction  
6 between Sentinel Reinsurance and any non-Highland  
7 entity?  
8 MS. SMITH: Objection, form.  
9 **A Any transfer between Sentinel Reinsurance**  
10 **and a non-Highland entity?**  
11 **BY MS. TOMKOWIAK:**  
12 Q Correct. Any transfer or other  
13 transactions that Sentinel undertook with respect  
14 to non-Highland entities.  
15 MS. SMITH: Objection, form.  
16 **A There was an e-mail I found in my Gmail**  
17 **that we've produced, about an investment that**  
18 **Sentinel made in a gold fund, some sort of gold**  
19 **commodities fund, in like twenty -- early 2016. I**  
20 **believe it redeemed its interest in that fund 12**  
21 **to 18 months after, but that would be it. I'm not**  
22 **familiar with these -- with the subject of this.**  
23 **That would be the other -- the only example I**  
24 **have.**  
25

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1 BY MS. TOMKOWIAK:  
2 Q Okay. Well, that's a good segue into  
3 that. So you can set that aside.  
4 You're testifying here today pursuant to a  
5 subpoena, correct?  
6 **A Yes.**  
7 Q And you also received a subpoena to  
8 produce documents; is that right?  
9 **A Yes.**  
10 MS. TOMKOWIAK: We will mark this as  
11 Exhibit 63.  
12 (Deposition Exhibit 63 marked for  
13 identification.)  
14 BY MS. TOMKOWIAK:  
15 Q Mr. Sevilla, this is the subpoena issued  
16 to you to produce documents in this case. Have  
17 you seen this before?  
18 **A Yes.**  
19 MS. SMITH: Objection.  
20 BY MS. TOMKOWIAK:  
21 Q Oh, shoot, that's the deposition subpoena.  
22 Okay. Well, have you seen that before?  
23 **A Yes.**  
24 MS. TOMKOWIAK: Then let's mark as  
25 Exhibit 64, the document subpoena.

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1 (Deposition Exhibit 64 marked for  
2 identification.)  
3 BY MS. TOMKOWIAK:  
4 Q Have you seen this document before?  
5 **A Yes.**  
6 Q When is the first time you saw it?  
7 **A I don't remember the exact date.**  
8 Q Was it on or around April 20th, 2021, or  
9 after that?  
10 **A Would have been whenever I got served with**  
11 **it. I don't remember the exact date I was served.**  
12 Q Okay. And what did you do to search for  
13 documents responsive to the subpoena?  
14 **A I searched my phone, I searched my**  
15 **e-mails, I searched any documents or papers I have**  
16 **at my residence and in my office, my place of work**  
17 **at Skyview. That's the extent of it.**  
18 Q What -- where did you search on your  
19 phone?  
20 **A I searched for text messages, I searched**  
21 **for Signal messages, I searched for e-mails,**  
22 **personal e-mails. I had access to -- I believe I**  
23 **still had access to Highland e-mails, but I did**  
24 **not review those or access my Highland account.**  
25 **That would have -- yeah, that's --**

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1 Q Okay. How did you search your text  
2 messages?  
3 **A Went text by text and tried to do a search**  
4 **at the top of the search bar.**  
5 Q Does that mean that you searched texts  
6 with specific people?  
7 **A I did both. I searched texts with**  
8 **specific people and entered -- and entered**  
9 **Sentinel in the search on iMessage and it will**  
10 **show whatever hits.**  
11 Q And who are those people that you  
12 searched?  
13 **A Ellington, Leventon, any work colleague,**  
14 **anyone who had worked at Highland. I made sure if**  
15 **there were texts from work colleagues, that I**  
16 **searched through there.**  
17 Q What are Signal messages?  
18 **A It's like a messaging -- like a messaging**  
19 **app, like IM. I use it very, very infrequently.**  
20 **Nothing responsive came up.**  
21 Q But that's an app on your phone?  
22 **A It's an app, yeah.**  
23 Q Like WhatsApp or something like that?  
24 **A Something like that. And I don't have**  
25 **WhatsApp.**

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1 Q What e-mail addresses did you search?  
2 **A sevilla.jp@gmail. I have another e-mail**  
3 **that is largely dormant that I used to sign up for**  
4 **things I thought would be spam, jaypsev@gmail. I**  
5 **checked my wife's and I family e-mail, which is**  
6 **jpml755@gmail. And then I checked my work e-mail**  
7 **at jsevilla@skyviewgroup.com.**  
8 Q And you said that you did not -- you  
9 thought you had access to your Highland account  
10 but you didn't access it?  
11 **A Yeah. My understanding is that I had**  
12 **access to -- my Highland e-mail had not been shut**  
13 **off, at the decision of Highland. So I knew I**  
14 **could access it, but I agreed with counsel that I**  
15 **would flag that and not search that or access**  
16 **Highland property to respond to the subpoena.**  
17 Q So do you know that you have access to  
18 your Highland e-mail account?  
19 **A At the time of the subpoena, I knew I did.**  
20 **I could check it if I wanted to. I don't know if**  
21 **that's since changed.**  
22 Q And again, you knew that because you had  
23 accessed it recently?  
24 **A No, I knew that because it was still -- I**  
25 **have an iPad and the e-mail client was still on**

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1 the iPad and I wasn't getting any kind of password  
2 or error message, so I kind of left it there in  
3 stasis out of an abundance of caution. So -- and  
4 then I let them know that was the case.  
5 Q When was the last time that you accessed  
6 your Highland e-mail account?  
7 A I haven't accessed it since I left  
8 Highland, but e-mails have come into the Highland  
9 e-mail on my -- e-mails had come into the Highland  
10 e-mail on my iPad and so to the extent I was on --  
11 the cursor was on it, I guess it would show the  
12 top e-mail as being read, but I didn't access it.  
13 I wasn't looking for stuff.  
14 Q So on your iPad, you don't need to like  
15 put in a password? Your Highland account is just  
16 set up so that new e-mails come in?  
17 A That's how it had been set up, yes. And I  
18 believe that's since been shut off.  
19 Q And why do you believe that?  
20 A We received a -- Skyview received some  
21 communication from the debtor saying they were  
22 shutting it off.  
23 Q When did you find the e-mail that you  
24 produced to us?  
25 A Friday -- what was last Friday? Whatever

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1 last Friday was.  
2 Q And was that a result of a subsequent  
3 search for documents, or was that as a result of  
4 what you just described to me here? So how many  
5 times did you look for documents?  
6 A I looked for documents one time. I  
7 accessed my Gmail differently on my home laptop.  
8 I used the Gmail on like the web browser, which  
9 showed more e-mails. I was looking for an e-mail  
10 from counsel and I saw that there was one that I  
11 hadn't seen. I don't know if it was archived or  
12 what, but I saw it and then flagged it for  
13 counsel.  
14 Q So the first time you looked in your Gmail  
15 you did not identify any responsive documents, but  
16 then you subsequently identified the document that  
17 you produced to us?  
18 A Correct.  
19 Q Before you were terminated from Highland,  
20 did you have a chance to clear out any materials  
21 on your desk?  
22 MS. SMITH: Objection to form.  
23 A Yes.  
24 BY MS. TOMKOWIAK:  
25 Q What did you do with those materials?

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1 A The materials that I cleared my desk off?  
2 Q That you had at the office, yeah.  
3 A Took them home or disposed of them if they  
4 were personal and I didn't want them.  
5 Q Did you look through those documents to  
6 identify anything potentially responsive to the  
7 subpoena?  
8 MS. SMITH: Objection to form.  
9 A I looked at documents that I cleared my  
10 desk of, yes.  
11 BY MS. TOMKOWIAK:  
12 Q You're represented by counsel in this  
13 matter; is that right?  
14 A Yes.  
15 Q And specifically both of the individuals  
16 here?  
17 A Yes.  
18 Q Who is paying for your counsel's fees in  
19 this matter?  
20 A I don't know if they've been paid --  
21 Q Who is --  
22 A -- to date.  
23 Q -- expected to pay them?  
24 A I have not been asked to pay. I would  
25 expect to have an indemnity or indemnities, but

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1 I'm not certain if that's the case.  
2 Q Would that be an indemnity by Skyview?  
3 A Potentially.  
4 Q Or Highland?  
5 A Potentially.  
6 Q Okay. So as you sit here today, you don't  
7 know who will pay for your counsel's fees?  
8 A I'm not certain who's going to pay or  
9 whether it will be me.  
10 Q One other point of clarification. I think  
11 you testified -- I was unclear from your testimony  
12 earlier. Other than the ATE policy with respect  
13 to the UBS litigation, during the course of your  
14 employment at Highland, did you work on any other  
15 ATE insurance policies?  
16 A Other -- I'm sorry, other than --  
17 Q Other than the one between -- other than  
18 the UBS policy with Sentinel.  
19 A I had worked on diligencing SAS litigation  
20 funding matters that involved ATE. And so in  
21 connection with that, I had reviewed terms of ATE  
22 and sort of looked at policies from that  
23 perspective.  
24 Q Okay. So you had a general understanding  
25 prior to the UBS policy of what an ATE policy was?

<p>273</p> <p>1 MS. SMITH: Objection to form. 2 <b>A I generally knew of what it was, yeah.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q And the -- and what the purpose of an ATE 5 policy was? 6 <b>A Or at least one purpose based on what I</b> 7 <b>had seen previously. I don't think I got a</b> 8 <b>comprehensive understanding or view of the</b> 9 <b>product, but I certainly had seen it before.</b> 10 MS. TOMKOWIAK: I'm going to ask the court 11 reporter to mark this as Exhibit 65. 12 (Deposition Exhibit 65 marked for 13 identification.) 14 BY MS. TOMKOWIAK: 15 Q You can put the subpoena aside. 16 <b>A Okay.</b> 17 MS. SMITH: I'm going to caution you not 18 to reveal any privileged communications between 19 yourself and counsel. 20 THE WITNESS: Okay. 21 BY MS. TOMKOWIAK: 22 Q Exhibit 65 is a confidentiality agreement. 23 Have you seen this agreement before? 24 <b>A Yes.</b> 25 Q And did you authorize your attorney to</p>	<p>275</p> <p>1 questions and I will let Ms. Smith respond to 2 that. 3 MS. SMITH: I'm going to object to the 4 debtor's counsel asking any questions. He did not 5 join in the notice of deposition and the purpose 6 of the deposition, pursuant to the Court's order, 7 was for UBS to make a record in support of the 8 plaintiff's motion for temporary restraining order 9 and preliminary injunction, not for the debtor. 10 Judge Jernigan limited the scope of the 11 depositions in her ruling, so I'm going to object 12 to him asking any questions. 13 MR. FEINSTEIN: Well, that's unfortunate. 14 Not a good look. Are you -- do you acknowledge 15 that the debtor has the right to notice the 16 witness for a separate deposition before the 17 cutoff of discovery? We can do it that way. I 18 mean, I'll represent that I've got 15 minutes of 19 questions. But, you know, I take your point, but 20 certainly we have the right to depose the witness 21 in the adversary. 22 MS. SMITH: Just give me one second. 23 MS. DANDENEAU: Can we -- we'll go off the 24 record and confer on that. 25 MR. FEINSTEIN: Maybe we should do that.</p>
<p>274</p> <p>1 sign it on your behalf? 2 <b>A Yes.</b> 3 Q Do you understand your obligations with 4 respect to confidentiality under this agreement? 5 <b>A I believe so, yes.</b> 6 Q Okay. And have you adhered to those 7 obligations? 8 <b>A I believe so, yes.</b> 9 Q And are you qualifying your answer in any 10 way when you say I believe so, or is there 11 something that you're unsure of there? 12 <b>A No. I think I have complied with it.</b> 13 MS. TOMKOWIAK: So let's go off the record 14 briefly. 15 THE VIDEOGRAPHER: The time is 5:14 p.m. 16 We are off the record. 17 (Recess taken from 5:14 p.m. CDT to 18 5:15 p.m. CDT) 19 THE VIDEOGRAPHER: The time is 5:15 p.m. 20 We are back on the record. 21 MS. TOMKOWIAK: While we were off the 22 record, I said that I would like to confer with my 23 colleagues to see if we have any further questions 24 for this witness and I also indicated that I 25 believed that the debtor's counsel had some</p>	<p>276</p> <p>1 THE VIDEOGRAPHER: We are off the record 2 at 5:17 p.m. 3 (Recess taken from 5:17 p.m. CDT to 4 5:41 p.m. CDT) 5 THE VIDEOGRAPHER: The time is 5:41 p.m. 6 We are back on the record. 7 MS. DANDENEAU: I just want to make a 8 statement. Before we broke, Mr. Feinstein had 9 indicated that he wished to ask about 15 minutes 10 of questions to Mr. Sevilla. We raised an 11 objection to that. We subsequently conferred and 12 we have an understanding with Mr. Feinstein that 13 if we permit those questions to be asked now in 14 the context of this deposition, that Mr. Feinstein 15 will not recall Mr. Sevilla as a witness for a 16 deposition in this proceeding. And I just want to 17 confirm with Mr. Feinstein if that's correct. 18 MR. FEINSTEIN: I can confirm that. 19 MS. DANDENEAU: Thank you. And I will be 20 defending Mr. Sevilla for the purposes of 21 Mr. Feinstein's questions. 22 MR. FEINSTEIN: Okay. Before I start, 23 though, is there any more questioning from UBS? 24 MS. TOMKOWIAK: Yes. But I will defer the 25 rest of my time until after your questions.</p>

<p style="text-align: right;">277</p> <p>1 MR. FEINSTEIN: Okay. Then we can get 2 started, then. 3 Madam Court Reporter, are you ready -- or 4 Mister. Not being in the room, that's the 5 problem. I'll be gender neutral. Are you ready? 6 THE REPORTER: Yes. 7 MR. FEINSTEIN: I'm ready. Thank you, 8 sir. 9 EXAMINATION 10 BY MR. FEINSTEIN: 11 Q Good afternoon, Mr. Sevilla. I'm Robert 12 Feinstein from Pachulski Stang Ziehl &amp; Jones for 13 counsel to Highland. We've never met before, have 14 we? 15 A <b>No, sir.</b> 16 Q So I want to focus you on the time period 17 between the appointment of the independent board 18 and the time you left the company. So the 19 independent board was put in place in or about 20 January of 2020, correct? 21 A <b>I believe that's right.</b> 22 Q And the board -- do you know -- can you 23 identify the board members by name? 24 A <b>Yes.</b> 25 Q And who are they?</p>	<p style="text-align: right;">279</p> <p>1 loss of the UBS litigation? 2 MS. DANDENEAU: Objection to form. 3 A <b>No.</b> 4 <b>BY MR. FEINSTEIN:</b> 5 Q Is there any reason why you didn't do 6 that? 7 A <b>I wasn't asked. No one ever asked me 8 about UBS matters. It's not a case that I worked 9 on or had any knowledge about. I was focused 10 on -- my primary focus was on the portfolio 11 companies in the private equity book and those 12 would be the matters that Mr. Seery asked me 13 about.</b> 14 <b>The one litigation I did work on in the 15 past had been the ACIS matter. And so Mr. Seery 16 would ask me about those matter -- about ACIS, if 17 he had ACIS questions. But my recollection is 18 that he and the board were very, sort of -- I 19 don't want to say disciplined, but very particular 20 about who they would ask about certain matters at 21 Highland and my function was primarily private 22 equity.</b> 23 Q All right. You testified before that, to 24 your knowledge, the UBS claim, given its size, 25 was, I think you used the word front and center in</p>
<p style="text-align: right;">278</p> <p>1 A <b>Dubel, Nelms and Seery.</b> 2 Q Okay. And to what extent did you have 3 interaction with them over the course of calendar 4 year 2020? 5 MS. DANDENEAU: Objection to form. 6 BY MR. FEINSTEIN: 7 Q You can answer. 8 A <b>I interacted with all of them at different 9 times from time to time.</b> 10 Q Did there come a point when Mr. Seery 11 became the CEO? 12 A <b>Yes.</b> 13 Q And of the three of them, would you say 14 that your greatest contact over the course of last 15 year was with Mr. Seery? 16 A <b>Yes.</b> 17 Q And when did you leave the employ of the 18 debtor? 19 A <b>February 28th of '21.</b> 20 Q Okay. And so between the time that the 21 independent board was appointed and your departure 22 from the company, did you ever disclose to any of 23 the members of the independent board that you were 24 aware of the existence of the Sentinel insurance 25 policy ostensibly providing for coverage for the</p>	<p style="text-align: right;">280</p> <p>1 the bankruptcy case. Do you recall that 2 testimony? 3 A <b>I don't recall using those words, but I 4 know it was -- it was litigated over and it was 5 discussed quite extensively.</b> 6 Q And are you aware that last year, calendar 7 year 2020, Highland was both litigating with UBS 8 and also attempting to settle? 9 A <b>Yes, I did know that.</b> 10 Q Did you -- do you think it would have been 11 relevant information to tell Mr. Seery of the 12 possible availability of \$100 million of insurance 13 proceeds to help settle the UBS litigation? 14 MS. DANDENEAU: Objection to form. 15 A <b>No, I didn't think to volunteer that 16 information. I knew he was consulting with others 17 and colleagues, and our interaction was primarily 18 related to the private equity team and to all of 19 the issues -- particularly during COVID, several 20 were exigent -- all of the issues facing the 21 portfolio companies. So I had a full plate, as 22 did he.</b> 23 <b>BY MR. FEINSTEIN:</b> 24 Q The purchase agreement that was entered 25 into alongside the Sentinel insurance policy</p>

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1 involved the transfer to Sentinel of assets from  
2 the two funds that were named by UBS in the state  
3 court litigation; isn't that correct?  
4 **A I believe that's right.**  
5 Q Yeah. Do you know -- were you made aware  
6 of the fact last year, that UBS was asking  
7 Highland for information about what assets were  
8 made in those funds?  
9 MS. DANDENEAU: Objection to form.  
10 **A I was not made aware of that.**  
11 **BY MR. FEINSTEIN:**  
12 Q Were you ever instructed by Mr. Dondero,  
13 Mr. Ellington or Mr. Leventon not to reveal the  
14 facts and circumstances surrounding the Sentinel  
15 insurance policy or the transfer of assets to the  
16 independent directors?  
17 **A No.**  
18 Q I want to go back to the July -- or  
19 August 17 meetings. There was a larger group and  
20 then there was a meeting with you and Mr. Surgent  
21 and Mr. Ellington. Do you recall testifying about  
22 those meetings today?  
23 **A My testimony was not that they occurred on**  
24 **August 17th.**  
25 Q I'm sorry. What was the date? Was it

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1 July 17th, thereabouts?  
2 **A No, I couldn't pinpoint the exact date.**  
3 **My recollection is that it was over the course of**  
4 **late July, early August, but I couldn't**  
5 **necessarily pinpoint.**  
6 Q Okay. But you do remember the meetings?  
7 **A Yes.**  
8 Q Okay. So now there was a compliance issue  
9 discussed at those meetings, was there not?  
10 **A I wouldn't characterize it as a compliance**  
11 **issue.**  
12 Q Well, you were aware, were you not, that  
13 Mr. Dondero was the beneficial owner of Highland  
14 Capital, correct?  
15 MS. DANDENEAU: Objection to form.  
16 **A I wasn't -- I had no direct knowledge of**  
17 **what Highland's ownership structure was over time.**  
18 **I knew colloquially that it had changed. It was**  
19 **never part of my job to really understand or get**  
20 **granular. So, no, I don't know to what extent he**  
21 **was the beneficial owner of Highland, if ever.**  
22 **BY MR. FEINSTEIN:**  
23 Q Was there any doubt in your mind,  
24 Mr. Sevilla, that James Dondero was the  
25 controlling shareholder, owner, manager of

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1 Highland Capital?  
2 MS. DANDENEAU: Objection to form.  
3 **A I would say there's no doubt in my mind**  
4 **that he was the president of the company. As far**  
5 **as a shareholder and the rest, I can't testify to**  
6 **that.**  
7 **BY MR. FEINSTEIN:**  
8 Q And you were also aware at this time, were  
9 you not, that Mr. Dondero had a beneficial  
10 ownership in Sentinel, correct?  
11 **A Yes.**  
12 Q Okay. And what -- was the compliance  
13 question that was discussed at those meetings in  
14 late July, whether or not Mr. Dondero's status as  
15 a beneficial owner of Sentinel and his  
16 relationship as president, among other things to  
17 Highland Capital, that that created the prospect  
18 of the Sentinel transaction, the insurance policy,  
19 the transfer of assets, being an affiliated party  
20 transaction; that was mutual, wasn't it?  
21 MS. DANDENEAU: Objection to form.  
22 **BY MR. FEINSTEIN:**  
23 Q You can answer.  
24 **A It wasn't just one compliance issue being**  
25 **reviewed. I acknowledge that was one issue, but**

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1 **there was a whole slew of issues or a whole -- a**  
2 **whole compliance approval that didn't just rest on**  
3 **that one discrete issue.**  
4 Q But that was one of the issues that was  
5 discussed, was it not?  
6 **A Yes.**  
7 Q Did you weigh in on the discussion at all  
8 at the meetings?  
9 MS. DANDENEAU: Objection to form.  
10 **A I don't recall what I said. I knew -- I**  
11 **would have weighed in with respect to questions**  
12 **about Sentinel or what I had been told was the,**  
13 **sort of approval process at the Sentinel level,**  
14 **but I didn't weigh in on the compliance analysis.**  
15 **I wasn't asked to give an opinion on that.**  
16 **BY MR. FEINSTEIN:**  
17 Q You testified that Mr. Surgent approved of  
18 the transaction from a client -- compliance  
19 standpoint, correct?  
20 **A Yeah, I believe compliance approved the**  
21 **transaction, yes.**  
22 Q And did he articulate at the meeting in  
23 particular that the relationship of James Dondero  
24 to both Sentinel and Highland Capital was not a  
25 live compliance issue in his mind?



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1 MS. DANDENEAU: Objection to form.  
2 **A I don't think he said that. I don't**  
3 **recall verbatim what he said. But from that**  
4 **longer meeting and subsequent meetings, my**  
5 **understanding was that compliance had approved the**  
6 **transaction, including the issues you just**  
7 **highlighted.**  
8 **BY MR. FEINSTEIN:**  
9 Q But knowing that, Mr. Dondero's  
10 relationship to both Sentinel and Highland  
11 Capital, did you question the conclusion that this  
12 was not a problem?  
13 MS. DANDENEAU: Objection to form.  
14 **A No, I did not question it.**  
15 **BY MR. FEINSTEIN:**  
16 Q You have a law degree, correct?  
17 **A Yes.**  
18 Q And how many years have you been in  
19 business?  
20 MS. DANDENEAU: Objection to form.  
21 **A I graduated law school in 2007.**  
22 **BY MR. FEINSTEIN:**  
23 Q And have been working in the fund industry  
24 since then?  
25 **A No.**

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1 Q With respect to the policy itself, the  
2 premium was 25 million, correct?  
3 **A Yes.**  
4 Q And the coverage was 100 million, correct?  
5 **A I believe that's right, in 2017, yes.**  
6 Q And you've seen documents today that show  
7 that approximately 11 million in cash and then  
8 various forms of securities and CLO assets was  
9 transferred to Sentinel to pay the premium,  
10 correct?  
11 MS. DANDENEAU: Objection to form.  
12 **A It's been a long day. I know I saw**  
13 **schedules of assets and a portion of that was**  
14 **cash. I don't know what the exact numbers were.**  
15 **BY MR. FEINSTEIN:**  
16 Q But is it consistent with your  
17 understanding of the transaction having  
18 participated in it, that Highland -- that assets  
19 were transferred to Sentinel, including cash and a  
20 substantial amount of CLO assets from the funds?  
21 MS. DANDENEAU: Objection to form.  
22 **A I don't know if I would say a substantial**  
23 **amount of CLO assets. I would agree that assets**  
24 **were transferred, including cash and CLOs.**  
25

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1 BY MR. FEINSTEIN:  
2 Q And you've seen estimates that the CLO  
3 assets that were transferred were worth tens of  
4 millions of dollars, correct?  
5 MS. DANDENEAU: Objection to form.  
6 **A Again, I don't -- I don't recall what**  
7 **value was attributed by valuation to the CLO**  
8 **assets, but I know there were CLO assets.**  
9 **BY MR. FEINSTEIN:**  
10 Q Did it make sense to you at the time that  
11 Sentinel was going to receive 11 million in cash  
12 plus the CLO assets to satisfy a premium  
13 obligation of \$25 million?  
14 MS. DANDENEAU: Objection to form.  
15 **A I'm sorry, the question was did it seem --**  
16 **can you repeat that, please?**  
17 **BY MR. FEINSTEIN:**  
18 Q Did it make sense to you that to satisfy a  
19 \$25 million premium, Sentinel was going to receive  
20 \$11 million in cash and all those CLO assets on  
21 that schedule?  
22 MS. DANDENEAU: Same objection.  
23 **A I understood what the transaction was to**  
24 **be. So, yes, I understood that was a portion of**  
25 **it.**

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1 **BY MR. FEINSTEIN:**  
2 Q Right. And did it strike you as strange  
3 or inappropriate or improper that Highland -- that  
4 Sentinel was receiving all those assets in  
5 exchange for a \$25 million premium obligation?  
6 MS. DANDENEAU: Objection to form.  
7 **A I wouldn't say that I thought it was**  
8 **strange or -- is inappropriate the second word you**  
9 **used? I wouldn't say that I thought it was**  
10 **strange or inappropriate. I left the approval and**  
11 **propriety of the matter to others above my rank, I**  
12 **guess.**  
13 **BY MR. FEINSTEIN:**  
14 Q Did it seem to you, though, that there was  
15 an imbalance between the premium payment and the  
16 amount of assets that Sentinel was receiving from  
17 the funds?  
18 MS. DANDENEAU: Objection to form.  
19 **A I didn't think of it that way, as far as**  
20 **an imbalance. That's not how I thought of it.**  
21 **BY MR. FEINSTEIN:**  
22 Q No, but I'm thinking that way and I asked  
23 you the question. Do you see that -- my point,  
24 that there's an imbalance between a \$25 million  
25 premium payment and the receipt by Sentinel of

<p style="text-align: right;">289</p> <p>1 11 million in cash and that whole list of CLO 2 assets? 3 MS. DANDENEAU: Objection to form. 4 BY MR. FEINSTEIN: 5 Q You can answer. 6 <b>A No, I don't disagree as to the imbalance. 7 The inputs or the -- the data inputs that I would 8 have been considering would have been from the 9 actuaries, the Highland team and outside counsel. 10 You know, whether the face amount of the policy, 11 et cetera, were appropriate or whether there was 12 an imbalance wasn't within what I was asking -- 13 being asked to do or opine on.</b> 14 Q Yes. But do you believe that the CLO 15 assets that were on the schedule to the purchase 16 agreement were worth less than \$15 million? 17 <b>A Again, I don't know what valuation 18 methodology would be used in an insurance context 19 or at the Highland context. I'm certainly not an 20 expert on that. I-- I wouldn't weigh in on that 21 because I know there are several different ways to 22 value securities like CLOs. That's not something 23 I've ever been asked to do.</b> 24 Q You saw documents at the time, did you 25 not, that showed that those assets were worth tens</p>	<p style="text-align: right;">291</p> <p><b>1 understand.</b> <b>2 BY MR. FEINSTEIN:</b> 3 Q Do you think it makes business sense to 4 pay tens of millions of dollars for an insurance 5 policy that provides \$100 million of coverage? 6 MS. DANDENEAU: I'm going to object, by 7 the way, because -- as to relevance as well as 8 form, because the propriety of the transaction is, 9 to my knowledge, not at issue in the current 10 litigation between UBS and the debtor. And that's 11 not part of the relief that's being sought. 12 And so you can keep asking him what he 13 thinks and his opinions. He's told you he's not 14 qualified to give that opinion, but it's not 15 only -- I mean, it's just not a relevant question. 16 Again, you want to spend the rest of the 17 time in this deposition -- allotted to this 18 deposition asking him these irrelevant questions, 19 that's, I guess, your prerogative and 20 Ms. Tomkowiak's prerogative. 21 MR. FEINSTEIN: Irrelevance is not an 22 appropriate objection in a deposition. 23 BY MR. FEINSTEIN: 24 Q Can you answer my question, please? <b>25 A Will you please repeat it?</b></p>
<p style="text-align: right;">290</p> <p>1 of millions of dollars, correct? 2 MS. DANDENEAU: Objection to form. 3 <b>A I saw valuation -- I saw value -- I saw 4 spreadsheets with valuation conclusions as to 5 assets. I didn't know what valuation methodology 6 was being used for those versus in an insurance 7 context. So again, the idea of an imbalance 8 wasn't within my -- within my workflow or what I 9 was being asked to opine on.</b> 10 BY MR. FEINSTEIN: 11 Q When you say -- use the words in an 12 insurance context, do you think that the value of 13 the assets transferred to satisfy a premium 14 payment are -- should be treated specially because 15 they're being transferred to pay for an insurance 16 policy? 17 MS. DANDENEAU: Object to the form. 18 <b>A I'm not saying that. I'm not purporting 19 to be an insurance expert by any means. I'm just 20 acknowledging that there's several ways to value 21 securities and I am an expert as to none of them. 22 And so I hesitate, I shun this idea that I would 23 come up with some sort of conclusion that there 24 was an imbalance, because I acknowledge there are 25 valuation methodologies that frankly I don't</b></p>	<p style="text-align: right;">292</p> <p>1 Q Do you think it's appropriate as a 2 business matter to pay tens of millions of dollars 3 for an insurance policy with \$100 million of 4 coverage? 5 MS. DANDENEAU: Objection to form. 6 <b>A I think it depends on risk and a number 7 of -- a number of other considerations. Again, I 8 was not qualified -- I was not qualified or asked 9 to provide my input as to the business sense or 10 the business rationale. I wasn't qualified to do 11 that nor was I asked. So I unfortunately don't 12 have a developed view as to that point, or some 13 sort of a conclusion that what you're describing 14 is patently uncommercial.</b> 15 BY MR. FEINSTEIN: 16 Q Did you ever ask Mr. Dondero or 17 Mr. Ellington in words or substance, why are you 18 paying so much in the way of assets and cash to 19 satisfy a \$25 million insurance premium? 20 MS. DANDENEAU: Objection to form. 21 <b>A I don't remember asking them that 22 question, as you've phrased it.</b> 23 BY MR. FEINSTEIN: 24 Q Do you recall any discussions with either 25 of them about the amount of the premium relevant</p>

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1 to the amount of assets that were being  
2 transferred to satisfy?  
3 **A I remember discussing with them all -- all**  
4 **material terms, including those and including the**  
5 **other terms of the policy.**  
6 Q And in those discussions, was there  
7 anything more -- any substantive discussion of the  
8 relevant value of the assets being transferred to  
9 Sentinel and the amount of the premium obligation?  
10 **A We certainly covered those topics. Again,**  
11 **I can't quote as to what was said, but we**  
12 **certainly covered those topics and I was not asked**  
13 **about the propriety or impropriety of the**  
14 **transaction.**  
15 Q But did it strike you as puzzling, that to  
16 satisfy a \$25 million premium obligation, the  
17 funds were going to hand over 11 million in cash  
18 and securities and CLO assets that potentially  
19 were worth substantially more than 14 million,  
20 which would have been the balance due to satisfy  
21 the premium obligation?  
22 MS. DANDENEAU: Objection to form.  
23 **A Again, I wouldn't use the word puzzling.**  
24 **I didn't -- I wouldn't say that I felt puzzled by**  
25 **it. What I did have in mind was that it was an**

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1 **obligation on the part of the insurance company to**  
2 **pay cash and it was being paid with something**  
3 **other than cash. So no, I didn't think that was**  
4 **particularly puzzling.**  
5 **BY MR. FEINSTEIN:**  
6 Q Did you ever have any one-on-one  
7 discussions with Surgent about the insurance  
8 policy and the transfer of assets?  
9 **A One-on-one, meaning just he and I?**  
10 Q Yes.  
11 **A I don't -- I'm sure we did. I can't point**  
12 **to a specific date. And the meetings that I**  
13 **recall had others in attendance.**  
14 Q Well, did you ever probe with Mr. Surgent  
15 compliance determinations that there was no  
16 affiliated party transaction involved and that the  
17 Sentinel transaction was okay from a compliance  
18 standpoint, just you and him?  
19 MS. DANDENEAU: Objection to form.  
20 BY MR. FEINSTEIN:  
21 Q You can answer.  
22 **A I wouldn't call it probing, but I would**  
23 **say that we had fulsome conversations about these**  
24 **matters.**  
25 Q You and he, you and Mr. Surgent?

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1 **A As well as others.**  
2 Q Can you tell me to your best recollection,  
3 what you and Mr. Surgent discussed on this topic?  
4 **A The potential conflicts of interest and**  
5 **other compliance issues that would otherwise**  
6 **disqualify this transaction from being**  
7 **appropriate.**  
8 Q Why would there be a conflict of interest?  
9 **A As you had indicated, there was a**  
10 **question, among many, with respect to**  
11 **Mr. Dondero's control of Highland and his**  
12 **beneficial -- beneficial interest in the insurance**  
13 **company and that certainly gave rise to compliance**  
14 **scrutiny.**  
15 Q Your testimony is that Surgent said it was  
16 okay and that ended the matter, right?  
17 MS. DANDENEAU: Objection to form.  
18 **A I don't think that's what I said.**  
19 **BY MR. FEINSTEIN:**  
20 Q Well, did you push back on Surgent's  
21 advice that this was not a compliance problem?  
22 **A Again, I don't want to characterize what**  
23 **he said as this is not a compliance problem. I**  
24 **will submit that there was compliance approval, in**  
25 **my mind, of the transaction. Did I push back on**

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1 **that or push back on that conclusion? No, I did**  
2 **not.**  
3 Q You said before, that nobody ever asked  
4 you to restrict your discussion about the Sentinel  
5 policy or the transfer of assets, correct?  
6 **A Yes.**  
7 Q There was that one e-mail at the beginning  
8 that said all these documents that are being  
9 prepared are attorney-client privilege. You  
10 recall seeing that e-mail today?  
11 **A I do recall that.**  
12 Q Did that e-mail raise a red flag to you  
13 that this transaction was different somehow or  
14 questionable?  
15 MS. DANDENEAU: Objection to form.  
16 **A I don't think it did.**  
17 **BY MR. FEINSTEIN:**  
18 Q Did you ever discuss the assets that  
19 remained in SOHC and CDO fund with Mr. Seery last  
20 year?  
21 MS. DANDENEAU: Objection to form.  
22 **A No.**  
23 **BY MR. FEINSTEIN:**  
24 Q I just need a minute to look at my notes.  
25 Would it have made more sense to you to

<p style="text-align: right;">297</p> <p>1 satisfy the premium obligation by using the 2 \$11 million in cash that was transferred to 3 Sentinel and liquidating a CLO asset to generate 4 another 14 million instead of transferring all 5 those CLO assets? 6 MS. DANDENEAU: Objection to form. 7 <b>A I don't know -- no, I don't -- I would 8 have not thought of that as an option. I don't 9 know what the marketability of them were -- of the 10 securities were. I didn't dive into any of that. 11 So I don't know -- I don't know if -- you started 12 your question, did I think it was reasonable or 13 did I think it would be a better idea to have done 14 that. It's not an analysis I performed or was 15 asked to perform.</b> 16 <b>BY MR. FEINSTEIN:</b> 17 Q Do you know whether the transaction 18 documents with Sentinel obligates Sentinel to 19 return money to the insureds to the extent that 20 the CLO assets it received are liquidated and 21 generate cash in excess of \$14 million? 22 <b>A I don't know. I'd have to review it and 23 probably want outside counsel to give that 24 opinion. I don't know.</b> 25 Q Well, you're a lawyer and you worked on</p>	<p style="text-align: right;">299</p> <p>1 BY MR. FEINSTEIN: 2 Q But if Highland was going to buy a piece 3 of real estate for \$25 million, isn't the analysis 4 the same, that we're going to transfer either 5 25 million in cash or we're going to transfer 6 11 million in cash and a bunch of securities? 7 It's a valuation issue, isn't it? 8 MS. DANDENEAU: Objection to form. And I 9 think you're really straying into argumentative at 10 this point. 11 BY MR. FEINSTEIN: 12 Q You can answer. 13 <b>A I understand your analogy, sir. I'm not 14 able to agree with your way in. That's outside of 15 my work.</b> 16 Q Which part of my question don't you 17 understand? It's a simple question. 18 MS. DANDENEAU: Objection to form. 19 <b>A I didn't say I didn't understand it. I 20 just said I'm not -- I understand your analogy. 21 I'm just not willing to agree or disagree. There 22 are questions as to liquidity of the securities. 23 There are questions of when the cash is needed, 24 what the risk of the investment -- I mean, there 25 are so many variables, I think it's unfair to ask</b></p>
<p style="text-align: right;">298</p> <p>1 the transaction documents. Do you recall anything 2 in the documents that obligate a rebate, if you 3 will, to the funds if the CLO assets were sold for 4 more than what was needed to satisfy the premium 5 obligation? 6 MS. DANDENEAU: Objection, asked and 7 answered. 8 <b>A I don't recall that being a provision. I 9 would have to -- but I haven't committed the 10 document to memory, so I don't want to --</b> 11 <b>BY MR. FEINSTEIN:</b> 12 Q To the extent that that was not a 13 provision and you worked on the transaction, did 14 you ever suggest to anyone at Highland that such a 15 provision be sought, given the value of the assets 16 being transferred? 17 <b>A I did not -- I did not tell anyone at 18 Highland that. I did not say -- I did not say 19 that to anyone at Highland. Sorry.</b> 20 Q Did you think about it at the time? 21 MS. DANDENEAU: Objection to form. 22 <b>A Candidly, insurance was not my bailiwick. 23 I relied on the subject matter experts to know 24 what was reasonable and feasible.</b> 25</p>	<p style="text-align: right;">300</p> <p>1 <b>me to agree with a very simple premise like that.</b> 2 MR. FEINSTEIN: I have no further 3 questions. 4 MS. SMITH: I'm ready. 5 FURTHER EXAMINATION 6 BY MS. TOMKOWIAK: 7 Q Okay. Mr. Sevilla, I just have some 8 cleanup questions. Do you know whether Sentinel 9 was a managed fund? 10 MS. SMITH: Objection to form. 11 <b>A Managed fund. Can you be a little more 12 specific? What do you mean by managed fund?</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q Is that a term that you -- that was used 15 at Highland? 16 <b>A Yeah, I mean, generally, the concept of a 17 fund managed by Highland.</b> 18 Q Would you consider Sentinel to be a fund 19 managed by Highland? 20 <b>A I never considered it that way.</b> 21 Q When the funds purchased the policy from 22 Sentinel, did you think that they were buying 23 coverage in the event that there was legal 24 liability to UBS in the state court action? 25 MS. SMITH: Objection to form.</p>

<p>301</p> <p>1 <b>A Yes.</b> 2 <b>BY MS. TOMKOWIAK:</b> 3 Q And there's no question that before you 4 left Highland, you were personally aware of the 5 \$1 billion judgment in UBS's favor against the 6 funds; is that right? 7 <b>A I had become aware of it before I left</b> 8 <b>Highland.</b> 9 Q You testified earlier today and in 10 response to the debtor's questions, that at this 11 meeting that occurred in the conference room, the 12 conflict of interest was one compliance question 13 among many. What were the other compliance 14 questions? 15 <b>A Suitability of the funds to -- and</b> 16 <b>wherewithal to purchase the -- or enter into the</b> 17 <b>insurance policy. Where the fund -- where the --</b> 18 <b>where the assets -- how Sentinel would hold the</b> 19 <b>assets and whether that was acceptable. But, you</b> 20 <b>know, I think of compliance approval and I think</b> 21 <b>of a whole bevy of -- a whole bevy of issues, some</b> 22 <b>of which involve conflicts of interest, some of</b> 23 <b>which involve, you know, an ability of a fund to</b> 24 <b>enter into a given investment or transaction,</b> 25 <b>things of that nature.</b></p>	<p>303</p> <p>1 <b>compliance review sort of apogee.</b> 2 Q Who reached that conclusion? 3 <b>A The chief compliance officer.</b> 4 Q Mr. Surgent? 5 <b>A Yes.</b> 6 Q Anybody else? 7 <b>A Compliance was the only -- at least as far</b> 8 <b>as I know, compliance was being asked to weigh in</b> 9 <b>on these questions.</b> 10 Q And what about the issue of whether the 11 insurance company was a bona fide counterparty? 12 Was there any conclusion reached with respect to 13 that issue? 14 <b>A I think the answer was, yes, that it was.</b> 15 Q And who reached that conclusion? 16 <b>A I think for some of the securities, I</b> 17 <b>think it ultimately would have been approved by</b> 18 <b>Mr. Surgent, but I think there was a question as</b> 19 <b>to some of the securities that involved Mr. Post</b> 20 <b>weighing in, but I would consider it having been</b> 21 <b>approved by compliance versus one person or</b> 22 <b>another.</b> 23 Q So whether or not Sentinel was a bona fide 24 counterparty depended on the -- depended on the 25 securities being transferred to Sentinel? I'm</p>
<p>302</p> <p>1 Q Other than the two issues that you 2 mentioned, and I want to talk about each of them, 3 are there any other compliance issues that you 4 recall being raised during that meeting? 5 MS. SMITH: Objection to form. 6 <b>A I think the appropriateness of the</b> 7 <b>transaction on a holistic level. I believe that</b> 8 <b>was part of the compliance review and approval</b> 9 <b>ultimately.</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q Anything else? 12 <b>A That's what I can think of now.</b> 13 Q What do you mean by suitability and 14 wherewithal to purchase? 15 <b>A It involves a lawsuit. Is the lawsuit</b> 16 <b>active and alive? Is the insurance company a bona</b> 17 <b>fide counterparty? Things like that.</b> 18 Q Okay. And were any conclusions reached 19 about whether the lawsuit was active and alive? 20 <b>A I believe the answer is yes, it was.</b> 21 Q Okay. And do you recall that conclusion 22 being reached during that meeting? 23 <b>A I remember that conclusion being reached.</b> 24 <b>I don't necessarily know whether it was during</b> 25 <b>that meeting or subsequent meetings, in the</b></p>	<p>304</p> <p>1 confused by that. 2 <b>A Whether Sentinel was qualified to take</b> 3 <b>ownership of certain securities, is what I mean.</b> 4 Q I see. Was Mr. Post a Highland employee 5 at this time? 6 <b>A I believe so.</b> 7 Q Okay. And so with what securities do you 8 believe he would have weighed in on? 9 <b>A I think there were some questions as to</b> 10 <b>interval funds. I don't have more specific</b> 11 <b>recollection than that.</b> 12 Q What's an interval fund? 13 <b>A A fund where the -- as I understand it,</b> 14 <b>the redemption period is -- it's fixed by length</b> 15 <b>of time. So it could be quarterly, it could be</b> 16 <b>yearly, but there's an interval in which the</b> 17 <b>investor can be redeemed, as far as I understand,</b> 18 <b>and that's a very rudimentary sort of</b> 19 <b>understanding of it.</b> 20 Q And were any conclusions reached at the 21 meeting as to whether or not Sentinel could, in 22 fact, take ownership of all of the assets that 23 were contemplated being transferred to Sentinel? 24 <b>A I think that would have been subsequent to</b> 25 <b>the larger meeting.</b></p>

<p>305</p> <p>1 Q Okay. And when do you -- well, first of 2 all, was that conclusion, in fact, reached? 3 A Yes. 4 Q And when was that conclusion reached? 5 A <b>Over the course of August, I would say. I 6 don't have an exact date.</b> 7 Q Who reached that conclusion? 8 A <b>Again, the compliance group, Mr. Fuentes, 9 I think was asked or weighed in, but, yeah, I -- I 10 can't point to a specific individual. I just 11 considered it a compliance-approved component to 12 the transaction.</b> 13 Q Okay. And Mr. Fuentes, was he employed by 14 Highland or NexBank at this time? 15 A <b>I don't know.</b> 16 Q You don't know. Okay. But you recall him 17 being involved in discussions regarding the assets 18 that were being transferred to Sentinel? 19 A <b>I recall he had to weigh in on certain -- 20 on certain assets.</b> 21 Q Okay. Did those assets relate to NexBank; 22 do you recall? 23 A <b>NexBank?</b> 24 Q Yeah. 25 A <b>No, I don't think anything related to</b></p>	<p>307</p> <p>1 <b>different Highland touchpoints I previously 2 mentioned.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q So did the legal department have no role 5 in that? 6 MS. SMITH: Objection to form. 7 A <b>No, I would say legal -- yeah, I -- the 8 legal department would have an approval component, 9 sure.</b> 10 <b>BY MS. TOMKOWIAK:</b> 11 Q And would that be Mr. Ellington? 12 A <b>Mr. Ellington and Mr. Sargent.</b> 13 <b>Mr. Sargent -- both of them, I think, as GC and 14 deputy GC.</b> 15 Q And I spoke earlier about NexBank. What 16 about NexPoint? Do you recall if any of NexPoint 17 securities were involved? 18 A <b>I think so. I don't recall directly, but 19 I think so.</b> 20 Q Okay. And again, during this conversation 21 or these series of conversations about the 22 appropriateness of the transaction at a holistic 23 level and various conflicts of interest issues, 24 was -- Mr. Ellington's ownership interest in 25 Sentinel was never discussed?</p>
<p>306</p> <p>1 <b>NexBank.</b> 2 Q And then you also mentioned that the 3 appropriateness of the transaction on a holistic 4 level was discussed. What do you mean by that? 5 A <b>The transaction was -- the material terms 6 and documentation of the transaction were 7 discussed. Different groups had a chance to weigh 8 in, and my understanding was that the conclusion 9 was that it was appropriate, feasible, complied 10 with compliance regulations, the Highland 11 compliance handbook, any other kind of governing 12 regime at Highland.</b> 13 Q So between Mr. Sargent, Mr. Stoops, you 14 and Mr. Ellington, the conclusion was reached that 15 this transaction complied with any other type of 16 governing regiment at Highland; is that what you 17 meant to say? 18 MS. SMITH: Objection to form. 19 A <b>No, I wasn't asked to weigh in on 20 compliance matters or feasibility of the trade or 21 any of those matters. What I would say is, 22 between that meeting and the subsequent -- and 23 meetings subsequent to that, the transaction was 24 approved from a compliance perspective, tax, 25 accounting, trading and settlement, all the</b></p>	<p>308</p> <p>1 MS. SMITH: Objection to form. 2 A <b>I have no doubt that it was discussed. I 3 just don't remember it creating a conflict of 4 interest question or issue.</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q And when you say you have no doubt that it 7 was discussed, do you believe that it was 8 discussed during the July 2017 meeting that you 9 talked about? 10 A <b>I don't know necessarily if it was 11 discussed then. Again, it wasn't a compliance -- 12 I don't think it gave rise to a compliance issue, 13 but in discussing the transaction and Sentinel, it 14 certainly came up. I just don't think it created 15 a compliance -- a compliance issue that needed to 16 be analyzed or resolved.</b> 17 Q Did Mr. Ellington ever recuse himself from 18 any of these conversations? 19 A <b>Not that I recall.</b> 20 Q You testified that after the independent 21 board took over, your plate was full and you 22 didn't think that it was your responsibility to 23 bring this policy to their attention. Do you 24 remember that? Do you remember that testimony? 25 MS. SMITH: Objection, form.</p>

<p style="text-align: right;">309</p> <p>1 <b>A I remember testimony to that effect.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Okay. Did you assume that somebody else</p> <p>4 would bring it to their attention?</p> <p>5 <b>A My assumption solely was that other --</b></p> <p>6 <b>other colleagues were working on these different</b></p> <p>7 <b>litigation matters and working with the</b></p> <p>8 <b>independent board and the Pachulski firm about</b></p> <p>9 <b>these matters. I-- the only assumption I had is</b></p> <p>10 <b>that all of those people were working together and</b></p> <p>11 <b>working effectively together.</b></p> <p>12 Q Do you think any of those colleagues had a</p> <p>13 duty to bring the UBS policy to the board's</p> <p>14 attention?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 <b>A I don't know what was asked, what</b></p> <p>17 <b>discussions they had or otherwise. I really can't</b></p> <p>18 <b>opine.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Okay. And you didn't have an assumption</p> <p>21 one way or the other that somebody was going to</p> <p>22 bring that to the board's attention?</p> <p>23 <b>A Again, my only assumption was that very</b></p> <p>24 <b>qualified people were working with the Pachulski</b></p> <p>25 <b>firm and the independent board on these matters.</b></p>	<p style="text-align: right;">311</p> <p>1 would be affiliates?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 <b>A That I would use -- can you be a little</b></p> <p>4 <b>more specific?</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q That you would use in your capacity as a</p> <p>7 lawyer. Is there any definition of affiliates</p> <p>8 under which Highland and Sentinel would be</p> <p>9 affiliates?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 <b>A The only legal term of art I know of is</b></p> <p>12 <b>this concept that affiliates are entities under</b></p> <p>13 <b>common control, which I think derives from the</b></p> <p>14 <b>securities laws. Applying that definition, I</b></p> <p>15 <b>would say that they're not.</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q And how do you reach that conclusion?</p> <p>18 <b>A Because I don't think they're under common</b></p> <p>19 <b>control.</b></p> <p>20 Q Why don't you think they're under common</p> <p>21 control?</p> <p>22 <b>A They're controlled by two different sets</b></p> <p>23 <b>of people.</b></p> <p>24 Q And it doesn't matter if those two</p> <p>25 different sets of people have any overlap?</p>
<p style="text-align: right;">310</p> <p>1 <b>These weren't matters I was working on. And that</b></p> <p>2 <b>they were effectively being handled, worked on,</b></p> <p>3 <b>addressed and resolved.</b></p> <p>4 Q So as Highland's assistant general counsel</p> <p>5 at the time that the policy was entered into, were</p> <p>6 Highland and Sentinel affiliated entities?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A I think the compliance conclusion is that</b></p> <p>9 <b>they were not affiliates.</b></p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Did you have a conclusion as to whether or</p> <p>12 not they were affiliates?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I was not asked nor was that -- nor would</b></p> <p>15 <b>it have mattered what -- my view. Compliance's</b></p> <p>16 <b>perspective was the one that counted.</b></p> <p>17 <b>BY MS. TOMKOWIAK:</b></p> <p>18 Q Okay. But did you have a view?</p> <p>19 <b>A I deferred and agreed to compliance. I</b></p> <p>20 <b>didn't have reason to think they were wrong or</b></p> <p>21 <b>they had missed something.</b></p> <p>22 Q Do you still hold that belief today?</p> <p>23 <b>A Yes.</b></p> <p>24 Q Is there any definition of affiliates that</p> <p>25 you would use under which Highland and Sentinel</p>	<p style="text-align: right;">312</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 <b>A Those two sets of people have any overlap.</b></p> <p>3 <b>What do you mean by that?</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q Well, you said that they're controlled by</p> <p>6 two different sets of people, right?</p> <p>7 <b>A Yes.</b></p> <p>8 Q And those two different sets of people</p> <p>9 included at least, at some point in time,</p> <p>10 Mr. Dondero, correct?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And that doesn't change your analysis as</p> <p>13 to whether they're controlled -- they're under</p> <p>14 common control; is that right?</p> <p>15 <b>A Right.</b></p> <p>16 Q I'm going to hand you what we will mark as</p> <p>17 Exhibit --</p> <p>18 <b>A 66.</b></p> <p>19 Q -- 66; is that right?</p> <p>20 (Deposition Exhibit 66 marked for</p> <p>21 identification.)</p> <p>22 <b>A Okay.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q Mr. Sevilla, is this the document that you</p> <p>25 found in your Gmail that you produced to us?</p>

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1 **A Yes.**  
2 Q I think you testified earlier that you  
3 didn't typically use your Gmail -- well, that you  
4 didn't use your Gmail for work purposes. Do you  
5 know why you're forwarding this particular e-mail  
6 to your Gmail?  
7 **A I believe the file was corrupted and I was**  
8 **resending it to myself to try and open it with a**  
9 **different program. That's vaguely my**  
10 **recollection. But it was certainly an aberration**  
11 **to do that. That's not something I did.**  
12 Q So as far as you can recall, you would  
13 forward items to your personal e-mail if you were  
14 having some type of technological issue?  
15 **A No. I think this was a one-time thing.**  
16 **It's not something I did.**  
17 Q And this e-mail reflects that Sentinel is  
18 investing in the Sequoia fund that you mentioned  
19 earlier, right?  
20 **A I think that's what it was called. The**  
21 **gold fund or whatever the --**  
22 MS. SMITH: Objection to form.  
23 **A I don't remember the formal name. Sequoia**  
24 **Diversified Growth Fund.**  
25 **BY MS. TOMKOWIAK:**

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1 Q And do you recall anything about that  
2 fund?  
3 **A It was -- the manager was based in the**  
4 **Middle East. It was related to investments in**  
5 **gold. It would pay a dividend and Sentinel was in**  
6 **the investment for a set period of time, a year or**  
7 **maybe 18 months, could have been less, but it**  
8 **was -- it was a somewhat nominal investment in**  
9 **this gold fund. I didn't really know much else**  
10 **about it.**  
11 Q And your e-mail, Friday, May 6, 2016, at  
12 9 a.m., you mention that Sentinel's funds for this  
13 investment are already at Noor Capital. Is that a  
14 financial firm in the Middle East?  
15 **A Noor Capital was the -- yes, it's a**  
16 **financial firm in the Middle East. Yes.**  
17 Q Do you know why Sentinel wanted to invest  
18 in gold in the Middle East?  
19 **A I don't know. I don't know why.**  
20 Q Do you know why they reached out to you to  
21 handle the subscription documents?  
22 **A I'm sorry, who's they?**  
23 Q Christopher Watler, Andrew Dean, Amelia  
24 Watler.  
25 **A No, I reached out to them. Mr. Ellington**

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1 **wanted to make the investment and it required**  
2 **director approval and processing. So I reached**  
3 **out to the directors.**  
4 Q Okay. I see. So Mr. Ellington had the  
5 idea for Sentinel to invest in this fund?  
6 **A Yes.**  
7 Q Okay. Do you know why he wanted to invest  
8 in this fund?  
9 MS. SMITH: Objection, form.  
10 **A That was not shared with me.**  
11 **BY MS. TOMKOWIAK:**  
12 Q He didn't tell you why?  
13 **A I don't recall. I don't recall why.**  
14 Q Well, you write here: Please expedite as  
15 this is time sensitive.  
16 Do you recall why it was time sensitive?  
17 **A I don't remember why it would have been**  
18 **time sensitive.**  
19 Q Are you aware of any other investments  
20 like this by Sentinel between 2012 and 2017?  
21 **A Like what?**  
22 Q Like the Sequoia fund. Are there other  
23 instances where Mr. Ellington came to you and  
24 asked you to assist with investment on behalf of  
25 Sentinel?

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1 **A No.**  
2 MS. TOMKOWIAK: Okay. We have no further  
3 questions. We would just mark this transcript  
4 confidential and remind everybody that it is  
5 subject to the confidentiality agreement that we  
6 looked at earlier, including all of the documents  
7 that we've reviewed today.  
8 THE VIDEOGRAPHER: Anybody else?  
9 MS. SMITH: No.  
10 MS. DANDENEAU: No.  
11 THE VIDEOGRAPHER: This concludes the  
12 videotaped deposition of Jean Paul Sevilla. The  
13 time is 6:32 p.m. We are off the record.  
14 (Deposition concluded at 6:32 p.m. CDT)  
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1 ACKNOWLEDGMENT OF DEPONENT

2 I, JEAN PAUL SEVILLA, do hereby  
3 acknowledge that I have read and examined the  
4 foregoing testimony, and the same is a true,  
5 correct and complete transcription of the  
6 testimony given by me and any corrections appear  
7 on the attached Errata sheet signed by me.

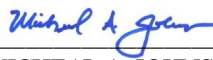
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1 REPORTER'S CERTIFICATION

2 I, Micheal A. Johnson, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true  
5 and correct record of the testimony given; that  
6 said testimony was taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; that reading and signing was requested;  
9 and that I am neither counsel for, related to, nor  
10 employed by any of the parties to this case and  
11 have no interest, financial or otherwise, in its  
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set my  
14 hand this 27th day of July, 2021.

15  
16   
17 \_\_\_\_\_  
18 MICHEAL A. JOHNSON, RDR, CRR  
19 NOTARY PUBLIC IN AND FOR  
20 THE STATE OF TEXAS  
21  
22  
23  
24  
25



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# Transcript of Isaac D. Leventon

**Date:** July 22, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION</p> <p>4 In re § 5 HIGHLAND CAPITAL § Chapter 11 6 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 7 Debtor. § 8 UBS SECURITIES LLC AND § 9 UBS AG LONDON BRANCH, § 10 Plaintiffs, § Adversary Proceeding 11 VS. § No. 21-03020-sgj 12 HIGHLAND CAPITAL § 13 MANAGEMENT, L.P., § 14 Defendant. §</p> <p>15 HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION REDACTED</p> <p>18 Videotaped Deposition of 19 ISAAC D. LEVENTON 20 Dallas, Texas 21 Thursday, July 22, 2021 22 9:55 a.m.</p> <p>23 Job No.: 386785 24 Pages: 1 - 370 25 Reported by: Micheal A. Johnson, RDR, CRR</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS 3 UBS SECURITIES LLC AND 4 UBS AG LONDON BRANCH:</p> <p>5 Andrew B. Clubok 6 Sarah Tomkowiak (Via Zoom) 7 LATHAM &amp; WATKINS LLP 8 555 Eleventh Street, N.W., Suite 1000 9 Washington, D.C. 20004 10 (202) 637-2200 11 andrew.clubok@lw.com 12 sarah.tomkowiak@lw.com</p> <p>13 Shannon E. McLaughlin 14 LATHAM &amp; WATKINS LLP 15 885 Third Avenue 16 New York, New York 10022-4834 17 (212) 906-4612 18 shannon.mclaughlin@lw.com</p> <p>19 ON BEHALF OF DEFENDANT 20 HIGHLAND CAPITAL MANAGEMENT, L.P.:</p> <p>21 Robert J. Feinstein (Via Zoom) 22 PACHULSKI STANG ZIEHL &amp; JONES LLP 23 780 Third Avenue, 34th Floor 24 New York, New York 10017-2024 25 (212) 561-7700 rfeinstein@pszjlaw.com</p> <p>26 ON BEHALF OF THE WITNESS:</p> <p>27 Frances A. Smith 28 ROSS &amp; SMITH, PC 29 700 N. Pearl Street, Suite 1610 30 Dallas, Texas 75201 31 (214) 377-7879 32 frances.smith@judithwross.com</p>
<p>1 Deposition of ISAAC D. LEVENTON, held at 2 the location of:</p> <p>3 Butler Snow LLP 4 2911 Turtle Creek Boulevard, Suite 1400 5 Dallas, Texas 75219 6 (469) 680-5500</p> <p>7 Pursuant to Notice, before Micheal A. 8 Johnson, Registered Diplomat Reporter and 9 Certified Realtime Reporter.</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 ON BEHALF OF THE WITNESS:</p> <p>3 Debra A. Dandeneau 4 Michelle Hartmann 5 BAKER &amp; MCKENZIE, LLP 6 452 Fifth Avenue 7 New York, New York 10018 8 (212) 626-4875 9 debra.dandeneau@bakermckenzie.com 10 michelle.hartmann@bakermckenzie.com</p> <p>11 VIDEOGRAPHER: 12 Brian Krieger</p>

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<p>1 DEPOSITION EXHIBITS ISAAC D. LEVENTON July 22, 2021</p> <p>2</p> <p>3</p> <p>4 NUMBER DESCRIPTION MARKED</p> <p>5 Exhibit 67 04/13/2017 E-mail, Isaac 196 Leventon to Stephanie Vitiello UBSPROD4837680</p> <p>6</p> <p>7 Exhibit 68 05/24/2019 through 06/17/2020 274 E-mail Chain UBSPROD000095 - UBSPROD000096</p> <p>8</p> <p>9 Exhibit 69 UBS's First Request for 301 Production of Documents to Debtor Highland Capital Management, LP</p> <p>10</p> <p>11 Exhibit 70 08/06/2020 through 08/13/2020 309 E-mail Chain UBSPROD1611114 - UBSPROD1611119</p> <p>12</p> <p>13</p> <p>14 Exhibit 71 07/18/2019 through 07/16/2020 329 E-mail Chain UBSPROD1754280 - UBSPROD1754282</p> <p>15</p> <p>16</p> <p>17 Exhibit 72 08/05/2020 E-mail Chain 333 UBSPROD1706963 - UBSPROD1706964</p> <p>18</p> <p>19 Exhibit 73 08/21/2020 E-mail Chain, with 342 Attachment UBSPROD497100 - UBSPROD497103</p> <p>20</p> <p>21 Exhibit 74 01/28/2021 E-mail Chain, with 348 Attachment UBSPROD1659896 - UBSPROD1659900</p> <p>22</p> <p>23 Exhibit 75 12/02/2019 E-mail Chain 361 UBSPROD456218 - UBSPROD456219</p> <p>24</p> <p>25</p>	<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins disk No. 1</p> <p>3 in the videotaped deposition of Isaac Leventon.</p> <p>4 This is in the matter regarding Highland Capital</p> <p>5 Management, LP, specifically the matter of UBS</p> <p>6 Securities, LLC and UBS AG, London Branch versus</p> <p>7 Highland Capital Management, LP. This is in the</p> <p>8 United States Bankruptcy Court for the Northern</p> <p>9 District of Texas, Dallas Division, filed as case</p> <p>10 number 19-34054-SGJ11.</p> <p>11 Today's date is Thursday, July 22nd, 2021.</p> <p>12 The videographer today is Brian Krieger</p> <p>13 representing PlanetDepos. This video deposition</p> <p>14 is taking place at Butler Snow at 2911 Turtle</p> <p>15 Creek Boulevard in Dallas, Texas.</p> <p>16 If counsel would please identify</p> <p>17 themselves for the record and whom they represent.</p> <p>18 MR. CLUBOK: On behalf of UBS, Andrew</p> <p>19 Clubok of Latham &amp; Watkins, LLP.</p> <p>20 MS. McLAUGHLIN: Shannon McLaughlin, also</p> <p>21 with Latham &amp; Watkins.</p> <p>22 MS. SMITH: Frances Smith with Ross &amp;</p> <p>23 Smith on behalf of Mr. Isaac Leventon.</p> <p>24 MS. HARTMANN: Michelle Hartmann, Baker</p> <p>25 McKenzie, on behalf of the witness as well.</p>

9	<p>1 MS. DANDENEAU: Debra Dandeneau from Baker                  2 McKenzie on behalf of Isaac Leventon.                  3 MR. FEINSTEIN: On the Zoom, Robert                  4 Feinstein of Pachulski Stang Ziehl &amp; Jones,                  5 counsel to Highland Capital Management, LP.                  6 THE VIDEOGRAPHER: The court reporter                  7 today is Micheal Johnson representing PlanetDepos.                  8 If the court reporter would please swear in the                  9 witness.                  10 ISAAC D. LEVENTON,                  11 called as a witness, having been duly sworn by a                  12 Notary Public, was examined and testified as                  13 follows:                  14 EXAMINATION                  15 BY MR. CLUBOK:                  16 Q Good morning. Please state your full                  17 name.                  18 A <b>Isaac Daniel Leventon.</b>                  19 Q And what's your home address?                  20 &lt;-- HIGHLY CONFIDENTIAL                  21 --&gt;                  22 Q Roughly how long have you lived there?                  23 A <b>Since 2013 or '14.</b>                  24 Q What's your current business address?                  25 A <b>2515 McKinney Avenue.</b></p>	11	<p>1 A <b>Not personally.</b>                  2 Q Have you been deposed before?                  3 A <b>Yes.</b>                  4 Q How many times, approximately?                  5 A <b>Over ten.</b>                  6 Q And were all of those matters in                  7 connection with your work with Highland Capital or                  8 an affiliated entity?                  9 MS. SMITH: Objection, form.                  10 A <b>I believe so.</b>                  11 <b>BY MR. CLUBOK:</b>                  12 Q When was the last time you were deposed,                  13 roughly?                  14 A <b>I'm trying to recall. I believe it may</b>                  15 <b>have been early this year.</b>                  16 Q Have you ever served as a corporate                  17 representative or as the equivalent state law                  18 nomenclature?                  19 A <b>Yes.</b>                  20 Q Roughly many times?                  21 A <b>Most of the depositions I gave were in a</b>                  22 <b>corporate representative capacity. The majority</b>                  23 <b>of them.</b>                  24 Q Who were you representing?                  25 A <b>Depended on the case.</b></p>
10	<p>1 Q You are an attorney authorized to practice                  2 law, correct?                  3 A <b>Yes.</b>                  4 Q In what states?                  5 A <b>Texas.</b>                  6 Q Just Texas?                  7 A <b>I'm only barred in the state of Texas,</b>                  8 <b>yes.</b>                  9 Q Where did you go to college?                  10 A <b>Emory University.</b>                  11 Q What year did you graduate?                  12 A <b>2001.</b>                  13 Q What was your degree?                  14 A <b>Political science.</b>                  15 Q And where did you go to law school?                  16 A <b>University of Texas School of Law.</b>                  17 Q Where did -- when did you graduate?                  18 A <b>2005.</b>                  19 Q Did you do something between college and                  20 law school?                  21 A <b>Yes.</b>                  22 Q What was that?                  23 A <b>I worked for the Centers for Disease</b>                  24 <b>Control.</b>                  25 Q Did you know Dr. Fauci?</p>	12	<p>1 Q Can you identify as many entities as you                  2 can recall that you have served as a corporate                  3 representative for in a deposition?                  4 A <b>The last one at the beginning of this</b>                  5 <b>year, I served as the corporate representative for</b>                  6 <b>the plaintiffs in the lawsuit against Celtic</b>                  7 <b>Pharma.</b>                  8 Q Who were the plaintiffs?                  9 A <b>You'd have to pull -- I don't recall the</b>                  10 <b>exact names of them. You'd have to look at the</b>                  11 <b>style of the case, but it was all of them.</b>                  12 Q Okay. And in past depositions, try to                  13 identify as many entities as you can recall that                  14 you've served as corporate representatives for in                  15 deposition.                  16 A <b>I really don't remember. I would have to</b>                  17 <b>look back at the records on that. I don't recall</b>                  18 <b>which ones.</b>                  19 Q You can't -- other than this deposition                  20 where you served as the representative against                  21 Celtic Pharma, you can't recall a single other                  22 entity where you were designated as a corporate                  23 representative, as you sit here today?                  24 A <b>There was a case related to the real</b>                  25 <b>estate fund a number of years back, but I don't</b></p>

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<p style="text-align: right;">13</p> <p><b>1 remember who I was representing as the witness in</b></p> <p><b>2 that case.</b></p> <p>3 Q So again, other than the deposition where</p> <p>4 you served as the representative against the</p> <p>5 Celtic Pharma, you cannot recall a single other</p> <p>6 entity that you can identify where you were</p> <p>7 designated as a corporate representative; is that</p> <p>8 correct?</p> <p><b>9 A First of all, it's Celtic, like -- spelled</b></p> <p><b>10 like the basketball team.</b></p> <p>11 Q Although apparently pronounced</p> <p>12 differently.</p> <p><b>13 A Correct. And now thinking about it</b></p> <p><b>14 further, I represented Highland Capital</b></p> <p><b>15 Management, LP, as their corporate representative</b></p> <p><b>16 in the Crusader arbitration.</b></p> <p>17 Q Other than that, can you identify any</p> <p>18 other entity on whose behalf you've served as a</p> <p>19 corporate representative in any testimony?</p> <p><b>20 A No, not sitting here today.</b></p> <p>21 Q In addition to your times being deposed as</p> <p>22 a corporate representative, have you been deposed</p> <p>23 in your individual capacity before today?</p> <p><b>24 A Yes.</b></p> <p>25 Q How many times, roughly?</p>	<p style="text-align: right;">15</p> <p>1 Q Had they been a client of yours before you</p> <p>2 started working for them?</p> <p><b>3 A No.</b></p> <p>4 Q How did you come to be employed at</p> <p>5 Highland Capital Management?</p> <p><b>6 A Online application, interview.</b></p> <p>7 Q Throughout the course of the deposition --</p> <p>8 I know there's lots of different -- some of the</p> <p>9 entities have longer names, some of them have</p> <p>10 things like LP. If I refer to Highland Capital</p> <p>11 Management throughout the rest of this deposition</p> <p>12 as HCM, will you understand it to be that entity?</p> <p><b>13 A So when you say HCM, you're referring to</b></p> <p><b>14 Highland Capital Management, LP, the debtor,</b></p> <p><b>15 correct?</b></p> <p>16 Q Correct.</p> <p><b>17 A Okay. We can make that agreement.</b></p> <p>18 Q Okay. Thank you. And who interviewed you</p> <p>19 for your job at HCM?</p> <p><b>20 A A number of people interviewed me.</b></p> <p>21 Q Did you have an understanding as to who</p> <p>22 was the final decision-maker?</p> <p><b>23 A No, I didn't actually.</b></p> <p>24 Q Who interviewed you? Identify the people</p> <p>25 who interviewed you.</p>
<p style="text-align: right;">14</p> <p><b>1 A Maybe two or three.</b></p> <p>2 Q Were those all in connection with your</p> <p>3 work?</p> <p><b>4 A Yes.</b></p> <p>5 Q Okay. And what were the circumstances of</p> <p>6 those depositions?</p> <p><b>7 A I honestly don't remember. I honestly</b></p> <p><b>8 don't recall.</b></p> <p>9 Q You recall nothing whatsoever about the</p> <p>10 two or three times that you've been deposed as an</p> <p>11 individual?</p> <p><b>12 A I really don't remember now.</b></p> <p>13 Q You were previously -- well, strike that.</p> <p>14 After law school, can you walk us through</p> <p>15 your employment history, briefly?</p> <p><b>16 A Yes. Would you like me to do so?</b></p> <p>17 Q Yes.</p> <p><b>18 A Okay. I went to work for a litigation</b></p> <p><b>19 boutique for approximately five years here in</b></p> <p><b>20 Dallas.</b></p> <p>21 Q Named?</p> <p><b>22 A Hartline, Dacus, Barger, Dryer &amp; Kern.</b></p> <p><b>23 We'll spell it during a break. And then in</b></p> <p><b>24 September 2009, I began working at Highland</b></p> <p><b>25 Capital Management, LP.</b></p>	<p style="text-align: right;">16</p> <p><b>1 A Michael Colvin, Andrei Dorenbaum, Patrick</b></p> <p><b>2 Daugherty, John Honis, Scott Ellington, Brian</b></p> <p><b>3 Collins and I believe Debbie Reynolds as well.</b></p> <p>4 Q And what was -- and you were hired by</p> <p>5 Highland Capital Management, correct?</p> <p><b>6 A Yes.</b></p> <p>7 Q By the way, just to be clear, I may say</p> <p>8 Highland Capital Management, I may say HCM, I may</p> <p>9 say the debtor. You'll understand those are all</p> <p>10 interchangeable for Highland Capital Management,</p> <p>11 LP, the entity that you were hired by in 2009?</p> <p><b>12 A Okay.</b></p> <p>13 Q Thanks. So what was the job you were</p> <p>14 hired to do for HCM?</p> <p><b>15 A I was hired as litigation counsel.</b></p> <p>16 Q What did that mean? What were your job</p> <p>17 duties as litigation counsel?</p> <p><b>18 A To work on and manage litigation.</b></p> <p>19 Q For whom?</p> <p><b>20 A For HCMLP and for its other affiliates.</b></p> <p>21 Q And did your role ever change?</p> <p><b>22 A Yes.</b></p> <p>23 Q When?</p> <p><b>24 A February 2011.</b></p> <p>25 Q How did your role change in February 2011?</p>

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<p>17</p> <p>1 <b>A I was promoted to assistant general</b>                  2 <b>counsel.</b>                  3 Q Who promoted you?                  4 <b>A The company.</b>                  5 Q Was there a person who you understood to                  6 have made the decision?                  7 <b>A I don't know.</b>                  8 Q Who were you reporting to prior to your                  9 promotion?                  10 <b>A Scott Ellington.</b>                  11 Q Did you always report to Scott Ellington                  12 throughout your tenure at HCM?                  13 <b>A Not that entire period. I believe there</b>                  14 <b>was a brief period where I did not report to him.</b>                  15 Q When was that?                  16 <b>A Subsequent to my promotion but before</b>                  17 <b>Mr. Ellington became general counsel.</b>                  18 Q And when was that?                  19 <b>A I think it would have been most of 2011.</b>                  20 Q Okay. So -- and who did you report to                  21 during most of 2011?                  22 <b>A Michael Colvin.</b>                  23 Q And then Mr. Colvin left and Mr. Ellington                  24 became general counsel?                  25 <b>A Correct.</b></p>	<p>19</p> <p>1 general counsels to him?                  2 <b>A I'm trying to remember the exact time</b>                  3 <b>frame. There were other assistant general</b>                  4 <b>counsels at various points in time. Those are</b>                  5 <b>individuals I recall held that title at one point</b>                  6 <b>in time or another.</b>                  7 Q Okay. So you got some additional duties                  8 that you just described when you became assistant                  9 general counsel, but fair to say, you were still                  10 focused primarily on litigation?                  11 <b>A Yes.</b>                  12 Q And did your role ever change after that?                  13 <b>A I mean, I took on additional duties and</b>                  14 <b>responsibilities as needed.</b>                  15 Q Did you -- and what were those?                  16 <b>A Depended on which business unit needed</b>                  17 <b>support and I would help them out.</b>                  18 Q What do you mean?                  19 <b>A I assisted the real estate team, I</b>                  20 <b>assisted the credit analysis team and I assisted</b>                  21 <b>the back office, accounting and operations.</b>                  22 Q How did you assist the back office                  23 accounting and operations?                  24 <b>A I worked on audit-related matters.</b>                  25 Q What do you mean?</p>
<p>18</p> <p>1 Q So before that time period and then after                  2 that time period, through your entire tenure at                  3 HCM, you reported to Scott Ellington, correct?                  4 <b>A Correct.</b>                  5 Q Did your duties change when you became                  6 assistant general counsel?                  7 <b>A Yes.</b>                  8 Q In what way?                  9 <b>A I took on nonlitigation management-related</b>                  10 <b>duties.</b>                  11 Q Like what?                  12 <b>A Corporate work, contract drafting and</b>                  13 <b>review, and then supporting some of the business</b>                  14 <b>units, a lot of transactional work.</b>                  15 Q Were there other assistant general                  16 counsels at the time?                  17 <b>A I believe the answer is yes.</b>                  18 Q Do you know who they were?                  19 <b>A Thomas Surgent, Scott Ellington and Andrei</b>                  20 <b>Dorenbaum.</b>                  21 Q I see. So the four of you were -- when                  22 you were first promoted, were all assistant                  23 general counsels to Mr. Colvin. And then when                  24 Mr. Colvin left, Mr. Ellington became the GC and                  25 you were all -- the remaining three were assistant</p>	<p>20</p> <p>1 <b>A The preparation of audits.</b>                  2 Q Did you work on asset valuations ever?                  3 <b>A No.</b>                  4 Q What does the credit analysis team do?                  5 <b>A They analyze and track and make</b>                  6 <b>recommendations for investments in debt</b>                  7 <b>instruments.</b>                  8 Q And what was the assistance you provided                  9 to that group?                  10 <b>A Credit analysis -- credit agreement</b>                  11 <b>analysis as requested.</b>                  12 Q What does that mean?                  13 <b>A Mean if they asked me to look at a credit</b>                  14 <b>agreement, I would look at it and I would give</b>                  15 <b>them my perspective on it.</b>                  16 Q Okay. Did you ever get a promotion after                  17 2011?                  18 <b>A I had an additional job title added, but I</b>                  19 <b>don't think it was really a promotion.</b>                  20 Q What was that?                  21 <b>A I believe I had a title of managing</b>                  22 <b>director of distress added.</b>                  23 Q What did that title entail?                  24 <b>A I didn't really do any work under that</b>                  25 <b>title.</b></p>

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<p style="text-align: right;">21</p> <p>1 Q Why did you get that title, as far as you 2 know? 3 <b>A It was anticipated that certain members of 4 the legal team, including myself, would be 5 assisting with distressed assets and private 6 equity.</b> 7 Q Starting when? 8 <b>A Maybe 2018.</b> 9 Q Who anticipated that? 10 <b>A Mr. Ellington informed us that we were 11 going to be asked to help out with that role.</b> 12 Q And -- but you never did help out with any 13 distressed assets after you got that job title? 14 <b>A Not really, no.</b> 15 Q Were you ever given the title director of 16 private equity? 17 <b>A Oh, that's what the title was. Yeah.</b> 18 Q Okay. Did you ever perform any functions 19 related to that title? 20 <b>A No, not really.</b> 21 Q So your job really didn't change beyond 22 what you've described, from 2011 until you left 23 HCM, correct? 24 <b>A We had -- depending on the needs of the 25 company, things would -- things would change and</b></p>	<p style="text-align: right;">22</p> <p>1 <b>you'd have different tasks, but the basic nature 2 of my role didn't change.</b> 3 Q How often did you communicate with 4 Mr. Dondero during the course of your employment 5 at HCM? 6 <b>A It really depended on when during that 7 employment. I was there for 11 years.</b> 8 Q How about in the last two years prior to 9 HCM going into bankruptcy, in the -- put yourself 10 back to the two years prior to the bankruptcy, 11 roughly how often were you directly communicating 12 with Mr. Dondero? 13 <b>A So you're talking approximately 2017 14 through 2019?</b> 15 Q Yes. 16 <b>A I don't know. Maybe once a month.</b> 17 Q And would that communication be in person 18 or be by e-mail? 19 MS. SMITH: Objection, form. 20 <b>A It would depend on the communication.</b> 21 <b>BY MR. CLUBOK:</b> 22 Q How often did you speak with Mr. Dondero 23 on average in 2017 through 2019? 24 <b>A I really don't recall. I would have to 25 speculate.</b></p>
<p style="text-align: right;">23</p> <p>1 Q Did you physically work near him? 2 <b>A We were in the same office facility, if 3 that's the question.</b> 4 Q Were you on the same floor? 5 <b>A The entire firm was on the same floor, so 6 yes.</b> 7 Q Okay. So I take it you'd see him at least 8 on a relatively frequent basis around the office? 9 MS. SMITH: Objection, form. 10 <b>A Not necessarily, no, actually.</b> 11 <b>BY MR. CLUBOK:</b> 12 Q Did you have your own office? 13 <b>A No.</b> 14 Q Did you sit out on a pod situation or what 15 was your physical layout for your workspace? 16 <b>A We had an open floor plan and I was 17 sitting in the open floor plan.</b> 18 Q Who sat near you? 19 <b>A When?</b> 20 Q In the 2017 through 2019 time frame. 21 <b>A I believe Jason Goldsmith sat near me.</b> 22 Q Anyone else? 23 <b>A Eric Girard.</b> 24 Q Anyone else? 25 <b>A I don't remember anyone else sitting near</b></p>	<p style="text-align: right;">24</p> <p>1 <b>me at that point in time, no.</b> 2 Q How about Scott Ellington? 3 <b>A He did not sit near me.</b> 4 Q Where did he sit? 5 <b>A He had an office.</b> 6 Q How often did you speak with Scott 7 Ellington on average during that time period? 8 <b>A 2017 to '19? I don't think I can give a 9 fair average estimate. It really would depend on 10 the ebb and flow of work.</b> 11 Q Well, would it be on a -- can you say 12 whether it would be roughly on a daily, weekly, 13 monthly basis? 14 <b>A There were times when we'd speak multiple 15 times a day and there were times when I wouldn't 16 talk to him for two or three weeks.</b> 17 Q Who did Scott Ellington report to during 18 the time period you worked -- were -- strike that. 19 After Scott Ellington became general 20 counsel, who did he report to? 21 <b>A Mr. Dondero.</b> 22 Q Did you supervise anyone in the legal 23 department after you got your promotion to 24 assistant general counsel? 25 <b>A I had younger associate attorneys that</b></p>



25	<p><b>1 could be staffed on to matters of mine, but they</b>  <b>2 did not technically report to me.</b>  3 Q Okay. But you would direct their work in  4 some -- depending on the needs?  <b>5 A Depending on the tasks, yes.</b>  6 Q Who were they?  <b>7 A Stephanie Vitiello.</b>  8 Q Anyone else?  <b>9 A Lauren Thedford.</b>  10 Q Anybody else?  <b>11 A No.</b>  12 Q So Stephanie -- how did you pronounce --  13 how do you spell that last name?  <b>14 A V-i-t-i-e-l-l-o.</b>  15 Q She was an attorney there?  <b>16 A Yes.</b>  17 Q Does she still work at HCM?  <b>18 A No.</b>  19 Q When did she leave HCM?  <b>20 A I don't know exactly.</b>  21 Q Was she there until you left?  <b>22 A Yes.</b>  23 Q So she was still there until this year,  24 2021?  <b>25 A Yes.</b></p>	27	<p><b>1 amount of deferred compensation.</b>  2 Q And then did your compensation change  3 after the bankruptcy?  <b>4 A No. Well, depends on your interpretation</b>  <b>5 of whether it changed or not.</b>  6 Q Okay. In terms of dollar amounts, did  7 it --  <b>8 A In terms of the dollar amounts I actually</b>  <b>9 received, yes, it changed.</b>  10 Q In what -- roughly the magnitude, did you  11 get half as much, two-thirds as much, twice as  12 much?  <b>13 A The UCC objected to the payment of my</b>  <b>14 bonuses. So in the amounts that the UCC objected.</b>  15 Q I see. And so what was your comp last  16 year? I guess 2020 would have been the full year  17 that you were under the bankruptcy rules. What  18 was your rough total comp?  <b>19 A I'm not exactly sure. It would have been</b>  <b>20 my salary, plus not receiving the bonuses.</b>  21 Q And what is your compensation at your new  22 job?  <b>23 A Roughly flat, as compared to what I had</b>  <b>24 been promised at Highland.</b>  25 Q Meaning what? Roughly 400,000 is what you</p>
26	<p>1 Q Where is she now in terms of employment?  <b>2 A She works at Skyview.</b>  3 Q How about Lauren? Does she work at  4 Skyview as well?  <b>5 A No.</b>  6 Q Where is she now in terms of employment,  7 if you know?  <b>8 A I don't.</b>  9 Q Did you -- during the time you were at  10 Highland, who paid your salary?  <b>11 A Highland Capital Management, LP.</b>  12 Q In the last year before the bankruptcy,  13 what was your total comp, roughly, from HCM?  <b>14 A I would have to go back and look. It was</b>  <b>15 maybe 3- or \$400,000.</b>  16 Q And was that partially salary and  17 partially bonus?  <b>18 A Yes.</b>  19 Q What was the rough split there?  <b>20 A Maybe 50/50.</b>  21 Q And did you have any other comp, in terms  22 of equity or deferred compensation or anything  23 else like that, in the final year that you worked  24 at Highland before the bankruptcy?  <b>25 A I think I might have had a very small</b></p>	28	<p>1 expect to make this year?  <b>2 A I don't know the exact number, but it's</b>  <b>3 roughly flat, so it's whatever is reflected in the</b>  <b>4 accounting records.</b>  5 Q What accounting records?  <b>6 A The ones at Highland.</b>  7 Q So whatever is reflected in terms of what  8 you were slated to receive prebankruptcy is the  9 amount -- is the amount you're expecting to get  10 paid at your new job?  <b>11 A Correct.</b>  12 Q Did you have any other sources of income  13 other than HCM during your time there?  <b>14 A Yes.</b>  15 Q What was that?  <b>16 A I received a payment from NexPoint.</b>  17 Q Okay. What's NexPoint?  <b>18 A NexPoint Advisors, LP.</b>  19 Q And when did you receive a payment from  20 NexPoint?  <b>21 A May of 2020.</b>  22 Q For -- what was the amount of that?  <b>23 A It was approximately 300,000 something.</b>  24 Q And what was that for?  <b>25 A It was the deferred compensation that I</b></p>

<p style="text-align: right;">29</p> <p><b>1 had been waiting for for three years, that the UCC</b></p> <p><b>2 chose not to pay me that had vested and earned.</b></p> <p>3 Q I see. So NexPoint paid deferred</p> <p>4 compensation that you had been expecting to get</p> <p>5 paid from HCM prior to the bankruptcy?</p> <p><b>6 A Correct.</b></p> <p>7 Q And did -- is that 300,000, did that</p> <p>8 account for the total of deferred comp that you</p> <p>9 believed you were due at that time?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 MR. CLUBOK: Sorry, what's the form</p> <p>12 objection?</p> <p>13 MS. SMITH: I think that's vague. He was</p> <p>14 supposed to get deferred comp over multiple years.</p> <p>15 MR. CLUBOK: Fair enough. Let me try --</p> <p>16 thanks. Let me try to make it clearer.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q When you got that -- it was a lump-sum</p> <p>19 payment that you got in May of 2020?</p> <p><b>20 A Yes.</b></p> <p>21 Q Was that amount supposed to be a total of</p> <p>22 all of the deferred comp that you believed you</p> <p>23 were owed at that point?</p> <p><b>24 A I'm struggling with your question. It was</b></p> <p><b>25 the amount of the deferred compensation that</b></p>	<p style="text-align: right;">31</p> <p>1 Q But not from the debtor, instead from</p> <p>2 NexPoint?</p> <p><b>3 A I don't believe we discussed where it was</b></p> <p><b>4 going to come from.</b></p> <p>5 Q So Mr. Collins just came to you one day</p> <p>6 and said you're going to be getting this money?</p> <p><b>7 A Yes.</b></p> <p>8 Q And then it showed up and it was from</p> <p>9 NexPoint?</p> <p><b>10 A It showed up and honestly I didn't even</b></p> <p><b>11 check where it came from until much later.</b></p> <p>12 Q When did you check?</p> <p><b>13 A There was a deposition earlier and -- I</b></p> <p><b>14 apologize. I'm trying to remember. It had -- I</b></p> <p><b>15 had something -- no, there was a deposition</b></p> <p><b>16 earlier I think this year and I wasn't -- I didn't</b></p> <p><b>17 know the answer and so I went back and looked.</b></p> <p>18 Q I see. Did you look before the deposition</p> <p>19 or after?</p> <p><b>20 A After.</b></p> <p>21 Q Did you -- did you ever discuss receiving</p> <p>22 that comp with anyone other than Mr. Collins?</p> <p><b>23 A I don't believe so, no.</b></p> <p>24 Q I'm setting aside your spouse if you have</p> <p>25 one or significant other if you have one. But</p>
<p style="text-align: right;">30</p> <p><b>1 was -- that I had earned and was due and payable</b></p> <p><b>2 to me in May of 2020.</b></p> <p>3 Q Right. And without getting to whether</p> <p>4 that's accurate, you believed that there was a</p> <p>5 total amount of deferred comp that was due to you</p> <p>6 from Highland Capital Management as of May 2020,</p> <p>7 correct?</p> <p><b>8 A Yes.</b></p> <p>9 Q And the amount that NexPoint paid you</p> <p>10 equalled the amount that you believed was due to</p> <p>11 you from Highland Capital Management through that</p> <p>12 point?</p> <p><b>13 A Yes.</b></p> <p>14 Q Okay. And did you disclose that</p> <p>15 compensation to the debtor?</p> <p><b>16 A To the company generally? I mean, it came</b></p> <p><b>17 from the HR department of the debtor. So the</b></p> <p><b>18 debtor was aware of it.</b></p> <p>19 Q Sorry. It came from the HR department of</p> <p>20 the debtor?</p> <p><b>21 A Yes.</b></p> <p>22 Q What do you mean?</p> <p><b>23 A Mr. Brian Collins, who was a debtor</b></p> <p><b>24 employee, told me to -- that I would be receiving</b></p> <p><b>25 the payment.</b></p>	<p style="text-align: right;">32</p> <p>1 other than that, or your lawyers?</p> <p><b>2 A Actually, I was about to say. The answer</b></p> <p><b>3 is, yes, I did discuss it with other people and</b></p> <p><b>4 that would be the attorneys sitting to the right</b></p> <p><b>5 of me.</b></p> <p>6 Q Right. So I'm going to exclude the</p> <p>7 attorneys representing you from this question or</p> <p>8 if you have a spouse or even a significant other.</p> <p><b>9 A I have a spouse.</b></p> <p>10 Q That's fine. So exclude that person.</p> <p>11 Other than those people, did you ever discuss</p> <p>12 receiving that comp with anyone until the</p> <p>13 deposition?</p> <p><b>14 A No.</b></p> <p>15 Q Not Mr. Ellington?</p> <p><b>16 A No.</b></p> <p>17 Q Not anybody else at the debtor other than</p> <p>18 Mr. Collins?</p> <p><b>19 A No.</b></p> <p>20 Q Where are you currently employed?</p> <p><b>21 A I'm currently employed by Skyview Group.</b></p> <p>22 Q When did you leave HCM?</p> <p><b>23 A On or about January 5th, 2021.</b></p> <p>24 Q Why did you leave HCM?</p> <p><b>25 A My employment was terminated.</b></p>

<p style="text-align: right;">33</p> <p>1 Q By whom?</p> <p>2 <b>A Mr. Seery.</b></p> <p>3 Q Did he or anybody tell you why?</p> <p>4 <b>A Yes.</b></p> <p>5 Q What did they tell you? Well, first of</p> <p>6 all, who told you?</p> <p>7 <b>A Mr. Seery.</b></p> <p>8 Q Okay. What did he say?</p> <p>9 <b>A He said I was being terminated for breach</b></p> <p>10 <b>of fiduciary duty, for disclosing confidential</b></p> <p>11 <b>information and for working against the best</b></p> <p>12 <b>interest of the debtor.</b></p> <p>13 Q Did he give you any more details?</p> <p>14 <b>A I asked him for details and he refused to</b></p> <p>15 <b>provide them.</b></p> <p>16 Q When you were at Highland Capital</p> <p>17 Management, you had an e-mail that used the</p> <p>18 hcmlp.com and HighlandCapital.com domains at</p> <p>19 various points during your tenure there?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Did you have any other e-mails that you</p> <p>22 used to conduct any business related to Highland</p> <p>23 prior to being terminated?</p> <p>24 <b>A No.</b></p> <p>25 Q You never got e-mail at any other address</p>	<p style="text-align: right;">35</p> <p>1 general counsel at HCM?</p> <p>2 <b>A I did due diligence and evaluated</b></p> <p>3 <b>litigation that SAS was considering investing in</b></p> <p>4 <b>as a litigation funder.</b></p> <p>5 Q Anything else for SAS Management?</p> <p>6 <b>A That was really it.</b></p> <p>7 Q And so did you understand that work for</p> <p>8 SAS Management to be part of your job duties?</p> <p>9 <b>A It was something I was instructed to do</b></p> <p>10 <b>from my seat at Highland. It was a service I was</b></p> <p>11 <b>instructed to provide from my seat at Highland.</b></p> <p>12 Q And you had absolutely no idea what, if</p> <p>13 any, connection SAS Management had to Highland</p> <p>14 when you were given these instructions?</p> <p>15 <b>A That's not my testimony.</b></p> <p>16 Q Did you have any idea -- strike that.</p> <p>17 Did you have any idea about what, if any,</p> <p>18 connection SAS Management had to Highland when you</p> <p>19 were given the instructions to provide services</p> <p>20 for it?</p> <p>21 <b>A I knew it had some connection to</b></p> <p>22 <b>Mr. Ellington, but other than that, I really</b></p> <p>23 <b>didn't know.</b></p> <p>24 Q What do you mean some connection to</p> <p>25 Mr. Ellington?</p>
<p style="text-align: right;">34</p> <p>1 other than ones that were hcmlp.com or</p> <p>2 HighlandCapital.com that related in any way to the</p> <p>3 work you did for Highland?</p> <p>4 <b>A I don't want to say it related to the work</b></p> <p>5 <b>I did at Highland, but I had another e-mail</b></p> <p>6 <b>address.</b></p> <p>7 Q What was that?</p> <p>8 <b>A I had an e-mail address at sasgmt.com.</b></p> <p>9 Q What's SAS MGT?</p> <p>10 <b>A SAS Management.</b></p> <p>11 Q What is that?</p> <p>12 <b>A It was a litigation funding company.</b></p> <p>13 Q Why did you have an e-mail address with</p> <p>14 the litigation funding company called SAS?</p> <p>15 <b>A From my role at Highland, I was instructed</b></p> <p>16 <b>to provide services to SAS Management and I did</b></p> <p>17 <b>so.</b></p> <p>18 Q Who instructed you to do that?</p> <p>19 <b>A Mr. Ellington.</b></p> <p>20 Q And was SAS owned by Highland?</p> <p>21 <b>A Actually, I don't know who owns SAS.</b></p> <p>22 Q Is SAS affiliated with Highland?</p> <p>23 <b>A I don't know the answer to that question.</b></p> <p>24 Q And what services were you instructed to</p> <p>25 provide to SAS Management while you were assistant</p>	<p style="text-align: right;">36</p> <p>1 <b>A He had some level of authority with the</b></p> <p>2 <b>organization.</b></p> <p>3 Q And you knew nothing more specific than</p> <p>4 that?</p> <p>5 <b>A Not really, no.</b></p> <p>6 Q Well, when you say not really, do you mean</p> <p>7 literally you knew nothing else when you were</p> <p>8 instructed to do work for SAS other than</p> <p>9 Mr. Ellington had some connection to SAS and that</p> <p>10 was all you knew about SAS?</p> <p>11 <b>A I mean, sitting here today, I really don't</b></p> <p>12 <b>recall anything else.</b></p> <p>13 Q Do you today know anything more about</p> <p>14 SAS's connection, if any, to Highland?</p> <p>15 <b>A No, I don't.</b></p> <p>16 Q As a lawyer working for Highland, were you</p> <p>17 ever asked to consider whether or not entities</p> <p>18 were affiliated entities during the course of your</p> <p>19 work?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 <b>A That was outside of the scope of my job</b></p> <p>22 <b>duties. That was solely the purview of</b></p> <p>23 <b>Mr. Sargent in the compliance department.</b></p> <p>24 <b>BY MR. CLUBOK:</b></p> <p>25 Q You said earlier that part of the work you</p>

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<p style="text-align: right;">37</p> <p>1 had to do at Highland was to do work both for                  2 Highland and for Highland affiliates, right?                  3 <b>A Correct.</b>                  4 Q Did you understand SAS to be a Highland                  5 affiliate when you were asked to do work for it?                  6 <b>A I don't remember how the compliance</b>                  7 <b>department classified SAS. I believe they</b>                  8 <b>classified them as not an affiliate.</b>                  9 Q But my question is did you understand                  10 Highland to be an affiliate when you were asked to                  11 do work for SAS?                  12 <b>A I understood that whatever the compliance</b>                  13 <b>department and Mr. Surgent's determination of what</b>                  14 <b>was or wasn't an affiliate was the final</b>                  15 <b>determination, and his determination, I believe,</b>                  16 <b>is that it wasn't.</b>                  17 Q Why do you believe that?                  18 <b>A Because that's my recollection is that was</b>                  19 <b>his determination.</b>                  20 Q Did he tell you that?                  21 <b>A I'm trying to remember if he told me that</b>                  22 <b>or if his determination was told to me by somebody</b>                  23 <b>else.</b>                  24 Q Did you specifically seek out that                  25 information as to whether SAS was an affiliate of</p>	<p style="text-align: right;">38</p> <p>1 Highland?                  2 <b>A I don't believe I did, no.</b>                  3 Q Do you have any idea, as you sit here                  4 today, who owns SAS?                  5 <b>A I don't.</b>                  6 Q Do you have any idea, as you sit here                  7 today, whether or not Mr. Ellington has any                  8 ownership interest in SAS?                  9 <b>A I actually don't know.</b>                  10 Q Did you talk to anybody else about work                  11 you were doing for SAS other than Mr. Ellington?                  12 <b>A Yes.</b>                  13 Q Who?                  14 <b>A Other individuals. I guess Mr. Sevilla.</b>                  15 Q Who else?                  16 <b>A Ms. Thedford.</b>                  17 Q Who?                  18 <b>A Thedford.</b>                  19 Q Is that Lauren?                  20 <b>A Yes.</b>                  21 Q Okay. Who else?                  22 <b>A Ms. Katie Irving.</b>                  23 Q Who else?                  24 <b>A That's who I can think of sitting here</b>                  25 <b>today.</b></p>
<p style="text-align: right;">39</p> <p>1 Q And they all assisted you in due diligence                  2 work done on behalf of SAS while you were all                  3 employed at Highland?                  4 <b>A Not necessarily, no.</b>                  5 Q Well, Katie Irving did, correct?                  6 <b>A Assisted me? No.</b>                  7 Q Did Katie Irving perform work for SAS                  8 while she was employed at HCM, as far as you know?                  9 <b>A I have a general understanding that she</b>                  10 <b>did, but I don't really know what she did for that</b>                  11 <b>entity or those entities.</b>                  12 Q Did you ever -- when was the last time you                  13 performed work for SAS?                  14 <b>A It's been a long time. Probably prior to</b>                  15 <b>the bankruptcy sometime.</b>                  16 Q Did you ever disclose the existence of SAS                  17 to the independent directors?                  18 MR. FEINSTEIN: Excuse me. Andy, if I                  19 could interrupt at this point. For the record,                  20 Rob Feinstein of Pachulski representing Highland                  21 Capital Management. So this seem like as good a                  22 time as any to put two statements on the record on                  23 behalf of the debtor that I think will help make                  24 the deposition go more smoothly.                  25 First, obviously, Mr. Leventon was an</p>	<p style="text-align: right;">40</p> <p>1 in-house counsel at our client until he was                  2 terminated earlier this year and that raises the                  3 question which has been the subject of some                  4 colloquy in prior depositions, about whether the                  5 extent to which the debtor is going to invoke the                  6 attorney-client privilege.                  7 As we advised counsel to the witness and                  8 UBS beforehand, I'll just restate on the record,                  9 if we have a problem with a question, if we think                  10 that we want to invoke the privilege, you'll hear                  11 from us. Otherwise, it's not our intention to                  12 answer questions, as we were asked yesterday about                  13 whether we're waiving the privilege or not,                  14 invoking the privilege. As I indicated yesterday,                  15 there are a number of bases under which the                  16 privilege may not apply to certain discussions                  17 between in-house counsel and others at the                  18 company. But again, if you hear from us, you'll                  19 know that we object; if you don't hear from us,                  20 then you should assume that we're not objecting.                  21 The other thing I'd like to address is                  22 because of Mr. Leventon's role as in-house                  23 counsel, the debtor as defendant in the action                  24 does have quite a number of questions it would                  25 like to ask, but just take -- going back to our</p>

<p style="text-align: right;">41</p> <p>1 colloquy yesterday with Frances, as she noted,                  2 this is a court-ordered deposition that was                  3 noticed by UBS. So our intention today is not to                  4 question the witness, to fully reserve our right                  5 to seek his deposition at a later date in this                  6 action, which we may or may not do, depending upon                  7 the testimony that he gives today. But we do want                  8 to give UBS their full day of deposition as the                  9 Court ordered.                  10 MR. CLUBOK: Okay.                  11 MR. FEINSTEIN: Thank you.                  12 MR. CLUBOK: Thank you.                  13 BY MR. CLUBOK:                  14 Q Mr. Leventon, do you need me to repeat the                  15 question?                  16 <b>A I actually don't remember what the</b>                  17 <b>question was at this point.</b>                  18 Q I kind of don't either, so give me one                  19 second here. Let's see if I can find it. Okay.                  20 Ready to go.                  21 Sir, did you ever disclose the existence                  22 of SAS to the independent directors?                  23 <b>A I don't ever remember discussing that</b>                  24 <b>entity with them one way or another.</b>                  25 Q Did you disclose the existence of SAS to</p>	<p style="text-align: right;">42</p> <p>1 counsel for the independent directors?                  2 <b>A I don't recall discussing that entity with</b>                  3 <b>them at any point in time, no.</b>                  4 Q Let's go back to your current employment.                  5 You said you work for the Skyview Group?                  6 <b>A Yes.</b>                  7 Q Is that the only entity you work for                  8 currently?                  9 <b>A No.</b>                  10 Q Okay. Who else do you work for besides                  11 the Skyview Group?                  12 <b>A Skyview Legal PC.</b>                  13 Q What's that?                  14 <b>A It is a dedicated law firm that provides</b>                  15 <b>services -- legal services to Skyview Group's</b>                  16 <b>clients.</b>                  17 Q Do you work for any other entities?                  18 <b>A No.</b>                  19 Q Who pays your compensation?                  20 <b>A Today it's Skyview Group, but I think it's</b>                  21 <b>switching over to Skyview Legal PC.</b>                  22 Q And do you expect that to affect your                  23 total compensation?                  24 <b>A No.</b>                  25 Q Who owns Skyview Group?</p>
<p style="text-align: right;">43</p> <p>1 <b>A Mr. Ellington.</b>                  2 Q The sole owner?                  3 <b>A I don't know actually. I know he's one of</b>                  4 <b>the owners.</b>                  5 Q Do you know any other owners of Skyview?                  6 <b>A Sitting here today, I do not.</b>                  7 Q I take it you have no equity in Skyview                  8 Group?                  9 <b>A No.</b>                  10 Q Do you expect to get any equity?                  11 <b>A I don't know if I will or not.</b>                  12 Q Has that been discussed at all?                  13 <b>A There have been discussions but nothing</b>                  14 <b>really determinative.</b>                  15 Q Okay. So there's been discussions where                  16 it's been held out to you that it's a possibility                  17 that you may one day get equity in Skyview Group,                  18 correct?                  19 <b>A Correct.</b>                  20 Q And those discussions were with                  21 Mr. Ellington, right?                  22 <b>A I don't believe they were, actually.</b>                  23 Q Who were they with?                  24 <b>A Mr. Collins.</b>                  25 Q And you understood Mr. Collins to be</p>	<p style="text-align: right;">44</p> <p>1 speaking on behalf of Mr. Ellington when he had                  2 these discussions, or with his authority?                  3 <b>A I understood him to be speaking on behalf</b>                  4 <b>of the company.</b>                  5 Q Okay. On behalf of Skyview Group?                  6 <b>A Correct.</b>                  7 Q That's the same Mr. Collins that you said                  8 is the only person you ever spoke to about getting                  9 the roughly \$300,000 in May of 2020 from NexPoint,                  10 correct?                  11 <b>A Correct.</b>                  12 Q Was Mr. Collins working for NexPoint at                  13 the time?                  14 MS. SMITH: Objection, form.                  15 <b>A Could you clarify your question, please?</b>                  16 <b>BY MR. CLUBOK:</b>                  17 Q Was Mr. Collins working for NexPoint in                  18 May of 2020 when you had this discussion with him?                  19 MS. SMITH: Objection, form.                  20 <b>A I don't know that I can answer the</b>                  21 <b>question as asked. Could you rephrase it, please?</b>                  22 <b>BY MR. CLUBOK:</b>                  23 Q Did you know -- well, was Mr. Collins                  24 working for HCM in May of 2020, as far as you                  25 know?</p>

<p style="text-align: right;">45</p> <p>1 <b>A Yes.</b></p> <p>2 Q Was Mr. Collins working for NexPoint in</p> <p>3 May of 2020, as far as you know?</p> <p>4 <b>A Can you define working? Because given the</b></p> <p>5 <b>situation, it has some complexities to it. Are</b></p> <p>6 <b>you asking if he was employed by NexPoint?</b></p> <p>7 Q Yes, was he employed by NexPoint?</p> <p>8 <b>A Not that I'm aware of.</b></p> <p>9 Q But he was acting on NexPoint's behalf, as</p> <p>10 far as you know, in May of 2020?</p> <p>11 <b>A Under shared services agreements, yes.</b></p> <p>12 Q So when he arranged for you to get paid</p> <p>13 \$300,000 in May of 2020, you understood him to be</p> <p>14 doing that on behalf of NexPoint pursuant to the</p> <p>15 shared services agreement NexPoint had with HCM at</p> <p>16 the time, correct?</p> <p>17 <b>A No.</b></p> <p>18 Q Okay. But shared services agreement at</p> <p>19 the time authorized Mr. Collins to act on behalf</p> <p>20 of NexPoint, as far as you know?</p> <p>21 <b>A Sorry, let me rephrase. I disagree with</b></p> <p>22 <b>the premise of your prior question. I shouldn't</b></p> <p>23 <b>have answered no. I simply disagree with the</b></p> <p>24 <b>underlying premise.</b></p> <p>25 Q In what way?</p>	<p style="text-align: right;">47</p> <p>1 <b>statement detail.</b></p> <p>2 Q Did you believe it was coming from HCM at</p> <p>3 that time?</p> <p>4 <b>A No.</b></p> <p>5 Q And so you knew it -- you didn't think it</p> <p>6 was coming from HCM and you had no idea where it</p> <p>7 was coming from until you checked after the</p> <p>8 deposition you had earlier this year, correct?</p> <p>9 <b>A I'm not saying I had no idea. I'm saying</b></p> <p>10 <b>I simply didn't check or look into it at all.</b></p> <p>11 Q What was the idea you had about the source</p> <p>12 of the funds?</p> <p>13 <b>A I didn't have an idea. I didn't check or</b></p> <p>14 <b>look, Mr. Clubok.</b></p> <p>15 Q Okay. So you had no idea about the source</p> <p>16 of the funds other than it was not coming from</p> <p>17 HCM, when you were told you were going to get</p> <p>18 roughly 300,000 in May of 2020 by Mr. Collins,</p> <p>19 correct?</p> <p>20 <b>A I didn't look one way or another.</b></p> <p>21 Q I didn't ask you that. I said you had no</p> <p>22 idea -- your testimony here today is you had no</p> <p>23 idea about the source of the funds other than you</p> <p>24 knew it was not coming from HCM, when you were</p> <p>25 told you were going to get roughly \$300,000 in May</p>
<p style="text-align: right;">46</p> <p>1 <b>A At the time I received that payment, I</b></p> <p>2 <b>didn't know that it had come from NexPoint.</b></p> <p>3 Q Where did you believe it had come from at</p> <p>4 the time?</p> <p>5 MS. SMITH: Andy, I'm going to object to</p> <p>6 this line of questioning. I refrained to see how</p> <p>7 far you were going, but this is not within the</p> <p>8 scope of the deposition. This is supposed to be</p> <p>9 about the temporary restraining order and the</p> <p>10 preliminary injunction and the relationship to</p> <p>11 Sentinel. And this -- I mean, I allowed several</p> <p>12 minutes of questions on this, but this doesn't</p> <p>13 seem at all related and now it's also repetitive.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q In May of 2020, where did you believe the</p> <p>16 \$300,000 was coming from?</p> <p>17 <b>A I didn't have a belief one way or another.</b></p> <p>18 Q Mr. Collins just said you were going to</p> <p>19 get 300,000 and you had no belief at all the</p> <p>20 source of those funds?</p> <p>21 <b>A He said you're going to get the deferred</b></p> <p>22 <b>compensation that your -- that you earned and that</b></p> <p>23 <b>you're owed and that you've been waiting for for</b></p> <p>24 <b>three years, but he didn't mention where it was</b></p> <p>25 <b>coming from and I didn't check the bank account</b></p>	<p style="text-align: right;">48</p> <p>1 of 2020 by Mr. Collins, correct?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 <b>A I didn't look one way or another.</b></p> <p>4 <b>BY MR. CLUBOK:</b></p> <p>5 Q I'm not asking whether you looked. My</p> <p>6 question is -- and I'll ask it one more time.</p> <p>7 When you received -- is it true -- strike that.</p> <p>8 Is it true that you had no idea about the</p> <p>9 source of the funds other than you knew it was not</p> <p>10 coming from Highland Capital Management, when you</p> <p>11 were told you were going to get roughly \$300,000</p> <p>12 in May of 2020 by Mr. Collins?</p> <p>13 <b>A I didn't look one way or another.</b></p> <p>14 Q I'm not asking you whether you looked.</p> <p>15 I'm asking you whether you had an idea. You've</p> <p>16 worked at Highland for a long time, you have</p> <p>17 beliefs and ideas about how things operate. My</p> <p>18 question is, did you have an idea in your head, a</p> <p>19 belief or an idea or a thought about the source of</p> <p>20 the funds other than knowing they did not come</p> <p>21 directly from HCM?</p> <p>22 <b>A I don't recall having any -- having any</b></p> <p>23 <b>thought process at the time because I simply</b></p> <p>24 <b>didn't look into it.</b></p> <p>25 Q What are your job -- what's your job title</p>

<p style="text-align: right;">49</p> <p>1 at Skyview?</p> <p>2 <b>A I think it's counsel.</b></p> <p>3 Q Who do you report to at Skyview Group?</p> <p>4 <b>A It's not really clear, actually. We're</b></p> <p>5 <b>still kind of figuring things out.</b></p> <p>6 Q Who gives you directions on what to do?</p> <p>7 <b>A Really nobody.</b></p> <p>8 Q You just have a sense of what to do</p> <p>9 without anyone telling you?</p> <p>10 <b>A I mean, we talk internally about tasks and</b></p> <p>11 <b>we divide them up and I take the ones that I need</b></p> <p>12 <b>to do and take care of and I take care of them.</b></p> <p>13 Q Is there anyone you consider to be in any</p> <p>14 sort of management position above you other than</p> <p>15 Mr. Ellington?</p> <p>16 <b>A Maybe Mr. Sevilla, but that's not really</b></p> <p>17 <b>clear.</b></p> <p>18 Q What about Skyview Legal PC? Do you have</p> <p>19 a job title there?</p> <p>20 <b>A Yes.</b></p> <p>21 Q What's that?</p> <p>22 <b>A Shareholder.</b></p> <p>23 Q How many shareholders are there at Skyview</p> <p>24 Legal PC?</p> <p>25 <b>A We're just forming the entity, so we</b></p>	<p style="text-align: right;">50</p> <p>1 <b>actually haven't determined that yet.</b></p> <p>2 Q Has it been established already?</p> <p>3 <b>A It's been formed, but we haven't executed</b></p> <p>4 <b>the bylaws yet.</b></p> <p>5 Q Who are the shareholders that you</p> <p>6 anticipate?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 <b>A We really haven't figured that out yet.</b></p> <p>9 <b>BY MR. CLUBOK:</b></p> <p>10 Q Well, you said that you anticipate being a</p> <p>11 shareholder, right?</p> <p>12 <b>A Yes.</b></p> <p>13 Q Has there already been anything signed to</p> <p>14 make that happen or is that just something you</p> <p>15 believe will happen?</p> <p>16 <b>A The latter. I don't think we have</b></p> <p>17 <b>anything executed yet.</b></p> <p>18 Q Other than yourself, who else do you</p> <p>19 anticipate being a shareholder of Skyview</p> <p>20 Legal PC, as you sit here today?</p> <p>21 <b>A Mr. Sevilla.</b></p> <p>22 Q Who else?</p> <p>23 <b>A I don't know.</b></p> <p>24 Q Just you and Sevilla and no one else, as</p> <p>25 you sit here today?</p>
<p style="text-align: right;">51</p> <p>1 <b>A I'm not really sure.</b></p> <p>2 Q I didn't ask if you were sure. Do you</p> <p>3 anticipate anyone else being a shareholder, as you</p> <p>4 sit here today?</p> <p>5 MS. SMITH: Isaac -- excuse me.</p> <p>6 Mr. Leventon, before you answer, make sure that</p> <p>7 you do not divulge any attorney-client privileged</p> <p>8 information with either Skyview Legal PC or in</p> <p>9 your role as counsel to Skyview Group.</p> <p>10 <b>A There's been no determination. I don't</b></p> <p>11 <b>have an anticipation one way or another.</b></p> <p>12 <b>BY MR. CLUBOK:</b></p> <p>13 Q Do you have an anticipation of what level</p> <p>14 of -- I assume as a shareholder you have some</p> <p>15 equity interest?</p> <p>16 <b>A Correct.</b></p> <p>17 Q Do you have any anticipation of roughly</p> <p>18 what equity interest you will have in Skyview</p> <p>19 Legal PC?</p> <p>20 <b>A No.</b></p> <p>21 Q You don't know if it's 1 percent or</p> <p>22 50 percent?</p> <p>23 <b>A Correct.</b></p> <p>24 Q And has there been any discussion to that</p> <p>25 effect?</p>	<p style="text-align: right;">52</p> <p>1 <b>A No.</b></p> <p>2 Q So the amount of equity ownership in</p> <p>3 Skyview is still to be determined, Skyview</p> <p>4 Legal PC?</p> <p>5 <b>A Correct.</b></p> <p>6 Q And you anticipate the ultimate</p> <p>7 decision-maker for that will be Scott Ellington,</p> <p>8 correct?</p> <p>9 <b>A No.</b></p> <p>10 Q Who will be the ultimate decision-maker</p> <p>11 for that?</p> <p>12 <b>A Collectively, the attorneys that will be</b></p> <p>13 <b>employed by Skyview Legal PC.</b></p> <p>14 Q Whose idea was it to create Skyview</p> <p>15 Legal PC?</p> <p>16 MS. SMITH: I'm going to interrupt and</p> <p>17 again object. I feel like I'm giving you a lot of</p> <p>18 latitude, but this is well beyond the scope of</p> <p>19 what Judge Jernigan ruled would be the scope of</p> <p>20 the deposition and the topics.</p> <p>21 <b>BY MR. CLUBOK:</b></p> <p>22 Q Whose idea was it to create Skyview</p> <p>23 Legal PC?</p> <p>24 <b>A I need to confer with my counsel for a</b></p> <p>25 <b>moment as to attorney-client privilege.</b></p>

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<p style="text-align: right;">53</p> <p>1 Q Okay. We'll come back to that, then.                  2 When did you start working at Skyview                  3 Group?                  4 <b>A March 1st, 2021.</b>                  5 Q Unless I say otherwise, let's assume when                  6 I say Skyview, we're talking about Group, the                  7 entity that already exists, as opposed to the one                  8 you're talking about forming that also has Skyview                  9 in the name; is that okay?                  10 <b>A I disagree with one premise of what you</b>                  11 <b>just stated.</b>                  12 Q What's that?                  13 <b>A Skyview Legal PC is a created and existing</b>                  14 <b>entity.</b>                  15 Q So who are the current shareholders of                  16 Skyview Legal PC?                  17 <b>A We don't have a shareholders agreement</b>                  18 <b>yet. We just have a filing with the State of</b>                  19 <b>Texas that forms the entity.</b>                  20 Q And you didn't have to identify the owners                  21 in that filing?                  22 <b>A I believe I'm the individual who's the</b>                  23 <b>contact person with the State for that entity.</b>                  24 Q Okay. Well, I'll try to say Skyview                  25 Group, then, to the best of my ability.</p>	<p style="text-align: right;">55</p> <p>1 <b>A No. Well, I don't think I did, no.</b>                  2 Q And I apologize if I asked you this, but                  3 do you know who -- sorry. You said Mr. Ellington                  4 is the 100 percent owner of Skyview Group, as far                  5 as you know?                  6 <b>A That was not my testimony.</b>                  7 Q Mr. Ellington is the only owner of Skyview                  8 Group that you're aware of, correct?                  9 <b>A He's the only one I can think of, yes.</b>                  10 <b>He's the only person I can think of, yes.</b>                  11 Q Are you aware of any others?                  12 <b>A No.</b>                  13 MS. SMITH: Objection, form.                  14 BY MR. CLUBOK:                  15 Q Okay. Does that entity go by any other                  16 name?                  17 <b>A It used to be called Highgate.</b>                  18 Q Why the switch? Do you know?                  19 <b>A Marketing or branding decided to change</b>                  20 <b>the name.</b>                  21 Q Okay. Any other names?                  22 <b>A No.</b>                  23 Q The work address you previously provided,                  24 is that the principal place of business for                  25 Skyview Group?</p>
<p style="text-align: right;">54</p> <p>1 What is your -- I take it you don't have                  2 any current job duties with respect to Skyview                  3 Legal PC yet?                  4 <b>A I do.</b>                  5 Q What are they?                  6 <b>A Providing service to -- legal service to</b>                  7 <b>clients.</b>                  8 Q So you've already started doing that?                  9 <b>A Yes.</b>                  10 Q Who are your clients?                  11 <b>A I have a nondisclosure agreement with</b>                  12 <b>clients that are not affiliated with Mr. Dondero</b>                  13 <b>and so I am not at liberty to go into that</b>                  14 <b>information at this time.</b>                  15 Q Okay. Aside from clients who are not                  16 affiliated in any way with Mr. Dondero or                  17 Mr. Ellington, who are your clients?                  18 MS. SMITH: Objection, form.                  19 <b>A I would really have to think about it.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q Can you identify any clients who aren't                  22 affiliated with Mr. Dondero or Mr. Ellington?                  23 <b>A Sitting here today, no.</b>                  24 Q Okay. What -- did you have any role in                  25 the formation of Skyview Group?</p>	<p style="text-align: right;">56</p> <p>1 <b>A Yes.</b>                  2 Q How many employees does it have, roughly?                  3 <b>A Thirty to 40.</b>                  4 Q Are they almost all ex-Highland Capital                  5 Management employees?                  6 <b>A Yes.</b>                  7 Q Are they all ex-HCM employees?                  8 <b>A No.</b>                  9 Q Are there any other entities that operate                  10 from the same address other than Skyview Group and                  11 Skyview Legal PC?                  12 MS. SMITH: Objection, form.                  13 <b>A Yes.</b>                  14 <b>BY MR. CLUBOK:</b>                  15 Q What are they?                  16 <b>A NexBank.</b>                  17 Q Okay. What else?                  18 <b>A NexPoint, I believe.</b>                  19 Q What else?                  20 <b>A I think that's it.</b>                  21 Q And do you current --                  22 <b>A Although there are other tenants in the</b>                  23 <b>building. I just don't know who they are.</b>                  24 Q What about CPCM?                  25 MS. SMITH: Objection, form.</p>



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<p style="text-align: right;">57</p> <p>1 <b>A CPCM is a wholly owned subsidiary of</b>                  2 <b>Skyview Group.</b>                  3 <b>BY MR. CLUBOK:</b>                  4 Q Are there other wholly owned subsidiaries                  5 of Skyview Group?                  6 <b>A I don't know.</b>                  7 Q That's the only one you know of, CPCM?                  8 <b>A Correct.</b>                  9 Q What is CPCM?                  10 <b>A It is a claims holding company.</b>                  11 Q For what kind of claims?                  12 <b>A Claims in the debtor's bankruptcy.</b>                  13 Q For what?                  14 <b>A I believe mostly for employee compensation</b>                  15 <b>that was due and payable but not paid.</b>                  16 Q And that would include your compensation?                  17 <b>A Yes.</b>                  18 Q And that would be the -- roughly the same                  19 amount that you received from NexPoint in May of                  20 2020?                  21 MS. SMITH: Objection, form.                  22 <b>A Not necessarily, no.</b>                  23 <b>BY MR. CLUBOK:</b>                  24 Q Is it?                  25 <b>A No, not necessarily, no.</b></p>	<p style="text-align: right;">59</p> <p>1 <b>pay me my unpaid bonus amounts.</b>                  2 Q Did you still have unpaid bonus amounts?                  3 <b>A Yes.</b>                  4 Q Is that amounts from May 2020 through the                  5 time of your employment, or something else?                  6 <b>A That's one time period, but that's not all</b>                  7 <b>of them.</b>                  8 Q I thought you said before that in May of                  9 2020, you got trued up to the amount that you                  10 believed you were owed at that point?                  11 <b>A No.</b>                  12 Q Roughly how much more did you believe you                  13 were owed in unpaid bonuses beyond what you                  14 received in May 2020 from NexPoint?                  15 MS. SMITH: Objection, form.                  16 <b>A So you're using the wrong nomenclature.</b>                  17 <b>There's bonuses and then there's deferred</b>                  18 <b>compensation.</b>                  19 <b>BY MR. CLUBOK:</b>                  20 Q Okay. Roughly how much in bonuses do                  21 you -- did you believe you were still owed?                  22 <b>A As of what date?</b>                  23 Q As of the date of your termination with                  24 HCM.                  25 <b>A I don't recall the exact number. It would</b></p>
<p style="text-align: right;">58</p> <p>1 Q What's the amount of that claim with                  2 respect to you?                  3 <b>A I'd have to look at the -- I don't recall.</b>                  4 Q Roughly. Is it --                  5 <b>A It's whatever is in the -- I don't recall,</b>                  6 <b>honestly.</b>                  7 Q Did you sell your claim to CPCM?                  8 MS. SMITH: Objection, form.                  9 <b>A I assigned it to CPCM.</b>                  10 <b>BY MR. CLUBOK:</b>                  11 Q For what consideration?                  12 <b>A Employment at Skyview.</b>                  13 Q That was a condition of your employment at                  14 Skyview?                  15 MS. SMITH: Objection, form.                  16 <b>A I believe that's right. I don't recall</b>                  17 <b>exactly, but I think that's right. Maybe. I take</b>                  18 <b>it back actually. I'm going to change my</b>                  19 <b>testimony. I don't remember, honestly. It's</b>                  20 <b>whatever is reflected in the documents.</b>                  21 <b>BY MR. CLUBOK:</b>                  22 Q You don't remember what the consideration                  23 is for assigning your claim in the bankruptcy case                  24 to CPCM?                  25 <b>A I believe Skyview indicated that it would</b></p>	<p style="text-align: right;">60</p> <p>1 <b>have been several hundred thousand dollars.</b>                  2 Q When was the last time you spoke with                  3 Scott Ellington?                  4 MS. SMITH: Objection, form.                  5 <b>A Three weeks ago, maybe a month.</b>                  6 <b>BY MR. CLUBOK:</b>                  7 Q Before he left for his vacation or since                  8 he's left?                  9 <b>A Before.</b>                  10 Q Have you communicated with him in any way                  11 since he started the vacation he's currently on?                  12 <b>A Have I communicated with him in any way?</b>                  13 <b>I've been -- actually, no, I haven't directly</b>                  14 <b>communicated with him at all.</b>                  15 Q What were you thinking about there?                  16 <b>A I received a forward of an e-mail that he</b>                  17 <b>wrote, but that's it.</b>                  18 Q An e-mail to whom?                  19 <b>A Brigid Brewer.</b>                  20 Q And he wrote that while he was on his                  21 trip?                  22 MS. SMITH: Objection.                  23 Make sure that you're not divulging any                  24 privileged information.                  25</p>

Conducted on July 22, 2021

<p style="text-align: right;">61</p> <p>1 BY MR. CLUBOK:                  2 Q I'm not asking for the substance. I'm                  3 asking for the timing of when you received this                  4 e-mail. When -- you received this --                  5 <b>A I didn't receive the e-mail from</b>                  6 <b>Mr. Ellington.</b>                  7 Q You received a forward of it?                  8 <b>A Correct.</b>                  9 Q From Brigid?                  10 <b>A Correct.</b>                  11 Q And that was dated when, roughly?                  12 <b>A I don't remember. Sometime over the last</b>                  13 <b>two weeks.</b>                  14 Q Okay. Other than that, have you in any                  15 way received any communications from Mr. Ellington                  16 since he left for Africa?                  17 <b>A No.</b>                  18 Q Did you ever get text messages from                  19 Mr. Ellington?                  20 <b>A Yes.</b>                  21 Q Do you have -- by the way, did you search                  22 for documents in connection with this adversary                  23 proceeding?                  24 <b>A Yes.</b>                  25 Q Where did you search?</p>	<p style="text-align: right;">62</p> <p>1 <b>A On my phone.</b>                  2 Q Where else?                  3 <b>A On my personal e-mail.</b>                  4 Q What's your personal e-mail address?                  5 &lt;-- HIGHLY CONFIDENTIAL --&gt;                  6 Q Do you have any other personal e-mail                  7 addresses?                  8 <b>A No.</b>                  9 Q Okay. Where else did you search for                  10 documents, if anywhere?                  11 <b>A That's it.</b>                  12 Q Did you take any physical documents at all                  13 from HCM when you left or retain any that you had                  14 when you left?                  15 <b>A Yes.</b>                  16 Q What did you retain?                  17 <b>A My personnel file. So like my pay stubs</b>                  18 <b>and those sorts of documents.</b>                  19 Q Anything else besides your personnel file?                  20 <b>A I'm trying to remember. I think that was</b>                  21 <b>it. I may have picked up like some CLE materials</b>                  22 <b>that I hadn't read yet, but I think that was it.</b>                  23 Q Mr. Ellington, when he -- you would know                  24 the phone number that Mr. Ellington texts you                  25 from, presumably, from your phone, right?</p>
<p style="text-align: right;">63</p> <p>1 <b>A No, actually, I wouldn't. Who knows phone</b>                  2 <b>numbers these days.</b>                  3 Q Well, if you looked at your phone, you                  4 could identify the phone number Mr. Ellington                  5 texted you from?                  6 <b>A Probably, yes.</b>                  7 Q And Mr. Ellington uses different phones,                  8 correct?                  9 MS. SMITH: Objection, form.                  10 <b>A I don't really know what he does.</b>                  11 <b>BY MR. CLUBOK:</b>                  12 Q Well, you've gotten texts from him from                  13 different phone numbers, correct?                  14 <b>A I don't know that that's true actually.</b>                  15 <b>No.</b>                  16 Q Were there any documents that you                  17 identified that were responsive to the request but                  18 that you deemed to be privileged?                  19 MS. SMITH: Objection, form.                  20 <b>A I'm going to defer to my counsel on what</b>                  21 <b>documents we gathered and how we handled them. If</b>                  22 <b>there's a privilege issue, I'm sure they can</b>                  23 <b>address it.</b>                  24 <b>BY MR. CLUBOK:</b>                  25 Q Well, did you -- who made the decision as</p>	<p style="text-align: right;">64</p> <p>1 to whether or not documents that you reviewed were                  2 relevant or not, you or --                  3 <b>A The counsel sitting to my right.</b>                  4 Q Did you identify documents? I mean, did                  5 you turn over your phone and have them search your                  6 phone?                  7 <b>A No.</b>                  8 Q Okay. So who did the search of your                  9 phone?                  10 <b>A I did the search.</b>                  11 Q And so did -- you were responsible for                  12 looking at your phone and seeing if there were                  13 documents responsive to our request, correct?                  14 <b>A I was responsible for locating everything</b>                  15 <b>that could potentially be responsive and turning</b>                  16 <b>it over to counsel.</b>                  17 Q I'm going to specifically ask about the                  18 search of your phone. Did anyone search your                  19 phone for responsive documents other than you?                  20 <b>A No.</b>                  21 Q Okay. So you made the sole decision when                  22 you looked at documents or text messages on your                  23 phone as to whether or not they were responsive or                  24 not?                  25 <b>A No, that is incorrect.</b></p>

<p style="text-align: right;">65</p> <p>1 Q Okay. You made the decision of which 2 documents to share with your attorneys to 3 determine whether or not they were responsive? 4 <b>A I made the decision as to which documents 5 to provide to my attorneys for them to make the 6 determination as to responsiveness and/or 7 privilege.</b> 8 MR. CLUBOK: And I think, for the record, 9 we've received zero documents from Mr. Leventon in 10 production. Correct me if I'm wrong, Ms. Smith, 11 and I don't think we received a privilege log so 12 we're going to want to work on that. 13 MS. SMITH: That's incorrect. I did 14 provide a privilege log. 15 MR. CLUBOK: Okay. I apologize if that's 16 the case. Ms. McLaughlin will know better than I 17 so we'll double-check that at the break. 18 BY MR. CLUBOK: 19 Q When was the last time you spoke with 20 Mr. Sevilla? 21 <b>A Maybe two weeks ago, week and a half.</b> 22 Q When was the last time you spoke with 23 Mr. DiOrio? 24 <b>A Yesterday.</b> 25 Q Did you speak about this matter at all?</p>	<p style="text-align: right;">66</p> <p>1 <b>A Very briefly.</b> 2 Q What did you say? 3 <b>A We just exchanged basically the dates when 4 we were going to be deposed.</b> 5 Q Anything else? 6 <b>A That's pretty much it.</b> 7 Q When was the last time you spoke with 8 Ms. Irving? 9 <b>A It's been months.</b> 10 Q Ms. Irving works at Skyview Group? 11 MS. SMITH: Objection, form. 12 <b>A Yes, but she's on maternity leave.</b> 13 <b>BY MR. CLUBOK:</b> 14 Q When did she start working there? 15 <b>A I don't know.</b> 16 Q Did you hire her? 17 <b>A Did I hire her? No.</b> 18 Q Was she ever there before she went on 19 maternity leave after her employment at HCM? 20 <b>A I don't know.</b> 21 Q Did you ever -- have you talked to her at 22 all since she left HCM? 23 <b>A Yes.</b> 24 Q Okay. And when you spoke with her, was 25 there ever a time when you spoke with her that she</p>
<p style="text-align: right;">67</p> <p>1 was working with Skyview Group but she wasn't yet 2 on maternity leave? 3 MS. SMITH: Objection, form. 4 <b>A I don't believe so.</b> 5 <b>BY MR. CLUBOK:</b> 6 Q Have you spoken to her about any 7 work-related issues since she left HCM? 8 <b>A No. We just talk about her babies.</b> 9 Q Okay. How long is her maternity leave? 10 MS. SMITH: Objection, form. 11 <b>A I don't know, Mr. Clubok.</b> 12 <b>BY MR. CLUBOK:</b> 13 Q Do you have a -- 14 <b>A Her maternity leave is whatever is 15 necessary and appropriate for a woman who's had 16 twins, and that is not a place where a man will 17 venture to render an opinion.</b> 18 Q It depends if they're, I suppose, HR. Is 19 Mr. Collins your HR person? 20 <b>A To be clear, I'm not in HR so I would not 21 venture an opinion as to what is the appropriate 22 length of maternity leave for a woman who's had 23 twins.</b> 24 Q Who decides that at Skyview Group? 25 <b>A I don't know.</b></p>	<p style="text-align: right;">68</p> <p>1 Q Is Mr. Collins in the HR group? 2 <b>A I believe he's the head of HR.</b> 3 MR. CLUBOK: This is probably a good time 4 to take a break if you guys want to take a break. 5 THE WITNESS: We can keep going. 6 BY MR. CLUBOK: 7 Q In that case, then, I'll ask you this? 8 THE WITNESS: They want a break. 9 MS. SMITH: I would like to take a break. 10 BY MR. CLUBOK: 11 Q You know what? I'm going to ask one last 12 thing to just finish this topic up and I think it 13 will then -- to really start -- to prepare for 14 this deposition, did you do anything other than 15 meet with your lawyers? 16 <b>A No.</b> 17 Q Did you review any documents at all in 18 anticipation of this deposition? 19 <b>A No.</b> 20 Q Did you look at any documents this 21 morning? 22 <b>A No.</b> 23 Q And roughly how long did you spend with 24 your attorneys preparing for this deposition, 25 total?</p>

<p>69</p> <p>1 <b>A Maybe five or six hours.</b></p> <p>2 Q When was that?</p> <p>3 <b>A Monday.</b></p> <p>4 Q Okay.</p> <p>5 MR. CLUBOK: That's it. Let's take our</p> <p>6 break.</p> <p>7 THE VIDEOGRAPHER: We are off the record</p> <p>8 at 11:01 a.m.</p> <p>9 (Recess taken from 11:01 a.m. CDT to</p> <p>10 11:19 a.m. CDT)</p> <p>11 THE VIDEOGRAPHER: The time is 11:19 a.m.</p> <p>12 We are back on the record.</p> <p>13 MS. SMITH: Normally the practice on these</p> <p>14 depositions of nonparties is if someone else wants</p> <p>15 to ask questions, then they allocate between</p> <p>16 themselves the time. And so we are presenting</p> <p>17 Mr. Leventon today for his seven hours and today</p> <p>18 is the day. We had a motion to compel and a</p> <p>19 motion to quash and nowhere during that time did</p> <p>20 the debtor raise any indication that they needed</p> <p>21 separate depositions. We're not presenting</p> <p>22 Mr. Leventon for 14 hours. So you might want to</p> <p>23 check on the break or at lunch and see. We -- you</p> <p>24 know, we objected yesterday, but we gave</p> <p>25 Mr. Feinstein his time and allowed him to answer</p>	<p>71</p> <p>1 We're now returned to our regularly scheduled</p> <p>2 program.</p> <p>3 Mr. Leventon, you're still under oath,</p> <p>4 right?</p> <p>5 <b>A Yes, sir.</b></p> <p>6 Q Okay. Sir, you were aware that UBS filed</p> <p>7 litigation in 2009 against Highland's affiliated</p> <p>8 entities, correct?</p> <p>9 <b>A So aware that UBS had filed litigation</b></p> <p>10 <b>against Highland Capital Management and two funds</b></p> <p>11 <b>managed by it.</b></p> <p>12 Q Well, it was Highland Capital Management</p> <p>13 plus CDO Fund and SOHC, as colloquial names for</p> <p>14 those funds, without laying out their whole formal</p> <p>15 names, correct?</p> <p>16 <b>A Those would be the colloquial names I</b></p> <p>17 <b>would use, but if we want to be specific, we</b></p> <p>18 <b>probably should identify the entities.</b></p> <p>19 Q Yeah. And there may have been a number of</p> <p>20 entities and subs, but it certainly included</p> <p>21 Highland CDO Opportunity Master Fund, LP, which we</p> <p>22 shorthanded would refer to as CDO Fund throughout</p> <p>23 the litigation; is that fair?</p> <p>24 <b>A I believe that was the CDO Fund entity</b></p> <p>25 <b>that was the named defendant in that matter, yes.</b></p>
<p>70</p> <p>1 questions and we're willing to do that again</p> <p>2 today.</p> <p>3 MR. CLUBOK: Okay. And, you know, it's --</p> <p>4 I don't mind if you-all want to make your record</p> <p>5 to use this time. We won't count this as part of</p> <p>6 the deposition, this dispute.</p> <p>7 MS. SMITH: That's fine.</p> <p>8 MR. CLUBOK: My -- our -- we have no view</p> <p>9 on it yesterday whether, you know, we were</p> <p>10 perfectly fine since we had time left to give that</p> <p>11 time to the debtor. It's between you-all to work</p> <p>12 out whether -- you know, whether and when the</p> <p>13 debtor gets to depose Mr. Leventon. From our</p> <p>14 perspective, but anyway, I don't know if</p> <p>15 Mr. Feinstein wants to make some other comment on</p> <p>16 the record, it's fine.</p> <p>17 MR. FEINSTEIN: Only briefly. It's not</p> <p>18 appropriate to debate this on the record, but I</p> <p>19 would refer counsel to her very fierce statements</p> <p>20 yesterday about -- she's done a 180, but we can</p> <p>21 take this up off line. Thank you. Why don't you</p> <p>22 proceed, Andy.</p> <p>23 MR. CLUBOK: Okay. Thank you.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Sorry for that commercial interruption.</p>	<p>72</p> <p>1 Q And also there was Highland Special</p> <p>2 Opportunities Holding Company, which we routinely</p> <p>3 referred to as SOHC throughout that litigation,</p> <p>4 correct?</p> <p>5 <b>A That's correct.</b></p> <p>6 Q And then there was also as defendant in</p> <p>7 that litigation an entity called Highland</p> <p>8 Financial Partners, which we often called HFP,</p> <p>9 correct?</p> <p>10 <b>A Not in 2009, no.</b></p> <p>11 Q Right. But -- okay. The litigation by --</p> <p>12 certainly by 2012 included as defendants, Highland</p> <p>13 Financial Partners, which we often referred to as</p> <p>14 HFP?</p> <p>15 <b>A Highland Financial Partners, LP, which we</b></p> <p>16 <b>would refer to as HFP, yes, was a defendant.</b></p> <p>17 Q And Strand was also a defendant in the</p> <p>18 litigation ultimately, correct?</p> <p>19 <b>A Strand Advisors, Inc., I believe that's</b></p> <p>20 <b>correct.</b></p> <p>21 Q Which we would shorthand by just referring</p> <p>22 to often as Strand?</p> <p>23 <b>A That may have been your practice.</b></p> <p>24 Q There was also an entity that was called</p> <p>25 Highland Credit Opportunities CDO, LP, that we</p>

<p style="text-align: right;">73</p> <p>1 sometimes referred to as Credit Opportunity or                  2 Credit Opps, correct?                  3 MS. SMITH: Objection, form.                  4 <b>A I believe that's right, but I probably                  5 would need to see the style of the case in order                  6 to identify the exact entity because a lot of them                  7 had very similar names.</b>                  8 <b>BY MR. CLUBOK:</b>                  9 Q And that entity was later changed to a                  10 name that we have shorthanded since as                  11 Multi Strat, correct?                  12 <b>A Again, I would need to look at the style                  13 of the case to match up the exact entities.</b>                  14 Q Okay. But colloquially as, you know, you                  15 were on this litigation for a long time --                  16 <b>A Yes.</b>                  17 Q -- we spoke many times, lots of e-mails                  18 and documents and hallway conversations, including                  19 during court, and fair to say that there was an                  20 entity that we sometimes shorthand as Highland                  21 Credit Opportunities that we've since shorthanded                  22 as Multi Strat?                  23 <b>A That's fair to say, yes.</b>                  24 Q Okay. Thanks. Now, what role did you                  25 play in managing that litigation for HCM and the</p>	<p style="text-align: right;">75</p> <p>1 the person who took responsibility that the                  2 responses to UBS's discovery requests in that                  3 litigation during that time period of roughly 2011                  4 to 2013 were properly answered?                  5 <b>A Kevin Rabinowitz</b>                  6 Q Who was outside counsel at the time?                  7 <b>A Correct.</b>                  8 Q Okay. And who inside was primarily                  9 responsible for managing your outside counsel to                  10 ensure that they did that work properly?                  11 <b>A I was primarily responsible at that point                  12 for managing the litigation from the in-house                  13 side.</b>                  14 Q And did that responsibility for managing                  15 the -- by the way, if I say the UBS litigation in                  16 New York, will you understand that I mean this                  17 case that we referred to where we've identified                  18 the parties?                  19 <b>A Yes, but I think there were also like                  20 three different cause numbers at some point.</b>                  21 Q Right. There was different causes that                  22 were all ultimately consolidated into one matter.                  23 And can I collectively refer to those actions as                  24 the UBS New York litigation against Highland, just                  25 to -- to shorthand it?</p>
<p style="text-align: right;">74</p> <p>1 other affiliates?                  2 <b>A During what time period?</b>                  3 Q From 2009 till you were terminated?                  4 <b>A I didn't have a consistent role during                  5 that entire period of time.</b>                  6 Q Okay. In 2011, when you got your                  7 promotion to assistant general counsel, from that                  8 period for the next two years, you were the                  9 primary person responsible for responding to the                  10 UBS's discovery requests in that litigation,                  11 correct?                  12 <b>A I don't think that's how I would phrase                  13 it, no.</b>                  14 Q Well, who was primarily responsible for                  15 responding to UBS's discovery requests in the UBS                  16 litigation in or about 2011 through 2013?                  17 <b>A I don't know that you can identify a                  18 single person that would have been responsible for                  19 responding to discovery.</b>                  20 Q There was no person at HCM who took                  21 responsibility ultimately for ensuring that                  22 document requests were properly responded to;                  23 that's what you're saying?                  24 <b>A That's not my testimony.</b>                  25 Q Who, to the best of your knowledge, was</p>	<p style="text-align: right;">76</p> <p>1 <b>A You can. Just to be clear, there were --                  2 before you said Highland and you meant just                  3 Highland Capital Management, LP. There were lots                  4 of other entities involved.</b>                  5 Q Right. So if we call it the UBS New York                  6 litigation against Highland and its affiliates,                  7 you'll know what I'm referring to, correct?                  8 <b>A Yes.</b>                  9 Q And you were primarily responsible for                  10 supervising that litigation from 2011 through at                  11 least the bankruptcy?                  12 <b>A That's not correct.</b>                  13 Q Okay. When were you the primary person                  14 responsible for supervising that litigation,                  15 during what time frame?                  16 <b>A I'm trying to remember exactly when I                  17 relinquished day-to-day management, but for a                  18 substantial period of time several years. That                  19 was done by Jason Vancour.</b>                  20 Q And that was during what period of time?                  21 <b>A I'm struggling to remember. It would have                  22 been somewhere in 2012 to '15 or so.</b>                  23 Q And then you resumed day-to-day                  24 supervision after that?                  25 <b>A I don't remember if we handed it off to</b></p>

<p style="text-align: right;">77</p> <p><b>1 one other person or if I took it straight back</b></p> <p><b>2 over.</b></p> <p>3 Q But you came to resume your role as the</p> <p>4 day-to-day supervisor of that litigation prior to</p> <p>5 it going to trial, correct?</p> <p><b>6 A Correct.</b></p> <p>7 Q And you were the day-to-day supervisor of</p> <p>8 that litigation during the trial, correct?</p> <p><b>9 A Yes.</b></p> <p>10 Q And that was a trial that ultimately</p> <p>11 resulted in a roughly \$1 billion judgment against</p> <p>12 two of the defendants in that case, correct?</p> <p><b>13 A Correct.</b></p> <p>14 Q And you, during that trial, came every</p> <p>15 single day to court and actively directed the</p> <p>16 outside counsel who were the courtroom advocates</p> <p>17 for the defendants in that case, correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p><b>19 A I mean, I don't know that I directed them,</b></p> <p><b>20 but we were part of a team together that was</b></p> <p><b>21 working cooperatively for the clients.</b></p> <p><b>22 BY MR. CLUBOK:</b></p> <p>23 Q Well, did they take your direction during</p> <p>24 the trial?</p> <p><b>25 A They took my direction sometimes and I</b></p>	<p style="text-align: right;">79</p> <p>1 Q By whom?</p> <p><b>2 A By Mr. Ellington.</b></p> <p>3 Q Did you ever directly inform Mr. Dondero</p> <p>4 about the trial or the litigation?</p> <p><b>5 A I don't remember if I did or not. I don't</b></p> <p><b>6 recall.</b></p> <p>7 Q How do you know Mr. Ellington did that?</p> <p><b>8 A I only have a very general recollection</b></p> <p><b>9 that he indicated that Mr. Dondero had been kept</b></p> <p><b>10 apprised.</b></p> <p>11 Q He indicated that to you?</p> <p><b>12 A Correct.</b></p> <p>13 Q And after the trial, did you communicate,</p> <p>14 in words or substance, that it was likely that UBS</p> <p>15 would get a significant judgment?</p> <p><b>16 A I don't remember how I communicated --</b></p> <p><b>17 what I communicated at that point.</b></p> <p>18 Q Did you have any recommendation as to</p> <p>19 whether or not UBS would likely obtain a judgment</p> <p>20 after sitting through the trial?</p> <p><b>21 A I don't recall if I did one way or</b></p> <p><b>22 another.</b></p> <p>23 Q Did you have a belief at the time as to</p> <p>24 whether UBS would likely get a judgment based on</p> <p>25 what you saw at the trial?</p>
<p style="text-align: right;">78</p> <p><b>1 took theirs sometimes.</b></p> <p>2 Q Did you report daily during that trial to</p> <p>3 Scott Ellington?</p> <p><b>4 A I don't recall if I did or not.</b></p> <p>5 Q Did you regularly report to Scott</p> <p>6 Ellington throughout the course of that trial?</p> <p><b>7 A I believe that's fair to say, yes.</b></p> <p>8 Q Did you regularly report to anyone else</p> <p>9 other than Scott Ellington about the -- how the</p> <p>10 trial was going?</p> <p><b>11 A I don't believe so, no.</b></p> <p>12 Q And were you also responsible for</p> <p>13 supervising the post-trial proceedings, the</p> <p>14 briefing and other communications with the Court</p> <p>15 in between the end of the trial and prior to the</p> <p>16 decision by the Court?</p> <p><b>17 A I don't remember what the post-trial</b></p> <p><b>18 briefing was or not. I don't remember what the</b></p> <p><b>19 post-trial briefing was.</b></p> <p>20 Q Was there anyone else at Highland who was</p> <p>21 responsible from the in-house perspective of</p> <p>22 dealing with the litigation proceedings in between</p> <p>23 trial and judgment other than yourself?</p> <p><b>24 A Mr. Ellington would have had some role and</b></p> <p><b>25 then Mr. Dondero would have been kept informed.</b></p>	<p style="text-align: right;">80</p> <p><b>1 A I mean, it was -- it was pretty complex,</b></p> <p><b>2 so there were a variety of different possible</b></p> <p><b>3 outcomes that I was considering.</b></p> <p>4 Q Yeah, but you saw it coming, that there</p> <p>5 would likely be a significant judgment given what</p> <p>6 went on at the trial; is that fair?</p> <p>7 MS. SMITH: Objection to form.</p> <p><b>8 A Actually not necessarily, no.</b></p> <p><b>9 BY MR. CLUBOK:</b></p> <p>10 Q It's true that you spoke with</p> <p>11 Mr. Ellington at some point where Mr. Ellington</p> <p>12 acknowledged it was likely to be a significant</p> <p>13 judgment based on what happened at the trial;</p> <p>14 isn't that true?</p> <p>15 MS. SMITH: Objection to form. My</p> <p>16 understanding, there's two parts to the trial. I</p> <p>17 just want to make sure what we're talking about.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Isn't it true that you had discussions</p> <p>20 with Mr. Ellington at some point where, in words</p> <p>21 or substance, you discussed the likelihood that</p> <p>22 the outcome of the first phase of the trial would</p> <p>23 be a significant judgment in UBS's favor?</p> <p><b>24 A So just to be clear, we're talking about</b></p> <p><b>25 the Phase 1 trial that took place against SOHC and</b></p>

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<p style="text-align: right;">81</p> <p>1 <b>CDO Fund, correct?</b>                  2 Q Correct.                  3 <b>A I don't remember if I did tell him that or</b>                  4 <b>not. I mean, we spoke about kind of all of the</b>                  5 <b>legal permutations of how the Court might rule.</b>                  6 Q Right. But in words or substance, during                  7 that discussion, whether you told him or he told                  8 you, you discussed the likelihood that UBS was                  9 going to get a meaningful judgment against                  10 CDO Fund and SOHC as a result of that Phase 1                  11 trial, correct?                  12 <b>A I don't recall. I mean, we certainly</b>                  13 <b>discussed it as a possibility, but in terms of how</b>                  14 <b>we weighed likelihoods, I just don't remember.</b>                  15 Q The trial did not go well for the                  16 defendants, correct?                  17 MS. SMITH: Objection, form.                  18 <b>A The outcome did not go as the defendants</b>                  19 <b>had hoped. I actually thought that our trial</b>                  20 <b>counsel performed fairly well.</b>                  21 <b>BY MR. CLUBOK:</b>                  22 Q Fair enough. I'm not asking you how your                  23 trial counsel performed. But in terms of the                  24 facts that were revealed at trial that led to the                  25 judge's decision, those were facts that were not</p>	<p style="text-align: right;">83</p> <p>1 litigation?                  2 <b>A At various points in time I was asked to</b>                  3 <b>assist in preparation kind of settlement-related</b>                  4 <b>materials, but the actual decision-making was</b>                  5 <b>never mine.</b>                  6 Q Whose was it?                  7 <b>A Ultimately, it would have been</b>                  8 <b>Mr. Dondero's.</b>                  9 Q Did you ever provide any advice regarding                  10 the wisdom of settling the case?                  11 <b>A I don't recall if I did or not.</b>                  12 Q Did you ever provide any advice regarding                  13 the merits of the case?                  14 <b>A I'm certain I did that, yes.</b>                  15 Q Who did you provide that advice to?                  16 <b>A It would really depend on the time period.</b>                  17 Q You said part of the job you always did                  18 at -- strike that.                  19 As part of the job that you did over the                  20 years at Highland was due diligence on litigation,                  21 correct?                  22 <b>A That doesn't accurately reflect my</b>                  23 <b>testimony.</b>                  24 Q Shorthand it, but part of the job you                  25 did, for example, for SAS was due diligence on</p>
<p style="text-align: right;">82</p> <p>1 favorable generally to the positions --                  2 MS. SMITH: Objection to form.                  3 BY MR. CLUBOK:                  4 Q -- that the defendants had been taking,                  5 correct?                  6 <b>A I'll let the court judgment speak for</b>                  7 <b>itself.</b>                  8 Q Did you play any role ever in analyzing                  9 whether or not Highland and its affiliates should                  10 settle with UBS?                  11 MS. SMITH: Objection to form.                  12 <b>A I never -- I never analyzed whether they</b>                  13 <b>should settle, no.</b>                  14 <b>BY MR. CLUBOK:</b>                  15 Q Okay. You never analyzed whether or not                  16 Highland -- if I say the Highland defendants, is                  17 that sufficient acceptable shorthand for all the                  18 defendants in the case?                  19 <b>A Yes.</b>                  20 Q And all the defendants in the case were                  21 either Highland or Highland affiliates, correct?                  22 <b>A That's correct.</b>                  23 Q Okay. So did you ever perform any                  24 analysis as to whether or not the Highland                  25 defendants should settle with UBS in the New York</p>	<p style="text-align: right;">84</p> <p>1 litigation they were considering funding?                  2 <b>A Well, I knew SAS was affiliated with</b>                  3 <b>Mr. Dondero somehow. I didn't -- well, let me</b>                  4 <b>rephrase it. I knew Mr. Dondero was involved in</b>                  5 <b>SAS and had approved its operations in some way.</b>                  6 <b>I didn't know how he was related to it. And so</b>                  7 <b>from my seat at Highland, I analyzed cases that</b>                  8 <b>SAS could potentially provide litigation funding</b>                  9 <b>for.</b>                  10 Q Right. And when you say analyzed, you                  11 would be asked to review the matter and give your                  12 opinion about the relative merits of the case?                  13 <b>A Yes.</b>                  14 Q And did you consider yourself to be good                  15 at that job of analyzing a case and giving an                  16 opinion as to the merits?                  17 <b>A I mean, we all hope we're pretty good at</b>                  18 <b>our jobs, don't we?</b>                  19 Q We all hope. Did you consider yourself to                  20 be good at that job?                  21 <b>A I did it to the best of my ability. I</b>                  22 <b>think I'm pretty good at my job generally.</b>                  23 Q And specifically were you good at                  24 analyzing the merits of litigation -- are you                  25 okay?</p>

<p style="text-align: right;">85</p> <p>1 <b>A Yeah.</b></p> <p>2 Q Do you need a break?</p> <p>3 <b>A No.</b></p> <p>4 Q Are you sure?</p> <p>5 <b>A Yeah.</b></p> <p>6 MR. CLUBOK: Let's go off the record.</p> <p>7 <b>A No, we're not. Let's keep going.</b></p> <p>8 MR. CLUBOK: Let's go off the record.</p> <p>9 THE VIDEOGRAPHER: We are off the record</p> <p>10 at 11:39 a.m.</p> <p>11 (Recess taken from 11:39 a.m. CDT to</p> <p>12 11:47 a.m. CDT)</p> <p>13 THE VIDEOGRAPHER: The time is 11:47 a.m.</p> <p>14 We are back on the record.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Sir, did you believe that you were good at</p> <p>17 analyzing the merits of litigation?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And did you ever -- were you ever asked to</p> <p>20 analyze the merits of the UBS New York litigation</p> <p>21 against the Highland and its affiliates?</p> <p>22 <b>A Yes.</b></p> <p>23 Q And did you ever give a recommendation, in</p> <p>24 words or substance, that UBS was likely to</p> <p>25 prevail, at least in part in that litigation?</p>	<p style="text-align: right;">86</p> <p>1 <b>A I don't recall my exact recommendations,</b></p> <p>2 <b>but I probably did.</b></p> <p>3 Q And --</p> <p>4 <b>A At least on some of the claims, but not on</b></p> <p>5 <b>others.</b></p> <p>6 Q Which claims?</p> <p>7 <b>A I don't recall. There were a lot of them.</b></p> <p>8 Q Do you recall if you gave a recommendation</p> <p>9 that UBS was likely to prevail in Phase 1 against</p> <p>10 SOHC and CDO Fund for the claims that were tried?</p> <p>11 <b>A Well, it's hard to say the answer because</b></p> <p>12 <b>prevailing had a lot of different meanings in that</b></p> <p>13 <b>context.</b></p> <p>14 Q Let's start with liability and then we'll</p> <p>15 talk about damages. Did you ever give a</p> <p>16 recommendation that UBS was likely to win on its</p> <p>17 breach of contract claims against CDO Fund and</p> <p>18 SOHC in Phase 1?</p> <p>19 <b>A Yes, I did.</b></p> <p>20 Q And what was that recommendation?</p> <p>21 <b>A That liability was likely to be found.</b></p> <p>22 Q Who did you make that to?</p> <p>23 <b>A I don't recall. It certainly would have</b></p> <p>24 <b>been -- well, I don't recall who it was.</b></p> <p>25 Q You said it certainly would have been?</p>
<p style="text-align: right;">87</p> <p>1 <b>A No, I believe it probably was</b></p> <p>2 <b>Mr. Ellington and Mr. Dondero.</b></p> <p>3 Q Directly to Mr. Dondero?</p> <p>4 <b>A Probably, but I can't say for certain.</b></p> <p>5 Q Would that have been oral or written?</p> <p>6 <b>A I don't know.</b></p> <p>7 Q When did you first make that</p> <p>8 recommendation?</p> <p>9 <b>A I don't know. It was a very lengthy</b></p> <p>10 <b>litigation.</b></p> <p>11 Q Did you ever make that recommendation</p> <p>12 prior to trial?</p> <p>13 <b>A I don't recall if I did or not.</b></p> <p>14 Q Well, you were going to trial on a billion</p> <p>15 dollar -- yeah, strike that.</p> <p>16 You were going to trial on a roughly</p> <p>17 billion dollar claim including interest. Prior to</p> <p>18 stepping into the courtroom for that Phase 1</p> <p>19 trial, had you made a recommendation that</p> <p>20 liability was likely?</p> <p>21 <b>A Immediately prior to stepping into trial?</b></p> <p>22 Q At any time prior to going to Phase 1</p> <p>23 trial, did you recommend to Mr. Ellington and</p> <p>24 Mr. Dondero that liability was likely to be</p> <p>25 established against SOHC and CDO Fund by UBS?</p>	<p style="text-align: right;">88</p> <p>1 <b>A My testimony was that I believed that I</b></p> <p>2 <b>probably stated to Mr. Ellington and Mr. Dondero</b></p> <p>3 <b>that SOHC and CDO Fund were likely to be found</b></p> <p>4 <b>liable on breach of contract.</b></p> <p>5 Q And that was before the trial?</p> <p>6 <b>A Right. But I don't know when exactly.</b></p> <p>7 Q Okay.</p> <p>8 <b>A Some time period which was -- I mean, that</b></p> <p>9 <b>covers like nine years.</b></p> <p>10 Q Right. But at some point summary judgment</p> <p>11 was decided largely in UBS's favor, correct?</p> <p>12 <b>A With respect to those two funds, the</b></p> <p>13 <b>answer is yes. With respect to the other</b></p> <p>14 <b>entities, not necessarily.</b></p> <p>15 Q Okay. But with respect to those two</p> <p>16 funds, UBS prevailed in the summary judgment</p> <p>17 briefing?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A I know it was prepared to go to trial. It</b></p> <p>20 <b>was -- there were claims going to trial. In terms</b></p> <p>21 <b>of what the orders say, I'll let them speak for</b></p> <p>22 <b>themselves.</b></p> <p>23 BY MR. CLUBOK:</p> <p>24 Q At any time after the summary judgment</p> <p>25 decision but before trial started, did you make a</p>



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<p style="text-align: right;">89</p> <p>1 recommendation to Mr. Ellington and Mr. Dondero                  2 that liability was likely to be established                  3 against SOHC and CDO Fund?                  4 <b>A I really don't recall.</b>                  5 Q As you sit here today, you have no idea if                  6 any time after summary judgment was decided                  7 against SOHC and CDO Fund but before the case for                  8 roughly a billion dollars was to be tried, whether                  9 you made a recommendation as to your view of the                  10 merits of liability?                  11 <b>A I'm not saying that I didn't. I'm just</b>                  12 <b>saying, sitting here today, I don't remember.</b>                  13 Q Did you -- what was the reaction of                  14 Mr. Ellington when you made the recommendation                  15 prior to going to trial, that liability was likely                  16 to be established against SOHC and CDO Fund?                  17 <b>A Well, again, when we're talking about</b>                  18 <b>prior to trial, you're talking about that</b>                  19 <b>nine-year time period from 2009 to 2018?</b>                  20 Q In that question I was.                  21 <b>A Okay. We discussed the UBS case numerous</b>                  22 <b>times.</b>                  23 Q Hold on. There was a whole nine-year                  24 period. From the get-go did you make a                  25 recommendation that liability was likely to be</p>	<p style="text-align: right;">91</p> <p>1 CDO Fund and SOHC for the breach of contract                  2 claims that UBS had in the New York litigation,                  3 correct?                  4 MS. SMITH: Objection to form.                  5 <b>A That's probably fair, yes.</b>                  6 <b>BY MR. CLUBOK:</b>                  7 Q And how long after coming to that belief                  8 did it take for you to make that recommendation                  9 known to Mr. Ellington and Mr. Dondero? Is that                  10 something you kept to yourself for a long time or                  11 did you fairly soon thereafter share that opinion                  12 with Mr. Ellington and Mr. Dondero?                  13 <b>A So it's difficult for me to answer the</b>                  14 <b>question because at the time I was a very junior</b>                  15 <b>attorney. No one was really asking me for my</b>                  16 <b>opinion about anything. I was responsible for</b>                  17 <b>kind of the day-to-day grind of working on the</b>                  18 <b>case.</b>                  19 Q Okay. At what point did people start                  20 asking you about your opinion on the merits of the                  21 case?                  22 <b>A I can't pinpoint exactly, but it would</b>                  23 <b>have been probably after I had been at Highland</b>                  24 <b>three or four years.</b>                  25 Q So sometime in the 2011 or 2012 time</p>
<p style="text-align: right;">90</p> <p>1 established against SOHC and CDO Fund?                  2 <b>A What do you mean from the get-go?</b>                  3 Q From the beginning of the litigation?                  4 <b>A I wasn't employed at Highland from the</b>                  5 <b>beginning of the litigation.</b>                  6 Q You started working on the matter in                  7 roughly 2011, correct?                  8 <b>A That's not accurate, no.</b>                  9 Q When did you start working on the matter?                  10 <b>A Earlier than that. When I arrived in</b>                  11 <b>Highland in two thousand -- late September,</b>                  12 <b>October 2009 I started working on it.</b>                  13 Q Okay. So from the time that you started                  14 work on litigation, what's the earliest time that                  15 you can recall, roughly, in which you came to the                  16 belief that liability would be established against                  17 CDO Fund and SOHC?                  18 <b>A I don't recall. It would have been early</b>                  19 <b>on, but I don't know exactly when.</b>                  20 Q Like as early as 2010?                  21 <b>A I don't remember.</b>                  22 Q Okay. But your -- when you say early on,                  23 you mean roughly within the first year of working                  24 on the matter, you came to the belief that                  25 liability was likely to be established against</p>	<p style="text-align: right;">92</p> <p>1 frame?                  2 <b>A Maybe around then, maybe a little later</b>                  3 <b>than that.</b>                  4 Q Well, was it before -- you said at some                  5 point this other individual took over the                  6 day-to-day management of the case. Remember that?                  7 <b>A Correct.</b>                  8 Q And prior to that, had you shared your                  9 views that you had already reached from early on,                  10 that SOHC and CDO Fund were likely to have                  11 liability established against them for the breach                  12 of contract claims that UBS had brought?                  13 <b>A I think I probably -- I don't exactly</b>                  14 <b>recall, but I believe I probably discussed it with</b>                  15 <b>Mr. Ellington.</b>                  16 Q What about Mr. Dondero?                  17 <b>A At that time I don't -- I don't remember</b>                  18 <b>one way or another if I would have spoken to him.</b>                  19 <b>I was still pretty junior and so I didn't</b>                  20 <b>regularly converse with him.</b>                  21 Q Okay. But then you resumed day-to-day                  22 management of the matter approximately when?                  23 <b>A Whenever Mr. -- well, that's what I said.</b>                  24 <b>I don't recall because Mr. Vancour left and then I</b>                  25 <b>don't remember if another person took over the</b></p>

<p style="text-align: right;">93</p> <p><b>1 case afterwards and then I took over after that</b></p> <p><b>2 person left, or if I took over directly from</b></p> <p><b>3 Mr. Vancour.</b></p> <p>4 Q Who was that person you're thinking of?</p> <p><b>5 A Jason Goldsmith.</b></p> <p>6 Q Certainly by the time Jason Goldsmith and</p> <p>7 Mr. Vancour had left, you had resumed day-to-day</p> <p>8 management for the UBS New York litigation against</p> <p>9 Highland, correct?</p> <p><b>10 A Well, those were different time periods.</b></p> <p><b>11 Mr. Vancour left first, Mr. Goldsmith left second.</b></p> <p><b>12 So after Mr. Goldsmith's departure, I certainly</b></p> <p><b>13 know -- well, after Mr. Goldsmith's departure</b></p> <p><b>14 would have been when I believe I probably would</b></p> <p><b>15 have picked up management.</b></p> <p>16 Q And that would have been before summary</p> <p>17 judgment briefing?</p> <p><b>18 A Probably. I mean, the -- I don't know.</b></p> <p>19 Q And at that point, at some point you --</p> <p>20 did you -- at some point you came to share your</p> <p>21 views with Mr. Dondero about the likelihood that</p> <p>22 liability would be established against SOHC and</p> <p>23 CDO Fund for its contract claims, correct?</p> <p><b>24 A At some point I did discuss that with him,</b></p> <p><b>25 I believe.</b></p>	<p style="text-align: right;">95</p> <p>1 that liability was likely to be determined against</p> <p>2 CDO Fund and SOHC?</p> <p><b>3 A I don't recall.</b></p> <p>4 Q Roughly?</p> <p><b>5 A It would have been more than one and</b></p> <p><b>6 probably less than five.</b></p> <p>7 Q Okay. And did Mr. Dondero push back?</p> <p><b>8 A I don't remember what he said on that.</b></p> <p><b>9 There were so many moving parts in that case, I</b></p> <p><b>10 don't know that I -- it's difficult to isolate</b></p> <p><b>11 those very specific claims against those very</b></p> <p><b>12 specific defendants as part of the conversation.</b></p> <p>13 Q Right. But the breach of contract was</p> <p>14 certainly a core part of the case, right?</p> <p><b>15 A Yes, but there were numerous what you</b></p> <p><b>16 would call core parts of the case.</b></p> <p>17 Q Okay. But I want to focus on the breach</p> <p>18 of contract against SOHC and CDO Fund, who were</p> <p>19 also referred to often as the counterparties to</p> <p>20 the UBS restructured warehouse agreement.</p> <p><b>21 A That's fair, they were.</b></p> <p>22 Q Okay. And those liability claims against</p> <p>23 the counterparties, with respect to those, did</p> <p>24 Mr. Dondero ever push back, in words or substance,</p> <p>25 about the likelihood of liability being</p>
<p style="text-align: right;">94</p> <p>1 Q Roughly when was that?</p> <p><b>2 A I don't know, sir.</b></p> <p>3 Q Certainly years ago, right?</p> <p><b>4 A Yes, it was a long time ago.</b></p> <p>5 Q And it was before you started working on</p> <p>6 settlement options in connection with the matter,</p> <p>7 correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p><b>9 A Can you clarify the question, please?</b></p> <p><b>10 BY MR. CLUBOK:</b></p> <p>11 Q I don't know -- remember the exact words</p> <p>12 you used, but you said at some point you had some</p> <p>13 involvement with -- contributed to some settlement</p> <p>14 analysis related to the case. I'm not trying to</p> <p>15 put words in your mouth. I'm paraphrasing.</p> <p><b>16 A That's fair. I did contribute to a</b></p> <p><b>17 settlement analysis on the case.</b></p> <p>18 Q Before contributing to that settlement</p> <p>19 analysis, fair to say you had already conveyed</p> <p>20 your views directly to Mr. Dondero that liability</p> <p>21 was likely to be found in UBS's favor against SOHC</p> <p>22 and CDO Fund?</p> <p><b>23 A I just don't remember, sir.</b></p> <p>24 Q How many times did you have discussions</p> <p>25 with Mr. Dondero in which you expressed your view</p>	<p style="text-align: right;">96</p> <p>1 established?</p> <p><b>2 A Yes, he did.</b></p> <p>3 Q And what did he say?</p> <p><b>4 A I don't remember the specific words, but I</b></p> <p><b>5 definitely remember he pushed back.</b></p> <p>6 Q And ultimately did he convey whether or</p> <p>7 not he accepted your recommendation?</p> <p><b>8 A Well, the case never settled. The case</b></p> <p><b>9 never settled, so I don't know what to say about</b></p> <p><b>10 that.</b></p> <p>11 Q Yeah, but did he ever -- at the end, did</p> <p>12 you come away with the impression that he accepted</p> <p>13 that liability against those two entities with</p> <p>14 respect to the breach of contract claims was more</p> <p>15 likely than not?</p> <p><b>16 A I don't know that he ever accepted that,</b></p> <p><b>17 no.</b></p> <p>18 Q Did Mr. Ellington?</p> <p><b>19 A I don't know if he did or not.</b></p> <p>20 Q Did you ever weigh in -- so we've talked</p> <p>21 about liability with respect to these claims. Did</p> <p>22 you ever come to an opinion about likely damages</p> <p>23 that would be awarded if liability were</p> <p>24 established?</p> <p><b>25 A I have a variety of opinions, but I don't</b></p>

<p style="text-align: right;">97</p> <p><b>1 think there was one in particular that I had as</b></p> <p><b>2 the most likely outcome.</b></p> <p>3 Q What were the -- how many likely -- did</p> <p>4 you have no view, like there's three or four</p> <p>5 outcomes and each were equally likely or were</p> <p>6 there two outcomes that were equally likely or you</p> <p>7 just had -- you couldn't -- even with your ability</p> <p>8 to analyze litigation, had no idea what was going</p> <p>9 to happen with damages?</p> <p>10 MS. SMITH: Object to form.</p> <p><b>11 A My recollection actually was that there</b></p> <p><b>12 were nine separate independent scenarios.</b></p> <p><b>13 BY MR. CLUBOK:</b></p> <p>14 Q Nine?</p> <p><b>15 A Yes.</b></p> <p>16 Q And were these laid out in a document?</p> <p><b>17 A Yes.</b></p> <p>18 Q And who did you present these to?</p> <p><b>19 A Mr. Ellington.</b></p> <p>20 Q And Mr Dondero?</p> <p><b>21 A I don't remember if I showed it to</b></p> <p><b>22 Mr. Dondero or not.</b></p> <p>23 Q When did you prepare that?</p> <p><b>24 A It would have been -- it incorporated the</b></p> <p><b>25 expert reports, so it would have been subsequent</b></p>	<p style="text-align: right;">99</p> <p><b>1 A I'm familiar with that, yes.</b></p> <p>2 Q And you're certainly familiar with the</p> <p>3 process of looking at different scenarios and</p> <p>4 coming up with an expected range of outcomes in</p> <p>5 terms --</p> <p><b>6 A Yes.</b></p> <p>7 Q Did you ever, in words or substance, come</p> <p>8 up with an expected likely range of outcomes for</p> <p>9 damages in connection with the breach of contract</p> <p>10 claims?</p> <p><b>11 A I don't think I did, no.</b></p> <p>12 Q And did you ever, in words or substance,</p> <p>13 convey anything about your views on the relative</p> <p>14 likelihood of one scenario versus another in terms</p> <p>15 of damages?</p> <p><b>16 A I just generally -- I may have, but I</b></p> <p><b>17 don't recall having done so.</b></p> <p>18 Q And did you ever, in words or substance,</p> <p>19 have a belief that likely it would be damages in</p> <p>20 the hundreds of millions of range or more?</p> <p><b>21 A Those were certainly possible scenarios,</b></p> <p><b>22 but I don't recall doing a probability analysis as</b></p> <p><b>23 to whether they were the most likely scenarios.</b></p> <p>24 Q Yeah, but whether or not you did a formal</p> <p>25 probability analysis, fair to say that you and</p>
<p style="text-align: right;">98</p> <p><b>1 to the expert reports and prior to trial, but</b></p> <p><b>2 where exactly, I don't know. But the document's</b></p> <p><b>3 on the debtor's system, which you can check the</b></p> <p><b>4 metadata.</b></p> <p>5 Q What was it called?</p> <p><b>6 A It was an Excel spreadsheet. I don't</b></p> <p><b>7 remember what it was called.</b></p> <p>8 Q And do you remember -- was it the kind of</p> <p>9 thing that you -- did you assign percentage</p> <p>10 likelihood to each of the nine scenarios?</p> <p><b>11 A I don't believe I did on that sheet, no.</b></p> <p>12 Q Did you ever?</p> <p><b>13 A I don't believe -- well, I don't recall if</b></p> <p><b>14 I did or not just because there were, I don't</b></p> <p><b>15 know, maybe 12 different line items that went into</b></p> <p><b>16 damages and then it depended on about six or seven</b></p> <p><b>17 different rulings of the Court as to which one</b></p> <p><b>18 would be incorporated or not. And so it's</b></p> <p><b>19 difficult to really come up with -- to say how I</b></p> <p><b>20 was thinking about it at the time because you're</b></p> <p><b>21 looking at -- I mean, it's literally an Excel</b></p> <p><b>22 matrix that was more than a screen full.</b></p> <p>23 Q Right. But you're aware of -- you're</p> <p>24 familiar with Monte Carlo simulations in terms of</p> <p>25 the context of analyzing litigation outcomes?</p>	<p style="text-align: right;">100</p> <p>1 Mr. Ellington at various times discussed the</p> <p>2 general likelihood that the damages in the case</p> <p>3 were likely to be in excess of \$100 million?</p> <p><b>4 A We certainly discussed it as a</b></p> <p><b>5 possibility. I don't know that we agreed that it</b></p> <p><b>6 was a probability.</b></p> <p>7 Q Well, Mr. Ellington conveyed to you, in</p> <p>8 words or substance, that he believed it was more</p> <p>9 likely than not that ultimately damages in excess</p> <p>10 of \$100 million would be awarded in UBS's favor</p> <p>11 with respect to the breach of contract claims</p> <p>12 against SOHC and CDO Fund, correct?</p> <p><b>13 A He may have. I don't recall if he did or</b></p> <p><b>14 not.</b></p> <p>15 Q And did you ever convey, in words or</p> <p>16 substance, to anyone, that you believed it was</p> <p>17 more likely than not that the damages that would</p> <p>18 be awarded in UBS's favor with respect to the</p> <p>19 breach of contract claims against SOHC and</p> <p>20 CDO Fund would likely be in excess of \$100</p> <p>21 million?</p> <p><b>22 A I very well might have, but I don't recall</b></p> <p><b>23 having done so.</b></p> <p>24 Q You certainly believed that prior to the</p> <p>25 trial, correct?</p>

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<p style="text-align: right;">101</p> <p><b>1 A I don't think that's fair to say, no. I</b>  <b>2 thought we actually had really good arguments on</b>  <b>3 the synthetic warehouse.</b>          4 Q Okay. So you believe -- so you said you          5 were good at your job, but you believed it was          6 more likely than not that the ultimate damages          7 would be less than \$100 million total?  <b>8 A I didn't say that, Counselor. Your</b>  <b>9 question was whether or not I believed in the</b>  <b>10 arguments we were making and I did, which would</b>  <b>11 have knocked damages well below 100 million.</b>          12 Q No, I never asked you about the -- whether          13 you believed in the arguments. That was a concept          14 you introduced. I'm looking at the transcript.          15 Let me ask the question again.          16 Taking into account the argument you're          17 making and the argument UBS was making and your          18 ability to analyze litigation, take all of that          19 and the work you did on the case, everything that          20 you had done, fair to say that at some point prior          21 to trial, you came to the belief that it was more          22 likely than not that damages in excess of          23 \$100 million would be awarded in UBS's favor with          24 respect to the breach of contract claims against          25 CDO Fund and SOHC?</p>	<p style="text-align: right;">103</p> <p><b>1 including but not limited to the synthetic</b>  <b>2 warehouse agreement argument, which would have</b>  <b>3 dropped damages below \$100 million.</b>          4 Q That's not true, is it? Even if you had          5 won the synthetic warehouse agreement, the total          6 damages still would have been in excess of          7 100 million, unless you won some other theories;          8 isn't that true?          9 MS. SMITH: Objection to form.  <b>10 A That may be your testimony, sir.</b>  <b>11 BY MR. CLUBOK:</b>          12 Q Well, the damages on the nonsynthetic          13 warehouse that were claimed in the case were well          14 in excess of \$100 million, correct?  <b>15 A I'm sorry, Mr. Clubok. I'm not in a</b>  <b>16 position to debate the merits of the case that we</b>  <b>17 tried together. I'm just recalling the</b>  <b>18 arguments -- that we had arguments that would</b>  <b>19 knock it down below 100 million. And among those</b>  <b>20 arguments were the synthetic warehouse agreement</b>  <b>21 arguments.</b>          22 Q Okay. I didn't ask you to debate the          23 merits. Again, you're -- please don't introduce          24 concepts that I didn't ask. My simple question is          25 the damages that were claimed on the cash</p>
<p style="text-align: right;">102</p> <p><b>1 A I don't recall having had that thought.</b>          2 Q So prior to trial was it your belief that          3 it was more likely than not that the total          4 damages -- well, strike that.          5 You've said that you believed that          6 liability would be established. That you agree          7 prior to trial you believed was more likely than          8 not based on the work you had done, correct?  <b>9 A To be specific, I believed that liability</b>  <b>10 was more likely than not to be proven against</b>  <b>11 CDO Fund and SOHC on the breach of contract</b>  <b>12 claims.</b>          13 Q Right. And --  <b>14 A Which were the ones tried in Phase 1.</b>          15 Q Right. And what was tried in Phase 1 was          16 the liability and the damages with respect to          17 those claims, correct?  <b>18 A Yes.</b>          19 Q Okay. So prior to trial was it your          20 belief that it was more likely than not that          21 despite liability being likely, the total damages          22 would be less than \$100 million?  <b>23 A I just don't recall which way -- what my</b>  <b>24 risk analysis was at the time, but I do remember</b>  <b>25 having a great deal of faith in certain arguments,</b></p>	<p style="text-align: right;">104</p> <p>1 warehouse were well in excess of \$100 million;          2 isn't that true?  <b>3 A Yes, assuming that UBS won all of its</b>  <b>4 arguments on the cash warehouse and lost on the</b>  <b>5 synthetic, I think that -- my recollection is it</b>  <b>6 may have been above 100 million. I honestly don't</b>  <b>7 remember.</b>          8 Q Okay. And again, you -- as you sit here          9 today, your testimony is even though you remember          10 believing and giving the advice on liability, you          11 don't remember if you had any belief as to whether          12 it was more likely than not that total damages          13 would be above or below \$100 million prior to the          14 Phase 1 trial?  <b>15 A That's correct, because the damages issue</b>  <b>16 was fundamentally a series of math problems that</b>  <b>17 were determined by experts, and so I don't know</b>  <b>18 that I necessarily had a conclusion about those.</b>          19 Q You don't know if you did or you don't          20 remember if you did?  <b>21 A I just don't remember if I did.</b>          22 Q Okay. Were you ever asked by anyone to          23 run that analysis or to give your opinion on what          24 the likely damages would be, given your belief          25 that liability was likely to be established?</p>

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<p style="text-align: right;">105</p> <p>1 <b>A I would have to speculate if I did or not.</b></p> <p>2 Q I'm not asking you to speculate. Do you</p> <p>3 remember ever being asked by anyone to give your</p> <p>4 opinion on what the likely damages would be, given</p> <p>5 your stated opinion to Mr. Ellington and</p> <p>6 Mr. Dondero that likely -- liability was likely to</p> <p>7 be established?</p> <p>8 <b>A I just don't recall.</b></p> <p>9 Q Well, did anyone give an opinion on</p> <p>10 damages that you were aware of?</p> <p>11 <b>A On a probability weighted basis, I don't</b></p> <p>12 <b>remember if they did, no.</b></p> <p>13 Q Did any of your outside -- were any of</p> <p>14 your outside counsel ever asked to give their</p> <p>15 opinion as to whether or not damages -- strike</p> <p>16 that.</p> <p>17 Were any of your outside counsel ever</p> <p>18 asked to give their opinion as to what the likely</p> <p>19 damages would be in connection with the breach of</p> <p>20 contract claims against CDO Fund and SOHC?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A I don't remember if they were or not.</b></p> <p>23 <b>BY MR. CLUBOK:</b></p> <p>24 Q Do you remember them ever giving any such</p> <p>25 opinion, whether they were asked to or not?</p>	<p style="text-align: right;">106</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 <b>A I don't. It's been a long time,</b></p> <p>3 <b>Mr. Clubok. I don't recall.</b></p> <p>4 <b>BY MR. CLUBOK:</b></p> <p>5 Q Did you ever, in words or substance, give</p> <p>6 any recommendation in terms of whether the case</p> <p>7 should be settled or a particular amount it should</p> <p>8 be settled for?</p> <p>9 <b>A I think I made recommendations that it</b></p> <p>10 <b>should be settled, but I don't know that I made</b></p> <p>11 <b>any recommendations as to the amounts.</b></p> <p>12 Q Who did you recommend the case should be</p> <p>13 settled to?</p> <p>14 <b>A Mr. Ellington.</b></p> <p>15 Q Anybody else?</p> <p>16 <b>A I believe that would have been it.</b></p> <p>17 Q How many times roughly did you tell</p> <p>18 Mr. Ellington this case should be settled?</p> <p>19 <b>A I don't recall. It would have been a</b></p> <p>20 <b>number of times at various different points over</b></p> <p>21 <b>various years.</b></p> <p>22 Q And that's because of your continued view</p> <p>23 from early on that liability was likely to be</p> <p>24 established at least against SOHC and CDO Funds</p> <p>25 for the breach of contract claims, correct?</p>
<p style="text-align: right;">107</p> <p>1 <b>A I don't know that that was necessarily the</b></p> <p>2 <b>basis.</b></p> <p>3 Q What was?</p> <p>4 <b>A It was a big case with big claims and</b></p> <p>5 <b>going to trial inevitably has risks and it's</b></p> <p>6 <b>better to limit those risks to some sort of</b></p> <p>7 <b>negotiated amount than to roll the dice at trial.</b></p> <p>8 Q And you didn't take into account, when you</p> <p>9 gave that recommendation, your views on liability,</p> <p>10 you set those aside in making that settlement</p> <p>11 recommendation?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 <b>A I'm certain that was a factor I</b></p> <p>14 <b>considered, but your point -- your question, I</b></p> <p>15 <b>believe, was something slightly different.</b></p> <p>16 <b>BY MR. CLUBOK:</b></p> <p>17 Q Okay. But certainly one of the factors</p> <p>18 that led you to repeatedly recommend settlement</p> <p>19 was your belief that liability was likely to be</p> <p>20 established, at least with respect to the contract</p> <p>21 claims against SOHC and CDO Fund, correct?</p> <p>22 <b>A I don't remember if that was an essential</b></p> <p>23 <b>motivating factor in my recommendation or not.</b></p> <p>24 Q Okay. So you, as you sit here today,</p> <p>25 don't know if your belief in liability played any</p>	<p style="text-align: right;">108</p> <p>1 role in recommending the case should be settled?</p> <p>2 <b>A That's not my testimony.</b></p> <p>3 Q My question -- that was your testimony,</p> <p>4 actually. That was like literally exactly your</p> <p>5 testimony. You said I don't remember if it was an</p> <p>6 essential motivating factor. Okay. Was it any</p> <p>7 factor in your recommendation? Did it factor into</p> <p>8 your recommendation in some way your views on</p> <p>9 liability?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Okay. But you don't know if it was an</p> <p>12 essential factor on your views of settlement,</p> <p>13 correct?</p> <p>14 <b>A That's correct.</b></p> <p>15 Q Do you think, as a general matter, the</p> <p>16 likelihood of legal liability being established</p> <p>17 should be an essential factor in determining</p> <p>18 whether to settle a matter?</p> <p>19 <b>A If you're asking for a general comment,</b></p> <p>20 <b>decontextualized from the actual facts of the UBS</b></p> <p>21 <b>case, yes, but I don't think that general</b></p> <p>22 <b>statement applies to the UBS case.</b></p> <p>23 Q As a lawyer advising a company who comes</p> <p>24 to the belief that liability is likely to be</p> <p>25 established, don't you think you have a</p>

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<p style="text-align: right;">109</p> <p>1 responsibility to say, in words or substance,                  2 because we have liability here or likely have                  3 liability here, we should meet our legal                  4 obligations, at least through settlement, if we                  5 can?                  6 MS. SMITH: Objection to form.                  7 <b>A I'm sorry, Counselor. I'm not going to</b>                  8 <b>sit here and come up with how I would render legal</b>                  9 <b>advice generally.</b>                  10 <b>BY MR. CLUBOK:</b>                  11 Q Well, when you say that you believe that                  12 liability would likely be established, fair to say                  13 that you believed that SOHC and CDO Fund had                  14 contractual obligations that had been breached to                  15 UBS, correct?                  16 <b>A I believe they would be found in breach of</b>                  17 <b>contract.</b>                  18 Q Okay. Do you believe that it's                  19 appropriate for a lawyer to advise their client to                  20 abide by the terms of its contract?                  21 MS. SMITH: Objection to form.                  22 <b>A As a general proposition -- I'm sorry.</b>                  23 <b>I'm not going to be able to give general</b>                  24 <b>testimony. If you'd like to ask me about a</b>                  25 <b>specific situation, I'm happy to address that.</b></p>	<p style="text-align: right;">110</p> <p>1 <b>BY MR. CLUBOK:</b>                  2 Q Well, do you believe that it was                  3 appropriate for you to advise those responsible                  4 for SOHC and CDO Fund that they had contractual                  5 obligations that they were in breach of?                  6 <b>A Did I believe I was obligated to inform --</b>                  7 <b>I mean, we had -- I had discussed, as I said,</b>                  8 <b>liability and probability of liability on those</b>                  9 <b>specific claims of those specific defendants with</b>                  10 <b>both Mr. Ellington and Mr. Dondero at various</b>                  11 <b>points in time.</b>                  12 Q Did you ever, in words or substance,                  13 advise those responsible for managing SOHC and CDO                  14 Fund's affairs that they should abide by the                  15 contractual obligations you came to believe they                  16 owed?                  17 MS. SMITH: Objection to form.                  18 <b>A I'm going to disagree with the premise of</b>                  19 <b>your question, sir.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q What's the premise you disagree with?                  22 <b>A I don't know that there necessarily was</b>                  23 <b>anyone generally responsible for the -- those two</b>                  24 <b>entities, save potentially Mr. Dondero at the top</b>                  25 <b>of the organization.</b></p>
<p style="text-align: right;">111</p> <p>1 Q Okay. Mr. Dondero was the sole director                  2 of SOHC at the time, correct?                  3 <b>A I think that's right, yes.</b>                  4 Q So -- did you ever -- did you think it                  5 was -- so Mr. Dondero controlled SOHC during the                  6 pendency of the litigation, at least until he was                  7 displaced in the bankruptcy, correct?                  8 <b>A You can -- you can add -- I'm not going to</b>                  9 <b>adopt the word control. He was a director of --</b>                  10 <b>he was the sole director of SOHC. That's a fact.</b>                  11 Q Okay. And did you believe it was your                  12 responsibility to ever advise Mr. Dondero that he                  13 should cause SOHC to live up to the contractual                  14 obligations you came to believe that they had owed                  15 UBS?                  16 <b>A That would be a business decision and</b>                  17 <b>Mr. Dondero could make it if he wanted to.</b>                  18 Q Did you believe it was your responsibility                  19 to ever advise Mr. Dondero that he should live up                  20 to the contractual obligations you believed that                  21 SOHC owed to UBS?                  22 MS. SMITH: Objection to form.                  23 <b>A Again, my only advice, sir, was that I</b>                  24 <b>believed liability was more likely than not to be</b>                  25 <b>found. I didn't talk about obligations and</b></p>	<p style="text-align: right;">112</p> <p>1 <b>expectations and that he needed to do anything.</b>                  2 <b>My legal advice was solely with respect to the</b>                  3 <b>probability of outcome on those two claims.</b>                  4 <b>BY MR. CLUBOK:</b>                  5 Q Is that a no to my question?                  6 <b>A Your question assumes statements I did not</b>                  7 <b>make.</b>                  8 Q No, it doesn't assume anything. I'm going                  9 to ask it again and I'm going to ask you to listen                  10 carefully to my question.                  11 <b>A Okay.</b>                  12 Q Did you believe it was your responsibility                  13 to ever advise Mr. Dondero that he should live up                  14 to the contractual obligations that SOHC owed to                  15 UBS?                  16 <b>A I disagree with the premise of the</b>                  17 <b>question.</b>                  18 Q What premise do you disagree with?                  19 <b>A That there are contractual obligations</b>                  20 <b>that SOHC and CDO Fund necessarily owed to UBS.</b>                  21 Q You believed it was more likely than not                  22 that a court would determine that they had                  23 contractual obligations that they owed to UBS that                  24 they were in breach of, correct?                  25 <b>A Yes.</b></p>

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<p style="text-align: right;">113</p> <p>1 Q Okay. Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC to live up to those contractual 4 obligations? 5 <b>A Again, my responsibility was to do the 6 legal analysis, not to tell people how to run 7 their business.</b> 8 Q So that's a no to my question? 9 <b>A Well, no, I disagreed with the underlying 10 premise of your question and that was my response, 11 sir.</b> 12 Q My question is, did you ever believe it 13 was your responsibility to advise Mr. Dondero that 14 he should cause SOHC to live up to the contractual 15 obligations you came to believe a court would 16 determine that SOHC and CDO Fund owed to UBS that 17 they were in breach of? 18 <b>A Right. And my testimony was that I 19 disagreed with the premise of that question.</b> 20 Q No, I changed the question. Okay. So now 21 I changed the question to address your premise 22 issue and you agreed with all these premises. 23 I've got it in writing here, so I'm going to ask 24 the question one more time and ask you to listen 25 to this question.</p>	<p style="text-align: right;">115</p> <p>1 Q Your testimony here under oath is that you 2 don't remember anything at all about a role you 3 played in connection with any settlement analysis 4 of the UBS litigation in New York against Highland 5 and its affiliates? 6 <b>A That was not my testimony.</b> 7 Q Okay. What do you remember, with as much 8 specificity as possible, about the role you played 9 in connection with any settlement analysis of the 10 New York UBS litigation against Highland and its 11 affiliates? 12 <b>A I know that Highland considered settlement 13 at numerous time periods and it would have been my 14 role to kind of gather the underlying documents 15 and facts to support settlement proposals.</b> 16 Q Okay. Any other role that you ever 17 remember playing in connection with any settlement 18 analysis of the New York UBS litigation against 19 Highland and its affiliates other than gathering 20 documents and facts to support settlement 21 proposals? 22 <b>A I don't recall.</b> 23 Q Did you continue to play any role in 24 connection with the settlement analysis after the 25 bankruptcy?</p>
<p style="text-align: right;">114</p> <p>1 Did you ever believe it was your 2 responsibility to advise Mr. Dondero that he 3 should cause SOHC and CDO Fund to live up to the 4 contractual obligations you had come to believe a 5 court would determine they owed to UBS? 6 <b>A Well, it was first that a court was more 7 likely than not to determine. No, I don't believe 8 it was my obligation to tell him to fulfill 9 contractual obligations or cause those entities to 10 fulfill contractual obligations.</b> 11 Q Was there anyone at Highland that you're 12 aware of who you understood to have that role to 13 advise Mr. Dondero to fulfill contractual 14 obligations? 15 MS. SMITH: Objection to form. 16 <b>A Since it's -- no, I don't know that I 17 would have had a thought process about that one 18 way or another.</b> 19 <b>BY MR. CLUBOK:</b> 20 Q So let's talk about the role you did play 21 in connection with settlement analysis for the UBS 22 New York litigation. Can you describe, in as much 23 detail as possible, what your role was, if any? 24 <b>A I don't specifically remember what role I 25 played in settlement analysis.</b></p>	<p style="text-align: right;">116</p> <p>1 <b>A I believe -- as -- let me see how I can 2 say this properly. I believe the answer is no. I 3 may have had some ancillary or occasional touch on 4 that process, but largely the answer is no.</b> 5 Q You were aware that there were settlement 6 discussions, including court-ordered mediation, in 7 connection with UBS's claims in the bankruptcy, 8 correct? 9 <b>A Yes.</b> 10 Q And you're aware that those settlement 11 discussions at times also included potential 12 settlement of the remaining claims in the New York 13 litigation against the entities that are outside 14 the bankruptcy, like CDO Fund and SOHC? 15 <b>A Actually, no, that was -- I don't recall 16 that ever being disclosed to me.</b> 17 Q Do you recall there ever being any 18 discussion, in words or substance, that there was 19 potential settlement regarding UBS in its claims 20 against Multi Strat? 21 <b>A And when we say settlement, we're talking 22 about like a cash payment for Multi Strat to UBS 23 in exchange for a release? Or are we talking 24 about like the May 2020 settlement, partial 25 settlement, whatever you want to call that thing?</b></p>

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<p style="text-align: right;">117</p> <p>1 Q Right. We're talking about -- there was a                  2 May 2020 agreement regarding the sale of certain                  3 assets and how the proceeds would be preserved. I                  4 want to take that out of the equation.                  5 <b>A Okay.</b>                  6 Q So we're talking about payments or                  7 consideration by Multi Strat to UBS with respect                  8 to the claims that were pending in the New York                  9 litigation.                  10 MS. SMITH: Objection to form.                  11 <b>A No, I -- so I had had an accident in early</b>                  12 <b>January of 2020. By the time I got back from</b>                  13 <b>leave of absence in April or May, largely I had</b>                  14 <b>just kind of become a task attorney at that point</b>                  15 <b>and Pachulski was running things.</b>                  16 <b>BY MR. CLUBOK:</b>                  17 Q Were you ever tasked by Pachulski after                  18 April -- after -- strike that.                  19 When did you come back after your                  20 accident, roughly?                  21 <b>A It was a slow return. I came back</b>                  22 <b>part-time in April, and I think I was fully back</b>                  23 <b>in May.</b>                  24 Q Okay. After returning to your active                  25 employment following your accident in April or May</p>	<p style="text-align: right;">119</p> <p>1 <b>but it was a large number.</b>                  2 Q And so you reviewed and gave comments                  3 throughout the process of objecting to the UBS                  4 claims?                  5 <b>A Yes.</b>                  6 Q And were there any other tasks that you                  7 were given ever in connection with the UBS claim                  8 by Mr. Seery or by the Pachulski firm?                  9 <b>A Not really, no.</b>                  10 Q Not really, or no?                  11 <b>A Sit -- I'm -- I would say -- yeah, I would</b>                  12 <b>say no. I worked on the claim objection as my</b>                  13 <b>role with respect to UBS.</b>                  14 Q How about on the summary judgment?                  15 <b>A I call that part of the claim objection</b>                  16 <b>because it's part of the same process.</b>                  17 Q Okay.                  18 <b>A So also there was a lift stay motion. I</b>                  19 <b>was involved in that. So really it -- let me</b>                  20 <b>rephrase it. I was involved in what I'm going to</b>                  21 <b>call the litigating part. So the adversarial</b>                  22 <b>pleadings between the debtor and UBS with respect</b>                  23 <b>to how the Court should rule on the claim.</b>                  24 Q And you were responsible for all of that                  25 up until the time the parties reached a</p>
<p style="text-align: right;">118</p> <p>1 of 2020, were you ever tasked with any work in                  2 connection with the UBS claim?                  3 <b>A Yes.</b>                  4 Q What were you tasked with?                  5 <b>A I was tasked with assisting Pachulski in</b>                  6 <b>analysis and drafting of the claim objection.</b>                  7 Q Who tasked you with that?                  8 <b>A Mr. Seery.</b>                  9 Q Directly?                  10 <b>A Yes.</b>                  11 Q He told you that he needed assistance in                  12 analyzing UBS's claim and helping draft the claim                  13 objection, correct?                  14 <b>A He told me to assist Pachulski in that</b>                  15 <b>process.</b>                  16 Q I see. And who specifically at Pachulski                  17 did you assist in that process?                  18 <b>A It was a team of lawyers, but primarily</b>                  19 <b>led by Mr. Feinstein.</b>                  20 Q Anyone else?                  21 <b>A His entire team. Elissa Wagner, I believe</b>                  22 <b>was an associate, John Morris had some involvement</b>                  23 <b>at various points in time, Greg Demo had</b>                  24 <b>involvement at certain points in time. I don't</b>                  25 <b>remember who the other lawyers were at Pachulski,</b></p>	<p style="text-align: right;">120</p> <p>1 settlement?                  2 MS. SMITH: Objection to form.                  3 <b>A I didn't say I was responsible, no.</b>                  4 <b>BY MR. CLUBOK:</b>                  5 Q I'm sorry. You had tasks assigned to you                  6 in connection with the litigation between UBS and                  7 the debtor up until the time that those entities                  8 reached a settlement agreement?                  9 <b>A No, that's not accurate.</b>                  10 Q Okay. When did you -- when was the last                  11 time you were assigned a task in connection with                  12 the UBS litigation against the debtor?                  13 <b>A Probably would have been responding to</b>                  14 <b>certain discovery that UBS propounded in advance</b>                  15 <b>of summary judgment.</b>                  16 Q That was the last time you were given any                  17 kind of task, that you can recall?                  18 <b>A The last time I can recall, yes. Largely,</b>                  19 <b>Pachulski took it over and if they asked me to do</b>                  20 <b>something, I would, but I was mostly kept out of</b>                  21 <b>that process.</b>                  22 Q And who asked you to help respond to                  23 discovery requests that UBS had propounded in                  24 advance of summary judgment?                  25 <b>A I believe it was Greg Demo.</b></p>



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<p style="text-align: right;">121</p> <p>1 Q And did you provide complete assistance to</p> <p>2 Mr. Demo in responding to the UBS discovery</p> <p>3 request to the best of your ability?</p> <p>4 <b>A I provided assistance to Mr. Demo in</b></p> <p>5 <b>response to the tasks that he had given me, yes.</b></p> <p>6 Q Did you believe that you were providing</p> <p>7 complete assistance to Mr. Demo in responding to</p> <p>8 the UBS discovery requests to the best of your</p> <p>9 ability?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 <b>A So I disagree with the premise of your</b></p> <p>12 <b>question because I was given specific tasks and I</b></p> <p>13 <b>did those specific tasks.</b></p> <p>14 <b>BY MR. CLUBOK:</b></p> <p>15 Q Do you believe that in connection with the</p> <p>16 tasks that Mr. Demo assigned you, you performed</p> <p>17 those tasks to the very best of your ability?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And do you believe that you were totally</p> <p>20 candid with Mr. Demo in the course of performing</p> <p>21 those tasks that you were assigned with respect to</p> <p>22 the discovery requests for UBS?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A With respect to those tasks, yes.</b></p> <p>25</p>	<p style="text-align: right;">123</p> <p>1 <b>BY MR. CLUBOK:</b></p> <p>2 Q You never affirmatively made misstatements</p> <p>3 to him as far as you can recall, correct?</p> <p>4 <b>A As far as I can recall, I never made a</b></p> <p>5 <b>misstatement to Mr. Demo.</b></p> <p>6 Q And same thing with respect to all of the</p> <p>7 lawyers at the Pachulski firm?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 <b>A To the best of my recollection, I never</b></p> <p>10 <b>made an affirmative misstatement to any of them.</b></p> <p>11 <b>BY MR. CLUBOK:</b></p> <p>12 Q Did you ever make an affirmative</p> <p>13 misstatement to any of the independent directors?</p> <p>14 <b>A None that I can recall.</b></p> <p>15 Q But you certainly -- there's certainly</p> <p>16 information that you did not volunteer in</p> <p>17 connection with your work with them; is that fair?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A I don't believe that's how I would</b></p> <p>20 <b>characterize it, sir, no.</b></p> <p>21 <b>BY MR. CLUBOK:</b></p> <p>22 Q Well, there's information that you had</p> <p>23 that may have been relevant to the tasks you were</p> <p>24 performing that you chose not to volunteer. Fair?</p> <p>25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">122</p> <p>1 <b>BY MR. CLUBOK:</b></p> <p>2 Q Were there any tasks that you were not</p> <p>3 completely candid with Mr. Demo about?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 <b>A No. I'm being very specific. With</b></p> <p>6 <b>respect to the tasks that I had with respect to</b></p> <p>7 <b>the discovery in UBS, I believe I was candid with</b></p> <p>8 <b>Mr. Demo.</b></p> <p>9 <b>BY MR. CLUBOK:</b></p> <p>10 Q Was there ever a time you were less than</p> <p>11 candid with Mr. Demo?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 <b>A In response to a question that he had or</b></p> <p>14 <b>just generally volunteering lots of information to</b></p> <p>15 <b>him?</b></p> <p>16 <b>BY MR. CLUBOK:</b></p> <p>17 Q Well, let's start with --</p> <p>18 <b>A I don't -- I'm sorry, I don't understand</b></p> <p>19 <b>the question, sir.</b></p> <p>20 Q You don't understand the question as to</p> <p>21 whether or not you were ever less than candid with</p> <p>22 Mr. Demo?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A Did I ever not tell him the truth? No, I</b></p> <p>25 <b>didn't ever not tell him the truth.</b></p>	<p style="text-align: right;">124</p> <p>1 <b>A Relevant to the tasks I was performing?</b></p> <p>2 <b>No, I don't know that that's necessarily true.</b></p> <p>3 <b>BY MR. CLUBOK:</b></p> <p>4 Q Relevant to the UBS litigation with</p> <p>5 Highland. Strike that.</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 <b>BY MR. CLUBOK:</b></p> <p>8 Q Let me ask this question again. There was</p> <p>9 certainly information that you had that was</p> <p>10 relevant to the UBS litigation with the debtor</p> <p>11 that you chose not to volunteer, correct?</p> <p>12 <b>A No.</b></p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A Actually, I don't think that's right at</b></p> <p>15 <b>all. No, I don't believe that's correct.</b></p> <p>16 <b>BY MR. CLUBOK:</b></p> <p>17 Q You were specifically asked to identify</p> <p>18 information about the assets of CDO Fund and SOHC,</p> <p>19 correct?</p> <p>20 <b>A That wasn't the exact task, no.</b></p> <p>21 Q At some point you were made aware that UBS</p> <p>22 was seeking information about the assets of</p> <p>23 CDO Fund and SOHC, correct?</p> <p>24 <b>A Yes.</b></p> <p>25 Q And you were aware that UBS was seeking</p>

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<p style="text-align: right;">125</p> <p>1 information not just about the current -- or the                  2 then current assets of those entities, but the                  3 historical information about those entities going                  4 back to the beginning of 2009?                  5 <b>A I was aware that UBS sought that</b>                  6 <b>information, yes.</b>                  7 Q And you were aware that the Pachulski firm                  8 believed they had an obligation -- or strike that.                  9 Did the debtor or its lawyers ever make it                  10 clear to you that they intended to provide that                  11 information to the very best of their ability?                  12 <b>A So we had fairly detailed conversations</b>                  13 <b>about what we were going to do in response to that</b>                  14 <b>discovery. I don't know that there was ever a</b>                  15 <b>discussion of -- well, I remember we had fairly --</b>                  16 <b>we had pretty detailed conversations about how to</b>                  17 <b>try to figure out how to respond to that</b>                  18 <b>discovery.</b>                  19 Q Who's the we in that sentence?                  20 <b>A It was me and Mr. Demo.</b>                  21 Q That's it?                  22 <b>A John Morris may have been involved, but I</b>                  23 <b>believe it was primarily Mr. Demo.</b>                  24 Q Anybody else?                  25 <b>A No one else that I can recall sitting here</b></p>	<p style="text-align: right;">127</p> <p>1 tasks?                  2 <b>A I don't believe -- in terms of what he --</b>                  3 <b>of what we were supposed to be gathering for them,</b>                  4 <b>no, I don't believe he did.</b>                  5 Q Okay. So did you convey to Mr. Ellington,                  6 in words or substance, that one of the important                  7 things that UBS -- well, strike that.                  8 Did Mr. Demo make it clear to you that one                  9 of the very important things that -- strike that.                  10 Did Mr. Demo make it clear to you that UBS                  11 had conveyed that it put a high level of                  12 importance behind the request for identifying the                  13 assets of SOHC and CDO Fund?                  14 MS. SMITH: Objection to form.                  15 <b>A That wasn't exactly the task I was given.</b>                  16 <b>I'm struggling to recall exactly what we said UBS</b>                  17 <b>wanted, but that ultimately was not -- the task I</b>                  18 <b>was given was something more specific.</b>                  19 <b>BY MR. CLUBOK:</b>                  20 Q What was that?                  21 <b>A To link up the assets that were in the</b>                  22 <b>funds in May of 2009 and answer the question what</b>                  23 <b>happened to those assets and where are they today.</b>                  24 Q And you believed that the only task you                  25 had in connection with identification of assets</p>
<p style="text-align: right;">126</p> <p>1 <b>today.</b>                  2 Q And did you convey this discussion to                  3 anyone, like, for example, someone in the team, to                  4 assist you with this work or to Mr. Ellington, to                  5 apprise him of it or Mr. Dondero? Did you ever                  6 after having that discussion with Mr. Demo or                  7 those extensive discussions, ever convey, in words                  8 or substance, those discussions to anybody?                  9 <b>A I conveyed to Mr. Ellington the tasks that</b>                  10 <b>I had been assigned and what I was doing to</b>                  11 <b>fulfill those tasks.</b>                  12 Q Anyone else?                  13 MS. SMITH: Objection to form.                  14 <b>A Stephanie Vitiello assisted in gathering</b>                  15 <b>some of the documents, although I don't remember</b>                  16 <b>if it was in response to UBS or not. There were a</b>                  17 <b>lot of document requests at the time.</b>                  18 <b>BY MR. CLUBOK:</b>                  19 Q Is there anyone else that you can recall                  20 conveying the substance of the extensive                  21 conversations you had with Mr. Demo about                  22 responding to the UBS requests?                  23 <b>A No.</b>                  24 Q And did Mr. Ellington give you any                  25 instructions in any way about how to perform those</p>	<p style="text-align: right;">128</p> <p>1 was to answer that very specific question?                  2 <b>A It was -- in terms of past assets? That's</b>                  3 <b>probably right. That was the defined task.</b>                  4 Q Okay. And in terms of current assets,                  5 were you also asked, in words or substance, to                  6 help identify the full breadth of the current                  7 assets held by CDO Fund and SOHC?                  8 <b>A I don't remember if I was or not. I would</b>                  9 <b>have to look at the -- I don't remember.</b>                  10 Q You understood that UBS was trying to                  11 obtain information about the current assets of                  12 CDO Fund and SOHC, correct?                  13 <b>A Yes.</b>                  14 Q And also HFP?                  15 <b>A Yes.</b>                  16 Q Okay. And did you provide all material                  17 information relating to the assets held by                  18 CDO Fund, SOHC and HFP from March of 2009 through                  19 the present?                  20 MS. SMITH: Objection to form.                  21 <b>A I don't know. We provided a lot of</b>                  22 <b>documents, so the documents will speak for</b>                  23 <b>themselves.</b>                  24 <b>BY MR. CLUBOK:</b>                  25 Q Did you endeavor to provide all material</p>

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<p style="text-align: right;">129</p> <p>1 information that you were aware of relating to the</p> <p>2 assets held by CDO Fund, SOHC and HFP from March</p> <p>3 of 2009 through the present in response to the</p> <p>4 detailed discussions you had with Mr. Demo?</p> <p>5 <b>A No. There were certain documents that</b></p> <p>6 <b>were separately held, like e-mails, and so we</b></p> <p>7 <b>didn't touch the e-mails.</b></p> <p>8 Q What do you mean?</p> <p>9 <b>A So there was a motion to compel by the UCC</b></p> <p>10 <b>in July of 2020. And so all of the e-mail</b></p> <p>11 <b>communications were at that point separated out</b></p> <p>12 <b>and sent to Meta-e for contract review. And so</b></p> <p>13 <b>that e-mail process was part of a very long</b></p> <p>14 <b>conversation -- a long series of conversations and</b></p> <p>15 <b>process with Sidley. And so once those e-mails</b></p> <p>16 <b>went over to Meta-e, I didn't really address them.</b></p> <p>17 <b>They were a separate data set that were being</b></p> <p>18 <b>handled separately.</b></p> <p>19 Q Did you make it clear to Mr. Demo that you</p> <p>20 were -- that you did not consider any review of</p> <p>21 those e-mails to be part of your --</p> <p>22 <b>A Absolutely.</b></p> <p>23 Q Okay. And did Mr. Demo say that other</p> <p>24 people would deal with that, those e-mails and the</p> <p>25 information, if any, that was relevant to the</p>	<p style="text-align: right;">131</p> <p>1 <b>looking for documents for HFP.</b></p> <p>2 Q Why did you do that?</p> <p>3 <b>A Because the process of figuring out what</b></p> <p>4 <b>had happened to the CDO Fund and SOHC assets had</b></p> <p>5 <b>been a lengthy task, and I told Mr. Demo that</b></p> <p>6 <b>unless I got positive instructions from them to</b></p> <p>7 <b>the contrary, that I didn't want to have to repeat</b></p> <p>8 <b>that task for HFP and he agreed with that.</b></p> <p>9 Q Is that because you-all agreed that -- is</p> <p>10 that because you said -- sorry. You guys decided</p> <p>11 you just didn't want to do it or you thought it</p> <p>12 was unnecessary because you had already gathered</p> <p>13 information in the course of looking for SOHC's</p> <p>14 assets?</p> <p>15 <b>A I don't remember what -- I don't remember</b></p> <p>16 <b>if the basis was that we'll just stand on our</b></p> <p>17 <b>objections or if it's not necessary for UBS's</b></p> <p>18 <b>motion for summary judgment. Because the</b></p> <p>19 <b>fundamental point was UBS was asking for --</b></p> <p>20 <b>Pachulski and I agreed that UBS was asking for</b></p> <p>21 <b>documents it didn't need, but the reason it was</b></p> <p>22 <b>asking for documents it didn't need was for the</b></p> <p>23 <b>purposes of preventing the Court from going</b></p> <p>24 <b>forward with the summary judgment on the claims</b></p> <p>25 <b>against the debtor. And so there was a discussion</b></p>
<p style="text-align: right;">130</p> <p>1 asset information that UBS was seeking?</p> <p>2 <b>A I don't recall if he did or not. I</b></p> <p>3 <b>remember John Morris was the person at Pachulski</b></p> <p>4 <b>responsible for that part of the process and what</b></p> <p>5 <b>conversations happened between Mr. Demo and</b></p> <p>6 <b>Mr. Morris, I don't know.</b></p> <p>7 Q Well, did anyone convey to you, in words</p> <p>8 or substance, that other people would be handling,</p> <p>9 reviewing those e-mails that were being housed by</p> <p>10 Meta-e for responsiveness to the information about</p> <p>11 the assets of SOHC, CDO Fund and HFP that UBS was</p> <p>12 requesting?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A The conversation simply was, all right,</b></p> <p>15 <b>the e-mails are separate, Isaac, you don't need to</b></p> <p>16 <b>look at those or worry about those, they're being</b></p> <p>17 <b>handled separately.</b></p> <p>18 <b>BY MR. CLUBOK:</b></p> <p>19 Q But other than those e-mails, you were</p> <p>20 responsible for getting any other material</p> <p>21 information you had about the assets of CDO Fund,</p> <p>22 SOHC and HFP dating back to March 2009?</p> <p>23 <b>A So there's one exception to that.</b></p> <p>24 Q Yes.</p> <p>25 <b>A I told Mr. Demo that I was not going to be</b></p>	<p style="text-align: right;">132</p> <p>1 <b>of what are the documents we need to give them,</b></p> <p>2 <b>how hard is it to get, and then what are we --</b></p> <p>3 <b>between, you know, kind of the balance of the</b></p> <p>4 <b>burden and the requests and, you know, how much</b></p> <p>5 <b>you want to show the Court that you've produced</b></p> <p>6 <b>these documents, even though they're completely</b></p> <p>7 <b>irrelevant to the claims at bar. I mean, that's a</b></p> <p>8 <b>balancing test that counsel goes through all the</b></p> <p>9 <b>time.</b></p> <p>10 Q You told Mr. Demo that the total value of</p> <p>11 assets at SOHC and HFP from the time period of</p> <p>12 March 2009 through the present was totally</p> <p>13 irrelevant to our claims against the debtor?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 <b>A I don't know that that was the</b></p> <p>16 <b>conversation. The conclusion was that we weren't</b></p> <p>17 <b>going to look for the HFP documents.</b></p> <p>18 <b>BY MR. CLUBOK:</b></p> <p>19 Q Okay. You introduced this concept of</p> <p>20 total irrelevancy. Did you, in words or</p> <p>21 substance, discuss with Mr. Demo that asset</p> <p>22 information about CDO Fund, SOHC and HFP was</p> <p>23 totally irrelevant against the claims of the</p> <p>24 debtor?</p> <p>25 MS. SMITH: Objection to form.</p>

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<p style="text-align: right;">133</p> <p>1 <b>A I believe the conversation was UBS -- UBS</b>                  2 <b>has had ten years to seek whatever discovery it</b>                  3 <b>wants and it didn't need these documents until a</b>                  4 <b>month before summary judgment. And so the</b>                  5 <b>discussion was that that request for documents</b>                  6 <b>immediately before summary judgment was an attempt</b>                  7 <b>to delay summary judgment.</b>                  8 <b>BY MR. CLUBOK:</b>                  9 Q Yeah, the question -- I asked the question                  10 about relevancy. Regardless of whether --                  11 whatever your views are, these arguments you want                  12 to make about --                  13 <b>A To be clear, these aren't my arguments,</b>                  14 <b>sir. This is Pachulski's position they were</b>                  15 <b>conveying to me.</b>                  16 Q I see. So Pachulski conveyed -- did they                  17 convey to you, then, that it was unnecessary to                  18 obtain all of the asset information from HFP from                  19 March 2009 to the present, in words or substance?                  20 <b>A There was a conclusion that we weren't</b>                  21 <b>going to. I don't remember if there was a</b>                  22 <b>discussion, the use of the word necessary or not,</b>                  23 <b>but ultimately we didn't decide to.</b>                  24 Q So Pachulski -- Mr. Demo specifically                  25 conveyed to you that they had concluded it was</p>	<p style="text-align: right;">135</p> <p>1 <b>A Ultimately that was not the task that he</b>                  2 <b>concluded I should undertake.</b>                  3 Q That's not my -- we'll get to the task                  4 that he gave you. But did he convey, in words or                  5 substance, that the debtor was going to use its                  6 best efforts to identify the assets of SOHC and                  7 CDO Fund from March 2009 to the present for                  8 purposes of providing that information to UBS?                  9 MS. SMITH: Objection to form.                  10 <b>A At some point in the process, that may</b>                  11 <b>have been his statement, but that wasn't the</b>                  12 <b>conclusion after we had gone through numerous</b>                  13 <b>discussions.</b>                  14 <b>BY MR. CLUBOK:</b>                  15 Q What was the conclusion?                  16 <b>A The conclusion was that my task was to</b>                  17 <b>locate the assets that were in the production to</b>                  18 <b>UBS as of May 2009 and identify what had happened</b>                  19 <b>to those assets.</b>                  20 Q And did you have -- setting aside the                  21 e-mails that you were specifically told others                  22 would be reviewing, did you have any other                  23 information about assets of SOHC or CDO Fund from                  24 March 2009 to the present that you did not share                  25 with Mr. Demo?</p>
<p style="text-align: right;">134</p> <p>1 unnecessary to try to trace the assets of HFP from                  2 March 2009 to the present?                  3 <b>A Again, you're introducing the word</b>                  4 <b>necessary, which I'm not prepared to adopt. I can</b>                  5 <b>just say the conclusion from Mr. Demo was that we</b>                  6 <b>weren't going to do that at that time.</b>                  7 Q Okay. Mr. Demo conveyed to you that the                  8 debtor had concluded it was not going to try to                  9 identify the assets of HFP from March 2009 to the                  10 present to provide to UBS, correct?                  11 <b>A Can you repeat that question? It had a</b>                  12 <b>lot in it.</b>                  13 Q Did Mr. Demo convey to you that the debtor                  14 had concluded it was not going to try to identify                  15 the assets of HFP from March 2009 to the present                  16 in order to provide that information to UBS?                  17 <b>A I think that's probably a fair</b>                  18 <b>characterization.</b>                  19 Q Okay. Well, we may come back to HFP. But                  20 with respect to SOHC and CDO Fund, did Mr. Demo                  21 convey, in words or substance, that it was                  22 necessary to as best as possible identify the                  23 assets of SOHC and CDO Fund from March 2009 to the                  24 present for purposes of providing that information                  25 to UBS?</p>	<p style="text-align: right;">136</p> <p>1 <b>A From March 2009 through the present, yes,</b>                  2 <b>I did have some other information I did not share</b>                  3 <b>with him.</b>                  4 Q And that was material information about                  5 the value of assets of those two funds between                  6 March 2009 through the present, correct?                  7 MS. SMITH: Objection to form.                  8 <b>A Material information about the value of</b>                  9 <b>assets? I don't really think that's right, no.</b>                  10 <b>BY MR. CLUBOK:</b>                  11 Q Well, you said you had other -- well,                  12 material should be assumed. If you had                  13 information that an asset was named Highland CDO                  14 Opportunity Fund, LLP versus LP, I'm not talking                  15 about that. I'm talking about material                  16 information. So let me ask the question again.                  17 I said -- you said from March 2009 to the                  18 present, you had some other information about the                  19 assets of SOHC or CDO Fund that you did not share                  20 with Mr. Demo, correct?                  21 <b>A Yes.</b>                  22 Q And when you say some information, do you                  23 mean material information about those assets?                  24 <b>A Material information over that entire time</b>                  25 <b>period, probably, yes.</b></p>

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<p style="text-align: right;">137</p> <p>1 Q But was --</p> <p>2 <b>A Hold on. Apologies, sir, let me finish</b></p> <p>3 <b>the answer. Material information about that</b></p> <p>4 <b>entire time period, yes. Material information</b></p> <p>5 <b>about the task I was assigned, no.</b></p> <p>6 Q Understood. And what was the material</p> <p>7 information you had about the assets of SOHC and</p> <p>8 CDO Fund from the period March 2009 through the</p> <p>9 present that you chose not to share with</p> <p>10 Pachulski?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 <b>A So I'm going to put the word material to</b></p> <p>13 <b>the side, sir. So if you want to just re-ask the</b></p> <p>14 <b>question, because that's a judgment call and I'll</b></p> <p>15 <b>let the Court make that decision.</b></p> <p>16 <b>BY MR. CLUBOK:</b></p> <p>17 Q You're a lawyer.</p> <p>18 <b>A I am.</b></p> <p>19 Q So I'm using -- with your lawyer hat on,</p> <p>20 did you believe you had any material information</p> <p>21 about the assets of SOHC and CDO Fund from the</p> <p>22 period March 2009 through the present that you</p> <p>23 chose not to share with Pachulski?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 <b>A I'm not going to perform -- sir, I'm not</b></p>	<p style="text-align: right;">139</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you make a conscious decision not to</p> <p>3 share that information with the Pachulski firm?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 <b>A I made a conscious decision that it wasn't</b></p> <p>6 <b>relevant to the task I was undertaking.</b></p> <p>7 <b>BY MR. CLUBOK:</b></p> <p>8 Q Did you ever share that information with</p> <p>9 Mr. Seery?</p> <p>10 <b>A No, but we rarely spoke.</b></p> <p>11 Q Did you share that information or cause it</p> <p>12 to be shared with any of the directors?</p> <p>13 <b>A I almost never spoke to the other two</b></p> <p>14 <b>directors, or even directly ever communicated with</b></p> <p>15 <b>them hardly ever.</b></p> <p>16 Q Did you communicate through any means,</p> <p>17 e-mail, smoke signals, text messages, whatever,</p> <p>18 the information about the 2017 transaction</p> <p>19 involving CDO Fund and SOHC assets to any</p> <p>20 independent director or lawyer of the debtor?</p> <p>21 <b>A No. It wasn't relevant to the task I was</b></p> <p>22 <b>working on.</b></p> <p>23 Q Did you discuss that transaction with</p> <p>24 anybody else at any point during the pendency of</p> <p>25 the bankruptcy?</p>
<p style="text-align: right;">138</p> <p>1 <b>prepared to perform legal analysis on the fly, but</b></p> <p>2 <b>if you'd like to ask me for objective facts, I'm</b></p> <p>3 <b>happy to provide those to you.</b></p> <p>4 <b>BY MR. CLUBOK:</b></p> <p>5 Q We'll come back to that. But what was the</p> <p>6 information you had about the assets of SOHC and</p> <p>7 CDO Fund from March 2009 to the present that you</p> <p>8 chose not to provide to the Pachulski firm?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A I knew that there had been a transaction</b></p> <p>11 <b>in 2017 sometime with respect to an</b></p> <p>12 <b>after-the-event insurance policy with Sentinel.</b></p> <p>13 <b>BY MR. CLUBOK:</b></p> <p>14 Q Anything else?</p> <p>15 <b>A Is there anything else? There may have</b></p> <p>16 <b>been other things, but I just didn't look into</b></p> <p>17 <b>them really.</b></p> <p>18 Q And you made a conscious decision not to</p> <p>19 share anything about the transaction in 2017</p> <p>20 involving Sentinel insurance with the Pachulski</p> <p>21 firm, correct?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A It wasn't relevant to the task I was</b></p> <p>24 <b>undertaking.</b></p> <p>25</p>	<p style="text-align: right;">140</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 <b>A Yes.</b></p> <p>3 <b>BY MR. CLUBOK:</b></p> <p>4 Q Who did you discuss it with?</p> <p>5 <b>A Beecher Carlson.</b></p> <p>6 Q Who is Beecher Carlson?</p> <p>7 <b>A They're the underwriter for Sentinel on</b></p> <p>8 <b>the insurance policy.</b></p> <p>9 Q And there's an insurance policy?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And who is that insurance -- who is the</p> <p>12 insured on that insurance policy?</p> <p>13 <b>A Certain of the defendants in the UBS case.</b></p> <p>14 Q Including CDO Fund and SOHC?</p> <p>15 <b>A I believe that's probably right, but I'd</b></p> <p>16 <b>have to have my recollection refreshed.</b></p> <p>17 Q And you understood that insurance policy</p> <p>18 is an asset of the CDO Fund and SOHC, correct?</p> <p>19 <b>A No.</b></p> <p>20 Q What do you think it is?</p> <p>21 <b>A I don't know how to -- it's however</b></p> <p>22 <b>accountants would classify it, but, no, I don't</b></p> <p>23 <b>believe it's an asset. The accountants didn't</b></p> <p>24 <b>classify it as an asset was my understanding. I</b></p> <p>25 <b>don't think insurance policies show up on balance</b></p>

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<p style="text-align: right;">141</p> <p><b>1 sheets.</b></p> <p>2 Q There were assets exchanged for that</p> <p>3 insurance policy in 2017, correct?</p> <p>4 <b>A That's my understanding, yes.</b></p> <p>5 Q What was the rough value of those assets</p> <p>6 that were exchanged?</p> <p>7 <b>A I don't know.</b></p> <p>8 Q You have no idea?</p> <p>9 <b>A No.</b></p> <p>10 Q Did you ever know?</p> <p>11 <b>A No, I don't believe I did.</b></p> <p>12 Q You never had any idea about the rough</p> <p>13 total value of the assets exchanged in 2017 for</p> <p>14 the insurance policy that you've called the ATE</p> <p>15 policy from Sentinel?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A No, I wasn't really involved in that.</b></p> <p>18 <b>BY MR. CLUBOK:</b></p> <p>19 Q You weren't involved in what?</p> <p>20 <b>A The drafting of the policy or the process</b></p> <p>21 <b>of getting it implemented.</b></p> <p>22 Q You weren't involved at all in the</p> <p>23 drafting of the policy?</p> <p>24 <b>A No.</b></p> <p>25 Q You weren't involved at all in the process</p>	<p style="text-align: right;">143</p> <p>1 judgment came down, you shared that with Beecher</p> <p>2 Carlson?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 <b>A I shared it with them. I don't remember</b></p> <p>5 <b>if it was immediately because you have to remember</b></p> <p>6 <b>at this time I was in recovery at home. So I</b></p> <p>7 <b>think I provided it to them kind of as quickly as</b></p> <p>8 <b>possible, given my limitations at the time.</b></p> <p>9 <b>BY MR. CLUBOK:</b></p> <p>10 Q Why did you provide it to Beecher Carlson</p> <p>11 as quickly as possible?</p> <p>12 <b>A Because it's a -- the judgment against the</b></p> <p>13 <b>insureds would be a fact that you should inform</b></p> <p>14 <b>the underwriter.</b></p> <p>15 Q When you say Beecher Carlson is the</p> <p>16 underwriter, what do you mean? They underwrote</p> <p>17 the policy?</p> <p>18 <b>A No, sorry, that's the wrong term. Oh,</b></p> <p>19 <b>man. I forget their exact role. They're -- maybe</b></p> <p>20 <b>they're more like an auditor.</b></p> <p>21 Q For Sentinel?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A Well, that's the thing. For the policy.</b></p> <p>24 <b>My understanding is that you had to have kind of</b></p> <p>25 <b>an external third party looking at the policy, but</b></p>
<p style="text-align: right;">142</p> <p>1 of getting the insurance policy implemented; is</p> <p>2 that correct?</p> <p>3 <b>A I had one role and it was a limited one.</b></p> <p>4 Q What was that?</p> <p>5 <b>A It was to share information with Beecher</b></p> <p>6 <b>Carlson as the underwriter about the underlying</b></p> <p>7 <b>litigation.</b></p> <p>8 Q And that was the only role you ever had</p> <p>9 that in any way was connected to the insurance</p> <p>10 policy issued by Sentinel?</p> <p>11 <b>A That's the only one I can ever recall,</b></p> <p>12 <b>yes.</b></p> <p>13 Q And what information did you share with</p> <p>14 Beecher Carlson as the underwriter, about the</p> <p>15 underlying litigation?</p> <p>16 <b>A Pleadings --</b></p> <p>17 Q Anything else?</p> <p>18 <b>A -- for the most part. The appellate</b></p> <p>19 <b>rulings of the New York appellate division.</b></p> <p>20 Q Anything else?</p> <p>21 <b>A When the February 2020 judgment came down,</b></p> <p>22 <b>I believe I shared that with them.</b></p> <p>23 Q So as soon as the judgment came down</p> <p>24 regarding -- strike that.</p> <p>25 As soon as the roughly billion dollar</p>	<p style="text-align: right;">144</p> <p>1 <b>I don't remember exactly. There's the right word</b></p> <p>2 <b>for what their role was and I apologize. It's</b></p> <p>3 <b>just slipping my mind right now.</b></p> <p>4 <b>BY MR. CLUBOK:</b></p> <p>5 Q Okay. And other than providing</p> <p>6 information -- and by the way, is the first time</p> <p>7 you provided information to Beecher Carlson after</p> <p>8 the policy was put into place?</p> <p>9 <b>A No.</b></p> <p>10 Q So you started providing information to</p> <p>11 Beecher Carlson prior to the execution of the</p> <p>12 policy?</p> <p>13 <b>A My recollection is that I had one</b></p> <p>14 <b>conversation with Beecher Carlson in advance of</b></p> <p>15 <b>the execution of the policy.</b></p> <p>16 Q Who at Beecher Carlson?</p> <p>17 <b>A I don't know.</b></p> <p>18 Q And what was the substance of that one</p> <p>19 conversation?</p> <p>20 <b>A To essentially give the entire background</b></p> <p>21 <b>of the litigation.</b></p> <p>22 Q At that point did you give your opinion</p> <p>23 that liability was likely to be established</p> <p>24 against CDO Fund and SOHC, in words or substance?</p> <p>25 <b>A I-- it was one conversation about</b></p>

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<p style="text-align: right;">145</p> <p><b>1 45 minutes four years ago. I really don't</b></p> <p><b>2 remember what we said.</b></p> <p>3 Q Do you recall ever providing, in advance</p> <p>4 of the policy, your opinion that liability was</p> <p>5 likely to be established?</p> <p>6 MS. SMITH: Objection to form.</p> <p><b>7 A I don't recall.</b></p> <p><b>8 BY MR. CLUBOK:</b></p> <p>9 Q Do you recall ever telling Beecher Carlson</p> <p>10 before or after the policy but prior to the</p> <p>11 judgment, that you had formed an opinion that</p> <p>12 liability was likely to be established against</p> <p>13 CDO Fund and SOHC with respect to the breach of</p> <p>14 contract claims?</p> <p><b>15 A I don't recall. Largely it was providing</b></p> <p><b>16 Beecher Carlson with information and letting them</b></p> <p><b>17 make their determination.</b></p> <p>18 Q Did you ever provide them with that</p> <p>19 information, the view you had with respect to</p> <p>20 liability?</p> <p><b>21 A I don't recall if I did. Mostly I</b></p> <p><b>22 provided them objective data, like pleadings,</b></p> <p><b>23 orders of the Court, those sorts of materials.</b></p> <p>24 Q Are you saying you have no idea if you</p> <p>25 provided this information or are you saying you</p>	<p style="text-align: right;">147</p> <p>1 Q You called it an after-the-event policy.</p> <p>2 Was it also sometimes shorthand by ATE policy?</p> <p><b>3 A Yes, that's what after the event stands</b></p> <p><b>4 for. It's a fairly standard industry product</b></p> <p><b>5 that's very common, particularly in the UK and</b></p> <p><b>6 other common law jurisdictions. So it's a fairly</b></p> <p><b>7 matured industry.</b></p> <p>8 Q Okay. And did you have any role -- or</p> <p>9 sorry, who made the decision to obtain an ATE</p> <p>10 policy with respect to the UBS litigation in</p> <p>11 New York?</p> <p><b>12 A My understanding is that Mr. Dondero made</b></p> <p><b>13 that decision.</b></p> <p>14 Q What's that understanding based on?</p> <p><b>15 A I believe that was communicated to me by</b></p> <p><b>16 Mr. Ellington.</b></p> <p>17 Q When?</p> <p><b>18 A Back around the time, probably right after</b></p> <p><b>19 the policy was implemented.</b></p> <p>20 Q Okay. So after it was implemented was the</p> <p>21 first time you heard that Mr. Dondero had made the</p> <p>22 decision to implement the ATE policy?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 MR. CLUBOK: Sorry, what's the form</p> <p>25 objection?</p>
<p style="text-align: right;">146</p> <p>1 don't recall doing it and therefore you probably</p> <p>2 didn't do it?</p> <p><b>3 A Well, I'm saying neither. What I'm saying</b></p> <p><b>4 is I don't remember one way or another.</b></p> <p>5 Q Okay. And other than providing</p> <p>6 information to Beecher Carlson, did you have any</p> <p>7 other role in any way with the insurance policy</p> <p>8 issued by Sentinel with respect to the UBS</p> <p>9 litigation?</p> <p><b>10 A No, not that I recall.</b></p> <p>11 Q Did you have any role at all in the</p> <p>12 process by which it was decided to pursue</p> <p>13 obtaining this policy?</p> <p>14 MS. SMITH: Objection to form.</p> <p><b>15 A I don't believe that I was involved in</b></p> <p><b>16 that process really.</b></p> <p><b>17 BY MR. CLUBOK:</b></p> <p>18 Q Who made the decision -- by the way, you</p> <p>19 called it an after-the-event policy?</p> <p><b>20 A Yeah. Sorry. I need to sneeze, but I'll</b></p> <p><b>21 try to push through it.</b></p> <p>22 Q Okay. You let us know if you need a</p> <p>23 break. As I've said many times, please tell us if</p> <p>24 you need a break.</p> <p><b>25 A Just a sneeze on this one.</b></p>	<p style="text-align: right;">148</p> <p>1 MS. SMITH: I'm sorry, I just</p> <p>2 misunderstood the question.</p> <p>3 MR. CLUBOK: Okay. I'll rephrase it.</p> <p>4 Sorry.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Are you saying that after the ATE</p> <p>7 insurance policy went into effect was the first</p> <p>8 time that you heard that Mr. Dondero had made the</p> <p>9 decision to enter into that ATE policy?</p> <p><b>10 A I'm trying to recall, but I think that's</b></p> <p><b>11 right.</b></p> <p>12 Q And do you know -- did anyone ever ask</p> <p>13 your opinion as to whether or not it was a good</p> <p>14 idea to do this?</p> <p><b>15 A I certainly don't recall -- let me</b></p> <p><b>16 rephrase. I don't recall that ever happening. I</b></p> <p><b>17 don't believe it did happen.</b></p> <p>18 Q Were you ever in any way involved with</p> <p>19 weighing the pros and cons of entering into the</p> <p>20 ATE policy prior to it being entered into?</p> <p><b>21 A In or around -- you know, for the policy</b></p> <p><b>22 that got implemented, no.</b></p> <p>23 Q For any ATE policy?</p> <p><b>24 A I think there had been contemplation of an</b></p> <p><b>25 ATE policy earlier in that year as a settlement</b></p>

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<p style="text-align: right;">149</p> <p><b>1 mechanism, but that's the only other thing I can</b></p> <p><b>2 remember.</b></p> <p>3 Q Were you involved in that?</p> <p><b>4 A I believe it was part of a settlement</b></p> <p><b>5 analysis that I contributed to. Or that I was</b></p> <p><b>6 involved in.</b></p> <p>7 Q And so as part of that settlement</p> <p>8 analysis, you assessed the pros and cons of</p> <p>9 entering into an ATE policy?</p> <p><b>10 A I don't remember if I did or not. I</b></p> <p><b>11 remember that term showed up during that time in</b></p> <p><b>12 those considerations.</b></p> <p>13 Q But you're not linking that work you did</p> <p>14 to the actual entering into the ATE policy?</p> <p><b>15 A No, they're two completely separate</b></p> <p><b>16 processes.</b></p> <p>17 Q Why?</p> <p><b>18 A Well, one was essentially a mechanism for</b></p> <p><b>19 funding a settlement which, you know, basically</b></p> <p><b>20 in -- like essentially like you have a settlement</b></p> <p><b>21 agreement already done and signed and this is how</b></p> <p><b>22 you're going to fund it.</b></p> <p>23 Q Okay.</p> <p><b>24 A That's not what the August 2017</b></p> <p><b>25 transaction was.</b></p>	<p style="text-align: right;">151</p> <p>1 this policy to any of the independent directors?</p> <p><b>2 A I never discussed it with them one way or</b></p> <p><b>3 another.</b></p> <p>4 Q Did you ever disclose the existence of</p> <p>5 this policy to any lawyer representing the debtor?</p> <p><b>6 A I never discussed it with them one way or</b></p> <p><b>7 another.</b></p> <p>8 Q Did you discuss this policy with any other</p> <p>9 human being other than Beecher Carlson since the</p> <p>10 time that bankruptcy started?</p> <p>11 MS. SMITH: Objection to form.</p> <p><b>12 A Yes.</b></p> <p><b>13 BY MR. CLUBOK:</b></p> <p>14 Q Who?</p> <p><b>15 A Matt DiOrio.</b></p> <p>16 Q When?</p> <p><b>17 A He was the one who usually would set up</b></p> <p><b>18 the calls with Beecher Carlson.</b></p> <p>19 Q And anyone else at all? Any other human</p> <p>20 being that you discussed this policy with since</p> <p>21 the bankruptcy?</p> <p><b>22 A I had discussed it at one point with</b></p> <p><b>23 Mr. Ellington.</b></p> <p>24 Q When?</p> <p><b>25 A July sometime maybe.</b></p>
<p style="text-align: right;">150</p> <p>1 Q What was the August 2017 transaction?</p> <p><b>2 A I'm not going to -- I don't know that I</b></p> <p><b>3 have a good characterization for it. I wasn't</b></p> <p><b>4 really involved in it, but it wasn't that.</b></p> <p>5 Q What was it, as far as you know?</p> <p><b>6 A It was a purchase of an after-the-event</b></p> <p><b>7 insurance policy.</b></p> <p>8 Q To do what?</p> <p><b>9 A I don't know what the purpose was. I</b></p> <p><b>10 wasn't really involved.</b></p> <p>11 Q You have no idea what the purpose of the</p> <p>12 after-the-event insurance policy was?</p> <p><b>13 A I don't know.</b></p> <p>14 Q Did you ever see it?</p> <p><b>15 A I remember seeing one page of it one time.</b></p> <p>16 Q When was that?</p> <p><b>17 A We were doing one of our annual update</b></p> <p><b>18 calls with Beecher Carlson and I think I asked</b></p> <p><b>19 on -- can we -- can someone confirm for me who the</b></p> <p><b>20 insureds are so I can make sure to link the</b></p> <p><b>21 developments for the defendants to the insureds</b></p> <p><b>22 that are named, and so I saw one page of the</b></p> <p><b>23 insurance policy at that point that listed who the</b></p> <p><b>24 insureds were.</b></p> <p>25 Q Did you ever disclose the existence of</p>	<p style="text-align: right;">152</p> <p>1 Q Of what year?</p> <p><b>2 A 2020. My apologies.</b></p> <p>3 Q Anyone else at all?</p> <p><b>4 A Not that I recall.</b></p> <p>5 Q Okay.</p> <p>6 MR. CLUBOK: Let's take a break.</p> <p>7 THE VIDEOGRAPHER: We are off the record</p> <p>8 at 1:04 p.m.</p> <p>9 (Recess taken from 1:04 p.m. CDT to</p> <p>10 2:12 p.m. CDT)</p> <p>11 THE VIDEOGRAPHER: The time is 2:12 p.m.</p> <p>12 We are back on the record.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Mr. Ellington [sic] --</p> <p><b>15 A No.</b></p> <p>16 Q Sorry. Mr. -- strike that.</p> <p>17 Mr. Leventon, you said you discussed the</p> <p>18 ATE policy with Mr. Ellington in approximately</p> <p>19 July 2020, correct?</p> <p><b>20 A I believe that was my testimony, yes.</b></p> <p>21 Q What was the reason for that conversation?</p> <p><b>22 A We were discussing the discovery task that</b></p> <p><b>23 I had been placed on by -- or maybe it was August</b></p> <p><b>24 then. The discovery task that I had been placed</b></p> <p><b>25 on by Pachulski and I was checking with</b></p>



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<p style="text-align: right;">153</p> <p>1 Mr. Ellington because he had been talking to                  2 Mr. Seery a lot and I wanted to see if there was                  3 anything I should be aware of.                  4 Q And did you discuss with Mr. Ellington                  5 whether or not you should disclose the ATE policy                  6 as part of the task you were assigned?                  7 A We discussed whether it was relevant to                  8 the task that I had been assigned and                  9 Mr. Ellington stated that he didn't believe that                  10 it was relevant to the task I was working on.                  11 Q You asked Mr. Ellington whether or not --                  12 in words or substance, you asked Mr. Ellington                  13 whether you should disclose the policy to                  14 Mr. Seery and the debtor's counsel?                  15 MS. SMITH: Objection, form.                  16 BY MR. CLUBOK:                  17 Q Correct?                  18 A That's not my testimony, no.                  19 Q Isn't it true that, in words or substance,                  20 you asked Mr. Ellington whether you should                  21 disclose the policy to Mr. Seery and the debtor's                  22 counsel?                  23 MS. SMITH: Objection, form.                  24 A That's not what our conversation was, no.                  25</p>	<p style="text-align: right;">155</p> <p>1 policy relevant to the task I was working on. But                  2 I just hadn't been privy to those conversations so                  3 I was checking.                  4 Q Did you offer your view to Mr. Ellington                  5 as to whether or not you should disclose the ATE                  6 policy to Mr. Seery and debtor's counsel?                  7 A I don't remember if I offered an opinion                  8 to Mr. Ellington. I think it was more focused on                  9 here's the task that I'm working on, is this                  10 relevant to that task.                  11 Q And he just said no, without any                  12 explanation or did he give you an explanation for                  13 his thinking?                  14 A I don't remember -- I don't remember what                  15 he said in that conversation. I remember the                  16 conclusion, but I also had asked -- another part                  17 of the conversation was, you've been talking to                  18 Seery, I haven't, so do -- you know, is this                  19 something I need to introduce or something that I                  20 need to interject into the task I'm working on.                  21 Q Why did you think it might be something                  22 that would appropriately be interjected into the                  23 task?                  24 A Well, that wasn't my testimony. My                  25 testimony is it was a thing to consider.</p>
<p style="text-align: right;">154</p> <p>1 BY MR. CLUBOK:                  2 Q Did you, in words or substance, ever ask                  3 Mr. Ellington whether you should disclose the                  4 policy?                  5 A To whom?                  6 Q To the debtor or their counsel.                  7 A So the conversation was, is the policy                  8 relevant to the task I'm working on, and the                  9 answer, Mr. Ellington said he didn't believe that                  10 it was and therefore didn't need to be included as                  11 materials in part of that task. And then I asked,                  12 you know, you've been in conversations with                  13 Mr. Seery, I don't talk to Mr. Seery hardly ever,                  14 so is there any other thing that -- any other --                  15 anything else that I should know or any other                  16 reason, you know, outside of my task that I should                  17 include it in the materials and Scott said no.                  18 Q Who initiated this conversation?                  19 A I don't recall. I take it back. I                  20 probably initiated it, I think.                  21 Q Why?                  22 A Because I wanted to understand if there                  23 had been kind of -- if there were separate                  24 contexts and conversations with Mr. Seery that I                  25 had not been privy to that would make the ATE</p>	<p style="text-align: right;">156</p> <p>1 Q Did you think that it might be something                  2 that would be appropriate to, as you say,                  3 interject into the task?                  4 A It would depend on the context. From the                  5 face of the task, probably not; but if there was                  6 further context based on Mr. Ellington's                  7 conversations with Mr. Seery that I didn't have,                  8 then I wanted to find out if that context existed.                  9 Q You knew that it was an urgent request                  10 from UBS to identify the total assets and history                  11 of the assets in CDO Fund/SOHC, correct?                  12 MS. SMITH: Objection, assumes facts not                  13 in evidence.                  14 A I don't know what you mean by urgent, sir.                  15 BY MR. CLUBOK:                  16 Q You were specifically advised that there                  17 was an urgent request, or words to that effect,                  18 from UBS for the debtor to identify the total                  19 assets and history of the assets in CDO Fund and                  20 SOHC; isn't that true?                  21 MS. SMITH: Objection, form.                  22 A I don't recall if the word urgent was                  23 used.                  24 BY MR. CLUBOK:                  25 Q Whether the exact word urgent or high</p>

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<p style="text-align: right;">157</p> <p>1 priority or very important, was there any --</p> <p>2 anything like that that conveyed to you the</p> <p>3 importance of this task?</p> <p>4 <b>A I believe it was conveyed to me that UBS</b></p> <p>5 <b>thought the task was very important, but I don't</b></p> <p>6 <b>know that that's necessarily what Pachulski's</b></p> <p>7 <b>position was.</b></p> <p>8 Q Was it ever conveyed to you that it was a</p> <p>9 high priority task for you to assist in</p> <p>10 identifying all the assets and the history of the</p> <p>11 assets for SOHC and CDO Fund?</p> <p>12 <b>A No.</b></p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A Not that I recall. And it's certainly not</b></p> <p>15 <b>the task ultimately that I was given.</b></p> <p>16 <b>BY MR. CLUBOK:</b></p> <p>17 Q Was it ever conveyed to you that the</p> <p>18 debtor had a high priority task for itself to</p> <p>19 identify the assets and history of the assets for</p> <p>20 SOHC and CDO Fund?</p> <p>21 <b>A Not that I recall and that's certainly not</b></p> <p>22 <b>at the end of kind of the iterative discussion</b></p> <p>23 <b>process with Mr. Demo what I was tasked with</b></p> <p>24 <b>doing.</b></p> <p>25 Q You said -- earlier, I was asking you</p>	<p style="text-align: right;">159</p> <p>1 <b>A That's correct.</b></p> <p>2 Q Did you ever -- did you see a draft of the</p> <p>3 ATE policy before it was executed?</p> <p>4 <b>A No, not that I recall. I don't -- no, I</b></p> <p>5 <b>don't believe I ever saw a draft.</b></p> <p>6 Q Did you see an unsigned version of the ATE</p> <p>7 policy?</p> <p>8 <b>A I don't believe I ever saw an unsigned</b></p> <p>9 <b>copy of the ATE policy.</b></p> <p>10 Q Okay. So I'm trying to -- I'm going to</p> <p>11 try to ask this as broadly as possible, and if you</p> <p>12 don't understand the question, I'll repeat it.</p> <p>13 But are you basically -- are you saying that other</p> <p>14 than this one page that Mr. Sevilla showed you on</p> <p>15 his computer screen, you never saw any part of the</p> <p>16 ATE policy, whether it was executed or unexecuted,</p> <p>17 correct?</p> <p>18 <b>A To the best of my recollection, that's</b></p> <p>19 <b>correct.</b></p> <p>20 Q Did you ever try to see a copy of the ATE</p> <p>21 policy in connection with your work at Highland?</p> <p>22 <b>A I never asked to see a copy of the ATE</b></p> <p>23 <b>policy that I recall.</b></p> <p>24 Q When -- roughly when did Mr. Sevilla show</p> <p>25 you this one page from the ATE policy?</p>
<p style="text-align: right;">158</p> <p>1 about the ATE policy that was ultimately entered</p> <p>2 into. Remember that discussion?</p> <p>3 <b>A Yes.</b></p> <p>4 Q I think you said that you only saw one</p> <p>5 page of it one time; is that right?</p> <p>6 <b>A That's right.</b></p> <p>7 Q Who showed you that one page?</p> <p>8 <b>A JP Sevilla.</b></p> <p>9 Q And how?</p> <p>10 <b>A On his computer screen.</b></p> <p>11 Q Oh, he let you look at one page on his</p> <p>12 computer screen and other than that, you never saw</p> <p>13 the ATE policy as it was -- after it was actually</p> <p>14 executed?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 <b>A I don't know that --</b></p> <p>17 <b>BY MR. CLUBOK:</b></p> <p>18 Q Strike that. Let me ask the question</p> <p>19 again.</p> <p>20 Mr. Sevilla showed you one page from the</p> <p>21 ATE policy on his computer screen, correct?</p> <p>22 <b>A Yes.</b></p> <p>23 Q And other than that one page that</p> <p>24 Mr. Sevilla showed you, you never saw the executed</p> <p>25 ATE policy, correct?</p>	<p style="text-align: right;">160</p> <p>1 <b>A We were going into an update call with</b></p> <p>2 <b>Beecher Carlson and I looked at it for about</b></p> <p>3 <b>30 seconds and then continued on to the call. It</b></p> <p>4 <b>would have been sometime in 2018 or '19 probably.</b></p> <p>5 Q Did it seem curious to you that you were</p> <p>6 only allowed to see one page from the ATE policy?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A I disagree with the premise of the</b></p> <p>9 <b>question, sir.</b></p> <p>10 <b>BY MR. CLUBOK:</b></p> <p>11 Q Okay.</p> <p>12 MR. CLUBOK: Let's go off the record.</p> <p>13 THE VIDEOGRAPHER: We are off the record</p> <p>14 at 2:21 p.m.</p> <p>15 (Recess taken from 2:21 p.m. CDT to</p> <p>16 2:22 p.m. CDT)</p> <p>17 THE VIDEOGRAPHER: 2:22 p.m., back on the</p> <p>18 record.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Did it seem unusual to you that</p> <p>21 Mr. Sevilla just showed you a page on his computer</p> <p>22 screen as opposed to sending you the policy so you</p> <p>23 could see it yourself?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 <b>A Under the circumstances, it wasn't unusual</b></p>

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<p style="text-align: right;">161</p> <p>1 in the slightest.</p> <p>2 <b>BY MR. CLUBOK:</b></p> <p>3 Q What were the circumstances?</p> <p>4 A We were about to have a call with Beecher</p> <p>5 Carlson. I was going to give an update on the</p> <p>6 litigation. I wanted to see the actual on the</p> <p>7 page who the insureds were so I could match it up</p> <p>8 with who the defendants were.</p> <p>9 Q I see.</p> <p>10 A I saw a single page that had the listed</p> <p>11 insureds, I looked at that page for anywhere from</p> <p>12 15 to 20 seconds while I was on my way walking to</p> <p>13 a conference room to have the call.</p> <p>14 Q Did you see who the -- did you know who</p> <p>15 the insurer was for the policy?</p> <p>16 A I knew it was Sentinel, but the exact name</p> <p>17 of the Sentinel entity, I don't.</p> <p>18 Q How did you come to know that Sentinel was</p> <p>19 the insurer for the policy?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 A I don't remember.</p> <p>22 MR. CLUBOK: Sorry, what was the form</p> <p>23 objection there?</p> <p>24 MS. SMITH: Well, there's more than one</p> <p>25 Sentinel entity and you said, how did you come to</p>	<p style="text-align: right;">163</p> <p>1 you learn that Sentinel was the insurer for the</p> <p>2 ATE policy?</p> <p>3 A I don't recall how I learned, but it would</p> <p>4 have been sometime around the time of the</p> <p>5 transaction in August 2017.</p> <p>6 Q That's -- okay. But it was contemplated</p> <p>7 for at least a couple months prior to that that</p> <p>8 Sentinel would be the insurer for an ATE policy,</p> <p>9 correct?</p> <p>10 MS. SMITH: Objection, assumes facts not</p> <p>11 in evidence.</p> <p>12 A I don't know that that's right. I don't</p> <p>13 recall that.</p> <p>14 <b>BY MR. CLUBOK:</b></p> <p>15 Q You specifically at one point contemplated</p> <p>16 that Sentinel would be the insurer for the ATE</p> <p>17 policy; isn't that true?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A I disagree with one of the premises of</p> <p>20 your question. I'm happy to explain.</p> <p>21 <b>BY MR. CLUBOK:</b></p> <p>22 Q Yeah.</p> <p>23 A So if you're talking about what was</p> <p>24 contemplated in April of 2017, that was a</p> <p>25 completely different transaction than what was</p>
<p style="text-align: right;">162</p> <p>1 know that Sentinel was the insurer.</p> <p>2 MR. CLUBOK: Okay. Thank you.</p> <p>3 <b>BY MR. CLUBOK:</b></p> <p>4 Q I'll use the term Sentinel with the</p> <p>5 understanding that it is -- there's many different</p> <p>6 related entities that are called Sentinel perhaps</p> <p>7 and we'll just talk generally like we sometimes</p> <p>8 talk Highland generally about Sentinel; is that</p> <p>9 okay?</p> <p>10 A I don't actually know what any of the --</p> <p>11 what the Sentinel entities are. I just kind of</p> <p>12 know generally the name Sentinel.</p> <p>13 Q Yeah. Colloquially you call the insurer</p> <p>14 Sentinel, whether it's Sentinel something</p> <p>15 something sub or Sentinel something something?</p> <p>16 A Yeah, I know there were at least a couple</p> <p>17 of entities, but --</p> <p>18 Q Okay.</p> <p>19 A -- where the roles were, I just don't</p> <p>20 know.</p> <p>21 Q Okay. I'm not asking you to comment on</p> <p>22 that by saying what Sentinel -- your understanding</p> <p>23 of Sentinel did or didn't do. Okay?</p> <p>24 A Okay.</p> <p>25 Q Okay. So with that understanding, how did</p>	<p style="text-align: right;">164</p> <p>1 done in August of 2017. And so whatever role</p> <p>2 Sentinel was going to play in April was a</p> <p>3 different transaction than what happened in</p> <p>4 August.</p> <p>5 Q We'll talk about the differences</p> <p>6 between -- the supposed differences between the</p> <p>7 transactions. But certainly in April, you</p> <p>8 contemplated that Sentinel would write an ATE</p> <p>9 policy for the benefit of the Highland affiliates</p> <p>10 that were involved in the New York litigation,</p> <p>11 correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 A I don't recall exactly what the proposal</p> <p>14 was.</p> <p>15 <b>BY MR. CLUBOK:</b></p> <p>16 Q Isn't it true that at some point you</p> <p>17 contemplated Sentinel would write an ATE policy</p> <p>18 for the benefit of the Highland affiliates?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A I don't remember what the proposal was.</p> <p>21 <b>BY MR. CLUBOK:</b></p> <p>22 Q Do you -- and you don't remember ever</p> <p>23 contemplating that Sentinel would write an ATE</p> <p>24 policy; is that your testimony under oath?</p> <p>25 A That's not what I said, sir.</p>

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<p style="text-align: right;">165</p> <p>1 Q Okay. Well, then, answer my question as                  2 opposed to a question you want to answer. Isn't                  3 it true that at some point you contemplated                  4 Sentinel would write an ATE policy for the benefit                  5 of the Highland affiliates involved in the                  6 New York UBS litigation?                  7 <b>A I can -- I knew that Sentinel -- it was                  8 contemplated that Sentinel would write an ATE                  9 policy related to the UBS litigation, but who the                  10 insureds were going to be and for whose benefit                  11 that was going to be, I don't remember that                  12 proposition at all.</b>                  13 Q And why do you claim the transaction that                  14 was being contemplated in April of 2017 was                  15 entirely different than the transaction that was                  16 consummated in August of 2017?                  17 <b>A Because in April of 2017, what was                  18 discussed then, and frankly didn't get very far,                  19 was the idea of essentially getting into a                  20 settlement agreement or getting to a number with                  21 UBS for settlement and having an ATE policy serve                  22 as kind of the funding mechanism for that                  23 settlement. Two thousand -- August 2017 was --                  24 there was no settlement with UBS in service of                  25 which the ATE policy would serve as a funding</b></p>	<p style="text-align: right;">166</p> <p>1 <b>mechanism. So that's why they're two different                  2 transactions.</b>                  3 Q Did the August -- so the actual ATE policy                  4 that was entered into, did it provide for the                  5 funding of a future settlement with UBS?                  6 <b>A I don't know what the policy said. I've                  7 never seen it.</b>                  8 Q You've never seen the ATE policy that was                  9 actually executed?                  10 <b>A No, sir, other than that one page.</b>                  11 Q That was a bit of a double negative, so                  12 I'm going to ask it again. It's my fault because                  13 I asked a negative and then you said no, sir.                  14 <b>A Fair enough.</b>                  15 Q You're saying it's true that you never                  16 saw -- strike that.                  17 It's true that you have to this day never                  18 seen the entire ATE policy that was actually                  19 executed, correct?                  20 <b>A It is true that to this day the only time                  21 I've ever seen any part of the ATE policy was the                  22 one page that I saw on Mr. Sevilla's screen for                  23 about 15 to 20 seconds back in 2018 or '19.</b>                  24 Q All right. And you're sure about that?                  25 <b>A Yes, I am, sir.</b></p>
<p style="text-align: right;">167</p> <p>1 Q Okay. Did you ever talk about the ATE                  2 policy other -- about the -- strike that.                  3 Did you ever talk about what the ATE                  4 policy does for the insureds even if you didn't                  5 see it?                  6 <b>A I don't recall those conversations. I'm                  7 not sure that I did.</b>                  8 Q So you don't know the terms, fair to say,                  9 of the ATE policy other than the name of the                  10 insureds, correct?                  11 <b>A Correct. And even today I don't remember                  12 what those names were. I just saw them on the                  13 screen that one time.</b>                  14 Q So when you said with such certainty a                  15 little bit ago under oath that the actual ATE                  16 policy is entirely different than what you were                  17 contemplating in April of 2017, that's not based                  18 on actually knowing what the ATE policy actually                  19 does?                  20 MS. SMITH: Objection to form.                  21 BY MR. CLUBOK:                  22 Q Fair to say?                  23 <b>A I disagree with a premise of your                  24 question. I'm happy to explain why.</b>                  25 Q Please. Thank you.</p>	<p style="text-align: right;">168</p> <p>1 <b>A The April proposed transaction, my                  2 understanding of it -- or recollection to the                  3 extent that I do, was that that was supposed to be                  4 essentially part of a single process in which we'd                  5 already gotten to a number with UBS and we'd                  6 agreed on a settlement and were negotiating a                  7 settlement agreement.</b>                  8 <b>In August of 2017, there was no such                  9 settlement agreement with UBS. And so kind of by                  10 definition, they can't be the same thing.</b>                  11 <b>Regardless of the terms of the ultimate policy in                  12 August of 2017, it was a different transaction.</b>                  13 Q But you don't know if the things that were                  14 contemplated by the policy -- strike that.                  15 As you sit here today, you don't know if                  16 the -- well, strike that.                  17 In April of 2017, you identified pros and                  18 cons of entering into what was then a contemplated                  19 ATE transaction, correct?                  20 <b>A I don't recall if I did or not, sir.</b>                  21 Q You certainly reviewed the pros and cons                  22 of entering into a contemplated ATE transaction in                  23 approximately April 2017, correct?                  24 MS. SMITH: Objection, assumes facts not                  25 in evidence.</p>

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<p style="text-align: right;">169</p> <p>1 <b>A Can you restate the question, sir?</b></p> <p>2 <b>BY MR. CLUBOK:</b></p> <p>3 Q You reviewed an identification of the</p> <p>4 potential benefits of entering into the</p> <p>5 contemplated ATE transaction in approximately</p> <p>6 April 2017, correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A I remember it was a concept around that</b></p> <p>9 <b>time, but -- that there would be an ATE policy to</b></p> <p>10 <b>fund a potential settlement, but I really don't</b></p> <p>11 <b>remember much more than that.</b></p> <p>12 <b>BY MR. CLUBOK:</b></p> <p>13 Q Well, you remember that somebody had laid</p> <p>14 out the potential benefits of doing that, correct?</p> <p>15 <b>A Actually, I don't.</b></p> <p>16 Q Did you have any role in identifying the</p> <p>17 potential benefits of entering into an ATE</p> <p>18 transaction at any point?</p> <p>19 <b>A Not that I recall, but if you would like</b></p> <p>20 <b>to show me a document, I'm happy to have my</b></p> <p>21 <b>recollection refreshed.</b></p> <p>22 Q Okay. Let's hand you what's been marked</p> <p>23 as Exhibit 47. Exhibit 47 is an e-mail from you,</p> <p>24 Isaac Leventon, to JP Sevilla with a subject UBS</p> <p>25 Settlement Structure (9.pptx), and it's dated</p>	<p style="text-align: right;">171</p> <p>1 MR. CLUBOK: Yes, this is the complete</p> <p>2 copy of this attachment. Appendix 1 was sent in a</p> <p>3 separate e-mail, which we'll get to.</p> <p>4 MS. SMITH: Okay.</p> <p>5 MR. CLUBOK: When they sent this</p> <p>6 PowerPoint, they just had a placeholder for</p> <p>7 Appendix 1, apparently, at least as far as we can</p> <p>8 tell.</p> <p>9 <b>A I've reviewed the document, sir.</b></p> <p>10 <b>BY MR. CLUBOK:</b></p> <p>11 Q Okay. Did you draft this document?</p> <p>12 <b>A I don't know if I did or not.</b></p> <p>13 Q Do you recognize it?</p> <p>14 <b>A I know I've seen it before. I have no</b></p> <p>15 <b>reason to dispute that I didn't receive it -- or</b></p> <p>16 <b>send it, I should say.</b></p> <p>17 Q You didn't just receive it --</p> <p>18 <b>A I said or send it, I should say.</b></p> <p>19 Q Okay. And you played some role in</p> <p>20 drafting this document at least, correct?</p> <p>21 <b>A I don't remember if I did or not, sir.</b></p> <p>22 <b>But the metadata will answer that question kind of</b></p> <p>23 <b>easily.</b></p> <p>24 Q Isn't it true that you drafted this</p> <p>25 document together with Stephanie Vitiello?</p>
<p style="text-align: right;">170</p> <p>1 April 19th, 2017. And it attaches a document</p> <p>2 called UBS_Settlement_Structure_9.pptx.</p> <p>3 Do you see that?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And page 1 of Exhibit 47 is the cover</p> <p>6 e-mail that has no substance in it, other than</p> <p>7 what I just described, and the remaining pages are</p> <p>8 the attachments. Do you see that?</p> <p>9 <b>A I do, yes.</b></p> <p>10 Q Now, the first page of the attachment says</p> <p>11 Settlement Analysis, UBS versus, and has the</p> <p>12 Highland logo, correct?</p> <p>13 <b>A It does.</b></p> <p>14 Q And then the first page talks about what</p> <p>15 happens: If Highland does not settle. And then</p> <p>16 the second page says: Taxes: If Highland Wins...</p> <p>17 it Loses. Third page says: If Highland does not</p> <p>18 settle: UBS Appeals. Et cetera, et cetera.</p> <p>19 Do you see that?</p> <p>20 <b>A I'm reviewing the document.</b></p> <p>21 (Witness reviews document.)</p> <p>22 MS. SMITH: While he's looking at this,</p> <p>23 Andy, is this a complete copy of the exhibit?</p> <p>24 Because it -- there's an odd Appendix 1 on the</p> <p>25 last page.</p>	<p style="text-align: right;">172</p> <p>1 MS. SMITH: Objection, assumes facts not</p> <p>2 in evidence.</p> <p>3 <b>A If that's what the metadata says, I don't</b></p> <p>4 <b>dispute it, but I don't know or recall, I should</b></p> <p>5 <b>say.</b></p> <p>6 <b>BY MR. CLUBOK:</b></p> <p>7 Q Who -- do you recall being asked to draft</p> <p>8 a presentation like this?</p> <p>9 <b>A I don't remember, sir.</b></p> <p>10 Q You're looking at this document now and it</p> <p>11 doesn't ring any bell as to the origin of this</p> <p>12 document?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A Like I said, I don't remember if I drafted</b></p> <p>15 <b>this document or not, but the metadata will answer</b></p> <p>16 <b>the question affirmatively.</b></p> <p>17 <b>BY MR. CLUBOK:</b></p> <p>18 Q We would need the metadata to answer that</p> <p>19 question given your lack of recollection, correct?</p> <p>20 <b>A You would need the debtor to provide you</b></p> <p>21 <b>with that metadata.</b></p> <p>22 Q What did you do with this presentation</p> <p>23 other than send it to Mr. Sevilla?</p> <p>24 <b>A I don't recall. But again, if I sent it</b></p> <p>25 <b>to someone else, it would be in the debtor's</b></p>

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<p style="text-align: right;">173</p> <p><b>1 documents.</b></p> <p>2 Q The second page of the attachment gives a</p> <p>3 bottom line that there's no upside to going to</p> <p>4 trial in either the UBS or the Citi matter,</p> <p>5 correct?</p> <p><b>6 A Correct.</b></p> <p>7 Q Did you -- did Highland go to trial in the</p> <p>8 Citi matter?</p> <p><b>9 A No.</b></p> <p>10 Q What happened in that matter?</p> <p><b>11 A It settled.</b></p> <p>12 Q For how much?</p> <p><b>13 A It was more than 500,000, but I think less</b></p> <p><b>14 than a million.</b></p> <p>15 Q Okay. And when?</p> <p><b>16 A Oh, wow. 2018 or '19 sometime.</b></p> <p>17 Q Okay. So sometime after this presentation</p> <p>18 was sent in April of 2017, correct?</p> <p><b>19 A Correct.</b></p> <p>20 Q And is that Citi matter totally settled,</p> <p>21 done?</p> <p><b>22 A Yes.</b></p> <p>23 Q And it was settled for something less than</p> <p>24 a million dollars?</p> <p><b>25 A That's my recollection.</b></p>	<p style="text-align: right;">175</p> <p><b>1 BY MR. CLUBOK:</b></p> <p>2 Q At one point you specifically estimated</p> <p>3 the liability in excess of hundreds of millions of</p> <p>4 dollars -- strike that.</p> <p>5 At one point you, for purposes of a</p> <p>6 solvency analysis, estimated the liability at</p> <p>7 being well in excess of \$100 million, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p><b>9 A I don't recall what you're talking about,</b></p> <p><b>10 but if you want to show me a document to refresh</b></p> <p><b>11 my recollection, I'm happy to look at it.</b></p> <p><b>12 BY MR. CLUBOK:</b></p> <p>13 Q Do you -- as you sit here today, are you</p> <p>14 able to deny that you did that?</p> <p><b>15 A I can neither confirm nor deny it, sir. I</b></p> <p><b>16 just don't know what you're talking about.</b></p> <p>17 Q So you -- okay. Getting back to this.</p> <p>18 You believed in April of 2017, that if UBS were to</p> <p>19 win, Highland would lose all of the assets in HFP</p> <p>20 and CDO Fund, correct?</p> <p>21 MS. SMITH: Objection to form. This is</p> <p>22 not necessarily what he believes.</p> <p>23 MR. CLUBOK: Okay. Ms. Smith, I have not</p> <p>24 said anything about your speaking objections.</p> <p>25 Things like assumes facts not in evidence, saying</p>
<p style="text-align: right;">174</p> <p>1 Q Okay. So the -- and the UBS case</p> <p>2 meanwhile at this time was -- you knew that the</p> <p>3 potential liability was over a billion dollars,</p> <p>4 right?</p> <p><b>5 A I knew that UBS was alleging over a</b></p> <p><b>6 billion dollars in damages against the</b></p> <p><b>7 counterparty funds and it also alleged some quasi</b></p> <p><b>8 contractual claims for that liability against HCM</b></p> <p><b>9 itself.</b></p> <p>10 Q In fact, you knew that HCM faced potential</p> <p>11 liability to backstop HFP and CDO Fund for up to</p> <p>12 \$1.2 billion; isn't that true?</p> <p>13 MS. SMITH: Objection to form.</p> <p><b>14 A I knew that was UBS's argument. I didn't</b></p> <p><b>15 necessarily agree with it.</b></p> <p><b>16 BY MR. CLUBOK:</b></p> <p>17 Q Right. But you certainly were aware that</p> <p>18 Highland was facing a clawback of \$9 million and</p> <p>19 liability to backstop HFP and CDO Fund for up to</p> <p>20 \$1.2 billion, correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p><b>22 A I was aware that that was a possible worst</b></p> <p><b>23 case scenario. I didn't necessarily agree that it</b></p> <p><b>24 was probable or that UBS's arguments in support of</b></p> <p><b>25 that position were valid.</b></p>	<p style="text-align: right;">176</p> <p>1 that comment you made there, I tried to ignore it,</p> <p>2 because it goes beyond what you're allowed to say</p> <p>3 in this proceeding. You say objection to form and</p> <p>4 nothing else unless you want to -- unless you have</p> <p>5 a privilege to assert. So please do not make any</p> <p>6 further speaking objections.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Mr. Leventon, isn't it true that in April</p> <p>9 of 2017, you believed that if UBS wins, Highland</p> <p>10 would lose all the assets in HFP/CDO Fund?</p> <p><b>11 A I believed that that was one of the</b></p> <p><b>12 worst-case scenarios that was possible, yes.</b></p> <p>13 Q And you believe that the HFP assets at</p> <p>14 that time in April of 2017, included an</p> <p>15 approximately \$32 million note payable from the</p> <p>16 donor advised fund or the DAF, correct?</p> <p><b>17 A It does say that HFP assets include</b></p> <p><b>18 32 million of DAF note payable.</b></p> <p>19 Q And that DAF refers to a DAF that was</p> <p>20 established by Mr. Dondero?</p> <p><b>21 A I don't necessarily believe that's</b></p> <p><b>22 correct, no.</b></p> <p>23 Q Who was the DAF established by?</p> <p><b>24 A I don't know specifically, but I believe</b></p> <p><b>25 it was the debtor itself.</b></p>

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<p style="text-align: right;">177</p> <p>1 Q Okay. The debtor, though, was 80 percent 2 owned by Mr. Dondero, right? 3 <b>A I actually don't know.</b> 4 MS. SMITH: Objection to form. 5 BY MR. CLUBOK: 6 Q You don't know the ownership of -- prior 7 to bankruptcy, did you know the ownership interest 8 of Mr. Dondero and HCM? 9 <b>A Immediately prior to bankruptcy, I think I</b> 10 <b>did because we had to know that type of</b> 11 <b>information for kind of first day schedules, but</b> 12 <b>prior to that, no.</b> 13 Q Did you know -- because it came up many 14 times in the litigation with UBS and HCM, that 15 Mr. Dondero's stake in HCM in this time frame was 16 approximately 80 percent? 17 MS. SMITH: Objection. I'm concerned that 18 he has confidentiality issues when you're talking 19 about things that happened in the course of 20 settlement or mediation. 21 MR. CLUBOK: No, no. This was in public 22 documents upon public documents upon public 23 documents, it was used in open court, it was said 24 in the trial. This is nothing confidential at 25 all.</p>	<p style="text-align: right;">178</p> <p>1 BY MR. CLUBOK: 2 Q Isn't it true, sir, that in 2017, 3 Mr. Dondero's stake in HCM was approximately 4 80 percent? 5 <b>A I don't know.</b> 6 Q Okay. 7 <b>A It -- I don't know.</b> 8 Q You knew at the time of trial that 9 Mr. Dondero's stake was identified as being 10 approximately 80 percent; isn't that true? 11 <b>A The reason I'm qualifying it is because I</b> 12 <b>know that there were some transaction that reduced</b> 13 <b>his interest from whatever it was down to a much,</b> 14 <b>much smaller percentage. I just don't remember</b> 15 <b>exactly when that transaction took place.</b> 16 Q Okay. And that transaction you're 17 referring to was a transfer to trusts or something 18 that he still had the beneficial ownership in, 19 correct? 20 <b>A No, that's not correct.</b> 21 Q Mr. Dondero had the vast majority of the 22 economic interest in Highland Capital Management 23 during the time frame that you wrote this memo; 24 isn't that true? 25 MS. SMITH: Objection, form.</p>
<p style="text-align: right;">179</p> <p>1 <b>A Sir, my testimony is I know that there was</b> 2 <b>some transaction that would have reduced</b> 3 <b>Mr. Dondero's economic interest and the documents</b> 4 <b>will speak for themselves as to exactly when that</b> 5 <b>transaction took place. I just -- I don't know</b> 6 <b>exactly when it took place.</b> 7 BY MR. CLUBOK: 8 Q Okay. 9 <b>A And I wasn't involved in that transaction</b> 10 <b>either.</b> 11 Q All right. The DAF was considered an 12 affiliated entity to Highland Capital Management, 13 correct? 14 <b>A The compliance department via Mr. Surgent</b> 15 <b>determined that the DAF was not -- I don't</b> 16 <b>believe -- I think it determined it wasn't an</b> 17 <b>affiliate.</b> 18 Q You believed that if Highland didn't 19 settle, it was facing years of fraudulent transfer 20 claims throughout the Highland structure, correct? 21 MS. SMITH: Objection, form. 22 <b>A I believe that that was a possible</b> 23 <b>worst-case scenario.</b> 24 BY MR. CLUBOK: 25 Q By the way, you don't use anywhere on this</p>	<p style="text-align: right;">180</p> <p>1 document that you sent to Mr. Sevilla possible 2 worst-case scenario to qualify what happens if UBS 3 wins, correct? 4 MS. SMITH: Objection to form. 5 <b>A No, these are -- if you read the document,</b> 6 <b>these are the kind of two extremes.</b> 7 BY MR. CLUBOK: 8 Q I understand. 9 <b>A If UBS wins or if Highland wins.</b> 10 Q Okay. But you don't say anywhere this is 11 possible worst-case scenario or otherwise qualify 12 it in this analysis, correct? 13 <b>A It doesn't say that on that page.</b> 14 Q On the other hand, that if Highland were 15 to win, you understood that that would result in 16 over \$50 million in tax liability to Mr. Dondero 17 personally, correct? 18 MS. SMITH: Objection to form. 19 <b>A I don't think that's right. That's not</b> 20 <b>what it says here.</b> 21 BY MR. CLUBOK: 22 Q If you can turn -- but it refers to 23 Slide 3. Do you see that? 24 <b>A Yes.</b> 25 Q And do you see where it says that: Taxes:</p>

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<p style="text-align: right;">181</p> <p>1 If Highland wins... it Loses?                  2 <b>A I do see that and it does say -- I was</b>                  3 <b>looking at the second page of the presentation.</b>                  4 <b>Looking at the third page, it does say Mr. Dondero</b>                  5 <b>would have to pay approximately \$50 million in</b>                  6 <b>taxes.</b>                  7 Q Yeah. So you understood -- and by the                  8 way, all the other people who would have suffered                  9 tax consequences if Highland were to win would                  10 have had a litigation claim for mismanagement                  11 against HCM and Dondero, correct?                  12 <b>A They could have asserted that claim. It</b>                  13 <b>was -- I mean, my job was to identify risk. That</b>                  14 <b>was a risk I identified.</b>                  15 Q And you also understood at the time, that                  16 Dondero was the decision-maker for Highland                  17 Financial Partners, correct?                  18 <b>A I believe that's right.</b>                  19 Q And getting back to Mr. Dondero's --                  20 consequences to Mr. Dondero, if Highland were to                  21 win completely at trial, that would mean that                  22 Mr. Dondero personally would have a \$50 million                  23 tax hit, correct?                  24 <b>A That's what this says.</b>                  25 Q And that was your understanding at the</p>	<p style="text-align: right;">183</p> <p>1 BY MR. CLUBOK:                  2 Q Okay. But you -- again, my question was                  3 just about Mr. Dondero, not all the other major                  4 banks and Wall Street. So getting back to my                  5 question. You had specifically discussed with                  6 Mr. Ellington that there would be significant tax                  7 consequences for Mr. Dondero if Highland were to                  8 defeat UBS in the litigation with respect to the                  9 claims against HFP, correct?                  10 <b>A Well, I'm disagreeing with the word</b>                  11 <b>specifically, because we discussed that among</b>                  12 <b>numerous other potential parties that would have</b>                  13 <b>significant tax consequences, not just the ones on</b>                  14 <b>this page.</b>                  15 Q I didn't say exclusively, I said                  16 specifically. I'm not using the word exclusively.                  17 I'm using the word specifically. You specifically                  18 identified that there would be a \$50 million plus                  19 tax hit to Mr. Dondero, correct?                  20 <b>A I don't remember if I drafted this</b>                  21 <b>document or not, but this document specifically</b>                  22 <b>lists a \$50 million potential tax liability for</b>                  23 <b>Mr. Dondero.</b>                  24 Q So you were aware of that specifically                  25 with respect to Mr. Dondero, correct?</p>
<p style="text-align: right;">182</p> <p>1 time, right?                  2 <b>A I would say that is what had been</b>                  3 <b>represented to me by the tax department and it is</b>                  4 <b>nonincumbent on a nontax person to second-guess</b>                  5 <b>what the tax department says is going to happen in</b>                  6 <b>a given situation.</b>                  7 Q Sure. And it was -- you had also                  8 discussed that with Mr. Ellington too, that there                  9 would be significant tax consequences for                  10 Mr. Dondero if Highland were to defeat UBS and                  11 therefore HFP were to be solvent, correct?                  12 <b>A We had discussed the consequences to</b>                  13 <b>Dondero, but also to all of the other HFP limited</b>                  14 <b>partners.</b>                  15 Q Right. But the specific consequences to                  16 Dondero -- economic consequences dwarfed all the                  17 others, correct?                  18 <b>A Well, this isn't --</b>                  19 MS. SMITH: Objection to form.                  20 <b>A This isn't all the limited partners in</b>                  21 <b>HFP. There were -- almost every Wall Street bank</b>                  22 <b>you could think of had a significant interest in</b>                  23 <b>HFP and would have been in the same situation as</b>                  24 <b>the people listed on Slide 3.</b>                  25</p>	<p style="text-align: right;">184</p> <p>1 <b>A I would have been aware of that and the</b>                  2 <b>variety of other parties, yes.</b>                  3 MR. CLUBOK: Move to strike.                  4 BY MR. CLUBOK:                  5 Q I'm not asking about those. I'm going to                  6 get to what you were aware about the other                  7 parties. So with respect to Mr. Dondero, though,                  8 fair to say that you and Mr. Ellington, amongst                  9 other conversations about the tax consequences of                  10 HFP prevailing, specifically discussed that would                  11 mean more than a \$50 million hit to Mr. Dondero,                  12 correct?                  13 <b>A We discussed that among the parties that</b>                  14 <b>would suffer significant tax consequences,</b>                  15 <b>Mr. Dondero was one of them and that the tax</b>                  16 <b>department had advised us that his exposure was</b>                  17 <b>approximately \$50 million.</b>                  18 Q Okay. Thank you. Now, by the way, that's                  19 because HFP had been insolvent or been declared                  20 insolvent prior to this time, correct?                  21 <b>A I believe that's correct.</b>                  22 Q And HFP, in fact, was insolvent going back                  23 to prior to the time you joined Highland Capital                  24 Management in 2009, correct?                  25 <b>A That's correct.</b></p>



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<p style="text-align: right;">185</p> <p>1 Q And it's also the case that you had 2 determined -- strike that. I say you. 3 It's also the case that HCM had determined 4 that CDO Fund was insolvent, correct? 5 <b>A I think that's fair, yes.</b> 6 Q And they had made that determination prior 7 to April of 2017, correct? 8 <b>A Yes.</b> 9 Q And SOHC was just -- SOHC just was a 10 wholly owned sub of HFP. So SOHC was also 11 insolvent dating back to prior to when you joined 12 HCM, correct? 13 MS. SMITH: Objection, form. 14 <b>A I don't know the answer to that question</b> 15 <b>because I don't remember if there was an</b> 16 <b>insolvency analysis on SOHC.</b> 17 <b>BY MR. CLUBOK:</b> 18 Q There was no separate -- you're not aware 19 of a separate insolvency analysis specific to SOHC 20 as opposed to it being part of the consolidated 21 group that included HFP, correct? 22 <b>A I remember that there was a letter that</b> 23 <b>went out to HFP investors that said HFP is</b> 24 <b>insolvent and that that was approximately January</b> 25 <b>of 2009, but it didn't mention SOHC and there was</b></p>	<p style="text-align: right;">187</p> <p>1 Q Well, was it truthful? 2 <b>A I assume so. I have no idea actually.</b> 3 Q Do you have any reason to believe that 4 CDO Fund was not insolvent as of March 2009? 5 <b>A No.</b> 6 Q Do you have any reason to believe that HFP 7 was not insolvent as of January 2009? 8 <b>A No. Those are accounting determinations</b> 9 <b>and the accountant's determinations on those</b> 10 <b>issues are final.</b> 11 Q But the concern in layman's terms or 12 colloquial terms was that if HFP were to defeat 13 UBS at trial, that insolvency determination might 14 have to be in some measure reversed, thus 15 generating tax liability; is that correct, in -- 16 MS. SMITH: Objection, form. 17 <b>BY MR. CLUBOK:</b> 18 Q -- in a rough approximation without being 19 technical? 20 <b>A It's partially correct.</b> 21 Q What's partially not correct? 22 <b>A Well, I think it -- at that time it was</b> 23 <b>both -- for HFP, it was just UBS. For CDO Fund,</b> 24 <b>it was UBS and Citibank, I think.</b> 25 Q But the Citibank -- was that the million</p>
<p style="text-align: right;">186</p> <p>1 <b>no separate equivalent letter for SOHC.</b> 2 Q Okay. Well, there are no investors to 3 SOHC. SOHC is just a wholly owned sub of HFP, 4 correct? 5 <b>A HFP is SOHC's sole investor, yes.</b> 6 Q Okay. And as of at least January 2009, 7 HFP was insolvent, correct? 8 <b>A Yes.</b> 9 Q And also as of January 2009, CDO Fund was 10 insolvent? 11 <b>A I believe that CDO Fund's letter went out</b> 12 <b>to its investors closer to like March of 2009, so</b> 13 <b>it would have been that time period. Now, from an</b> 14 <b>accounting perspective when exactly were they</b> 15 <b>insolvent, I don't know.</b> 16 Q Okay. 17 <b>A But from a legal perspective when did we</b> 18 <b>give notice to -- or when -- let me rephrase,</b> 19 <b>sorry. When did Highland give notice to the</b> 20 <b>investors in those respective entities, those are</b> 21 <b>the documents I've seen and that I remember.</b> 22 Q Okay. So CDO Fund was insolvent at or 23 prior to March of 2009, correct? 24 <b>A It stated to its investors, I think in</b> 25 <b>March of 2009 that it was insolvent.</b></p>	<p style="text-align: right;">188</p> <p>1 dollar liability -- or the matter to Citibank that 2 was ultimately settled for less than a million 3 dollars? 4 <b>A Yes.</b> 5 Q I see. So CDO Fund -- I guess I don't 6 understand. 7 <b>A Let's back up and do this again.</b> 8 Q Sure. With respect to HFP -- 9 <b>A Okay.</b> 10 Q -- the concern was that if it were to 11 defeat UBS at trial and be able to retain some of 12 the assets it held, the insolvency determination 13 could be reversed to some degree thus generating 14 the tax liability, correct? 15 <b>A I believe that's a fair description</b> 16 <b>without sitting here today and being a tax expert.</b> 17 Q And there was a similar concern with 18 respect to the CDO insolvency determination, if 19 somehow CDO were to fully prevail against UBS and 20 be able to retain the assets? 21 <b>A Again, that's partially correct with</b> 22 <b>respect to CDO Fund.</b> 23 Q Well, you're saying that that was also a 24 potential concern with respect to Citi in addition 25 to that being true with respect to UBS, correct?</p>

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<p style="text-align: right;">189</p> <p>1 <b>A I think for Citi -- let me -- sorry, let</b>                  2 <b>me rephrase. For CDO Fund, the insolvency would</b>                  3 <b>be reversed if it successfully defeated both UBS</b>                  4 <b>and Citibank.</b>                  5 Q Right. Right. So it -- CDO Fund would                  6 have had to win both in order to have insolvency                  7 analysis reversed?                  8 <b>A As of this time period, that's correct.</b>                  9 Q Right.                  10 <b>A Please let me know when we hit a break.</b>                  11 Q Oh, we can take a break if you want.                  12 <b>A You sure?</b>                  13 Q Of course.                  14 <b>A I wanted to let you finish your series of</b>                  15 <b>questions.</b>                  16 Q I like to give people breaks within reason                  17 whenever they ask. You've been good about that.                  18 THE VIDEOGRAPHER: We are off the record                  19 at 2:57 p.m.                  20 (Recess taken from 2:57 p.m. CDT to                  21 3:06 p.m. CDT)                  22 THE VIDEOGRAPHER: The time is 3:06 p.m.                  23 We are back on the record.                  24 BY MR. CLUBOK:                  25 Q Going back to page 2, one of the things</p>	<p style="text-align: right;">191</p> <p>1 seven-step proposal to determine whether it could                  2 possibly be considered to be a fraudulent                  3 transfer?                  4 <b>A In the context, I don't believe that would</b>                  5 <b>have made any sense to conduct --</b>                  6 Q Is that a no to my question?                  7 <b>A -- that analysis. Well, it's a -- it</b>                  8 <b>would have been counterintuitive and non --</b>                  9 <b>illogical to kind of perform that analysis in</b>                  10 <b>conjunction with this proposal because this was</b>                  11 <b>supposed to be a proposal for a settlement with</b>                  12 <b>UBS.</b>                  13 Q And what you testified before under oath                  14 was that the thinking was that there would be a                  15 settlement first with a number and then you'd go                  16 out and get an ATE policy to fund that settlement.                  17 I'm paraphrasing a little, but that's the way                  18 you've described it several times today, correct?                  19 <b>A Essentially that you would be on the</b>                  20 <b>precipice of settlement, that you would be close</b>                  21 <b>enough that it was worth going out and getting</b>                  22 <b>funding for what ultimately would be the</b>                  23 <b>settlement.</b>                  24 Q But in your -- the way you described it                  25 earlier today, you would already know the amount</p>
<p style="text-align: right;">190</p> <p>1 that was contemplated if UBS wins is that Highland                  2 could face years of fraudulent transfer claims                  3 throughout the Highland structure, correct?                  4 <b>A That was one of the things that was</b>                  5 <b>contemplated, yes.</b>                  6 Q And fraudulent -- there were fraudulent                  7 transfers claims in the New York litigation,                  8 right, in addition to breach of contract claims we                  9 talked about?                  10 <b>A Yes.</b>                  11 Q When this -- and by the way, this                  12 settlement analysis ends with a proposal -- a                  13 seven-step proposal, right?                  14 <b>A It does appear to have a proposed</b>                  15 <b>settlement structure summary.</b>                  16 Q As far as you know, was any analysis done                  17 of this seven-step proposal to determine whether                  18 it would constitute a fraudulent transfer?                  19 <b>A Well, I guess that assumes -- that assumes</b>                  20 <b>facts that I disagree with, and I can explain why.</b>                  21 Q My question is this: There was a --                  22 there's a settlement analysis that includes a                  23 seven-step proposal for consideration, right?                  24 <b>A Yes.</b>                  25 Q And was there any analysis done about that</p>	<p style="text-align: right;">192</p> <p>1 of the settlement prior to getting the ATE policy,                  2 correct?                  3 <b>A Maybe that was a slight overstatement. I</b>                  4 <b>should have said approximate amount.</b>                  5 Q Okay. You'd know the approximate amount?                  6 <b>A Right.</b>                  7 Q And what was the approximate amount that                  8 was being contemplated in terms of settling with                  9 UBS when this proposal was being considered?                  10 <b>A I don't know because all the settlement</b>                  11 <b>conversations were -- as far as I was aware, were</b>                  12 <b>between yourself and Mr. Ellington.</b>                  13 Q What did you understand the approximate                  14 amount of settlement that was being contemplated?                  15 <b>A I didn't have an understanding.</b>                  16 <b>Mr. Ellington did not share that information with</b>                  17 <b>me.</b>                  18 Q You had no idea if it was 1 million or                  19 \$100 million?                  20 <b>A I didn't.</b>                  21 Q And did you ever come to have any                  22 understanding at all of a magnitude of a potential                  23 settlement with UBS?                  24 <b>A Yes.</b>                  25 Q Okay. When was that?</p>

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<p style="text-align: right;">193</p> <p>1 <b>A There was a proposed settlement with UBS</b>                  2 <b>for I want to say 72.5 million that was drafted</b>                  3 <b>but never executed. I want to say that was in</b>                  4 <b>2014 or '15 sometime. That's when I had an</b>                  5 <b>understanding of a magnitude of potential</b>                  6 <b>settlements with UBS.</b>                  7 Q Okay. And that settlement after -- you                  8 understood that that settlement wasn't executed,                  9 although there was a settlement with two of the                  10 defendants, namely Crusader and Credit Strategies,                  11 correct?                  12 <b>A Those were subsequent separate settlement</b>                  13 <b>agreements is my understanding.</b>                  14 Q Okay.                  15 <b>A That there was a proposed -- I'll call it</b>                  16 <b>global settlement, which was all of the claims</b>                  17 <b>filed by UBS against all of the defendants, that</b>                  18 <b>was drafted but never fully executed and then</b>                  19 <b>there were separate executed settlements between</b>                  20 <b>UBS and Crusader on the one hand and UBS and</b>                  21 <b>Credit Strategies on the other.</b>                  22 Q And that was all in the 2014-2015 time                  23 frame, correct?                  24 <b>A I think it was primarily 2015.</b>                  25 Q Okay. After that point, did you ever</p>	<p style="text-align: right;">195</p> <p>1 <b>struggling with the question, but I -- this is --</b>                  2 <b>this is the summary, I guess, of the potential</b>                  3 <b>outcomes if the settlement process is completed.</b>                  4 Q If the settlement process that's laid out                  5 in this presentation is completed?                  6 <b>A Yes.</b>                  7 Q Okay. And the first -- one thing that                  8 would happen is that Sentinel would then control                  9 HFP/CDO Fund assets, correct?                  10 <b>A That's what this says, yes.</b>                  11 Q And it was believed that it was currently                  12 a total of about \$94 million, right?                  13 <b>A That's what the document says. I have no</b>                  14 <b>independent recollection of that information.</b>                  15 Q Who determined that the assets were worth                  16 approximately \$94 million at this time?                  17 <b>A I don't know. It would have been someone</b>                  18 <b>in the accounting department most likely.</b>                  19 Q Did they do that at your direction?                  20 <b>A I don't remember that.</b>                  21 Q Do you see at the very last page of this                  22 document it says Appendix 1 and it's blank?                  23 <b>A I do see that, yes.</b>                  24 Q And Ms. Smith asked before if we had a                  25 complete document here and I had said I believe</p>
<p style="text-align: right;">194</p> <p>1 again hear about any magnitude of a potential                  2 settlement with UBS?                  3 <b>A No, not that I recall.</b>                  4 Q When you were involved with this                  5 settlement analysis, was there any number being                  6 contemplated for a total amount that would be used                  7 to settle with UBS?                  8 <b>A I wasn't contemplating any amount and I</b>                  9 <b>don't know what other people were or were not</b>                  10 <b>contemplating.</b>                  11 Q Well, let's look at the document further                  12 and see if it's here. You see on -- let's start,                  13 though, with Slide 6. Slide 6 says: If Highland                  14 Settles...                  15 You see that?                  16 <b>A Yes.</b>                  17 Q And under -- and this is assuming the                  18 proposal that's going to be laid out step by step                  19 later in the presentation, correct?                  20 <b>A I'm sorry, say that again.</b>                  21 Q This -- if Highland settles and all these                  22 things that would happen, this assumes that the                  23 seven-step proposal that's laid out later in the                  24 presentation goes into effect, correct?                  25 <b>A I think that's -- I apologize. I'm</b></p>	<p style="text-align: right;">196</p> <p>1 that Appendix 1 was sent separately from this                  2 e-mail. And I'm going to hand you what we'll mark                  3 as Exhibit 67.                  4 (Deposition Exhibit 67 marked for                  5 identification.)                  6 BY MR. CLUBOK:                  7 Q Exhibit 67 is an e-mail from you to                  8 Stephanie Vitiello, dated April 13th, 2017, that                  9 is -- got a subject UBS Settlement Assets.xlsx and                  10 it's got an attachment, which is the second page                  11 of Exhibit 67. And you'll note on the first page                  12 in the cover e-mail it says, Appendix 1. Do you                  13 see that?                  14 <b>A I do.</b>                  15 Q And if you turn to the second page, you                  16 see there is a list of assets with the bottom --                  17 in the middle towards the bottom it says, Total                  18 Assets 94,057,547. Do you see that?                  19 <b>A I'm sorry, say that one more time, please.</b>                  20 Q Do you see where there's a subtotal -- or                  21 there's a total of all the total assets and a                  22 black bar towards the bottom of the page? Do you                  23 see that?                  24 <b>A The gross assets?</b>                  25 Q Yeah.</p>

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<p style="text-align: right;">197</p> <p>1 <b>A Okay.</b></p> <p>2 Q The gross assets total, according to this,</p> <p>3 about \$94 million. Do you see that?</p> <p>4 <b>A I do see that, yes.</b></p> <p>5 Q And this document on page 1 is identified</p> <p>6 as Appendix 1, and you can see at the end of</p> <p>7 Exhibit 47, it's a reference to Appendix 1 and the</p> <p>8 94 million matches up with page 6. Do you see all</p> <p>9 that?</p> <p>10 <b>A I do see that, yes.</b></p> <p>11 Q And Stephanie Vitiello was a woman that</p> <p>12 you said worked with you sometimes on various</p> <p>13 matters?</p> <p>14 <b>A She's an attorney who worked with me, yes.</b></p> <p>15 Q Yeah. And the question is, did you -- who</p> <p>16 would you have gone to to generate Appendix 1 that</p> <p>17 you were sending to Stephanie Vitiello on</p> <p>18 April 13th, 2017?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 <b>A I don't know specifically. It would have</b></p> <p>21 <b>been someone in the accounting department I would</b></p> <p>22 <b>guess.</b></p> <p>23 <b>BY MR. CLUBOK:</b></p> <p>24 Q And that is your e-mail address, right, on</p> <p>25 Exhibit 67?</p>	<p style="text-align: right;">199</p> <p>1 the Excel spreadsheet. I just don't want to keep</p> <p>2 talking about this knowing that I think there's an</p> <p>3 error in the formula. It's just like somebody,</p> <p>4 you know, an Excel, like they didn't add the last</p> <p>5 line in or something like that, so I believe this</p> <p>6 total, which looks like it totals everything, is</p> <p>7 really just totalling everything except for the</p> <p>8 cash, just so you know.</p> <p>9 <b>A Okay. I'll -- I won't re-create the math</b></p> <p>10 <b>here. That's certainly a possibility.</b></p> <p>11 Q And we can do that. We can -- we'll have</p> <p>12 the Excel thing if we want to do it later. We'll</p> <p>13 show it to you, but I just want to make that</p> <p>14 clear. I'm not trying to -- it looks like, for</p> <p>15 what it's worth, I take it you never -- you never</p> <p>16 knew about that potential error, until I just</p> <p>17 mentioned it, right?</p> <p>18 <b>A I'm kind of embarrassed that there's an</b></p> <p>19 <b>error in a Highland document that --</b></p> <p>20 Q Well, it's Excel. I could -- bottom line</p> <p>21 is, I presume that you would have just relied on</p> <p>22 the Excel, you know, calculation to assume that</p> <p>23 the right number is 94, whether or not there's an</p> <p>24 error.</p> <p>25 <b>A Sir, I honestly don't recall, but I do</b></p>
<p style="text-align: right;">198</p> <p>1 <b>A 67 or 47?</b></p> <p>2 Q 67. The Appendix 1.</p> <p>3 <b>A Sorry, I was looking at the wrong one.</b></p> <p>4 <b>Say that -- let's have a clean record. Why don't</b></p> <p>5 <b>you repeat your question one more time.</b></p> <p>6 Q Sure. Exhibit 67 is an e-mail from you to</p> <p>7 Stephanie Vitiello attaching what becomes</p> <p>8 Appendix 1 for the settlement analysis that's</p> <p>9 reflected in Exhibit 47, correct?</p> <p>10 <b>A I don't have any independent recollection,</b></p> <p>11 <b>but that's what this appears to be.</b></p> <p>12 Q By the way, I will represent to you that</p> <p>13 we got a native file of Exhibit 67, this Excel</p> <p>14 spreadsheet. And if we need to, we will, but I</p> <p>15 will tell you for the record that that 94 million</p> <p>16 appears to be the function of an error in the</p> <p>17 calculation and it seems to have -- that</p> <p>18 94,057,547 I'll just represent to you and we can</p> <p>19 put the Excel spreadsheet up at some point if</p> <p>20 necessary, it's the total for all the assets</p> <p>21 above, not including the cash. So when you add</p> <p>22 the cash in there, it gets up to something more</p> <p>23 like 98 or 99 million.</p> <p>24 <b>A Okay.</b></p> <p>25 Q That's my understanding. We can pull up</p>	<p style="text-align: right;">200</p> <p>1 <b>believe that it -- first of all, I'm not saying --</b></p> <p>2 <b>again, you're saying you and I'm not sure that I</b></p> <p>3 <b>drafted this document that's attached to</b></p> <p>4 <b>Exhibit 47. But it does appear that whoever</b></p> <p>5 <b>drafted it included the number from document 67.</b></p> <p>6 Q Right. Fair enough. And whoever put</p> <p>7 together that Excel spreadsheet, I'm not asking</p> <p>8 you to -- I'll represent to you that it appears</p> <p>9 there was an error, which you can look at at</p> <p>10 your -- at the time and just -- I take it -- I</p> <p>11 only bring this up because I take it you never --</p> <p>12 no one ever brought this potential error to your</p> <p>13 attention until now?</p> <p>14 <b>A I don't remember this document and I don't</b></p> <p>15 <b>remember any mention of an error.</b></p> <p>16 Q Okay. That's fine.</p> <p>17 So turning back, then, to the document.</p> <p>18 When it says Sentinel controls, that's why when I</p> <p>19 say currently 94, let's just agree that it was</p> <p>20 intended to be the total of Appendix 1 regardless</p> <p>21 of whether there's an error or not; is that fair?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A Sir, because I don't have any independent</b></p> <p>24 <b>recollection of this, I can only say that your</b></p> <p>25 <b>analysis of the documents seems to be a fair one,</b></p>

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<p style="text-align: right;">201</p> <p><b>1 but I'm not saying that's what happened. It just</b></p> <p><b>2 happens to be something that might have been what</b></p> <p><b>3 happened.</b></p> <p><b>4 BY MR. CLUBOK:</b></p> <p>5 Q Okay. Thanks for that clarification.</p> <p>6 In any event, whether it's 94 or 98, that</p> <p>7 doesn't change the point that's being made in</p> <p>8 No. 1, which is if Highland settles, Sentinel</p> <p>9 would control the HFP/CDO Fund assets?</p> <p><b>10 A Which page are you on, sir?</b></p> <p>11 Q Back to page 6. So if Highland were to</p> <p>12 settle under the proposal that's being</p> <p>13 contemplated in this document, Sentinel would then</p> <p>14 control the HFP/CDO Fund assets referenced in --</p> <p>15 at least in Appendix 1?</p> <p><b>16 A That's what this document says.</b></p> <p>17 Q And the contemplation was that Sentinel</p> <p>18 and Highland Capital Management could then use</p> <p>19 those assets that had originated at HFP and</p> <p>20 CDO Fund to generate cash to pay a UBS settlement,</p> <p>21 a Citi settlement and outstanding legal fees,</p> <p>22 correct?</p> <p><b>23 A That is what this says.</b></p> <p>24 Q And you have no reason to believe that you</p> <p>25 had a different understanding than what was in</p>	<p style="text-align: right;">203</p> <p><b>1 again because the problem is we're so off base</b></p> <p><b>2 that I'm being -- I'm confused as to how to answer</b></p> <p><b>3 the question.</b></p> <p><b>4 BY MR. CLUBOK:</b></p> <p>5 Q Well, it's your document, so I'm asking --</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q It's a document that you sent to</p> <p>9 Mr. Sevilla, correct?</p> <p><b>10 A It is a document that I attached to an</b></p> <p><b>11 e-mail to Mr. Sevilla, yes.</b></p> <p>12 Q And with no -- with no further</p> <p>13 explanation, you just sent this document to</p> <p>14 Mr. Sevilla?</p> <p><b>15 A In Exhibit 47, I just sent the document to</b></p> <p><b>16 Mr. Sevilla.</b></p> <p>17 Q Okay. And you at one point in the</p> <p>18 document -- at one point -- strike that.</p> <p>19 At one point the document refers to</p> <p>20 Dondero's tax liability as 50 million plus and</p> <p>21 here it talks about HCMLP's \$50 million plus tax</p> <p>22 liability. You see that?</p> <p><b>23 A The document refers to Dondero's potential</b></p> <p><b>24 tax liability of \$50 million plus and HCMLP's tax</b></p> <p><b>25 liability of \$50 million plus.</b></p>
<p style="text-align: right;">202</p> <p>1 this document at the time, as you sit here today,</p> <p>2 correct?</p> <p><b>3 A I don't remember it so I don't remember if</b></p> <p><b>4 I had a different belief or not at the time.</b></p> <p>5 Q Okay. And then -- and then another</p> <p>6 benefit is that it says HCMLP's \$50 million tax</p> <p>7 liability would be avoided. Do you see that?</p> <p><b>8 A It does.</b></p> <p>9 Q It doesn't say Jim Dondero's \$50 million</p> <p>10 plus tax liability. You see that?</p> <p><b>11 A Yeah, I -- it doesn't, but I think you're</b></p> <p><b>12 conflating two issues.</b></p> <p>13 Q How so?</p> <p><b>14 A Well, it's a limited partnership. So the</b></p> <p><b>15 liability would be at HCMLP and it would flow</b></p> <p><b>16 through to the limited partners.</b></p> <p>17 Q But the only limited partners at HCM at</p> <p>18 that time -- or the only significant limited</p> <p>19 partners at HCM at that time were Jim Dondero and</p> <p>20 Mark Okada, right?</p> <p>21 MS. SMITH: Objection, form.</p> <p><b>22 A First of all, I don't remember who the</b></p> <p><b>23 significant limited partners were. I've already</b></p> <p><b>24 told you that, depending on what time period it</b></p> <p><b>25 is, but your -- I'm -- here, ask the question</b></p>	<p style="text-align: right;">204</p> <p>1 Q Right. And I guess if you go back to --</p> <p><b>2 A Oh, actually, I answered that question</b></p> <p><b>3 wrong. There's going to be part of my testimony</b></p> <p><b>4 I'll need to correct.</b></p> <p>5 Q Sorry, what --</p> <p><b>6 A Because I messed up.</b></p> <p>7 Q Go ahead and correct it now, then. As</p> <p>8 they say, by the way, deposition testimony is not</p> <p>9 a take home exam, so please correct it now if you</p> <p>10 can.</p> <p><b>11 A So whoever owned HCMLP would be completely</b></p> <p><b>12 irrelevant to the tax liability. It's tax</b></p> <p><b>13 liability associated with HFP, not HCMLP.</b></p> <p>14 Q Right. It's owners of HFP?</p> <p><b>15 A Right. But that means that ownership of</b></p> <p><b>16 HCMLP is not relevant to this inquiry.</b></p> <p>17 Q Unless you're treating the economic</p> <p>18 interest of HCMLP interchangeably with Mr. Dondero</p> <p>19 and a few other limited partners, correct?</p> <p>20 MS. SMITH: Objection, form.</p> <p><b>21 A That's -- no, that's completely incorrect,</b></p> <p><b>22 sir.</b></p> <p><b>23 BY MR. CLUBOK:</b></p> <p>24 Q All right. Let's just continue with the</p> <p>25 document here, though. It says: Residual assets</p>

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<p style="text-align: right;">205</p> <p>1 (up to \$50 million) stay at Sentinel.                  2 Do you see that?  <b>3 A I do.</b>                  4 Q Now, that's residual assets after using                  5 the assets to generate cash to pay the UBS                  6 settlement. Do you see?                  7 MS. SMITH: Objection, form.  <b>8 A It is bullet point 3 below bullet point 2.</b>  <b>9 BY MR. CLUBOK:</b>                  10 Q Sorry, bullet point 4 below bullet                  11 point 2?  <b>12 A Yes, you're right, bullet point 4, below</b>  <b>13 bullet point 2.</b>                  14 Q And fair to say, then, that the                  15 contemplation here is that the total settlements                  16 in outstanding legal fees would total something                  17 approximately \$44 million under what's being                  18 contemplated on page 6 here?                  19 MS. SMITH: Objection, form.  <b>20 A That's not really accurate, sir.</b>  <b>21 BY MR. CLUBOK:</b>                  22 Q Why not?  <b>23 A Because bullet point 4 says up to</b>  <b>24 \$50 million.</b>                  25 Q Up to 50 million. Okay. So it's</p>	<p style="text-align: right;">207</p> <p>1 it be pretty curious to negotiate a settlement                  2 amount and then buy an insurance policy if you                  3 already know exactly what the settlement amount                  4 is?                  5 MS. SMITH: Objection.                  6 BY MR. CLUBOK:                  7 Q Doesn't that seem curious to you if it was                  8 that way?                  9 MS. SMITH: Objection, form.                  10 BY MR. CLUBOK:                  11 Q Instead of the way it's laid out here?  <b>12 A Not necessarily, no.</b>                  13 Q Seems perfectly appropriate to you -- you                  14 said before that ATE policies are standard issue                  15 or something -- some comment like that. You                  16 remember that?  <b>17 A It's a matured industry. It's fairly</b>  <b>18 commonly used in a variety of different</b>  <b>19 jurisdictions.</b>                  20 Q And is it fairly commonly used after a                  21 settlement amount has been negotiated to then come                  22 up with an ATE policy to fund a known settlement                  23 amount?  <b>24 A I don't know. I don't know the ATE</b>  <b>25 industry that well to be able to say one way or</b></p>
<p style="text-align: right;">206</p> <p>1 contemplated that the total settlement of the                  2 claims against UBS, Citi -- strike that.                  3 It's contemplated the total settlement of                  4 the claims brought by UBS and Citi along with                  5 outstanding legal fees associated with those                  6 claims would be at least \$40 million and -- plus                  7 more, up to another \$50 million; is that fair?  <b>8 A I-- I mean, I guess if that's how you</b>  <b>9 want to describe the document, sir. But since I</b>  <b>10 don't remember the document, I really have nothing</b>  <b>11 to add other than what's on the page.</b>                  12 Q So turning to page 8, it summarizes the                  13 UBS Settlement: Structure Summary. Do you see                  14 that?  <b>15 A I do.</b>                  16 Q And Step 1 actually is that HFP and                  17 CDO Fund buy the \$100 million ATE policy from                  18 Sentinel. Do you see that?  <b>19 A I do.</b>                  20 Q That's the very first thing contemplated                  21 before even negotiating a settlement amount with                  22 UBS, according to this document that you sent                  23 Mr. Sevilla, right?  <b>24 A That's correct.</b>                  25 Q And indeed if you think about it, wouldn't</p>	<p style="text-align: right;">208</p> <p><b>1 another, sir.</b>                  2 Q Well, you said under oath that it's                  3 commonly used, or words to that effect, and my                  4 question is do you really have any idea whether                  5 it's commonly used in that way, specifically after                  6 a settlement amount has been already negotiated?  <b>7 A I don't know one way or another.</b>                  8 Q Do you know one way or the other whether                  9 the way the ATE policy that was ultimately bought                  10 in this case comports with the common use of ATE                  11 policies the way you used that phrase earlier                  12 today?  <b>13 A I've never seen the ATE policy that was</b>  <b>14 executed in August 2017, so I don't know one way</b>  <b>15 or another.</b>                  16 Q Did you have access to that policy if you                  17 had wanted to see it?  <b>18 A I think I did at one point.</b>                  19 Q At what point?  <b>20 A I think it was e-mailed to me at one</b>  <b>21 point.</b>                  22 Q Sorry, it was e-mailed to you?  <b>23 A I think that's right.</b>                  24 Q You said you never had it.  <b>25 A No, I said I never looked at it, sir.</b></p>

<p style="text-align: right;">209</p> <p><b>1 There's a difference.</b></p> <p>2 Q It was e-mailed to you and you never --</p> <p>3 why was it e-mailed to you?</p> <p><b>4 A I don't recall. I would have to -- I</b></p> <p><b>5 would have to look. I don't remember.</b></p> <p>6 Q Did you just remember that it was e-mailed</p> <p>7 to you? Because I asked you many times earlier</p> <p>8 today if you ever saw the policy. When I asked</p> <p>9 you those questions, did you remember that it had</p> <p>10 been e-mailed to you but just didn't mention that?</p> <p><b>11 A I've never seen the policy, sir. That</b></p> <p><b>12 is -- that is true.</b></p> <p>13 Q Understood. But when I asked you those</p> <p>14 questions earlier today, did you remember that it</p> <p>15 was e-mailed to you, or did something since I</p> <p>16 asked those questions refresh your recollection?</p> <p><b>17 A I'd have to think about it. I'm sorry.</b></p> <p>18 Q I would like you to think about that. I</p> <p>19 asked you many times earlier in this deposition</p> <p>20 just within the last couple hours in many</p> <p>21 different ways whether you had ever seen the</p> <p>22 policy. What I'd like to know is when I was</p> <p>23 asking those questions and you were giving</p> <p>24 answers, did you know, like you just volunteered</p> <p>25 now, that it had been e-mailed to you or did</p>	<p style="text-align: right;">211</p> <p><b>1 had I seen it and I haven't, other than the page.</b></p> <p><b>2 BY MR. CLUBOK:</b></p> <p>3 Q Has anything happened since I asked you</p> <p>4 those questions to refresh your recollection that</p> <p>5 you actually were e-mailed a copy of that policy?</p> <p><b>6 A I'd have to think about it. I don't know.</b></p> <p>7 Q I'm asking you that question.</p> <p><b>8 A I know and I'm thinking --</b></p> <p>9 Q It's only been about an hour. Did</p> <p>10 something happen since I asked those questions</p> <p>11 that refreshed your recollection that you actually</p> <p>12 had been e-mailed a copy of that policy; anything</p> <p>13 at all?</p> <p>14 MS. SMITH: Objection to form.</p> <p><b>15 A I'd have to think about it, Mr. Clubok. I</b></p> <p><b>16 don't --</b></p> <p><b>17 BY MR. CLUBOK:</b></p> <p>18 Q Think about it.</p> <p><b>19 A Okay.</b></p> <p>20 Q Did anything happen since I asked you</p> <p>21 those questions to refresh your recollection that,</p> <p>22 in fact, you had been e-mailed a copy of that</p> <p>23 policy?</p> <p><b>24 A I'm not sure. I'd need to think about it</b></p> <p><b>25 further.</b></p>
<p style="text-align: right;">210</p> <p>1 something happen since I asked you those questions</p> <p>2 to refresh your recollection on that subject?</p> <p>3 MS. SMITH: Objection, form.</p> <p><b>4 A I'd have to think about it, Mr. Clubok.</b></p> <p><b>5 We could take a break, but I don't -- I don't</b></p> <p><b>6 know.</b></p> <p><b>7 BY MR. CLUBOK:</b></p> <p>8 Q I'd like you to think about it and give</p> <p>9 the answer. I've asked you a question. You don't</p> <p>10 take a break in between a question and answer, as</p> <p>11 you know.</p> <p><b>12 A Fair enough.</b></p> <p>13 Q So I asked you those questions earlier</p> <p>14 today about whether you'd ever seen the insurance</p> <p>15 policy and in a number of different ways you said</p> <p>16 absolutely not, except for the one page that was</p> <p>17 shown to you on the screen. And my question to</p> <p>18 you is, when I was asking you those questions, did</p> <p>19 you remember that it had been e-mailed to you even</p> <p>20 if you didn't look at it?</p> <p><b>21 A I don't --</b></p> <p>22 MS. SMITH: Objection to form.</p> <p><b>23 A I don't think that was something I was</b></p> <p><b>24 thinking about when you asked me those questions</b></p> <p><b>25 because I was answering the question you asked,</b></p>	<p style="text-align: right;">212</p> <p>1 Q Did your lawyer show you anything at all</p> <p>2 that refreshed your recollection?</p> <p><b>3 A No.</b></p> <p>4 Q Did your lawyer say anything to you in any</p> <p>5 way that refreshed your recollection?</p> <p>6 MS. SMITH: Objection, privileged.</p> <p><b>7 A I'm not going to talk about what my lawyer</b></p> <p><b>8 said to me.</b></p> <p><b>9 BY MR. CLUBOK:</b></p> <p>10 Q Did you speak to anyone at all?</p> <p><b>11 A The only people I have conversed with</b></p> <p><b>12 today are my wife and my attorneys.</b></p> <p>13 Q Did you review anything in --</p> <p><b>14 A No, sir.</b></p> <p>15 Q And what caused you to suddenly remember</p> <p>16 and say that you had been e-mailed a copy of that</p> <p>17 policy?</p> <p><b>18 A I've given you my testimony, sir.</b></p> <p>19 Q What caused you to suddenly think of that;</p> <p>20 do you know? Or is your answer you have no idea?</p> <p><b>21 A I mean, I think my answer is that I have</b></p> <p><b>22 nothing to say that's not potentially subject to</b></p> <p><b>23 privilege.</b></p> <p>24 Q So there was something that occurred that</p> <p>25 caused you to refresh your recollection about</p>

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<p style="text-align: right;">213</p> <p>1 being e-mailed that document but you can't say                  2 because of privilege; is that what you're saying?                  3 MS. SMITH: Objection, form.                  4 <b>A I'm not going to -- I've given you my</b>                  5 <b>testimony, sir.</b>                  6 <b>BY MR. CLUBOK:</b>                  7 Q Why were you e-mailed a copy of the                  8 policy?                  9 <b>A I don't recall.</b>                  10 MS. SMITH: Can we go off the record for                  11 one second?                  12 MR. CLUBOK: Sure.                  13 THE VIDEOGRAPHER: Off the -- off the                  14 record at 3:34 p.m.                  15 (Recess taken from 3:34 p.m. CDT to                  16 3:42 p.m. CDT)                  17 THE VIDEOGRAPHER: The time is 3:42 p.m.                  18 We are back on the record.                  19 BY MR. CLUBOK:                  20 Q So earlier today I asked you if you ever                  21 tried to see a copy of the ATE policy in                  22 connection with your work at Highland and you said                  23 I never asked to see a copy of the ATE policy that                  24 I recall. Do you remember that?                  25 <b>A Yes.</b></p>	<p style="text-align: right;">215</p> <p>1 previously marked as Exhibit 56. This is an                  2 e-mail from you -- sorry, from JP Sevilla to you,                  3 attaching the ATE policy in response to an e-mail                  4 that you sent on October 25, 2017, at 3:23 p.m.                  5 with the subject: UBS ATE Policy, and a note that                  6 says: Will you please send me a copy of the final                  7 executed insurance agreement?                  8 Do you see that?                  9 <b>A I do.</b>                  10 Q Why did you ask Mr. Sevilla to send you a                  11 copy of the final executed insurance agreement                  12 that you called the UBS ATE policy?                  13 <b>A I don't recall.</b>                  14 Q Did you --                  15 MS. SMITH: Objection, form.                  16 BY MR. CLUBOK:                  17 Q Did you recall that you had asked for this                  18 policy before I just showed you this document?                  19 <b>A Actually, I don't remember this e-mail at</b>                  20 <b>all.</b>                  21 Q And what did you do when you got the                  22 policy? You just got it and didn't look at it?                  23 <b>A Actually I don't even want to look at it</b>                  24 <b>now. I haven't seen it before.</b>                  25 Q Well, I would like you to look at it, and</p>
<p style="text-align: right;">214</p> <p>1 Q And at the time I asked you that question,                  2 were you thinking that you had asked to get a copy                  3 of it but not to see a copy of it? Is that a                  4 distinction you were drawing in your mind when you                  5 answered that question?                  6 <b>A I don't think so. I was actually</b>                  7 <b>answering the question that you asked, which was</b>                  8 <b>did I ever ask to see a policy copy and I never</b>                  9 <b>did.</b>                  10 Q And when I asked you that question did you                  11 remember that you had asked for a copy of the                  12 policy?                  13 <b>A When I was answering that question, I</b>                  14 <b>don't believe so. I think I was answering the</b>                  15 <b>question in front of me.</b>                  16 Q So what's caused you now -- by the way,                  17 did you ever ask for a copy of the document?                  18 <b>A I don't recall, but if you'd like to show</b>                  19 <b>me a document to refresh my recollection, I may</b>                  20 <b>have.</b>                  21 Q Okay. So I earlier asked you if you had                  22 access to it, you said you did have access. Did                  23 you ever ask for a copy of the policy?                  24 <b>A I don't remember.</b>                  25 Q I'm going to hand you what's been</p>	<p style="text-align: right;">216</p> <p>1 you asked Mr. Sevilla for the policy, correct?                  2 <b>A That's what this appears to say, yes.</b>                  3 Q That's your e-mail to Mr. Sevilla, right?                  4 <b>A Yes.</b>                  5 Q ILeventon@HighlandCapital.com was you in                  6 October 2017, right?                  7 <b>A Yes.</b>                  8 Q Okay. And let's look at the document.                  9 Your testimony is that you got this -- you made a                  10 point of asking Mr. Sevilla for it, you got it and                  11 then you never looked at it?                  12 <b>A Correct.</b>                  13 Q Why?                  14 <b>A I don't remember, sir.</b>                  15 Q Why did you want it?                  16 <b>A I don't remember, sir.</b>                  17 Q What did you do with it?                  18 <b>A I don't remember, sir.</b>                  19 Q And you didn't even remember asking for it                  20 until I just showed you this document, correct?                  21 <b>A I didn't remember asking Mr. Sevilla for</b>                  22 <b>it, no.</b>                  23 Q Do you consider yourself to have a good                  24 memory?                  25 <b>A You know, I literally send and received</b></p>



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<p style="text-align: right;">217</p> <p>1 <b>probably 10,000 e-mails over this time period. I</b>                  2 <b>think I have a decent memory.</b>                  3 Q You send and received 10,000 e-mails over                  4 what time period?                  5 <b>A I mean, if you're talking about over a</b>                  6 <b>four-year period, five-year period, thousands of</b>                  7 <b>e-mails. I didn't remember this one.</b>                  8 Q Did you read thousands of documents over                  9 that time period?                  10 <b>A Possibly.</b>                  11 Q So it's possible that you forgot you had                  12 read the ATE policy?                  13 <b>A No. I am certain that the only part of</b>                  14 <b>the ATE policy I ever read was just the one page.</b>                  15 Q Why? Why did you -- why did you refuse to                  16 read the policy?                  17 MS. SMITH: Objection to form.                  18 <b>A Refuse is not accurate.</b>                  19 <b>BY MR. CLUBOK:</b>                  20 Q You obtained a copy of it, but you made a                  21 point of not looking at it or opening the                  22 document?                  23 MS. SMITH: Objection to form.                  24 <b>A That's not accurate, sir.</b>                  25</p>	<p style="text-align: right;">219</p> <p>1 Q That's the entity that we often commonly                  2 referred to as CDO Fund in the UBS New York                  3 litigation, right?                  4 <b>A I think that's right.</b>                  5 Q And Mr. Dondero had authority to sign on                  6 behalf of CDO Fund at this time?                  7 <b>A I suppose he did. It appears that he</b>                  8 <b>signed on behalf of that entity.</b>                  9 Q And also on behalf of CDO Hold Co and                  10 SOHC, correct?                  11 <b>A Appears that he signed on behalf of all of</b>                  12 <b>those entities, yes.</b>                  13 Q And CDO Hold Co and SOHC were both subs of                  14 Highland Financial Partners, correct?                  15 <b>A They were both owned by Highland Financial</b>                  16 <b>Partners, yes.</b>                  17 Q Who negotiated this policy on behalf of                  18 CDO Opportunity Master Fund?                  19 <b>A I don't know.</b>                  20 Q Who negotiated this policy on behalf of                  21 Highland CDO Hold Co?                  22 <b>A I have no idea.</b>                  23 Q So who negotiated this policy on behalf of                  24 SOHC?                  25 <b>A I don't know.</b></p>
<p style="text-align: right;">218</p> <p>1 <b>BY MR. CLUBOK:</b>                  2 Q What's inaccurate about that statement?                  3 <b>A I don't ever remember consciously thinking</b>                  4 <b>I better not look at this. I don't -- but I</b>                  5 <b>certainly know that I didn't look at it.</b>                  6 Q Well, let's open it up and take a look at                  7 it. You certainly have looked at the page -- the                  8 last page of the legal liability insurance policy                  9 is the signature page. Do you see that?                  10 <b>A I do.</b>                  11 Q And do you see that it was signed on                  12 behalf of Sentinel Reinsurance by someone named                  13 Andrew Dean, director?                  14 <b>A I see that, yes.</b>                  15 Q Do you know who Andrew Dean is?                  16 <b>A I don't.</b>                  17 Q Do you know who negotiated the policy on                  18 behalf of Sentinel Reinsurance?                  19 <b>A No, sir, I don't.</b>                  20 Q Okay. Do you see there where it lists the                  21 insureds under the policy?                  22 <b>A I do.</b>                  23 Q And do you see it lists Highland CDO                  24 Opportunity Master Fund, LP?                  25 <b>A Yes.</b></p>	<p style="text-align: right;">220</p> <p>1 Q You understood, though, that -- strike                  2 that.                  3 Was this the page you looked at on                  4 Mr. Sevilla's computer to tell you that the -- who                  5 the insureds were?                  6 <b>A I don't think so, no.</b>                  7 Q So flip back to page 17. It says page 17                  8 of 16. Do you see that? And I guess they ended                  9 the policy at 16 and then they added 17 and 18 on                  10 top.                  11 <b>A Gosh.</b>                  12 Q I don't know if that's --                  13 <b>A Yeah.</b>                  14 Q Or they added 17 and then they added a                  15 signature page that's 16 but with signatures. Do                  16 you see that?                  17 <b>A I do.</b>                  18 Q Maybe that's a Cayman convention. I don't                  19 know. I haven't seen that before.                  20 Is this schedule on what's marked as                  21 page 17 of 16, or Bates label ending in 90, 91 of                  22 Exhibit 56, is that the page that you looked at on                  23 Mr. Sevilla's computer?                  24 <b>A It might have been.</b>                  25 Q Certainly -- did you know that the ATE</p>

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<p style="text-align: right;">221</p> <p>1 policy was for \$100 million?</p> <p>2 <b>A I don't think I did, no.</b></p> <p>3 Q Well, that matches up exactly with the</p> <p>4 settlement structure that you had proposed in</p> <p>5 which HFP and CDO Fund would buy a \$100 million</p> <p>6 ATE policy from Sentinel, right?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Strike that. Let me ask it again.</p> <p>10 In Exhibit 47, you passed on a settlement</p> <p>11 proposal that contemplated HFP and CDO Fund buying</p> <p>12 a \$100 million ATE policy from Sentinel. Do you</p> <p>13 see that?</p> <p>14 <b>A Where are you, sir?</b></p> <p>15 Q Back to page 8.</p> <p>16 <b>A Of which document?</b></p> <p>17 Q 47.</p> <p>18 <b>A I see the page.</b></p> <p>19 Q And remember, Exhibit 47 was the</p> <p>20 settlement analysis that was conducted in April of</p> <p>21 2017 that you claimed was for an entirely separate</p> <p>22 transaction than the executed ATE policy, correct?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A Can you rephrase the question? I'm sorry,</b></p> <p>25 <b>I got lost in all of the advocacy of that one.</b></p>	<p style="text-align: right;">223</p> <p>1 <b>A The settlement proposal in April was</b></p> <p>2 <b>different than the ATE policy purchased in August.</b></p> <p>3 Q I believe you said, in words or substance,</p> <p>4 the transaction contemplated in April of 2017 was</p> <p>5 entirely different than the purchased ATE policy</p> <p>6 in August of 2017?</p> <p>7 <b>A What I'm --</b></p> <p>8 Q Is that correct?</p> <p>9 <b>A What I'm testifying is to, sir, the</b></p> <p>10 <b>contemplated settlement process, which is what's</b></p> <p>11 <b>discussed in this document, is different than the</b></p> <p>12 <b>ATE policy that was purchased in August of 2017.</b></p> <p>13 Q Okay. But part of that settlement process</p> <p>14 was the purchase of an ATE policy that was very</p> <p>15 close to what ultimately was purchased in August</p> <p>16 of 2017, correct?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 <b>A Honestly, I'm seeing this document -- the</b></p> <p>19 <b>ATE policy for the first time.</b></p> <p>20 <b>BY MR. CLUBOK:</b></p> <p>21 Q Okay. So you have -- but in your proposal</p> <p>22 that was being considered in April of 2017, as</p> <p>23 part of it, it was HFP and CDO Fund would buy a</p> <p>24 \$100 million ATE policy from Sentinel, correct?</p> <p>25 MS. SMITH: Objection, form.</p>
<p style="text-align: right;">222</p> <p>1 <b>BY MR. CLUBOK:</b></p> <p>2 Q There was work done in April of 2017</p> <p>3 that's at least in part reflected by Exhibit 47,</p> <p>4 regarding a potential settlement structure with</p> <p>5 UBS, correct?</p> <p>6 <b>A There was a potential settlement structure</b></p> <p>7 <b>with UBS contemplated in April of 2017.</b></p> <p>8 Q And as part of that, there was a</p> <p>9 transaction that you've testified about today that</p> <p>10 was being considered, correct?</p> <p>11 <b>A There is the consideration of purchasing</b></p> <p>12 <b>an ATE policy.</b></p> <p>13 Q And you said, I'm paraphrasing, that the</p> <p>14 April proposed transaction or contemplated</p> <p>15 transaction was entirely different from what</p> <p>16 actually happened when an ATE policy was purchased</p> <p>17 in August of 2017, correct?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A Whatever my testimony was, it will speak</b></p> <p>20 <b>for itself.</b></p> <p>21 <b>BY MR. CLUBOK:</b></p> <p>22 Q Am I getting the gist of your testimony</p> <p>23 correct, that you said the April proposed</p> <p>24 transaction was entirely different from the actual</p> <p>25 consummated August transaction?</p>	<p style="text-align: right;">224</p> <p>1 <b>A The document states that HFP and CDO Fund</b></p> <p>2 <b>would buy a \$100 million ATE policy from Sentinel</b></p> <p>3 <b>as the first of what ultimately were seven steps</b></p> <p>4 <b>in a settlement process.</b></p> <p>5 <b>BY MR. CLUBOK:</b></p> <p>6 Q Right. But the purchase of the policy</p> <p>7 would be from HFP and CDO Fund. Yes?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And it would be a \$100 million ATE policy</p> <p>10 from Sentinel Reinsurance, right?</p> <p>11 <b>A From Sentinel, yes.</b></p> <p>12 Q And the premium would be all of the assets</p> <p>13 in HFP and CDO Fund, correct?</p> <p>14 <b>A Right. That's what it says on the page.</b></p> <p>15 Q Okay. And what actually happened is --</p> <p>16 pursuant to the legal liability insurance policy</p> <p>17 that you asked for a copy of in October 25th,</p> <p>18 2017, is that Sentinel Reinsurance issued a policy</p> <p>19 to SOHC -- sorry, to CDO Fund and two subsidiaries</p> <p>20 of HFP, correct?</p> <p>21 <b>A Which page are you on, sir?</b></p> <p>22 MS. SMITH: Objection, form.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q I'm on the schedule which is marked as</p> <p>25 page 17 of 16, that you believe you had reviewed</p>

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<p style="text-align: right;">225</p> <p>1 on Mr. Sevilla's computer, and it's fair to say                  2 that there was a \$100 million ATE policy purchased                  3 by HFP and CDO Fund from Sentinel in August of                  4 2017?                  5 MS. SMITH: Objection, form.                  6 <b>A To clarify my earlier testimony, the only</b>                  7 <b>thing I did was I looked at who the insureds were</b>                  8 <b>on this page. That's all I cared about. I don't</b>                  9 <b>even remember looking at the rest of the page.</b>                  10 <b>BY MR. CLUBOK:</b>                  11 Q You knew that the insureds were HFP and                  12 CDO Fund, correct?                  13 MS. SMITH: Objection, form.                  14 <b>A I apparently had to confirm that the</b>                  15 <b>insureds were Highland CDO Opportunity Master</b>                  16 <b>Fund, LP, Highland CDO Holding Company and</b>                  17 <b>Highland Special Opportunities Holding Company.</b>                  18 <b>That's why I looked at this page.</b>                  19 <b>BY MR. CLUBOK:</b>                  20 Q Right. And that matches up with the                  21 contemplation from your April document, that                  22 shorthand, HFP/CDO fund would buy a \$100 million                  23 ATE policy from Sentinel, correct?                  24 MS. SMITH: Objection, form.                  25 <b>A I don't really know that it does, no.</b></p>	<p style="text-align: right;">227</p> <p>1 do you say that the transaction that was                  2 contemplated in Step 1 of the UBS settlement                  3 structure reflected in Exhibit 47 is totally                  4 different than the actual ATE policy that was                  5 purchased a couple months later? Is that your                  6 testimony under oath, yes or no?                  7 MS. SMITH: Objection, form.                  8 <b>A I can't give you that testimony one way or</b>                  9 <b>another. I'm seeing that ATE policy for the first</b>                  10 <b>time.</b>                  11 <b>BY MR. CLUBOK:</b>                  12 Q Okay. So as you sit here today, fair to                  13 say that you can't say how closely the actual ATE                  14 policy matches up with what was contemplated as                  15 part of the proposed UBS settlement structure                  16 reflected in Exhibit 47; is that fair?                  17 <b>A I disagree with one of the premises of</b>                  18 <b>your question, and I'm happy to explain.</b>                  19 Q Yeah.                  20 <b>A The April settlement proposal was a series</b>                  21 <b>of steps, but they were all part of a single</b>                  22 <b>proposal. I don't know that we can pull one of</b>                  23 <b>them out and characterize it as something that</b>                  24 <b>happened later or didn't happen later. It's a</b>                  25 <b>single process with multiple steps.</b></p>
<p style="text-align: right;">226</p> <p>1 <b>BY MR. CLUBOK:</b>                  2 Q You're sitting here -- now that you're                  3 looking at these, you claim that the Step 1                  4 HFP/CDO Fund buy a \$100 million ATE policy from                  5 Sentinel, using all the assets in HFP and CDO Fund                  6 doesn't match up with the actual purchase of a                  7 \$100 million ATE policy from Sentinel as reflected                  8 in Exhibit 56?                  9 MS. SMITH: Objection, form.                  10 <b>A The documents speak for themselves. I'm</b>                  11 <b>looking at one document I didn't even remember and</b>                  12 <b>know that I've drafted and another document I've</b>                  13 <b>never seen.</b>                  14 <b>BY MR. CLUBOK:</b>                  15 Q Yeah. The documents do speak for                  16 themselves. I want -- but I asked you for your                  17 testimony earlier. And we have a record of what                  18 you said.                  19 <b>A Okay.</b>                  20 Q And what you said about how separate these                  21 transactions were. I'm not trying to quote the                  22 exact words, but we've got pages of transcript                  23 from earlier today about exactly what you said                  24 under oath.                  25 And my question now is, as you sit here,</p>	<p style="text-align: right;">228</p> <p>1 Q Okay.                  2 MR. CLUBOK: I'm going to move to strike                  3 as nonresponsive.                  4 BY MR. CLUBOK:                  5 Q I just want you to focus on my question                  6 and please don't make points about things I'm not                  7 asking you.                  8 Step 1 of the proposed settlement                  9 structure that is reflected in Exhibit 47 is                  10 substantially similar as what actually occurred                  11 with the purchase of the ATE policy in August.                  12 True or not true, or you can't -- you don't know?                  13 MS. SMITH: Objection, form.                  14 <b>A I'm just seeing the ATE policy for the</b>                  15 <b>first time today and frankly haven't even had a</b>                  16 <b>chance to review the whole document. And I also</b>                  17 <b>wouldn't pull one step out of the April proposal</b>                  18 <b>and characterize it. So I don't believe I can</b>                  19 <b>answer your question as asked.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q The reason you can't answer -- I am asking                  22 you, if you could, to compare Step 1, which says:                  23 HFP/CDO Fund buy a \$100 million ATE policy from                  24 Sentinel, using a premium of all the assets in                  25 HFP/CDO Fund to what actually happens in August.</p>

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<p style="text-align: right;">229</p> <p>1 And I want to know if that -- what was                  2 contemplated as Step 1 is substantially the same                  3 as what occurred in August, or if you believe it                  4 was not substantially the same or if you don't                  5 know because you don't know enough about the                  6 details of what happened in August to make that                  7 comparison? That's the only question I'm asking                  8 you. Can you please answer that question?                  9 MS. SMITH: Objection, asked and answered.  <b>10 A I've given you my testimony, sir.</b>  <b>11 BY MR. CLUBOK:</b>                  12 Q My question is, was Step 1, as                  13 contemplated in Exhibit 47, substantially the same                  14 as what actually occurred in August, or do you not                  15 know about the -- enough about the August                  16 transaction to say one way or the other?  <b>17 A I've given you my --</b>                  18 MS. SMITH: Objection, asked and answered.  <b>19 A I've given you my testimony, sir.</b>  <b>20 BY MR. CLUBOK:</b>                  21 Q My question is, as con -- I have a right                  22 to ask this question. This is cross-examination.                  23 And I'm going to ask the Court for more time with                  24 you if we don't get an answer to this question.                  25 It's very simple, without saying you've answered</p>	<p style="text-align: right;">231</p> <p>1 doing what you're doing, which is just claim                  2 you've answered a question instead of just                  3 answering the question, even if you believe I've                  4 asked it twice. I hope your attorneys --                  5 MS. SMITH: Objection.                  6 BY MR. CLUBOK:                  7 Q -- tell you not to do that but we're going                  8 to move on and we'll reserve that.  <b>9 A Let me give you a full answer. I disagree</b>  <b>10 with the premise of your question, sir, and I</b>  <b>11 cannot answer it as asked.</b>                  12 Q In August of 2017, did HFP and CDO Fund                  13 buy a \$100 million ATE policy from Sentinel using                  14 all of the assets in HFP and CDO Fund?  <b>15 A I don't know.</b>                  16 Q Did anyone ever tell you whether or not                  17 that occurred?  <b>18 A I don't remember ever being told that.</b>                  19 Q Did you know that the purchase of the                  20 ATE policy in 2017 was made using assets of HFP                  21 and CDO Fund?                  22 MS. SMITH: Objection, form.  <b>23 A I don't think I can really answer the</b>  <b>24 question as asked.</b>                  25</p>
<p style="text-align: right;">230</p> <p>1 it. You just listen to my question and please try                  2 to answer this question, regardless of whether you                  3 believe you've answered this question or not.                  4 Step 1, that's identified on page 8 of the                  5 presentation attached as part of Exhibit 47,                  6 describes the purchase of a \$100 million ATE                  7 policy from Sentinel by HFP and CDO Fund using as                  8 the premium all of the assets in HFP and CDO Fund.                  9 And my question is, is that Step 1 the                  10 same as what ultimately occurred substantially in                  11 August of 2017, or do you believe it is not                  12 substantially the same or do you not know enough                  13 about the August transaction to answer that                  14 particular question?  <b>15 A My response to the question was that I did</b>  <b>16 not believe I could answer the question as phrased</b>  <b>17 and I gave you the reasons I did not believe I</b>  <b>18 could answer the question as phrased. That was my</b>  <b>19 testimony. And that is still my testimony in</b>  <b>20 response to the same question, sir.</b>                  21 MR. CLUBOK: Move to strike as                  22 nonresponsive. We'll mark this document.                  23 BY MR. CLUBOK:                  24 Q We're going to call you back. It's not                  25 acceptable to this court for any witness to keep</p>	<p style="text-align: right;">232</p> <p>1 BY MR. CLUBOK:                  2 Q Why not?  <b>3 A I didn't -- well, let me rephrase. I</b>  <b>4 didn't know what assets went over.</b>                  5 Q Did you believe -- you knew that there was                  6 an ATE policy that had been purchased, right?  <b>7 A Yes.</b>                  8 Q And you knew who the insureds were, right?  <b>9 A Yes.</b>                  10 Q And did you know that some or all of the                  11 purchase was made using assets from the CDO Fund                  12 and HFP?  <b>13 A I didn't know what the consideration was</b>  <b>14 for the policy.</b>                  15 Q You knew, though, that as of April 2017,                  16 as part of the settlement structure laid out, the                  17 contemplation was that the entire consideration                  18 for the ATE policy that was being considered as                  19 part of that analysis would come from HFP and                  20 CDO Fund, correct?                  21 MS. SMITH: Objection, form.  <b>22 A What I was aware of was in April 2017, it</b>  <b>23 was contemplated that Sentinel and HMLP can use</b>  <b>24 HFP and CDO Fund assets to generate cash to pay</b>  <b>25 UBS, Citi and outstanding legal bills.</b></p>

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<p style="text-align: right;">233</p> <p>1 MR. CLUBOK: Move to strike as                  2 nonresponsive.                  3 BY MR. CLUBOK:                  4 Q You knew that in April 2017 as part of the                  5 settlement structure, Step 1 was the purchase of                  6 an ATE policy for HFP and CDO Fund with the entire                  7 consideration for that purchase coming from assets                  8 in HFP and CDO Fund, correct?                  9 MS. SMITH: Objection, form.                  10 <b>A I can characterize what's on the page,</b>                  11 <b>which is HFP and CDO Fund would buy a \$100 million</b>                  12 <b>ATE policy from Sentinel and the ATE premium,</b>                  13 <b>apparently, was going to be all the assets in HFP</b>                  14 <b>and CDO Fund.</b>                  15 <b>BY MR. CLUBOK:</b>                  16 Q And there's no other consideration that                  17 you're aware of that was being contemplated to pay                  18 for the ATE policy that was part of the proposal                  19 being discussed in April 2017, correct?                  20 <b>A I don't remember --</b>                  21 MS. SMITH: Objection, form.                  22 THE WITNESS: Sorry.                  23 <b>A I don't remember the proposal from</b>                  24 <b>April 2017, so I can't add or subtract from what's</b>                  25 <b>on the page.</b></p>	<p style="text-align: right;">235</p> <p>1 Okay. So please try hard to listen to my                  2 questions the rest of the way and just answer the                  3 questions I ask and not questions you decide to                  4 answer. Okay?                  5 MS. SMITH: Andy, I think this might be a                  6 good time for a break.                  7 BY MR. CLUBOK:                  8 Q Do you need a break, Mr. Leventon?                  9 <b>A I believe I do.</b>                  10 Q Then we will take a break.                  11 THE VIDEOGRAPHER: We are off the record                  12 at 4:07 p.m.                  13 (Recess taken from 4:07 p.m. CDT to                  14 4:17 p.m. CDT)                  15 THE VIDEOGRAPHER: The time is 4:17 p.m.                  16 We are back on the record.                  17 BY MR. CLUBOK:                  18 Q Sir, did you ever send the insurance                  19 policy to anybody?                  20 <b>A I don't remember if I did or not.</b>                  21 Q Who's Chris Dunn?                  22 <b>A Chris was an accountant at Highland. I</b>                  23 <b>think a junior fund accountant.</b>                  24 Q I'm going to hand you what's been marked                  25 as Exhibit 57. It's a cover e-mail from you</p>
<p style="text-align: right;">234</p> <p>1 <b>BY MR. CLUBOK:</b>                  2 Q My -- please listen to my question. As                  3 you sit here today, you are not aware of any other                  4 consideration that was being contemplated to pay                  5 for the ATE policy that was being discussed in                  6 April 2017 other than the assets from the HFP and                  7 CDO Fund, correct?                  8 <b>A Sitting here today, I don't remember one</b>                  9 <b>way or another, sir.</b>                  10 Q So you are not aware of any other                  11 consideration that was being contemplated,                  12 correct?                  13 MS. SMITH: Objection, form.                  14 BY MR. CLUBOK:                  15 Q As you sit here today?                  16 <b>A As I sit here today, yes.</b>                  17 Q Okay.                  18 <b>A Was I ever aware, I don't know.</b>                  19 Q I didn't ask if you were ever aware. I'm                  20 going to ask you for the rest of this deposition,                  21 in order to avoid me needing to seek more time,                  22 that you please listen to the question I ask and                  23 answer the question I ask and not one that you                  24 make up. I didn't ask you if you ever were aware.                  25 I said as you sit here today, are you aware.</p>	<p style="text-align: right;">236</p> <p>1 attaching the UBS_ATE.PDF, dated October 26, 2017.                  2 Do you see that?                  3 <b>A Hold on one moment, please. I do see</b>                  4 <b>that, yes.</b>                  5 Q And this is an instance of you forwarding                  6 the UBS after-the-event policy to Chris Dunn on                  7 October 26, 2017, correct?                  8 <b>A Yes.</b>                  9 Q And you tell -- you don't -- you tell                  10 Mr. Dunn: Please label all communications related                  11 to this project as Privileged as all documents are                  12 being drafted at the request of the Legal Team.                  13 Do you see that?                  14 <b>A I do.</b>                  15 Q What documents did you request Mr. Dunn                  16 draft in connection with this ATE policy?                  17 MS. SMITH: Objection, form.                  18 <b>A I never requested Mr. Dunn draft any</b>                  19 <b>documents in connection with the ATE policy.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q What did you request Mr. Dunn do in                  22 connection with the ATE policy?                  23 <b>A I don't recall. I don't recall if I</b>                  24 <b>requested him to do anything with it.</b>                  25 Q Well, you talk about this project. You</p>

<p style="text-align: right;">237</p> <p>1 refer to this project. Do you see?</p> <p>2 <b>A I do.</b></p> <p>3 Q What's this project that you're referring</p> <p>4 to?</p> <p>5 <b>A I mean, I can speculate, but I don't</b></p> <p>6 <b>recall.</b></p> <p>7 Q Give your best educated guess.</p> <p>8 <b>A Something having to do with the UBS</b></p> <p>9 <b>ATE policy.</b></p> <p>10 Q You know nothing beyond that?</p> <p>11 <b>A I don't.</b></p> <p>12 Q Do you have any educated assumption about</p> <p>13 what this was beyond that it had something to do</p> <p>14 with the UBS ATE policy?</p> <p>15 <b>A When you say this, you're talking about</b></p> <p>16 <b>the e-mail to Mr. Dunn?</b></p> <p>17 Q I'm talking about the project you</p> <p>18 reference, as if he knows what you're talking</p> <p>19 about when you send this policy to Mr. Dunn.</p> <p>20 <b>A I mean, I don't have a recollection, I</b></p> <p>21 <b>guess. I'm trying to figure out if I have an</b></p> <p>22 <b>educated guess. I mean, there were a number of</b></p> <p>23 <b>things that that could have referenced.</b></p> <p>24 Q Mr. Leventon, in the course of this</p> <p>25 deposition, you understand you have an obligation</p>	<p style="text-align: right;">239</p> <p>1 you also understand that you have to</p> <p>2 affirmatively -- do you believe when you're</p> <p>3 answering these questions, I just want to</p> <p>4 understand what your -- your process when you're</p> <p>5 answering questions, do you believe you have an</p> <p>6 obligation not to omit intentionally information</p> <p>7 that is necessary to make the statements you say</p> <p>8 fully true?</p> <p>9 <b>A I mean, I answer the questions fully and</b></p> <p>10 <b>truthfully. That's what I can say, sir.</b></p> <p>11 Q Yeah. My question is in the -- when you</p> <p>12 do that, do you believe, as you sit here today,</p> <p>13 that you have an obligation not to omit</p> <p>14 information that's necessary to make a statement</p> <p>15 that you have made fully true?</p> <p>16 MS. SMITH: Objection. You've already</p> <p>17 asked him that and he's answered. You're</p> <p>18 badgering him now.</p> <p>19 MR. CLUBOK: The record's going to show</p> <p>20 he's not answered this question and I think it's</p> <p>21 an important question for the judge to know and I</p> <p>22 think it's a perfectly fair --</p> <p>23 MS. SMITH: You're testifying now.</p> <p>24 MR. CLUBOK: So are you. We're not</p> <p>25 supposed to -- you should limit yourself to</p>
<p style="text-align: right;">238</p> <p>1 to affirmatively tell the truth, right?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Do you understand as part of that</p> <p>4 obligation, you also can't intentionally omit</p> <p>5 information that is necessary to make a statement</p> <p>6 you're saying the complete truth?</p> <p>7 MS. SMITH: Objection.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Do you have that understanding?</p> <p>10 MS. SMITH: Objection.</p> <p>11 <b>A I'm going to testify fully and truthfully</b></p> <p>12 <b>to the best of my ability.</b></p> <p>13 <b>BY MR. CLUBOK:</b></p> <p>14 Q When you're answering questions in this</p> <p>15 deposition, do you understand that you have an</p> <p>16 obligation not to omit information that is</p> <p>17 necessary to make statements you are making true?</p> <p>18 MS. SMITH: Objection. Mr. Clubok, you're</p> <p>19 badgering him now.</p> <p>20 <b>A I'll accept my counsel's instructions on</b></p> <p>21 <b>how to conduct a deposition.</b></p> <p>22 <b>BY MR. CLUBOK:</b></p> <p>23 Q I'm asking your understanding of when</p> <p>24 you're trying to answer these questions, you know</p> <p>25 that you're not supposed to affirmatively lie. Do</p>	<p style="text-align: right;">240</p> <p>1 objection to form and I should limit myself, so</p> <p>2 I'm going to ask my question again and I'm going</p> <p>3 to try not to take the bait of this argument. I</p> <p>4 agree with you, it's inappropriate.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Mr. Leventon, when you are answering these</p> <p>7 questions, do you believe you have an obligation</p> <p>8 not to intentionally omit material information</p> <p>9 that's necessary to make one of your answers</p> <p>10 completely truthful?</p> <p>11 <b>A I have to fully and truthfully answer a</b></p> <p>12 <b>question, but I am not obligated to answer a</b></p> <p>13 <b>question I haven't been asked, is my understanding</b></p> <p>14 <b>of the rules.</b></p> <p>15 Q And do you believe you're allowed to</p> <p>16 intentionally omit material information that might</p> <p>17 be necessary to make an answer you give completely</p> <p>18 true?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Yes or no?</p> <p>22 <b>A I'm not allowed to omit information that</b></p> <p>23 <b>would make an answer to a question asked true, but</b></p> <p>24 <b>I don't believe I have an obligation to educate</b></p> <p>25 <b>the questioning lawyer with respect to questions</b></p>

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<p style="text-align: right;">241</p> <p><b>1 they haven't asked.</b></p> <p>2 Q Okay. So with respect to this e-mail that</p> <p>3 relates -- that references this project, do you</p> <p>4 know anything else at all about what this project</p> <p>5 may have been other than it relates somehow to the</p> <p>6 UBS after-the-event policy that was purchased by</p> <p>7 HFP and CDO Fund?</p> <p><b>8 A My answer previously was that I don't</b></p> <p><b>9 recall, but that I was prepared to give my</b></p> <p><b>10 educated guess.</b></p> <p>11 Q Okay. And that guess is?</p> <p><b>12 A It had something to do with the audits</b></p> <p><b>13 being run by the accounting team, where you would</b></p> <p><b>14 do some sort of risk analysis, potentially, in</b></p> <p><b>15 order to determine if something goes into an audit</b></p> <p><b>16 or not.</b></p> <p>17 Q When did you first become aware of</p> <p>18 Sentinel Reinsurance?</p> <p><b>19 A I knew there was a reinsurance company in</b></p> <p><b>20 the Cayman Islands in 2013 sometime, but I don't</b></p> <p><b>21 recall if I knew the name or not.</b></p> <p>22 Q Did you know who owned Sentinel when you</p> <p>23 were talking about potentially having CDO Fund and</p> <p>24 HFP buy an ATE policy in April of 2017?</p> <p><b>25 A I mean, I knew it was somehow associated</b></p>	<p style="text-align: right;">242</p> <p><b>1 with Mr. Dondero and Mr. Ellington, but I didn't</b></p> <p><b>2 know who owned it.</b></p> <p>3 Q Did you know that those two had beneficial</p> <p>4 economic interests in Sentinel?</p> <p><b>5 A I don't know -- I didn't know that then</b></p> <p><b>6 and I don't believe I know that now.</b></p> <p>7 Q You were never provided any information</p> <p>8 showing the beneficial ownership of Sentinel</p> <p>9 during that time frame; is that what you're</p> <p>10 testifying to?</p> <p>11 MS. SMITH: Objection, form.</p> <p><b>12 A I don't recall ever seeing the beneficial</b></p> <p><b>13 ownership of Sentinel.</b></p> <p><b>14 BY MR. CLUBOK:</b></p> <p>15 Q Did you know that -- did you ever come to</p> <p>16 believe that Sentinel was an affiliated investor?</p> <p>17 MS. SMITH: Objection, form.</p> <p><b>18 A It would have been whatever Mr. Surgent</b></p> <p><b>19 and the compliance department determined and I</b></p> <p><b>20 believe his determination is that it wasn't an</b></p> <p><b>21 affiliated investor.</b></p> <p><b>22 BY MR. CLUBOK:</b></p> <p>23 Q Why?</p> <p>24 MS. SMITH: Objection, form.</p> <p><b>25 A Because I believe I either spoke to him</b></p>
<p style="text-align: right;">243</p> <p><b>1 about it directly or was told by somebody that</b></p> <p><b>2 that was his determination.</b></p> <p><b>3 BY MR. CLUBOK:</b></p> <p>4 Q I'm going to hand you what's been marked</p> <p>5 as Exhibit 61. It's an e-mail chain, the top one</p> <p>6 being an e-mail from Scott Ellington to you</p> <p>7 copying JP Sevilla. Here's a color version if it</p> <p>8 helps you. That's the official marked one, but</p> <p>9 there's a color version if --</p> <p><b>10 A I'm going to put the marked version into</b></p> <p><b>11 the pile and I'm going to look at the color</b></p> <p><b>12 version.</b></p> <p>13 Q This is the last few pages of that.</p> <p><b>14 A Is this --</b></p> <p>15 MS. SMITH: Shannon, could I have a copy</p> <p>16 of the color version also?</p> <p>17 MR. CLUBOK: I'm going to suggest that we</p> <p>18 agree that we can swap in the color version for</p> <p>19 Exhibit 61 if that's okay with you? Is that all</p> <p>20 right, Ms. Smith?</p> <p>21 MS. SMITH: That works for me. Well, I</p> <p>22 can't tell if it's the same.</p> <p>23 MR. CLUBOK: It's the same. We're</p> <p>24 representing it's the same. We printed it out</p> <p>25 with a color copier instead of the black-and-white</p>	<p style="text-align: right;">244</p> <p>1 version we had yesterday.</p> <p>2 MS. SMITH: Okay.</p> <p>3 MR. CLUBOK: So we'll work on that with</p> <p>4 the court reporter to --</p> <p>5 MS. SMITH: So you're tossing the old --</p> <p>6 (Simultaneous discussion interrupted by</p> <p>7 reporter.)</p> <p>8 MR. CLUBOK: We'll do that off the record</p> <p>9 at the end to replace the version 61 that's in</p> <p>10 black and white with a color version.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q And we've got a color version for</p> <p>13 Mr. Leventon in front of him just for ease of use.</p> <p>14 Do you see that there was a file that was</p> <p>15 circulated amongst a number of people, with</p> <p>16 Sentinel being presented as an affiliated investor</p> <p>17 in Multi Strat. Do you see that?</p> <p><b>18 A I'm sorry, say that one more time, please.</b></p> <p>19 Q There is a document that was being</p> <p>20 circulated in December of 2017, and on the first</p> <p>21 page it identifies Sentinel (from Highland</p> <p>22 CDO Fund) as an affiliated investor in what was</p> <p>23 called Credit Opps and later became known as</p> <p>24 Multi Strat.</p> <p>25 MS. SMITH: Objection, form.</p>

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<p style="text-align: right;">245</p> <p>1 <b>A I see on Bates number 020562 toward the</b>                  2 <b>bottom, an e-mail from Mr. Taylor Colbert to Trey</b>                  3 <b>Parker, copying a bunch of people, stating: As</b>                  4 <b>discussed, please see the updated file with</b>                  5 <b>Sentinel being presented as an affiliated</b>                  6 <b>investor.</b>                  7 <b>BY MR. CLUBOK:</b>                  8 Q And if you look at the attachment, the                  9 first page, you can see where it identifies                  10 Credit Opps Investors by NAV, Sentinel Re Holdings                  11 is included, along with the others that are not                  12 shaded to reflect being affiliated investors.                  13 MS. SMITH: Objection, form.                  14 BY MR. CLUBOK:                  15 Q Do you see that?                  16 <b>A Sorry, sir, give me a moment, please.</b>                  17 <b>This isn't completely straightforward.</b>                  18 (Witness reviews document.)                  19 <b>A Okay. I see that there's nothing on</b>                  20 <b>nonaffiliated master for Sentinel Re Holdings,</b>                  21 <b>Ltd.</b>                  22 <b>BY MR. CLUBOK:</b>                  23 Q What?                  24 <b>A On one, two, three, four -- fifth column</b>                  25 <b>over, top of the first page on the attachment,</b></p>	<p style="text-align: right;">247</p> <p>1 Q Okay. So as I said, this document gets                  2 forwarded apparently to Mr. Surgent, who in turn                  3 forwards it to Scott Ellington with a statement,                  4 let's discuss. Do you see that?                  5 <b>A I guess that's right.</b>                  6 Q And --                  7 <b>A Maybe.</b>                  8 Q -- Mr. Ellington in turn forwards it to                  9 you and JP Sevilla and says: See below and                  10 attached and please call me tomorrow on this, from                  11 his iPhone. Do you see that?                  12 <b>A I do.</b>                  13 Q Do you remember him calling you about                  14 this?                  15 <b>A No, I do not.</b>                  16 MS. SMITH: Objection, form.                  17 MR. CLUBOK: What is the objection form on                  18 that question?                  19 MS. SMITH: This says please call me                  20 tomorrow on this and you asked do you remember if                  21 he called you.                  22 MR. CLUBOK: Right. What is the form                  23 objection?                  24 MS. SMITH: I thought you were asking it                  25 backwards.</p>
<p style="text-align: right;">246</p> <p>1 <b>it -- there are percentages of non-affiliated</b>                  2 <b>master and it does not have an entry for Sentinel.</b>                  3 Q Right. So Sentinel is identified as                  4 having some interest in the master and some                  5 interest in the offshore, and like other entities,                  6 for example, HCMLP and Mark Okada and Dugaboy,                  7 they are listed as being affiliated as opposed to                  8 non-affiliated in connection with Credit Opps,                  9 correct?                  10 MS. SMITH: Objection, form.                  11 <b>A I think that's probably fair, yes.</b>                  12 <b>BY MR. CLUBOK:</b>                  13 Q And this document gets forwarded to                  14 Thomas Surgent who in turn forwards this to Scott                  15 Ellington saying, let's discuss. Do you see that?                  16 <b>A I don't mean to quibble with you, but</b>                  17 <b>Mr. Surgent appears to have been one of the</b>                  18 <b>initial people copied on Mr. Colbert's e-mail at</b>                  19 <b>5:50 p.m. on December 1 and then Mr. Surgent</b>                  20 <b>forwards that to Mr. Ellington.</b>                  21 Q Okay. If you look down to Mr. Colbert's                  22 original e-mail December 1st, 2017, Mr. Surgent is                  23 not copied, correct?                  24 <b>A I'm looking at this for the first time and</b>                  25 <b>that apparently is correct.</b></p>	<p style="text-align: right;">248</p> <p>1 MR. CLUBOK: Okay.                  2 BY MR. CLUBOK:                  3 Q Do you remember Mr. Ellington calling you                  4 about this?                  5 <b>A No.</b>                  6 Q Do you remember ever discussing                  7 Multi Strat's cash projections on or about                  8 December of 2017?                  9 <b>A No.</b>                  10 Q Do you recall ever discussing whether                  11 Sentinel was an affiliated investor in connection                  12 with its investment of Multi Strat in December of                  13 2017?                  14 <b>A I don't specifically recall December 2017,</b>                  15 <b>but I do know that at some point the compliance</b>                  16 <b>department via Mr. Surgent made the determination</b>                  17 <b>that it was not an affiliated investor.</b>                  18 Q Why do you know that?                  19 <b>A I believe my testimony was I either -- I</b>                  20 <b>don't remember if I spoke to Mr. Surgent about it</b>                  21 <b>directly or heard from somebody indirectly that</b>                  22 <b>that had been Mr. Surgent's determination.</b>                  23 Q And do you know the basis that that                  24 determination was supposedly made on?                  25 <b>A I don't. It would be the purview of the</b></p>



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<p style="text-align: right;">249</p> <p><b>1 compliance department to make those calls.</b></p> <p>2 Q Do you see on the attachment where it says</p> <p>3 Sentinel (from Highland CDO Fund)? Do you see</p> <p>4 that?</p> <p><b>5 A Yes.</b></p> <p>6 Q And fair to say that the interest in</p> <p>7 Sentinel had been owned by CDO Fund prior to the</p> <p>8 purchase of the ATE policy?</p> <p><b>9 A I'm sorry, can you say that one more time,</b></p> <p><b>10 please?</b></p> <p>11 Q Yeah. The interest that's referenced here</p> <p>12 from Sentinel had been an interest that was owned</p> <p>13 by the Highland CDO Fund until the purchase of the</p> <p>14 ATE policy in August of 2017?</p> <p><b>15 A I don't actually know what assets were</b></p> <p><b>16 involved in that ATE policy, but it would -- it</b></p> <p><b>17 would be a fair assumption.</b></p> <p>18 Q You certainly know that there was assets</p> <p>19 in Sentinel that were being held by CDO Fund when</p> <p>20 you were doing your April 2017 analysis, correct?</p> <p><b>21 A Say that one more time, please.</b></p> <p>22 Q You knew that in April of 2017, when you</p> <p>23 were doing the analysis about a transaction that</p> <p>24 included the purchase of an ATE policy from</p> <p>25 Sentinel, that at that time CDO Fund had an</p>	<p style="text-align: right;">251</p> <p><b>1 BY MR. CLUBOK:</b></p> <p>2 Q So in April of 2017, you know that</p> <p>3 CDO Fund had ownership interest in the entity that</p> <p>4 was then called Credit Opps that later became</p> <p>5 known as Multi Strat, correct?</p> <p><b>6 A I certainly had this schedule. I don't</b></p> <p><b>7 remember focusing on it particularly, but I know I</b></p> <p><b>8 had it.</b></p> <p>9 Q Okay. And you know that by the end of the</p> <p>10 year, CDO Funds' interest in Credit</p> <p>11 Opportunities/Multi Strat came to be owned by</p> <p>12 Sentinel pursuant to this schedule attached to</p> <p>13 Exhibit 61, correct?</p> <p>14 MS. SMITH: Objection, form.</p> <p><b>15 A Hold on. This is the -- that was in the</b></p> <p><b>16 attachment that was sent to me.</b></p> <p><b>17 BY MR. CLUBOK:</b></p> <p>18 Q So that's a yes?</p> <p><b>19 A I'm not meaning to quibble about -- I know</b></p> <p><b>20 I received these documents. I have no dispute</b></p> <p><b>21 about that. I just don't have a recollection of</b></p> <p><b>22 looking at them, comparing them and noticing that</b></p> <p><b>23 particular point, as we're doing today.</b></p> <p>24 Q Okay. But you were provided information,</p> <p>25 whether you studied it or not, by the end of 2017</p>
<p style="text-align: right;">250</p> <p>1 interest in Credit Opportunities which later</p> <p>2 became known as Multi Strat, correct?</p> <p><b>3 A I saw the e-mail that showed that schedule</b></p> <p><b>4 of assets, and I think Multi Strat is on there,</b></p> <p><b>5 but I don't have an independent recollection of</b></p> <p><b>6 that ownership.</b></p> <p>7 Q Right. But Exhibit 67 --</p> <p><b>8 A Hold on one second, please. Hold on. I</b></p> <p><b>9 don't have --</b></p> <p>10 Q Exhibit 67 is a one-page document.</p> <p><b>11 A Sorry, I don't have Exhibit 67 in front of</b></p> <p><b>12 me for some reason.</b></p> <p>13 Q Well, Exhibit 67 is a one-page document</p> <p>14 that was Appendix 1 --</p> <p><b>15 A Sorry, it got attached. I found it.</b></p> <p>16 Q If you look at the second page of</p> <p>17 Exhibit 67, these were assets that were being held</p> <p>18 by CDO Fund and HFP that had been identified to</p> <p>19 you in April of 2017 when it was contemplated that</p> <p>20 these assets could be used to purchase an</p> <p>21 ATE policy from Sentinel, correct?</p> <p>22 MS. SMITH: Objection, form.</p> <p><b>23 A Yes. And as I told you after looking at</b></p> <p><b>24 this document, it appears that the Highland Credit</b></p> <p><b>25 Opportunities CDO Ltd./LP units are on here.</b></p>	<p style="text-align: right;">252</p> <p>1 that showed that the interest CDO Fund had had in</p> <p>2 Credit Opportunities/Multi Strat from earlier in</p> <p>3 the year had now come to be owned by Sentinel,</p> <p>4 correct?</p> <p><b>5 A That's what this line says for the</b></p> <p><b>6 offshore feeder.</b></p> <p>7 Q And that's a line in a document that was</p> <p>8 provided to you by the end of the year 2017,</p> <p>9 correct?</p> <p><b>10 A I mean, now that I'm comparing these for</b></p> <p><b>11 the first time, I mean, this is a -- they don't</b></p> <p><b>12 match. They don't match.</b></p> <p>13 Q Right. The dollar amounts don't match</p> <p>14 exactly.</p> <p><b>15 A No, the entities don't match.</b></p> <p>16 Q Oh, the entities don't match.</p> <p><b>17 A No. The entities don't match.</b></p> <p>18 Q Oh. Are you claiming that the interest</p> <p>19 that Credit Opps/Multi Strat had in Sentinel did</p> <p>20 not come from CDO Fund?</p> <p>21 MS. SMITH: Objection, form.</p> <p><b>22 A I'm not saying that, sir. I'm making an</b></p> <p><b>23 observation of fact that Highland Credit</b></p> <p><b>24 Opportunities Fund, Ltd., on Exhibit --</b></p> <p><b>25 whatever -- 61, is a different entity than</b></p>

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<p style="text-align: right;">253</p> <p><b>1 Highland Credit Opportunities CDO, Ltd., which was</b></p> <p><b>2 colloquially known as the MVCDO and was a wholly</b></p> <p><b>3 owned subsidiary of the master fund and they don't</b></p> <p><b>4 match.</b></p> <p><b>5 BY MR. CLUBOK:</b></p> <p>6 Q Sir --</p> <p>7 A I'm not making a dispute about</p> <p><b>8 transactions. I'm pointing out -- I mean as you</b></p> <p><b>9 pointed out to me that there was a math error, I'm</b></p> <p><b>10 pointing out to you there's an error.</b></p> <p>11 Q Well, there may or may not be an error in</p> <p>12 the names used, but fair to say that you knew in</p> <p>13 April of 2017 that CDO Fund had roughly</p> <p>14 \$24 million of LP units in what was then known as</p> <p>15 Credit Strategies, correct?</p> <p><b>16 A In some level of Credit Strategies, but</b></p> <p><b>17 they're not matching up, correct.</b></p> <p>18 Q Okay. And you also received</p> <p>19 information -- you also -- strike that -- knew</p> <p>20 that there was a plan being proposed in April that</p> <p>21 would have had an ATE policy with a \$100 million</p> <p>22 face value purchased by CDO Fund and HFP for all</p> <p>23 of the assets in those two funds from Sentinel,</p> <p>24 correct?</p> <p>25 MS. SMITH: Objection, form.</p>	<p style="text-align: right;">255</p> <p>1 owned an interest in Multi Strat but that it had</p> <p>2 been transferred to Sentinel?</p> <p>3 MS. SMITH: Objection to form.</p> <p><b>4 A We discussed that they had at one point</b></p> <p><b>5 owned an interest in Multi Strat, but I don't --</b></p> <p><b>6 there was a problem with that interest.</b></p> <p><b>7 BY MR. CLUBOK:</b></p> <p>8 Q What did you say specifically -- well,</p> <p>9 first of all, who's the we in that sentence?</p> <p><b>10 A Sorry, if you'll read my testimony back.</b></p> <p>11 Q You said we discussed.</p> <p><b>12 A Mr. -- oh, gosh. It was either me and</b></p> <p><b>13 Mr. Demo or me and Mr. Seery. I think it was me</b></p> <p><b>14 and Mr. Demo.</b></p> <p>15 Q You and Mr. Demo discussed what on this</p> <p>16 subject?</p> <p><b>17 A That there had been -- that there had been</b></p> <p><b>18 an interest in the Credit Opportunities fund</b></p> <p><b>19 structure or fund entities that had been owned by</b></p> <p><b>20 CDO Fund.</b></p> <p>21 Q And did you ever in any way, to Mr. Demo</p> <p>22 or Mr. Seery or any other lawyer for the debtor or</p> <p>23 independent director, convey that that interest</p> <p>24 that CDO Fund had had in Multi Strat was</p> <p>25 transferred to Sentinel?</p>
<p style="text-align: right;">254</p> <p><b>1 A I was aware that what was in that</b></p> <p><b>2 presentation is what was in the presentation, that</b></p> <p><b>3 it was a \$100 million ATE policy, I believe, in</b></p> <p><b>4 exchange for all the assets. Whatever it says</b></p> <p><b>5 there is the answer.</b></p> <p><b>6 BY MR. CLUBOK:</b></p> <p>7 Q And then you were advised at the end of</p> <p>8 December -- strike that.</p> <p>9 You were advised at the end of 2017 that</p> <p>10 Sentinel (from Highland CDO Fund) had some</p> <p>11 interest in one of the Credit Opportunities funds,</p> <p>12 correct?</p> <p><b>13 A I was advised that Sentinel had -- well, I</b></p> <p><b>14 don't know advised. I was sent a document that</b></p> <p><b>15 included a lot of information, but amongst it</b></p> <p><b>16 included the line that there was 28 million in</b></p> <p><b>17 offshore NAV that was transferred to Sentinel from</b></p> <p><b>18 Highland CDO Fund.</b></p> <p>19 Q Okay. And did you ever follow up on that</p> <p>20 issue with anyone at any time after that?</p> <p><b>21 A I don't recall if I did, and the</b></p> <p><b>22 determination as to what was or wasn't an</b></p> <p><b>23 affiliate was not my decision or purview.</b></p> <p>24 Q Did you ever tell Mr. Seery or anyone else</p> <p>25 affiliated with the debtor, that CDO Fund had once</p>	<p style="text-align: right;">256</p> <p><b>1 A Yes.</b></p> <p>2 Q When did you tell them that?</p> <p><b>3 A Mr. Sargent was at all times aware of</b></p> <p><b>4 that. He had been intimately involved in the</b></p> <p><b>5 transaction and he was deputy general counsel for</b></p> <p><b>6 the debtor and senior to me in the legal team. I</b></p> <p><b>7 technically reported to Mr. Ellington, but</b></p> <p><b>8 Mr. Sargent often would task me with things as</b></p> <p><b>9 well and I had to follow his instructions.</b></p> <p>10 Q Sorry, let's set aside Mr. Sargent for the</p> <p>11 moment. Did you ever tell Mr. Demo or any other</p> <p>12 lawyer at the Pachulski law firm, that the</p> <p>13 interest that CDO Fund had had in Multi Strat was</p> <p>14 transferred to Sentinel?</p> <p><b>15 A I believe what I told Mr. Demo was that I</b></p> <p><b>16 wasn't sure what happened to that interest.</b></p> <p>17 Q But, in fact, you knew that that interest</p> <p>18 had been transferred to Sentinel pursuant to this</p> <p>19 document that we've just reviewed, correct?</p> <p>20 MS. SMITH: Objection, form.</p> <p><b>21 A Actually based on the discrepancy I just</b></p> <p><b>22 showed you, which actually was something I</b></p> <p><b>23 originally became aware of back in August of 2020</b></p> <p><b>24 or maybe September, I don't actually know that</b></p> <p><b>25 that was an effective transfer.</b></p>

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<p style="text-align: right;">257</p> <p><b>1 BY MR. CLUBOK:</b></p> <p><b>2 Q</b> You don't know if there actually has been</p> <p><b>3</b> an effective transfer from CDO Fund to Sentinel;</p> <p><b>4</b> is that correct?</p> <p><b>5 A Well, it -- the problem is --</b></p> <p><b>6 Q</b> I just want an answer to my question. As</p> <p><b>7</b> you sit here today, you don't know if there</p> <p><b>8</b> actually has been an effective transfer of CDO's</p> <p><b>9</b> interest in Multi Strat to Sentinel, correct?</p> <p><b>10 A The answer is I don't know and I also</b></p> <p><b>11 think that that question assumes certain facts</b></p> <p><b>12 that I can't confirm or agree with.</b></p> <p><b>13 Q</b> Like what?</p> <p><b>14 A Like the problem I ran into was if you</b></p> <p><b>15 have an accounting entry that shows that a fund</b></p> <p><b>16 owns -- let's just round it -- we'll call it</b></p> <p><b>17 24 million; is that fair? We'll just call the</b></p> <p><b>18 CDO Fund interest that --</b></p> <p><b>19 Q</b> For purpose of this discussion you can</p> <p><b>20</b> call it 24 million for ease of --</p> <p><b>21 A Okay.</b></p> <p><b>22 Q</b> Whether it's 24 or 28.</p> <p><b>23 A Twenty-four or 28, I'm not --</b></p> <p><b>24</b> (Simultaneous discussion interrupted by</p> <p><b>25</b> reporter.)</p>	<p style="text-align: right;">259</p> <p><b>1</b> you're saying?</p> <p><b>2 A It may or may not.</b></p> <p><b>3 Q</b> Okay.</p> <p><b>4 A But it -- that interest may not exist, is</b></p> <p><b>5 another possibility.</b></p> <p><b>6 Q</b> Okay. And then -- and you identified this</p> <p><b>7</b> issue at some point?</p> <p><b>8 A Yes, absolutely.</b></p> <p><b>9 Q</b> While you were still working for the</p> <p><b>10</b> debtor?</p> <p><b>11 A Yes.</b></p> <p><b>12 Q</b> And did you fully describe this issue to</p> <p><b>13</b> Mr. Demo or another lawyer at the Pachulski firm?</p> <p><b>14</b> MS. SMITH: Objection, form.</p> <p><b>15 A I discussed this at length with Mr. Demo.</b></p> <p><b>16 BY MR. CLUBOK:</b></p> <p><b>17 Q</b> And did you explain to Mr. Demo that there</p> <p><b>18</b> had been -- when you say discussed it at length,</p> <p><b>19</b> did you ever, in words or substance, say something</p> <p><b>20</b> that reflected that there was some effort, whether</p> <p><b>21</b> or not it had been successful, to transfer</p> <p><b>22</b> interest in Credit Strat from Highland CDO Fund to</p> <p><b>23</b> Sentinel?</p> <p><b>24 A We discussed --</b></p> <p><b>25 Q</b> That's a yes-or-no question.</p>
<p style="text-align: right;">258</p> <p><b>1 A So if you have one accounting sheet that</b></p> <p><b>2</b> shows one asset and one accounting sheet that</p> <p><b>3</b> shows that after it was transferred it's a</p> <p><b>4</b> completely different asset, then you have a</p> <p><b>5</b> problem. Which then raises the question, did you</p> <p><b>6</b> own what you think you owned and did you actually</p> <p><b>7</b> transfer something you owned? I mean, it's kind</p> <p><b>8</b> of like -- it's like any other security that would</p> <p><b>9</b> be issued. Like if you own shares of UBS</p> <p><b>10</b> Securities USA, LLC, and then you sell them and</p> <p><b>11</b> someone on their balance sheet reflects US AG</p> <p><b>12</b> stock, then what just happened?</p> <p><b>13 BY MR. CLUBOK:</b></p> <p><b>14 Q</b> I see. And, in fact, for example, you</p> <p><b>15</b> know that -- you -- based on the analysis you did,</p> <p><b>16</b> you determined that CDO Fund still has ownership</p> <p><b>17</b> of an entity that's been loosely called</p> <p><b>18</b> Greenbriar, perhaps because of a faulty</p> <p><b>19</b> transaction?</p> <p><b>20 A That is a different situation.</b></p> <p><b>21 Q</b> Okay. With respect to CDO Fund and</p> <p><b>22</b> Multi Strat, you believe that CDO Fund may still</p> <p><b>23</b> retain whatever interest it had in Multi Strat</p> <p><b>24</b> that you were aware of in April of 2017 because of</p> <p><b>25</b> perhaps an incorrect book entry; is that what</p>	<p style="text-align: right;">260</p> <p><b>1 A The issue of Sentinel did not come up in</b></p> <p><b>2</b> our conversations.</p> <p><b>3 Q</b> So when you claim that you discussed at</p> <p><b>4</b> length this potential problem with identifying</p> <p><b>5</b> whether CDO Fund, in fact, owned an interest in</p> <p><b>6</b> Multi Strat, you never thought to raise the issue</p> <p><b>7</b> of whether or not CDO Fund had effectuated a</p> <p><b>8</b> proper transfer of that interest if it had one, to</p> <p><b>9</b> Sentinel, correct?</p> <p><b>10 A I got stuck in an earlier stage in the</b></p> <p><b>11</b> analysis and so Sentinel didn't come up.</p> <p><b>12 Q</b> You never raised it affirmatively,</p> <p><b>13</b> correct?</p> <p><b>14 A We never got to that point in the inquiry.</b></p> <p><b>15 So no.</b></p> <p><b>16 Q</b> You never mentioned that in order to</p> <p><b>17</b> figure out what interest, if any, CDO Fund had in</p> <p><b>18</b> Multi Strat, you might need to look at Sentinel's</p> <p><b>19</b> books, correct?</p> <p><b>20 A No, I wouldn't care what Sentinel's books</b></p> <p><b>21</b> said.</p> <p><b>22 Q</b> You never mentioned that in order to</p> <p><b>23</b> figure out what interest, if any, CDO Fund had in</p> <p><b>24</b> Multi Strat, you might need to look at what</p> <p><b>25</b> Highland's books reflected in terms of transfers</p>

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<p style="text-align: right;">261</p> <p>1 from Highland CDO Fund to Sentinel, correct?                  2 <b>A We didn't say Sentinel in particular, but</b>                  3 <b>we did talk about any transfers, yes.</b>                  4 Q But you definitely didn't say Sentinel,                  5 which was the transfer that you were aware at                  6 least had been contemplated and at least in one                  7 place reflected as having had occurred?                  8 MS. SMITH: Objection, form.                  9 BY MR. CLUBOK:                  10 Q I'll break that up into two questions.                  11 You knew that it was contemplated that                  12 there would be a transfer of CDO Fund's interest                  13 in Credit Strat to Sentinel, but you never                  14 affirmatively raised that with Mr. Demo or any                  15 other lawyer at Pachulski, correct?                  16 MS. SMITH: Objection, form.                  17 <b>A I don't remember being aware of that at</b>                  18 <b>the time and it wasn't pertinent to the task that</b>                  19 <b>I was working on, which was the asset trade.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q Sir, you knew that it had been                  22 contemplated based on the work you did in April of                  23 2017, that to purchase an ATE policy, CDO Fund                  24 might use as part of the consideration whatever                  25 interest it had in Multi Strat, correct?</p>	<p style="text-align: right;">263</p> <p>1 Q And you knew that there was a schedule                  2 that showed Sentinel having interest in                  3 Multi Strat (from Highland CDO Fund), correct?                  4 <b>A In December I think that's fair -- sorry,</b>                  5 <b>December 2017. I think that's fair.</b>                  6 Q And you even -- when you were tasked with                  7 helping trace the assets of CDO Fund and HFP, you                  8 even talked to Mr. Ellington, in words or                  9 substance, about whether or not you should mention                  10 Sentinel, correct?                  11 <b>A Correct.</b>                  12 Q And you never did once mention Sentinel to                  13 anyone at the Pachulski law firm in the course of                  14 doing the task you were given with respect to                  15 tracing the assets of CDO Fund and SOHC, correct?                  16 Correct?                  17 <b>A It was not relevant to the task, so, no, I</b>                  18 <b>didn't.</b>                  19 Q I'm going to hand you what's been marked                  20 as Deposition Exhibit No. 2. I don't want you to                  21 spend time reading it. I just want to -- in fact,                  22 before I hand it to you, I just want to ask you.                  23 Did you know there was a purchase agreement that                  24 was executed on or about the same time as the                  25 ATE policy was executed?</p>
<p style="text-align: right;">262</p> <p>1 <b>A I can affirmatively state that in August</b>                  2 <b>of 2020, I was not thinking about an e-mail from</b>                  3 <b>April of 2017.</b>                  4 MR. CLUBOK: Move to strike as                  5 nonresponsive.                  6 BY MR. CLUBOK:                  7 Q I didn't ask you that. I just said you                  8 knew based on the work you had done in April 2017,                  9 that CDO Fund had been contemplating using its                  10 interest in Multi Strat to partially fund the                  11 purchase of an ATE policy, correct?                  12 <b>A Sir, it was one of many assets on a</b>                  13 <b>schedule, and I just don't remember thinking about</b>                  14 <b>that asset in -- I don't remember thinking of that</b>                  15 <b>asset from that schedule in April of 2017 back</b>                  16 <b>in -- whenever we were, August of 2020.</b>                  17 Q You knew it was contemplated that CDO Fund                  18 would transfer all of its assets to Sentinel as                  19 part of the consideration for what was then                  20 contemplated to be an ATE policy. You knew that                  21 for sure, right?                  22 <b>A Apparently in April 2017, I did, yes.</b>                  23 Q And you knew that there had been an                  24 ATE policy purchased, correct?                  25 <b>A Yes.</b></p>	<p style="text-align: right;">264</p> <p>1 <b>A I think I knew that there was such an</b>                  2 <b>agreement, but I've never seen it.</b>                  3 Q You've never seen it before today and that                  4 you're sure about, right?                  5 <b>A Yes.</b>                  6 Q Did you ever ask for a copy of it?                  7 <b>A Not that I'm aware of.</b>                  8 Q Were you ever sent a copy of it?                  9 <b>A Not that I'm aware of.</b>                  10 Q Okay. You knew -- you specifically were                  11 involved with authorizing payments from Sentinel                  12 for legal fees associated with the UBS litigation                  13 in New York, correct?                  14 <b>A Say that one more time, please.</b>                  15 Q You were involved with authorizing                  16 payments to be made from Sentinel for legal fees                  17 associated with the UBS litigation in New York,                  18 correct?                  19 <b>A Yes.</b>                  20 Q In fact, you directed Sentinel to make                  21 certain payments to lawyers and vendors associated                  22 with the legal work done in New York against UBS,                  23 correct?                  24 <b>A I don't want to say I directed them to.</b>                  25 <b>I'll say we requested that they do so.</b></p>

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<p style="text-align: right;">265</p> <p>1 Q And in every single instance, they                  2 followed your request for payment of legal fees                  3 associated with the New York litigation against                  4 UBS, correct?                  5 <b>A I can't say --</b>                  6 MS. SMITH: Objection to form.                  7 <b>A I can't say every single time, but I think</b>                  8 <b>pretty much every time, if not every.</b>                  9 <b>BY MR. CLUBOK:</b>                  10 Q You can't, as you sit here today, identify                  11 a single time where they did not follow your                  12 directions in terms of paying legal fees or costs                  13 associated with the litigation pending in                  14 New York, correct?                  15 MS. SMITH: Objection, form.                  16 <b>A Sitting here today, I'm not aware of any</b>                  17 <b>time that they refused to pay requested legal</b>                  18 <b>fees.</b>                  19 MR. CLUBOK: What was your form objection?                  20 MS. SMITH: You said direction and he said                  21 he didn't direct. He said he requested.                  22 BY MR. CLUBOK:                  23 Q In every single time that you requested                  24 Sentinel pay any legal fees or costs associated                  25 with the New York litigation, they abided by that</p>	<p style="text-align: right;">267</p> <p>1 <b>at Highland.</b>                  2 Q Did you ever request that anyone consider                  3 whether or not a ATE policy that was related to a                  4 judgment would be considered to be an asset of the                  5 beneficiary of that policy? Let me ask that                  6 again.                  7 If there's an ATE policy -- and by the                  8 way, that after the event, what was the event                  9 that's referenced in the ATE policy?                  10 <b>A I haven't read the policy, sir.</b>                  11 Q Did you have -- they told you that legal                  12 fees were part of the policy. Did they tell you                  13 that a settlement would be an event that would be                  14 impacted by the policy?                  15 <b>A Well, those are two slightly different</b>                  16 <b>questions. Can we break them into two, please?</b>                  17 Q Did anyone, in words or substance, tell                  18 you if there was a settlement in the UBS                  19 litigation, that a Sentinel policy could be used                  20 to pay the settlement?                  21 <b>A I believe that was my understanding, yes.</b>                  22 Q And who gave you that understanding?                  23 <b>A I don't recall exactly, but it would have</b>                  24 <b>been probably Mr. Ellington or Mr. Sevilla.</b>                  25 Q When?</p>
<p style="text-align: right;">266</p> <p>1 request, as best as you recall sitting here today,                  2 correct?                  3 <b>A Again, I don't remember every single</b>                  4 <b>instance, but I don't remember any time that they</b>                  5 <b>didn't do it.</b>                  6 Q Who told you that you could make requests                  7 directly to Sentinel and expect that they would                  8 carry them out with respect to legal fees                  9 associated with the New York litigation?                  10 <b>A It was my understanding that that was</b>                  11 <b>something contemplated in the ATE policy, was that</b>                  12 <b>Sentinel would pay legal invoices.</b>                  13 Q How did you know that if you never saw the                  14 ATE policy?                  15 <b>A I don't remember who told me, but somebody</b>                  16 <b>did.</b>                  17 Q Who?                  18 <b>A I don't remember. It would have been</b>                  19 <b>Mr. Sevilla or Mr. DiOrio, most likely.</b>                  20 Q Did they tell you anything else about the                  21 policy, other than they would pay all legal fees                  22 associated with the New York litigation?                  23 <b>A Maybe they told me other things, but this</b>                  24 <b>particular subject would have come up because I</b>                  25 <b>was the person in charge of processing legal fees</b></p>	<p style="text-align: right;">268</p> <p>1 <b>A I don't know.</b>                  2 Q Before the bankruptcy?                  3 <b>A Yes.</b>                  4 Q And at any point during the bankruptcy,                  5 did you ever tell the independent directors or any                  6 of the lawyers at the Pachulski firm that there                  7 was this source of funds available to help settle                  8 the litigation between UBS and the defendants in                  9 the New York litigation?                  10 <b>A I don't know that I ever spoke to the</b>                  11 <b>Pachulski firm about settlement of the New York</b>                  12 <b>litigation.</b>                  13 Q Did you ever volunteer that there was an                  14 insurance policy available that could be used to                  15 satisfy the judgment in the New York litigation?                  16 <b>A I don't believe I ever spoke to Pachulski</b>                  17 <b>about satisfaction of the judgment in New York or</b>                  18 <b>settlement of the New York litigation.</b>                  19 Q So is that a no to my question?                  20 <b>A That's right.</b>                  21 Q And you understood also from Mr. Sevilla                  22 or Mr. Ellington that the after-the-event policy                  23 could be used to satisfy a judgment in addition to                  24 satisfying settlement or legal fees in connection                  25 with the New York litigation, correct?</p>

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<p style="text-align: right;">269</p> <p>1 <b>A I don't know that that's something we ever</b>                  2 <b>discussed, but it would be logical. But I don't</b>                  3 <b>recall ever discussing that point.</b>                  4 Q You never suggested, in words or                  5 substance, that either the independent directors                  6 or the Pachulski lawyers should look into whether                  7 the Sentinel after-the-event policy could be used                  8 to help satisfy the judgment that was entered                  9 against CDO Fund and SOHC, correct?                  10 <b>A We never discussed settlement or</b>                  11 <b>satisfaction of a judgment against those two</b>                  12 <b>entities, whether the insurance policy or from any</b>                  13 <b>other source of funds.</b>                  14 Q So that's a yes to my question, correct?                  15 MS. SMITH: Objection, form.                  16 BY MR. CLUBOK:                  17 Q I would just like you to try to answer my                  18 question. You gave me a broader answer, which is                  19 interesting, but I'm not going to ask you to do                  20 that and I am going to ask for my time if you                  21 don't just -- make me ask these questions again.                  22 So please answer the question I asked.                  23 MS. SMITH: Andy, the questions are so                  24 long and they're multiple declarative sentences,                  25 followed by comma, correct. That's the --</p>	<p style="text-align: right;">271</p> <p>1 possibly be used to help satisfy the billion                  2 dollar judgment?                  3 <b>A That question assumes -- I don't want to</b>                  4 <b>make an assumes facts not in evidence objection</b>                  5 <b>for myself, but that's what I'm saying. It</b>                  6 <b>assumes things that didn't happen and I told you</b>                  7 <b>the thing that didn't happen.</b>                  8 Q Yeah, I understand you want to tell me                  9 that you never discussed anything about the                  10 judgment, but I'm asking you a narrower question.                  11 And it's very simple and you've spent -- wasted                  12 five minutes and I'm going to add to my time at                  13 least, and I just want to know.                  14 Fair to say that you never suggested, in                  15 words or substance, to the directors or to the                  16 Pachulski lawyers, that they should look into                  17 whether the Sentinel ATE policy could be used to                  18 satisfy the judgment that UBS had obtained against                  19 CDO Fund and SOHC, correct?                  20 <b>A And my --</b>                  21 MS. SMITH: Objection, form.                  22 <b>A And my answer is that assumes that I spoke</b>                  23 <b>to the Pachulski firm or the independent directors</b>                  24 <b>about satisfaction of the judgment or</b>                  25 <b>settlement --</b></p>
<p style="text-align: right;">270</p> <p>1 MR. CLUBOK: Okay. I'm going to ask --                  2 MS. SMITH: It gets confusing.                  3 MR. CLUBOK: You didn't even object on                  4 form.                  5 MS. SMITH: Objection, form.                  6 MR. CLUBOK: It's too late after I asked                  7 the question. So with no form objection, I ask                  8 the following question and I'm going to ask                  9 Mr. Leventon to answer this question.                  10 <b>A Okay.</b>                  11 <b>BY MR. CLUBOK:</b>                  12 Q Isn't it true that you never suggested, in                  13 words or substance, to either the independent                  14 directors or any of the Pachulski lawyers that                  15 they should look into whether the Sentinel                  16 ATE policy could be used to help satisfy the                  17 judgment that had been entered against CDO Fund                  18 and SOHC?                  19 <b>A My answer is I disagree with the premise</b>                  20 <b>of the question. I can explain why. It's the</b>                  21 <b>explanation I just gave.</b>                  22 Q I don't want you to explain why. I want                  23 to say, did you ever suggest, in words or                  24 substance, to either the directors or the                  25 Pachulski lawyers that the ATE policy could</p>	<p style="text-align: right;">272</p> <p>1 <b>BY MR. CLUBOK:</b>                  2 Q It doesn't --                  3 <b>A -- which it didn't.</b>                  4 Q It doesn't assume that at all. I never                  5 assumed that. In fact, I assumed you didn't. It                  6 assumes the opposite. So I'm not asking you to                  7 quibble with me about what supposedly is assumed                  8 or not. I just want you to answer a question.                  9 My question is, you never volunteered to                  10 the independent directors or to any lawyer at the                  11 Pachulski firm that they should look into whether                  12 or not the Sentinel ATE policy could be used to                  13 satisfy the billion dollar judgment that had been                  14 discussed during the course of the bankruptcy,                  15 correct?                  16 <b>A That was never a conversation that we had.</b>                  17 Q You certainly discussed with others at                  18 Highland during the bankruptcy, the possibility of                  19 settling or satisfying the judgment in the                  20 New York litigation, correct?                  21 MS. SMITH: Objection to form.                  22 <b>A I don't know that I did.</b>                  23 <b>BY MR. CLUBOK:</b>                  24 Q Well --                  25 <b>A I thought that action was stayed.</b></p>

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<p style="text-align: right;">273</p> <p>1 Q You -- did you ever communicate with 2 anyone about the possibility that the ATE policy 3 could be used to satisfy the judgment that had 4 been entered in the New York litigation after the 5 bankruptcy? 6 <b>A I don't know if I did or not. I don't</b> 7 <b>remember.</b> 8 Q In fact, you specifically engaged in 9 analysis for Sentinel's auditors about the 10 potential impact of the judgment in the New York 11 litigation on the ATE policy, didn't you? 12 <b>A I believe I spoke to Beecher Carlson at</b> 13 <b>some point about the impact of the judgment on the</b> 14 <b>policy.</b> 15 Q And you never told the independent 16 directors that you were having those discussions, 17 correct? 18 <b>A It wouldn't have come up ever, so, no, we</b> 19 <b>never had those conversations.</b> 20 Q And you never told the Pachulski lawyers 21 that you were having discussions with the auditors 22 for the Sentinel policy about the potential impact 23 of the judgment on the policy, correct? 24 <b>A It would never have come up with the</b> 25 <b>Pachulski lawyers, so, no, we didn't have those</b></p>	<p style="text-align: right;">275</p> <p>1 chart is clearly after the judgment because it 2 refers to the Phase 1 decision, correct? 3 <b>A Well, it -- it refers to the -- yes, the</b> 4 <b>Phase 1 decision from November.</b> 5 Q Right. And that's this -- the decision 6 that led to the so-called billion dollar judgment, 7 correct? 8 <b>A That's correct.</b> 9 MS. SMITH: Objection, form. 10 BY MR. CLUBOK: 11 Q And there's a number of expected payouts 12 from Sentinel as a result of that judgment. Do 13 you see that? 14 <b>A I see Mr. Kemp's chart, yes.</b> 15 Q And it appears that this -- he sends you 16 this chart and he asked you if the actuarial 17 identification of lightly -- likely outcomes are 18 reasonable. Do you see that? 19 <b>A Yes.</b> 20 Q And they've got one possibility of 21 settlement where the Sentinel -- and this is all 22 expected payouts by Sentinel that are being 23 assessed, correct? 24 MS. SMITH: Objection, form. 25 <b>A I believe that's right, yes.</b></p>
<p style="text-align: right;">274</p> <p>1 <b>conversations.</b> 2 Q In fact, you specifically analyzed 3 different outcomes and assigned percentages to 4 settlement and to other scenarios to try to 5 calculate the potential liability for Sentinel in 6 connection with the New York litigation; isn't 7 that true? 8 <b>A I don't recall that.</b> 9 Q I'm going to hand you what we're going to 10 mark as Exhibit 68. 11 (Deposition Exhibit 68 marked for 12 identification.) 13 BY MR. CLUBOK: 14 Q Exhibit 68 is a two-page document 15 Bates-labeled 95 and 96. This is a document 16 that's an e-mail chain beginning at the very first 17 e-mail, May 24th, 2019, from Lawrence Kemp to you 18 and then it picks up June 16, 2020, from Lawrence 19 Kemp to you and you respond. Do you see that? 20 <b>A I do.</b> 21 Q And here it looks like there is a request 22 for an update on what happened with respect to the 23 New York litigation, correct? 24 <b>A Yes.</b> 25 Q And this analysis that's reflected in the</p>	<p style="text-align: right;">276</p> <p>1 MR. CLUBOK: What's the form objection to 2 that question? 3 MS. SMITH: It doesn't say that they're 4 the expected payouts for Sentinel. 5 MR. CLUBOK: That's why I asked the 6 question. But in any event. 7 BY MR. CLUBOK: 8 Q This was a question for you to affirm 9 whether they were reasonable estimates for 10 potential payouts by Sentinel because of its 11 ATE policy. Is that what you understood this to 12 be? 13 <b>A I think that's right, yes.</b> 14 Q And one possibility that you agreed was a 15 50 percent probability is that the plaintiff, that 16 is UBS, would pursue recovery exclusively through 17 bankruptcy proceedings. Do you see that? 18 <b>A I see where it says that, yes.</b> 19 Q And if that were to happen, you told them 20 to expect that Sentinel would pay zero. Do you 21 see that? 22 <b>A I didn't tell him to expect that. This is</b> 23 <b>the assumptions he's giving me.</b> 24 Q You agreed that it was a reasonable 25 assumption that there was a 50 percent chance that</p>

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<p style="text-align: right;">277</p> <p>1 UBS would pursue its recovery against the insureds                  2 under the ATE policy exclusively through the                  3 bankruptcy proceedings and therefore there would                  4 be zero paid out from the ATE policy, correct?  <b>5 A I didn't -- I agreed with Mr. Kemp's</b>  <b>6 analysis -- or I didn't change it.</b>                  7 Q You agreed that it was a reasonable                  8 assumption?  <b>9 A Yes.</b>                  10 Q And you also agreed that if the Phase 1                  11 decision were affirmed, then the expected payout                  12 would be \$91 million from the ATE policy, correct?  <b>13 A That's what that says, yes.</b>                  14 Q And you said there was a reasonable                  15 assumption that there would only be a 20 percent                  16 chance of that, correct?  <b>17 A That's not exactly right. Because it's</b>  <b>18 total probabilities, so it's not isolating just</b>  <b>19 the probability of success on the appeal.</b>                  20 Q But the total -- okay. I see. You                  21 thought there was a 50 percent chance that we                  22 wouldn't even -- that UBS wouldn't even bother to                  23 continue the litigation but instead would settle                  24 the case or pursue recovery just through the                  25 bankruptcy proceeding?</p>	<p style="text-align: right;">279</p> <p>1 Q Right. So you at one point had a bunch of                  2 settlement -- sorry. At one point you had a bunch                  3 of damages outcomes that included scenarios                  4 involving winning on hedging, but by the time the                  5 trial was done, you knew that that was not going                  6 to happen, correct?  <b>7 A I know the scenarios incorporated hedging.</b>  <b>8 I would have to go back and look at what they</b>  <b>9 said. But certainly by the end of trial, we would</b>  <b>10 have -- excuse me. Certainly by the end of the</b>  <b>11 trial, we would have known that the Court -- the</b>  <b>12 trial court had ruled against us on hedging.</b>                  13 Q And the -- anyway, back to this. Did you                  14 ever -- when you're responding to Mr. Kemp, did                  15 you inform Mr. Seery in any way, directly or                  16 indirectly, through the chain of command about                  17 this analysis and the potential payout from the                  18 ATE policy with respect to the New York                  19 litigation?  <b>20 A Mr. Surgent would have been aware of the</b>  <b>21 potential payout, but other than that, I don't</b>  <b>22 know if there's anyone else. And Mr. Ellington</b>  <b>23 would have been, but I mean that's my whole --</b>  <b>24 that's my chain of command.</b>                  25 Q Did you inform Mr. Surgent about this</p>
<p style="text-align: right;">278</p> <p><b>1 A I mean, in terms of the 20 percent, the</b>  <b>2 20 percent is in terms of the total outcome. I'm</b>  <b>3 not saying that the appeal is only 20 percent.</b>  <b>4 Like that UBS has an 80 percent chance of losing</b>  <b>5 its appeal, that's not what I thought this said.</b>                  6 Q Okay. Because at the time you thought it                  7 was nearly certain -- or certainly extremely                  8 likely that UBS's judgment would be affirmed if it                  9 was even appealed, correct?  <b>10 A Honestly, I don't remember.</b>                  11 Q Well, you --  <b>12 A I still remember that we -- we thought we</b>  <b>13 had really good textual arguments on the synthetic</b>  <b>14 warehouse.</b>                  15 Q But you actually believed from day one                  16 that UBS was likely to win on liability, right?  <b>17 A Which is a wholly separate issue, yes.</b>                  18 Q And you had done analysis -- and by the                  19 way, you also knew from the trial, way before the                  20 judgment, that you had lost all of your arguments                  21 about offsetting the damages due to hedging                  22 because the Court ruled from the bench on that                  23 during the trial, right?  <b>24 A The Court made a ruling on hedging during</b>  <b>25 the trial, yes.</b></p>	<p style="text-align: right;">280</p> <p>1 analysis you were doing in June of 2020?  <b>2 A No, but he was aware of the ATE policy and</b>  <b>3 what it covered.</b>                  4 Q Again, then, it's not the question at all                  5 that I asked you. You've just volunteered --                  6 somehow you find it okay to volunteer information                  7 about Mr. Surgent, but you never volunteered                  8 anything about the ATE policy in the whole time                  9 you worked for Mr. Seery.                  10 MS. SMITH: Objection, badgering.                  11 BY MR. CLUBOK:                  12 Q My question to you, without -- and I'm                  13 asking you not to volunteer information that's not                  14 responsive to this question, is did you ever                  15 inform Mr. Seery in any way directly or indirectly                  16 through the chain of the command about the                  17 analysis and potential payout under the ATE policy                  18 that's reflected in Exhibit 68?  <b>19 A I don't believe that I ever discussed</b>  <b>20 Exhibit 68 with Mr. Seery.</b>                  21 MS. SMITH: Andy, is now a good time for a                  22 break?                  23 MR. CLUBOK: I'm going to finish up one                  24 more thing here.                  25</p>



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<p style="text-align: right;">281</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you tell anyone else in the</p> <p>3 organization other than Mr. Seery or the debtor's</p> <p>4 outside counsel, the Pachulski firm, about this</p> <p>5 analysis that you had performed or that you had</p> <p>6 blessed?</p> <p>7 <b>A I believe -- without characterizing</b></p> <p>8 <b>whether it's been performed or blessed, the</b></p> <p>9 <b>document will speak for itself, but I believe that</b></p> <p>10 <b>Mr. DiOrio was aware of this analysis.</b></p> <p>11 Q Why do you believe that?</p> <p>12 <b>A Because he was the person who was in</b></p> <p>13 <b>charge of the -- coordinating the Sentinel audit.</b></p> <p>14 Q Who made Mr. DiOrio aware of this?</p> <p>15 <b>A I believe it would have been me.</b></p> <p>16 Q Who else did you make aware of this other</p> <p>17 than Mr. DiOrio and obviously Mr. Kemp?</p> <p>18 <b>A This specific analysis, I don't know that</b></p> <p>19 <b>I discussed it with anyone else.</b></p> <p>20 Q Did you?</p> <p>21 <b>A Not that I recall.</b></p> <p>22 Q I'm going to hand you what's been marked</p> <p>23 as Exhibit 53. Exhibit 53 is an e-mail dated</p> <p>24 June 16th, 2020 in which you forward this analysis</p> <p>25 to Mr. DiOrio, Mr. Sevilla and Katie Irving. Do</p>	<p style="text-align: right;">283</p> <p>1 independent directors or with their outside</p> <p>2 counsel?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 <b>A I only remembered sharing it with</b></p> <p>5 <b>Mr. DiOrio. So I can't say that I expected this</b></p> <p>6 <b>information to be -- that I recall expecting this</b></p> <p>7 <b>information to be shared with the independent</b></p> <p>8 <b>directors.</b></p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Did you bring this to Mr. Surgent's</p> <p>11 attention in 2020?</p> <p>12 <b>A This document? Not that I recall.</b></p> <p>13 Q How about this analysis or anything about</p> <p>14 this subject in 2020?</p> <p>15 <b>A This analysis, no. Anything about this</b></p> <p>16 <b>subject, I would have to think about further.</b></p> <p>17 Q This analysis clearly -- the people you</p> <p>18 sent this e-mail to, you expected them to all know</p> <p>19 about the ATE policy, right?</p> <p>20 <b>A They all did know about the ATE policy.</b></p> <p>21 Q And you discussed this analysis also with</p> <p>22 Mr. Ellington at some point?</p> <p>23 <b>A I don't know that I did.</b></p> <p>24 Q But you certainly never mentioned the</p> <p>25 ATE policy again to Mr. Surgent at any point after</p>
<p style="text-align: right;">282</p> <p>1 you see that?</p> <p>2 <b>A Yes. I remembered forwarding it to</b></p> <p>3 <b>Mr. DiOrio. I forgot who I CC'd, which was</b></p> <p>4 <b>Mr. Sevilla and Ms. Irving.</b></p> <p>5 Q And you did not -- you forwarded it to</p> <p>6 those three individuals but not to Greg Demo,</p> <p>7 correct?</p> <p>8 <b>A Greg Demo is not on this e-mail.</b></p> <p>9 Q And you did not forward it to</p> <p>10 Mr. Feinstein or Mr. Morris at the Pachulski firm,</p> <p>11 correct?</p> <p>12 <b>A That's correct.</b></p> <p>13 Q And you did not forward it to Mr. Nelms or</p> <p>14 Mr. Dubel or Mr. Seery, correct?</p> <p>15 <b>A No -- nobody is on this e-mail except for</b></p> <p>16 <b>the people on this e-mail.</b></p> <p>17 Q Is there any other way that you</p> <p>18 communicated this information that you chose to</p> <p>19 share with Mr. DiOrio, Mr. Sevilla and</p> <p>20 Ms. Irving -- is there any other way that you</p> <p>21 believe you ever tried to communicate this</p> <p>22 information that you chose to share with</p> <p>23 Mr. DiOrio, Mr. Sevilla and Ms. Irving that's</p> <p>24 reflected in Exhibit 68 with anybody at all who</p> <p>25 you expected to share the information with the</p>	<p style="text-align: right;">284</p> <p>1 the time the debtor declared bankruptcy, correct?</p> <p>2 <b>A I don't know if we talked about it or not.</b></p> <p>3 <b>I don't remember.</b></p> <p>4 Q As you sit here today, you can't recall</p> <p>5 ever reminding Mr. Surgent about the ATE policy</p> <p>6 after the bankruptcy commenced, correct?</p> <p>7 <b>A Sitting here today, I can't remember that</b></p> <p>8 <b>conversation having taken place.</b></p> <p>9 MR. CLUBOK: Okay. Let's take a break.</p> <p>10 THE VIDEOGRAPHER: The time is 5:20 p.m.</p> <p>11 We are off the record.</p> <p>12 (Recess taken from 5:20 p.m. CDT to</p> <p>13 5:39 p.m. CDT)</p> <p>14 THE VIDEOGRAPHER: The time is 5:39 p.m.</p> <p>15 We are back on the record.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q We're turning to Exhibit 59. Exhibit 59</p> <p>18 is an e-mail chain with the top e-mail dated</p> <p>19 August 11th, 2017, from Carter Chism, C-h-i-s-m,</p> <p>20 to Mr. Patel, P-a-t-e-l, attaching a document</p> <p>21 that's called CDO Fund and HFP Balance Sheets at</p> <p>22 8/7/17. It's an Excel sheet that's attached as</p> <p>23 part of Exhibit 59. Do you see that?</p> <p>24 <b>A I do.</b></p> <p>25 MS. SMITH: And like yesterday, Shannon,</p>

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<p style="text-align: right;">285</p> <p>1 is this the full exhibit of the Excel?</p> <p>2 MR. CLUBOK: It's the same document that</p> <p>3 was used yesterday, Exhibit 59. It was marked</p> <p>4 yesterday, I believe.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q So for Exhibit 59, we're going to turn to</p> <p>7 page 3, which is the first, working backwards</p> <p>8 e-mail in the chain.</p> <p>9 A Can you -- will you give me the Bates</p> <p>10 number?</p> <p>11 Q It ends with 85.</p> <p>12 A Okay. Got it.</p> <p>13 Q And the Bates label ending in 85 is where</p> <p>14 the e-mail starts, and it starts with Mr. Stoops</p> <p>15 sending an e-mail to a number of people, including</p> <p>16 yourself. Do you see that?</p> <p>17 A I do, yes.</p> <p>18 Q And the e-mail says, Jeremy, who is the</p> <p>19 first person on the To line, you are the third</p> <p>20 person on the To line, says: Jeremy, Please send</p> <p>21 custodial admin details for the following entities</p> <p>22 to JP Sevilla and Isaac (copied).</p> <p>23 That Isaac is you, correct?</p> <p>24 A Yes.</p> <p>25 Q And they asked for custodial admin details</p>	<p style="text-align: right;">287</p> <p>1 goal was to transfer all of the assets out of HFP</p> <p>2 and CDO Fund to Sentinel to purchase the</p> <p>3 \$100 million ATE policy in August of 2017,</p> <p>4 correct?</p> <p>5 A I don't know that it's clear from this</p> <p>6 document per se, but I did know that, you know,</p> <p>7 substantially all of the assets were going to</p> <p>8 be -- were included in the ATE policy.</p> <p>9 Q And the attachment, which has a number of</p> <p>10 different worksheets including the first one which</p> <p>11 says CDO Opportunity Master Fund, LP, Combined</p> <p>12 Assets and Liabilities, and then another document</p> <p>13 that says Highland Financial Partners, LP,</p> <p>14 Combined Assets and Liabilities, show that, the</p> <p>15 assets and liabilities of those two respective</p> <p>16 entities, correct?</p> <p>17 A Yes. But I don't know that those -- well,</p> <p>18 I know they were attached to -- this was attached</p> <p>19 to the top-level e-mail and that's what it shows.</p> <p>20 Q Right. And one question I have is --</p> <p>21 well, first of all, there's a schedule that was</p> <p>22 constructed in connection with the purchase</p> <p>23 agreement. The purchase agreement is Exhibit 2</p> <p>24 and I believe you said you've never seen it. I'm</p> <p>25 going to give you a copy of it just to confirm</p>
<p style="text-align: right;">286</p> <p>1 for Highland Financial Partners, we've called HFP;</p> <p>2 CDO Hold Co, which is a sub of HFP, correct?</p> <p>3 A Yes.</p> <p>4 Q Highland Financial Corp., which is another</p> <p>5 sub of HFP at the time, correct?</p> <p>6 A I think so, but I'm not 100 percent sure.</p> <p>7 Q And then SOHC, which was a sub of HFP at</p> <p>8 the time, right?</p> <p>9 A Yes.</p> <p>10 Q Then the CDO Master Fund and two of its</p> <p>11 subsidiaries or affiliates, correct?</p> <p>12 A Those look like the feeder funds.</p> <p>13 Q Okay. The feeder funds. But there are</p> <p>14 basically four HFP entities, the first four names</p> <p>15 that I mentioned, and then there are three</p> <p>16 CDO Fund entities, correct?</p> <p>17 A Yes.</p> <p>18 Q And he says he included those feeder funds</p> <p>19 for CDO just in case there's any cash held at</p> <p>20 these entities. Do you see that?</p> <p>21 A I do see where he says that, yes.</p> <p>22 Q And this is all part of the purchase of</p> <p>23 the ATE policy in August of 2017, correct?</p> <p>24 A That's what it appears to be.</p> <p>25 Q And it's clear from reading this that the</p>	<p style="text-align: right;">288</p> <p>1 that that's true. This was Exhibit 2. It's a</p> <p>2 Purchase Agreement dated August 7th, 2017.</p> <p>3 A Mr. Clubok, are we done with 59?</p> <p>4 Q No.</p> <p>5 A Should I put it up or keep it --</p> <p>6 Q I want you to keep it up because I'm going</p> <p>7 to ask you to compare something.</p> <p>8 A Got it. Okay.</p> <p>9 Q There's a purchase agreement that was</p> <p>10 dated as of August 7th, 2017, and you said before</p> <p>11 you believe -- you thought you had never seen</p> <p>12 this. Looking at it now, do you want to change</p> <p>13 your answer or do you still believe you've never</p> <p>14 seen this?</p> <p>15 A No, I don't think I've ever seen this.</p> <p>16 Q Okay. Well, what about Schedule A, which</p> <p>17 is somewhat like that Appendix 1, but it's got</p> <p>18 different assets listed and in some cases</p> <p>19 different values. Have you ever seen Schedule A</p> <p>20 before?</p> <p>21 A No, I haven't.</p> <p>22 Q Okay. And so I take it you don't know</p> <p>23 whether or not the asset information reflected in</p> <p>24 Exhibit 59 was what was used to populate</p> <p>25 Schedule A of Exhibit 2?</p>

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<p style="text-align: right;">289</p> <p>1 <b>A No. I don't think I've seen either of</b>                  2 <b>these two things before.</b>                  3 Q Okay. Do you -- why were you part of this                  4 whole chain? What was your role in this part of                  5 the transaction? And in particular, if you know,                  6 why did Mr. Stoops specifically ask for the                  7 details to be sent to both you and Mr. Sevilla?                  8 <b>A I mean, I don't know what was in</b>                  9 <b>Mr. Stoops's mind, but I can speculate.</b>                  10 Q What did you understand your role to be at                  11 the time in connection with this information that                  12 was forwarded to you?                  13 <b>A My best guess as to why I was involved in</b>                  14 <b>this process is because I was the guy in charge of</b>                  15 <b>the legal bills. And so it would have been</b>                  16 <b>relevant to payment of the legal wires that you</b>                  17 <b>see on the first page of this exhibit.</b>                  18 Q And so all of those payments were made                  19 prior to the transfers?                  20 <b>A I don't know.</b>                  21 Q Do you know whether or not there was any                  22 effort to satisfy the liabilities of CDO Fund and                  23 SOHC -- sorry, strike that.                  24 Do you know whether there was any effort                  25 to satisfy the liabilities of CDO Fund and HFP</p>	<p style="text-align: right;">291</p> <p>1 <b>maybe what the difference is, but they weren't</b>                  2 <b>exactly the same.</b>                  3 Q Fair enough. But at some point UBS had                  4 either amended its complaint or submitted expert                  5 reports that reflected the roughly \$500 million in                  6 principal liability that was ultimately awarded;                  7 is that true?                  8 <b>A I know the number went down, but I don't</b>                  9 <b>remember exactly how it matched up to the final</b>                  10 <b>judgment because there were a lot of toggles that</b>                  11 <b>went on with the expert reports.</b>                  12 Q Right. But let's say within 20 percent                  13 the amount that UBS was seeking as of 2017                  14 pursuant to its expert reports was the amount that                  15 was ultimately awarded; fair to say?                  16 <b>A Sitting here today, I don't know the</b>                  17 <b>answer to that. They were big numbers. I mean,</b>                  18 <b>there's no dispute they were big numbers, but I</b>                  19 <b>don't remember exactly what they were, if it was</b>                  20 <b>20 percent, 30 percent, 10 percent.</b>                  21 Q Okay. Certainly you knew that UBS was                  22 seeking at least \$500 million plus interest as of                  23 this date of this transfer, correct?                  24 <b>A As of August 2017, I think that I knew</b>                  25 <b>that UBS was seeking \$500 million or so.</b></p>
<p style="text-align: right;">290</p> <p>1 prior to transferring all of these assets to                  2 Sentinel in 2017?                  3 <b>A I don't know.</b>                  4 Q Do you know at that time whether or not                  5 there was any estimation that was being made at                  6 either of these two entities for amounts that                  7 could be due to UBS in connection with the                  8 litigation?                  9 <b>A To the best of my recollection, accounting</b>                  10 <b>had taken UBS's initial complaint and the number</b>                  11 <b>identified in the initial complaint and then just</b>                  12 <b>rolled that number forward year over year.</b>                  13 Q And indeed UBS ultimately collected                  14 roughly the amount plus interest that was in its                  15 initial complaint pursuant -- or strike that.                  16 UBS was awarded as part of Phase 1,                  17 roughly the amounts that it had identified in its                  18 initial complaint plus PJI, correct?                  19 <b>A That's not exactly right.</b>                  20 Q Why not?                  21 <b>A So the initial complaint was for</b>                  22 <b>\$746 million in principal, and to the best of my</b>                  23 <b>recollection the judgment principal amount was</b>                  24 <b>something like 530. I know, we're talking about</b>                  25 <b>enormous numbers where it kind of doesn't matter</b></p>	<p style="text-align: right;">292</p> <p>1 Q And the whole aim of this transfer was to                  2 create an -- or to purchase an ATE policy with                  3 respect to that UBS litigation that was pending in                  4 New York, correct?                  5 <b>A The August 2017 transaction was the</b>                  6 <b>purchase of an ATE policy relative to the UBS</b>                  7 <b>state court action.</b>                  8 Q Okay. I'm going to turn to Exhibit 4                  9 which is a document dated August 11th, 2017, that                  10 you are also on the to line. There's a whole host                  11 of people.                  12 <b>A Do I keep or do I throw?</b>                  13 Q You can put it in front of me.                  14 <b>A No, these?</b>                  15 Q You can set it aside. Take a look at                  16 Exhibit 4, please. Exhibit 4 is an e-mail from                  17 David Willmore to a host of people, including                  18 yourself, Mr. Chism, Ms. Irving, Mr. Sevilla,                  19 copying Mr. Surgent, Mr. Stoops and others and its                  20 subject is Sentinel Wiring Info. Do you see that?                  21 <b>A Yes.</b>                  22 Q And it -- in an e-mail below, it                  23 references instructions to wire cash from all the                  24 HFP Funds and all the CDO Funds to Sentinel,                  25 correct?</p>

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<p style="text-align: right;">293</p> <p><b>1 A That's what Mr. Chism says in his e-mail.</b></p> <p>2 Q And those two wire transfers totaled</p> <p>3 roughly \$10 million, according to Mr. Willmore's</p> <p>4 e-mail, correct?</p> <p><b>5 A Yes.</b></p> <p>6 Q Well, I should say CDO Funds cash totaled</p> <p>7 about \$10 million, according to Mr. Willmore,</p> <p>8 correct?</p> <p><b>9 A I don't honestly know if -- I mean,</b></p> <p><b>10 reading this, Mr. Willmore says there are two</b></p> <p><b>11 wires that are CDO Fund wires, which wouldn't</b></p> <p><b>12 include HFP. Sitting here today, I have no idea</b></p> <p><b>13 whether there were two of them.</b></p> <p>14 Q Does it ring a bell --</p> <p><b>15 A That's what it says.</b></p> <p>16 Q Does it ring a bell that the total amount</p> <p>17 of cash including the HFP cash was closer to</p> <p>18 \$11 million or so?</p> <p><b>19 A No. No.</b></p> <p>20 Q But fair to say you understood on</p> <p>21 August 2017, that all of the cash in CDO Fund and</p> <p>22 HFP was being wired to Sentinel, correct?</p> <p><b>23 A Apparently I did.</b></p> <p>24 Q And do you know what was the consideration</p> <p>25 for that cash at the time?</p>	<p style="text-align: right;">295</p> <p>1 does it ring a bell that Mr. Willmore was</p> <p>2 responsible for transferring CDO Fund cash and</p> <p>3 Mr. Stoops was responsible for transferring HFP</p> <p>4 cash?</p> <p><b>5 A I can infer that from the document and it</b></p> <p><b>6 wouldn't surprise me, but I don't know.</b></p> <p>7 Q Did you at any point ever mention to</p> <p>8 Mr. Seery or to the Pachulski lawyers that all</p> <p>9 this cash had been transferred out of CDO Fund and</p> <p>10 HFP to Sentinel just in 2017, a little over</p> <p>11 two years before the bankruptcy?</p> <p><b>12 A To the best of my recollection, neither</b></p> <p><b>13 myself nor any of the other individuals mentioned</b></p> <p><b>14 it to him.</b></p> <p>15 Q Did you think that you personally as a</p> <p>16 lawyer who was working for the debtor had a</p> <p>17 fiduciary obligation to the debtor at the time?</p> <p><b>18 A I believe you do, yes.</b></p> <p>19 Q Did you have a fiduciary obligation to</p> <p>20 ensure that the debtor -- strike that.</p> <p>21 From January 2020 forward, is it fair to</p> <p>22 say that there were independent directors who were</p> <p>23 in charge of the debtor?</p> <p><b>24 A Yes.</b></p> <p>25 Q And you understood you ultimately reported</p>
<p style="text-align: right;">294</p> <p><b>1 A I knew that it was in consideration of the</b></p> <p><b>2 ATE policy.</b></p> <p>3 Q Did you know how the value of the</p> <p>4 ATE policy compared the total transfers that were</p> <p>5 being made at the time?</p> <p><b>6 A No, I did not.</b></p> <p>7 Q Did you know whether it was for equivalent</p> <p>8 value?</p> <p><b>9 A I didn't know what the assets were so I</b></p> <p><b>10 couldn't comment one way or another.</b></p> <p>11 Q Turning to Exhibit 5, this is a separate</p> <p>12 e-mail from Mr. Stoops that responds to Carter</p> <p>13 Chism's e-mails. And you can see Mr. Stoops says:</p> <p>14 All cash has been sent. Working on DTC</p> <p>15 securities. Still waiting on delivery</p> <p>16 instructions for physicals from Legal.</p> <p>17 You see that?</p> <p><b>18 A I do.</b></p> <p>19 Q Was Mr. Stoops the one responsible for</p> <p>20 transferring the HFP cash?</p> <p><b>21 A I don't know.</b></p> <p>22 Q Did Mr. Stoops have a role in connection</p> <p>23 with HFP at the time?</p> <p><b>24 A Yes.</b></p> <p>25 Q Okay. So looking at these two documents,</p>	<p style="text-align: right;">296</p> <p>1 up to them?</p> <p><b>2 A That's fair to say.</b></p> <p>3 Q And you understood that you had a</p> <p>4 fiduciary duty to ensure that they were made aware</p> <p>5 of all material information necessary to carry out</p> <p>6 their jobs?</p> <p><b>7 A I'm not sure how -- I'm not sure how</b></p> <p><b>8 the -- that I had -- say that one more time. That</b></p> <p><b>9 I had a fiduciary duty to make them aware of all</b></p> <p><b>10 facts that they needed for their job?</b></p> <p>11 Q Yeah. Did you believe as part of the</p> <p>12 fiduciary duties that you understood you owed the</p> <p>13 debtor, that you had an obligation to the best of</p> <p>14 your ability to make sure that Mr. Seery and the</p> <p>15 other directors were apprised of any material</p> <p>16 information that you reasonably believed would be</p> <p>17 necessary for them to do their jobs in managing</p> <p>18 the estate?</p> <p><b>19 A No. My understanding -- I understood my</b></p> <p><b>20 job was to do the tasks that I was assigned.</b></p> <p>21 Q There was a number of times after this</p> <p>22 transfer in August 2017, where questions arose</p> <p>23 about the transfers that were supposed to have</p> <p>24 been made, correct?</p> <p><b>25 A Sorry, I really don't --</b></p>

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<p style="text-align: right;">297</p> <p>1 MS. SMITH: Objection, form.                  2 <b>A I don't understand the question as asked.</b>                  3 <b>BY MR. CLUBOK:</b>                  4 Q So in August 2017, you were copied on                  5 these documents that purported to show there had                  6 been transfers made from CDO Fund and HFP to                  7 Sentinel Reinsurance, correct?                  8 <b>A Yes.</b>                  9 Q And over the next couple of years, did you                  10 come to learn that there were questions about                  11 whether those transfers had properly been                  12 effectuated?                  13 <b>A I didn't really get involved in that until</b>                  14 <b>mid -- like kind of third quarter of 2020.</b>                  15 Q Well, you were asked about information                  16 relating to the transfers as early as February of                  17 2019, weren't you?                  18 <b>A I was? Okay. I don't recall that.</b>                  19 Q I'm going to share with you what's been                  20 marked as Exhibit 62. Exhibit 62 has an e-mail                  21 chain that begins with Ernest Ramos of BNY Mellon                  22 reaching out to Carter Chism about custody                  23 invoices.                  24 <b>A I apologize. Where are you, sir?</b>                  25 Q The very last e-mail in the chain working</p>	<p style="text-align: right;">299</p> <p>1 BY MR. CLUBOK:                  2 Q Sir, do you remember this exchange? And                  3 in particular I want to point your attention to                  4 the first page that's Bates-labeled 35 of                  5 Exhibit 62 where you --                  6 <b>A Go ahead.</b>                  7 Q Where you are specifically e-mailing                  8 Carter Chism to say that: CDO Fund is and has                  9 been insolvent since the financial crisis of 2009.                  10 Do you see that?                  11 <b>A I do see that, yes.</b>                  12 Q And then in response, Carter Chism says:                  13 Thinking about this further, I believe the                  14 CDO Opps fund was included in the transfer to                  15 Sentinel.                  16 Do you see that?                  17 <b>A I do.</b>                  18 Q And this is an e-mail that you and                  19 Mr. Sevilla and Mr. DiOrio and Clifford Stoops are                  20 all copied on, correct?                  21 <b>A Yes.</b>                  22 Q So this is another reminder that there had                  23 been this transfer to Sentinel, right?                  24 <b>A I suppose, yes.</b>                  25 Q Okay. Now, your e-mail to Carter Chism</p>
<p style="text-align: right;">298</p> <p>1 backwards. If you turn to the page that's                  2 Bates-labeled 39 at the end.                  3 <b>A Give me a moment to review it.</b>                  4 MS. SMITH: Is this the complete e-mail?                  5 MR. CLUBOK: This is the e-mail that was                  6 marked as Exhibit 62 yesterday that I presume is                  7 the complete e-mail.                  8 MS. SMITH: In the middle it says: See                  9 column M for approved action, and I don't see                  10 anything with column M.                  11 MR. CLUBOK: What page are you on?                  12 MS. SMITH: 9039.                  13 MR. CLUBOK: Yeah. Well, I don't know.                  14 Sometimes the top -- yeah. There was originally                  15 attachments, but on this particular version of the                  16 document, I don't believe it included the                  17 attachments. But in any event, yeah -- -- look,                  18 as I stated, the first e-mail refers to attached                  19 invoices. Obviously those attached invoices                  20 aren't included as part of this document, just the                  21 cover e-mail. And then Carter Chism talks about                  22 column M presumably in the attached invoices. If                  23 I could just focus the questions I want to ask of                  24 Mr. Leventon.                  25</p>	<p style="text-align: right;">300</p> <p>1 says: Jason, CDO Fund and has been insolvent.                  2 Do you see that?                  3 <b>A Yes.</b>                  4 Q Did you mean to send that e-mail to Jason                  5 Martinez?                  6 <b>A No.</b>                  7 Q Why did you say Jason?                  8 <b>A I was suggesting -- I don't recall</b>                  9 <b>exactly, but I know what my practice was and I</b>                  10 <b>think I was suggesting language to Mr. Chism that</b>                  11 <b>he could use to go back to Mr. Martinez.</b>                  12 Q I see. So you -- this is a draft e-mail                  13 of what you were suggesting that Mr. Chism could                  14 send to Jason Martinez in response to the question                  15 that he asked, correct?                  16 <b>A Correct.</b>                  17 Q And when you say that CDO Fund is and has                  18 been insolvent since the financial crisis, you                  19 weren't going to tell him that CDO Fund actually                  20 had some assets in August of 2017, correct?                  21 MS. SMITH: Objection, form.                  22 <b>A I mean, I don't know that I was going to</b>                  23 <b>mention it in this communication, but Bank of</b>                  24 <b>New York Mellon was actually the bank for those</b>                  25 <b>funds that was directly involved in apparently the</b></p>

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<p style="text-align: right;">301</p> <p><b>1 transfers, as I'm noticing from the earlier</b></p> <p><b>2 exhibits. So they certainly knew about it.</b></p> <p><b>3 BY MR. CLUBOK:</b></p> <p>4 Q Do you know what Sebastian Clarke is?</p> <p><b>5 A Who?</b></p> <p>6 Q Have you ever heard of an entity called</p> <p>7 Sebastian Clarke?</p> <p><b>8 A No, sir.</b></p> <p>9 Q Are you aware of Sentinel ever</p> <p>10 transferring assets to an entity called Sebastian</p> <p>11 Clarke?</p> <p><b>12 A I'm sorry, sir, I don't know that name.</b></p> <p>13 Q You've never heard that name before ever?</p> <p><b>14 A Candidly, I thought it was a person when</b></p> <p><b>15 you first asked it.</b></p> <p>16 Q Okay. I'm going to hand you what we're</p> <p>17 going to mark as Exhibit 69.</p> <p>18 (Deposition Exhibit 69 marked for</p> <p>19 identification.)</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q It is a copy of UBS's First Request for</p> <p>22 Production of Documents to Debtor Highland Capital</p> <p>23 Management, dated September 28th, 2020. Do you</p> <p>24 see that?</p> <p><b>25 A Yes.</b></p>	<p style="text-align: right;">303</p> <p>1 Q Was there -- so was Mr. Willmore still</p> <p>2 there?</p> <p><b>3 A Mr. Willmore was no longer employed by the</b></p> <p><b>4 debtor.</b></p> <p>5 Q Who was Mr. Willmore employed by at that</p> <p>6 time?</p> <p><b>7 A He was employed -- well, I don't know who</b></p> <p><b>8 exactly he was employed by, but he started to work</b></p> <p><b>9 for some NexPoint affiliate and didn't work on any</b></p> <p><b>10 further Highland stuff.</b></p> <p>11 Q Okay. Did you inquire of Mr. Willmore as</p> <p>12 to where you would go to find the CDO Fund asset</p> <p>13 information?</p> <p><b>14 A I think I did actually.</b></p> <p>15 Q And what did he tell you?</p> <p><b>16 A He generally pointed me to some accounting</b></p> <p><b>17 drives on the G drive.</b></p> <p>18 Q Well, you certainly had an e-mail that</p> <p>19 talked about how all of CDO Fund's assets had been</p> <p>20 moved to Sentinel in approximately August of 2017,</p> <p>21 correct? Actually, you had many e-mails that</p> <p>22 reflected that in your inbox, correct?</p> <p><b>23 A I mean, as I previously stated, the</b></p> <p><b>24 e-mails were separate from the production process</b></p> <p><b>25 that I was involved in and that was agreed to with</b></p>
<p style="text-align: right;">302</p> <p>1 Q So were you -- you were partially</p> <p>2 responsible for helping respond to this discovery</p> <p>3 request; is that true?</p> <p><b>4 A I was part of a team of people</b></p> <p><b>5 responsible.</b></p> <p>6 Q Did you review this request carefully?</p> <p><b>7 A I don't know about carefully, but I</b></p> <p><b>8 certainly reviewed it.</b></p> <p>9 Q Would it have been your practice to review</p> <p>10 a document request like this carefully?</p> <p><b>11 A I definitely reviewed it and understood</b></p> <p><b>12 its contents. I don't know what carefully means,</b></p> <p><b>13 but I definitely reviewed it and knew what it</b></p> <p><b>14 said.</b></p> <p>15 Q And at the time you reviewed this, you had</p> <p>16 the ability to obtain the asset information</p> <p>17 about -- from CDO Fund, SOHC and HFP, correct?</p> <p><b>18 A That's a really hard question to answer.</b></p> <p><b>19 Not exactly. Not really.</b></p> <p>20 Q Well, who would have had information about</p> <p>21 CDO Fund in September of 2020 who was still</p> <p>22 working for the debtor?</p> <p><b>23 A So that's the problem, is I don't think</b></p> <p><b>24 there was an accountant who was responsible for</b></p> <p><b>25 CDO Fund at that point.</b></p>	<p style="text-align: right;">304</p> <p><b>1 Pachulski, and all of those e-mails were actually</b></p> <p><b>2 sitting at Meta-e and were accessible by</b></p> <p><b>3 Pachulski.</b></p> <p>4 Q Right. But you personally had access to</p> <p>5 information about transfers from CDO Fund to</p> <p>6 Sentinel at the time you reviewed this document</p> <p>7 request that's been marked as Exhibit 69, correct?</p> <p><b>8 A In the e-mails, yes.</b></p> <p>9 Q And you knew that that information existed</p> <p>10 in the e-mails, whether you chose to look at them</p> <p>11 or not at the time, right?</p> <p>12 MS. SMITH: Objection to form.</p> <p><b>13 A I knew that information was in the e-mails</b></p> <p><b>14 that had been sent to Meta-e.</b></p> <p><b>15 BY MR. CLUBOK:</b></p> <p>16 Q And did you specifically tell anyone at</p> <p>17 the Pachulski firm that there is information about</p> <p>18 what happened to CDO Fund's assets in August of</p> <p>19 2017, available in the e-mails that were sitting</p> <p>20 at Meta-e?</p> <p><b>21 A No, the e-mails were carved out completely</b></p> <p><b>22 from the process I was involved in.</b></p> <p>23 Q Same answer with respect to HFP's assets,</p> <p>24 including SOHC's assets, correct?</p> <p><b>25 A Everything that was in the e-mails I did</b></p>

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<p style="text-align: right;">305</p> <p><b>1 not look at as part of this response. And I</b></p> <p><b>2 understand from Mr. Morris was that he told you</b></p> <p><b>3 that we weren't going to be looking through</b></p> <p><b>4 e-mails in response to these requests because that</b></p> <p><b>5 was being handled separately.</b></p> <p>6 Q Mr. Morris told you that he told me,</p> <p>7 Andrew Clubok, that?</p> <p><b>8 A That's --</b></p> <p>9 Q That's what you're claiming?</p> <p><b>10 A That's what I recall, is that it was</b></p> <p><b>11 agreed that the e-mails would be separate.</b></p> <p>12 Q Mr. Morris told you that he had an</p> <p>13 agreement with me, Andrew Clubok, that they didn't</p> <p>14 have to search the e-mails for information</p> <p>15 relating to CDO Fund and HFP's assets?</p> <p><b>16 A That -- it may not have been an agreement</b></p> <p><b>17 per se, but it was -- essentially Mr. Morris and</b></p> <p><b>18 Mr. Demo told me not to worry about the e-mails</b></p> <p><b>19 and they would take care of it.</b></p> <p>20 Q And did you tell Mr. -- when they told you</p> <p>21 that, did you say, hey, but there's this transfer</p> <p>22 that occurred in 2017 that will show you exactly</p> <p>23 what assets were there at CDO Fund and HFP as of</p> <p>24 August 2017? Did you say anything like that to</p> <p>25 them, in words or substance, when they told you</p>	<p style="text-align: right;">307</p> <p>1 okay. There isn't a single request in here that</p> <p>2 caused you to mention to the Pachulski firm or</p> <p>3 Mr. Seery or the other directors, hey, there's all</p> <p>4 this information about the assets that were held</p> <p>5 at HFP and CDO Fund and SOHC as of August 2017, if</p> <p>6 we just go look at that time period when the</p> <p>7 assets were all transferred to Sentinel. Nothing</p> <p>8 caused you --</p> <p>9 MS. SMITH: Objection, form.</p> <p><b>10 A You mean in the e-mails, that that</b></p> <p><b>11 information was sitting in the e-mails?</b></p> <p><b>12 BY MR. CLUBOK:</b></p> <p>13 Q That that information was available</p> <p>14 anywhere.</p> <p><b>15 A The only place that I know that it was</b></p> <p><b>16 available was the e-mails and that was, again,</b></p> <p><b>17 carved out of what I was looking at. But I</b></p> <p><b>18 understand that these issues were being looked at</b></p> <p><b>19 by whomever was reviewing the e-mails.</b></p> <p>20 Q Did you think you had any kind of</p> <p>21 fiduciary obligation to affirmatively tell the</p> <p>22 debtor counsel that it wasn't just a treasure hunt</p> <p>23 or a needle in the haystack hunt in those e-mails,</p> <p>24 but that specifically in August of 2017 if they</p> <p>25 focused on your e-mails and Mr. Sevilla's and a</p>
<p style="text-align: right;">306</p> <p>1 we've got somebody else reviewing the e-mails?</p> <p><b>2 A No.</b></p> <p>3 Q And by the way, you were told by Mr. Demo</p> <p>4 that it was a high priority item to get the asset</p> <p>5 information for CDO Fund and SOHC and HFP,</p> <p>6 correct?</p> <p><b>7 A He may have said that at one point, but</b></p> <p><b>8 then we had additional iterations as to how we</b></p> <p><b>9 were going to respond and ultimately I was tasked</b></p> <p><b>10 with tracing the -- I can't remember if it was</b></p> <p><b>11 March or May of 2009, I think it was May of 2009</b></p> <p><b>12 through -- but those assets and explain where they</b></p> <p><b>13 were today.</b></p> <p>14 Q If you look at Exhibit 69, you see that</p> <p>15 the request included -- and for No. 8, it was:</p> <p>16 All Documents pertaining to the assets and</p> <p>17 liabilities of HFP, CDO Fund, and SOHC, including,</p> <p>18 but not limited to -- and then it lists a number</p> <p>19 of subcategories. Do you see that?</p> <p><b>20 A I do.</b></p> <p>21 Q And did you review that request carefully</p> <p>22 to see what was being requested in terms of assets</p> <p>23 and liabilities of HFP, CDO Fund and SOHC?</p> <p><b>24 A Yes.</b></p> <p>25 Q And did you, in words or substance --</p>	<p style="text-align: right;">308</p> <p>1 few others that we've seen today, they could find</p> <p>2 all the information they were looking for?</p> <p><b>3 A At that point I was a task lawyer with</b></p> <p><b>4 what Pachulski was telling me, so if it was in the</b></p> <p><b>5 e-mails, frankly, I just ignored it because they</b></p> <p><b>6 had them and I knew that they were focused on</b></p> <p><b>7 these issues as well.</b></p> <p>8 Q And even though you knew they were in the</p> <p>9 e-mails, you ignored them?</p> <p>10 MS. SMITH: Objection to form.</p> <p><b>11 A See, let me rephrase. I don't know that</b></p> <p><b>12 I, sitting here today, knew that all these</b></p> <p><b>13 e-mails -- let me rephrase.</b></p> <p><b>14 I don't know that in September 2020 I knew</b></p> <p><b>15 that all those e-mails existed from 2017, but to</b></p> <p><b>16 the extent they existed, they had been sitting</b></p> <p><b>17 with Pachulski from the end of July.</b></p> <p>18 THE WITNESS: Did they turn off the heat?</p> <p>19 MS. SMITH: Yes, they turned off the air.</p> <p>20 THE WITNESS: Okay.</p> <p>21 MS. DANDENEAU: Wonder if we should open</p> <p>22 the door. Would that be better?</p> <p>23 THE WITNESS: I think that might mess with</p> <p>24 the acoustics.</p> <p>25 MS. DANDENEAU: What?</p>

<p style="text-align: right;">309</p> <p>1 THE WITNESS: I think that might mess with                  2 the acoustics. No, it won't? Maybe.                  3 BY MR. CLUBOK:                  4 Q I'm going to --                  5 MR. CLUBOK: Keep this here. Let's go to                  6 this document.                  7 BY MR. CLUBOK:                  8 Q I'm going to hand you what's been marked                  9 as Exhibit No. 70.                  10 (Deposition Exhibit 70 marked for                  11 identification.)                  12 BY MR. CLUBOK:                  13 Q It's an e-mail chain and I'm going to ask                  14 you to start on the page that's Bates labeled --                  15 ends with a 17. Turn -- second-to-last page -- or                  16 third-to-last page. You can see there's an e-mail                  17 from James Romey at DSI to you, copying Greg Demo                  18 and Seery.                  19 <b>A Sorry, this is hard to read. If you'll</b>                  20 <b>give me a moment.</b>                  21 Q Right. You're at the page that ends in                  22 Bates number 117, right?                  23 MS. SMITH: Let him read the whole thing,                  24 please.                  25 <b>A I'm going to review the document.</b></p>	<p style="text-align: right;">311</p> <p>1 <b>specifically.</b>                  2 Q Okay. But it's basically talking about --                  3 okay. There's questions and it says that there                  4 may be confusions over the name and David Klos                  5 asks for you to chime in and they're trying to                  6 figure out, you know, ownership, I guess, in                  7 Multi Strat Credit Fund, correct? And in                  8 particular Greg Demo chimes in and says, beginning                  9 at the bottom of page 16: The confusion we're                  10 having is that there's an asset shown on the                  11 worksheets that we got from Isaac that says                  12 Highland CDO Opportunity Master Fund has a                  13 \$21.5 million limited partnership interest in                  14 MVCDO.                  15 Do you see that?                  16 <b>A Yes.</b>                  17 Q And Greg goes on to say, so the issue you                  18 raise is exactly the issue we're trying to figure                  19 out. Going off the org chart, I thought this                  20 entity was 100 percent owned by MSCF. We're                  21 trying to figure out what the \$26 million asset on                  22 CDO Fund's books means and whether it's a direct                  23 interest in MCVDO [sic] and LP interest in MSCF or                  24 redemption interest. I haven't seen Highland CDO                  25 Opportunity Master Fund listed as either an LP or</p>
<p style="text-align: right;">310</p> <p>1 MR. CLUBOK: In that case, let's go off                  2 the record.                  3 THE VIDEOGRAPHER: We are off the record                  4 at 6:16 p.m.                  5 (Recess taken from 6:16 p.m. CDT to                  6 6:19 p.m. CDT)                  7 THE VIDEOGRAPHER: The time is 6:19 p.m.                  8 We are back on the record.                  9 BY MR. CLUBOK:                  10 Q Sir, turning to the page in Exhibit 70                  11 that is -- ends with 17, do you see where there's                  12 an e-mail from James Romey to you saying: Before                  13 we give anything to UBS today, we need to track                  14 down what the Highland Credit Opportunities CDO                  15 Ltd. partnership interest in MSCF means and how                  16 it's accounted for on MSCF's books, i.e., whether                  17 it's part of the existing redemption group, or how                  18 it has any remaining interest in the fund. Or if                  19 I'm misunderstanding something, please let me know                  20 ASAP.                  21 You see that?                  22 <b>A Yes.</b>                  23 Q And MSCF refers to Multi Strat, correct?                  24 <b>A I think that means the Multi Strat Credit</b>                  25 <b>Fund. I'm just not sure which level it would be</b></p>	<p style="text-align: right;">312</p> <p>1 as one of the redeemers.                  2 Do you see that?                  3 <b>A Actually I lost you while you were</b>                  4 <b>reading, but I will take your word for it that you</b>                  5 <b>read it right.</b>                  6 Q I paraphrased it slightly and skipped what                  7 I thought was not every word.                  8 <b>A Okay.</b>                  9 Q But the gist of this is --                  10 <b>A Could you tell me -- sorry, I don't know</b>                  11 <b>where we are in the document.</b>                  12 Q The gist of what Greg is asking --                  13 <b>A Sorry, which e-mail from Greg?</b>                  14 Q There's an e-mail from Greg at the bottom                  15 of the page that ends in 16 --                  16 <b>A Okay. I'm there.</b>                  17 Q -- that is to you and other people --                  18 <b>A Yes.</b>                  19 Q -- copying Seery --                  20 <b>A Yes.</b>                  21 Q -- and says they're having confusion over                  22 assets shown on worksheets they got from Isaac,                  23 that's you, about CDO Fund's interest in                  24 Multi Strat, correct?                  25 <b>A That's what it says.</b></p>



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<p style="text-align: right;">313</p> <p>1 Q And you say: Dave -- and I assume you're 2 referring to Dave Klos -- I will call you to 3 figure this out. 4 Do you see that? 5 <b>A Yes.</b> 6 Q And then James then follows up and says, 7 are you guys available for a call at 6 p.m. 8 Eastern for a status check, on the same day. And 9 by the way, it says importance high. 10 Do you see that? 11 <b>A I do.</b> 12 Q And Greg says he's going to circulate a 13 dial-in, and you then jump in and say: Guys, I 14 don't think this is a prerequisite to delivering 15 materials to UBS in satisfaction of their 16 concerns. I am prepping the documents set for 17 delivery tomorrow. Dave has not worked on this, 18 so I will just call Greg and James. However, this 19 is the current status. 20 Do you see that? 21 <b>A I do.</b> 22 Q And then Scott says: Isaac and me were 23 instructed by Jim Seery to get this UBS 24 deliverable handled. I was on the phone with -- I 25 was just on the phone with Isaac when the e-mail</p>	<p style="text-align: right;">315</p> <p>1 Q And he says basically, this is really hard 2 and we can't find more information about what 3 you're asking. 4 MS. SMITH: Objection, form. 5 BY MR. CLUBOK: 6 Q Is that the impression that he conveys 7 from when you read this document? 8 MS. SMITH: Objection, form. 9 <b>A I'll let the document speak for itself.</b> 10 <b>The impression that I got at the time was that he</b> 11 <b>was butting heads with Mr. Demo.</b> 12 <b>BY MR. CLUBOK:</b> 13 Q That's the only impression you got from 14 this exchange, that he's butting heads with 15 Mr. Demo? 16 <b>A That's the primary impression that I got.</b> 17 Q Did you get the impression from this 18 document that Mr. Seery, who was the CEO of 19 Highland, had made it clear to you and to 20 Mr. Ellington that these requests were, in fact, a 21 high priority, notwithstanding what 22 Mr. Ellington's views were or your views were? 23 MS. SMITH: Objection, form. 24 BY MR. CLUBOK: 25 Q Okay. Let me just ask it very simply.</p>
<p style="text-align: right;">314</p> <p>1 came through. Don't see how this is urgent. 2 Especially relative to UBS request. We will get 3 to this when it is a priority. 4 Do you see that? 5 <b>A I do.</b> 6 Q And Greg jumps in and says: Scott and 7 Isaac, I spoke to Jim about this issue this 8 morning. It is a high priority at this point and 9 we need to do what we can to push it to 10 conclusion. I understand that it's going to take 11 some work. 12 Do you see that? 13 <b>A Yes.</b> 14 Q And then Scott writes a fairly lengthy 15 e-mail that begins by saying: I don't think 16 there's a need for a call and I can tell you where 17 we are currently. 18 Do you see that? 19 <b>A Yes.</b> 20 Q And that's an e-mail that he copies you 21 on, along with Mr. Seery, James Romey and 22 David Klos. 23 <b>A Yes.</b> 24 Q And Greg Demo. 25 <b>A Yes.</b></p>	<p style="text-align: right;">316</p> <p>1 Did you get the impression from this e-mail 2 exchange that's reflected in Exhibit 70, that 3 notwithstanding what you and Mr. Ellington may 4 have thought about the priority level of these 5 requests, Mr. Seery definitely believed it was a 6 high priority to respond to these requests from 7 UBS? 8 MS. SMITH: Objection, form. 9 <b>A Well, I didn't really know what the answer</b> 10 <b>was because I wasn't speaking to Mr. Seery, but</b> 11 <b>Greg was saying that Mr. Seery needed one thing</b> 12 <b>and Scott's saying, no, he doesn't and I was not</b> 13 <b>involved in either of those conversations and then</b> 14 <b>it was just going to be me and Dave trying to</b> 15 <b>figure things out.</b> 16 <b>BY MR. CLUBOK:</b> 17 Q My simple question to you is, did you, 18 from reading this back and forth, have the 19 impression that Mr. Seery believed that this was a 20 high priority for you to respond to regardless of 21 what Mr. Ellington or what you believed? 22 MS. SMITH: Objection, form. 23 <b>A So I wasn't sure, because Mr. Ellington</b> 24 <b>conveyed essentially that -- I mean, to get the</b> 25 <b>deliverable handled, but I don't know that this</b></p>

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<p style="text-align: right;">317</p> <p><b>1 one outstanding item was the most important thing</b></p> <p><b>2 in the deliverable. And then Greg thought that</b></p> <p><b>3 this one outstanding item was the most important</b></p> <p><b>4 thing in the deliverable and I didn't speak to</b></p> <p><b>5 Mr. Seery either way to confirm who was right.</b></p> <p><b>6 BY MR. CLUBOK:</b></p> <p>7 Q Well, wait a second. You were instructed</p> <p>8 by Mr. Seery to get this UBS deliverable handled,</p> <p>9 weren't you?</p> <p><b>10 A Yes.</b></p> <p>11 Q And Mr. Seery made it clear to you</p> <p>12 personally in that call that this was a priority,</p> <p>13 didn't he?</p> <p><b>14 A This deliverable, yes. But this one</b></p> <p><b>15 specific item that was holding up the deliverable,</b></p> <p><b>16 I don't remember that.</b></p> <p>17 Q All right. You then read Mr. Seery</p> <p>18 telling your -- or telling this group including --</p> <p>19 sorry.</p> <p>20 You read Mr. Ellington's -- strike that.</p> <p>21 Let me start over.</p> <p>22 You read Mr. Ellington's e-mail to</p> <p>23 Mr. Seery and to others in which he says that</p> <p>24 there are ghost funds such as these target</p> <p>25 entities, and by target entities he means</p>	<p style="text-align: right;">319</p> <p>1 Herculean task. Do you see?</p> <p><b>2 A He does.</b></p> <p>3 Q And he says: Isaac and myself have spent</p> <p>4 in excess of 100 hours trying to piece together</p> <p>5 everything we can to create a true and accurate</p> <p>6 document-based record of what happened with these</p> <p>7 target entities.</p> <p>8 Correct?</p> <p><b>9 A Yes.</b></p> <p>10 Q As part of that -- and by the way, was</p> <p>11 that a true statement when you read it, in your</p> <p>12 mind, that you had gone through a Herculean task</p> <p>13 to do everything you could to create a true and</p> <p>14 accurate document-based record of what happened to</p> <p>15 HFP, CDO Fund and SOHC?</p> <p><b>16 A I think a more fair characterization is we</b></p> <p><b>17 had put a substantial amount of effort into</b></p> <p><b>18 tracing the May 2009 assets against -- well,</b></p> <p><b>19 figuring out what happened to the May 2009 assets.</b></p> <p>20 Q My question to you is not that question.</p> <p>21 So I want you to answer my question.</p> <p>22 Is it true that you and Mr. Ellington</p> <p>23 did -- had done everything you could to create a</p> <p>24 true and accurate document-based record of what</p> <p>25 happened with HFP, SOHC and CDO Fund as of</p>
<p style="text-align: right;">318</p> <p>1 CDO Fund, HFP and SOHC, correct?</p> <p><b>2 A I can assume that's what he means, but I</b></p> <p><b>3 don't know.</b></p> <p>4 Q And he talks about how the ghost funds</p> <p>5 don't have directors, custodians, administrators,</p> <p>6 bank accounts and no one knows -- no one knows</p> <p>7 what they truly retain. Do you see that?</p> <p><b>8 A I do.</b></p> <p>9 Q And he claims that UBS is aware of the</p> <p>10 situation because he's personally discussed it</p> <p>11 with Andy Clubok, that's me, several dozen times,</p> <p>12 including as recently as this year, right?</p> <p><b>13 A He does say that.</b></p> <p>14 Q And did you know that Mr. Ellington had</p> <p>15 represented to me that these were ghost funds and</p> <p>16 there was no way really as a practical matter to</p> <p>17 figure out how much assets they had or when they</p> <p>18 last had assets or words to that effect?</p> <p><b>19 A I wasn't privy to your conversations.</b></p> <p>20 Q Did you -- did Mr. Ellington ever tell</p> <p>21 you, in words or substance, that he had conveyed</p> <p>22 that information to UBS other than what's here in</p> <p>23 Exhibit 70?</p> <p><b>24 A I don't recall him ever doing that.</b></p> <p>25 Q Okay. He then said, the project is a</p>	<p style="text-align: right;">320</p> <p>1 August 15th, 2020?</p> <p>2 MS. SMITH: Objection, form.</p> <p><b>3 A I think that was a slight</b></p> <p><b>4 mischaracterization of the work that we were</b></p> <p><b>5 doing, which was tracing the assets.</b></p> <p><b>6 BY MR. CLUBOK:</b></p> <p>7 Q Did you --</p> <p><b>8 A And that we had done a lot of work.</b></p> <p>9 MR. CLUBOK: Move to strike as</p> <p>10 nonresponsive.</p> <p><b>11 A Sorry, I was addressing the Herculean task</b></p> <p><b>12 portion of it.</b></p> <p><b>13 BY MR. CLUBOK:</b></p> <p>14 Q Okay. Well, I'm asking you whether it was</p> <p>15 true as Mr. Ellington reported to Mr. Seery and</p> <p>16 others, that as of August 15th, 2020, you were --</p> <p>17 you had spent 100 hours trying to piece together</p> <p>18 everything you could to create a true and accurate</p> <p>19 document-based record of what happened with HFP,</p> <p>20 SOHC and CDO Fund?</p> <p><b>21 A I think his statement was not precise, and</b></p> <p><b>22 I believe that what I stated was a more precise</b></p> <p><b>23 characterization of what he was saying.</b></p> <p>24 Q Did you make any effort to correct his</p> <p>25 statement to this audience?</p>

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<p style="text-align: right;">321</p> <p>1 <b>A I never responded to this e-mail and I</b>                  2 <b>wasn't going to get involved in a -- what I viewed</b>                  3 <b>to be essentially a butting of heads between</b>                  4 <b>Mr. Ellington and Pachulski.</b>                  5 Q At the time did you think it was accurate                  6 that you had been doing everything you could to                  7 create a true and accurate document-based record                  8 of what had happened with HFP, SOHC and CDO Funds?                  9 <b>A That was not what I had been tasked with</b>                  10 <b>doing. I had been tasked with the other thing</b>                  11 <b>that I've already described.</b>                  12 Q So is the answer to my question no?                  13 <b>A No, I didn't because that wasn't my task.</b>                  14 Q Is the answer to my question no?                  15 <b>A I said no, because that's not what I was</b>                  16 <b>tasked with doing.</b>                  17 Q Are you saying --                  18 MS. SMITH: Objection to form.                  19 BY MR. CLUBOK:                  20 Q You're saying that you had not done                  21 everything you could to create or to try to create                  22 a true and accurate document-based record of what                  23 happened with HFP, SOHC and CDO Fund as of the                  24 date of this e-mail, correct?                  25 <b>A Well, I tried to do everything I could and</b></p>	<p style="text-align: right;">323</p> <p>1 Q To whom?                  2 <b>A So Mr. Demo knew exactly what I was</b>                  3 <b>working on, as did -- well, I take it back. I</b>                  4 <b>don't know if DSI knew what I was working on. But</b>                  5 <b>Mr. Demo knew exactly what I was working on and I</b>                  6 <b>never represented to him, or anybody that I</b>                  7 <b>remember, maybe I did, but I just -- I don't</b>                  8 <b>remember having that conversation of I'm going to</b>                  9 <b>do a forensic audit of the funds.</b>                  10 <b>Instead, it was, I'm going to identify</b>                  11 <b>what did they have as of this date, which has</b>                  12 <b>already been produced to UBS and show UBS what</b>                  13 <b>happened to those assets.</b>                  14 Q You've said that you and -- he says that                  15 you and he were speaking literally daily about                  16 this. Do you see that?                  17 <b>A Yes.</b>                  18 Q Is that true, that you were speaking daily                  19 about responding to UBS's document request with                  20 respect to the assets?                  21 <b>A This is the -- before the document</b>                  22 <b>request.</b>                  23 Q Okay. This was with respect to -- this is                  24 before the formal document request.                  25 <b>A I don't know how to respond to that, sir.</b></p>
<p style="text-align: right;">322</p> <p>1 <b>I put a lot of effort into tracing the May 2009</b>                  2 <b>assets and identifying what happened -- where they</b>                  3 <b>were today. I put a lot of effort into that.</b>                  4 Q But you very -- you had not -- okay.                  5 MR. CLUBOK: Move to strike as                  6 nonresponsive.                  7 BY MR. CLUBOK:                  8 Q I just want you to answer my question and                  9 we are going to add more time to this dep if you                  10 don't answer my question. Was Mr. Ellington's                  11 statement that you and he together had tried to do                  12 everything you could to create a true and accurate                  13 document-based record of what had happened with                  14 HFP, SOHC and CDO Fund?                  15 MS. SMITH: Objection, form.                  16 <b>A The problem is that's a paraphrase of what</b>                  17 <b>Mr. Ellington said here and I'm happy to point out</b>                  18 <b>where, frankly, I disagree with Mr. Ellington on</b>                  19 <b>this.</b>                  20 BY MR. CLUBOK:                  21 Q But did you point out to anyone on this                  22 e-mail chain in any communication, how you                  23 disagreed with what Mr. Ellington was saying in                  24 this e-mail that you read?                  25 <b>A I think I did actually, yes.</b></p>	<p style="text-align: right;">324</p> <p>1 <b>It's before the request for production that are</b>                  2 <b>marked as Exhibit 69.</b>                  3 Q Okay. But it -- you knew at the time of                  4 August 15, 2020, that UBS had requested all                  5 information relating to the assets of HFP,                  6 CDO Fund and SOHC, correct?                  7 <b>A I don't know that I ever saw UBS requests</b>                  8 <b>that -- whenever these informal requests were that</b>                  9 <b>predated the request for --</b>                  10 Q I didn't ask you if you ever saw them. I                  11 said, did you know, prior to the formal requests                  12 that were marked as Exhibit 69, that UBS had                  13 requested all information related to the assets,                  14 both current and historical, for SOHC, CDO Fund                  15 and HFP?                  16 <b>A I knew that UBS certainly was asking for a</b>                  17 <b>lot of information, but in terms of exactly how</b>                  18 <b>you phrased it just now, I don't remember that</b>                  19 <b>part. But UBS was certainly asking for a lot of</b>                  20 <b>information and then that's what me and Mr. Demo</b>                  21 <b>spoke about, is to kind of how to satisfy that.</b>                  22 Q Was this -- Mr. Ellington says that a                  23 large majority of your efforts were based on                  24 educated guess work, but at the time, you and he                  25 both knew that all the assets that CDO Fund and</p>

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<p style="text-align: right;">325</p> <p>1 HFP had, had been attempted to be transferred to                  2 Sentinel in 2017, correct?                  3 MS. SMITH: Objection, form.                  4 <b>A With respect to the assets that had been</b>                  5 <b>sitting in those SOHC and CDO Fund in May of 2009,</b>                  6 <b>most of those weren't the subject of the 2017</b>                  7 <b>transfer and there was a lot of -- educated guess</b>                  8 <b>work is probably not the right way to say it. We</b>                  9 <b>were gathering as many documents as we could to</b>                  10 <b>try to figure out what had happened to those</b>                  11 <b>assets.</b>                  12 <b>BY MR. CLUBOK:</b>                  13 Q At the time Mr. Ellington made the                  14 statement about an educated guess, you knew that                  15 all the assets that CDO Fund and HFP had had been                  16 attempted to be transferred to Sentinel in 2017,                  17 correct?                  18 MS. SMITH: Objection to form.                  19 <b>A I knew that substantially all of the</b>                  20 <b>assets they had in August of 2017 had been</b>                  21 <b>transferred in August of 2017, but that's not</b>                  22 <b>necessarily the same as what was there in 2009.</b>                  23 <b>BY MR. CLUBOK:</b>                  24 Q I didn't ask you about that yet.                  25 MR. CLUBOK: I'm going to move to strike</p>	<p style="text-align: right;">327</p> <p>1 correct?                  2 <b>A I knew that the assets -- substantially</b>                  3 <b>all of the assets that they had owned in August of</b>                  4 <b>2017 had been transferred in -- or attempted to be</b>                  5 <b>transferred in 2017.</b>                  6 Q And Mr. Ellington knew that too, correct,                  7 when he wrote this e-mail?                  8 <b>A Mr. Ellington and Mr. Klos knew that,</b>                  9 <b>both.</b>                  10 Q Okay. And also you knew that Sentinel --                  11 you knew in August 2020, that Sentinel was at                  12 least partially owned by Mr. Ellington, correct?                  13 <b>A I actually didn't know that, no.</b>                  14 Q Okay. But Mr. Ellington certainly knew                  15 that at the time, correct?                  16 MS. SMITH: Objection, form.                  17 <b>A You'll have to ask Mr. Ellington what he</b>                  18 <b>knows. I don't -- I don't know that Mr. Ellington</b>                  19 <b>owns any part of Sentinel. I know he's related to</b>                  20 <b>it in some way, but I don't know if he owns it.</b>                  21 <b>BY MR. CLUBOK:</b>                  22 Q Oh, you don't know if Mr. -- you don't                  23 know, sitting here today, if Mr. Ellington has any                  24 economic interest, direct or indirect, in                  25 Sentinel?</p>
<p style="text-align: right;">326</p> <p>1 that part as nonresponsive.                  2 BY MR. CLUBOK:                  3 Q I'm going to again ask you, hopefully try                  4 to answer my question so we can finish this close                  5 to on time.                  6 <b>A Okay.</b>                  7 Q I didn't say a word about 2009 yet. I may                  8 move to that, but I want a clean answer to my                  9 question.                  10 When Mr. Ellington wrote this e-mail                  11 that's reflected on the first page of Exhibit 70,                  12 you knew at the time and he knew at the time that                  13 substantially all of the assets of HFP and                  14 CDO Fund had been transferred to an entity that he                  15 partially owned in August of 2017, correct?                  16 MS. SMITH: Objection, form.                  17 <b>A I can't give you a clean answer to that</b>                  18 <b>question, sir. There are -- if you want to break</b>                  19 <b>it up into parts, I'm happy to address it.</b>                  20 <b>BY MR. CLUBOK:</b>                  21 Q Okay. At the time Mr. Ellington wrote the                  22 e-mail that's reflected on the first page of                  23 Exhibit 70, you knew that substantially all of the                  24 assets of HFP and CDO Fund had been attempted to                  25 be transferred to Sentinel in August of 2017,</p>	<p style="text-align: right;">328</p> <p>1 <b>A No.</b>                  2 Q But you do know that Mr. Dondero has an                  3 economic interest in Sentinel?                  4 <b>A So it's similar to SAS, right. I knew</b>                  5 <b>that Mr. Dondero and Mr. Ellington had some</b>                  6 <b>involvement with that entity. I didn't know</b>                  7 <b>exactly what the structure or ownership was. I</b>                  8 <b>knew that they had, essentially, involvement in</b>                  9 <b>authority with respect to those entities.</b>                  10 Q You do know that Mr. Dondero has an                  11 economic interest in Sentinel, correct?                  12 <b>A Actually, I don't.</b>                  13 Q Okay. Do you know if Mr. Surgent was made                  14 aware that Mr. Dondero and Mr. Ellington had an                  15 economic interest in Sentinel when he supposedly                  16 made the determination that they were not                  17 affiliates -- strike that.                  18 Do you know whether or not Mr. Surgent                  19 knew about Mr. Dondero and Mr. Ellington's                  20 economic interest in Sentinel when he supposedly                  21 made the determination you claim he made with                  22 respect to Sentinel's status as an affiliate or                  23 not an affiliate of Highland Capital?                  24 MS. SMITH: Objection to form.                  25 <b>A I don't know if they have an economic</b></p>

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<p style="text-align: right;">329</p> <p><b>1 interest and I don't know what the content of</b>  <b>2 those conversations were, but I do know</b>  <b>3 Mr. Surgent's determination.</b>  <b>4 BY MR. CLUBOK:</b>  5 Q Okay. But you don't know if he knew the  6 economic ownership interest that Mr. Dondero or  7 Mr. Ellington may or may not have had in Sentinel  8 at the time he was supposedly asked to make that  9 determination, correct?  <b>10 A I don't know what he knew one way or</b>  <b>11 another.</b>  12 Q I'm going to hand you what's been marked  13 as Exhibit 71.  14 (Deposition Exhibit 71 marked for  15 identification.)  16 BY MR. CLUBOK:  17 Q It's an e-mail from Mike Throckmorton to  18 you, copying David Klos and also to Chris Rice.  19 It's actually an e-mail exchange, I should say,  20 that begins with Chris Rice sending to you a  21 balance of roughly 363 million in the claims  22 account for CDO Opportunity Master as of  23 12/31/2018, and it goes back and forth here. Do  24 you see that?  <b>25 A Yes.</b></p>	<p style="text-align: right;">331</p> <p><b>1 A Well, because for years, CDO Fund didn't</b>  <b>2 have any financials and so it just struck me as</b>  <b>3 unusual that they were doing anything with that</b>  <b>4 fund. It was very -- it was strange to me so I</b>  <b>5 asked.</b>  6 Q And are these people, Mike Throckmorton  7 and Chris Rice who are copied on this exchange,  8 people that you went to when you were tasked with  9 helping to identify historical information about  10 the assets of CDO Fund?  <b>11 A Throckmorton, I think yes. Rice, I don't</b>  <b>12 remember.</b>  13 Q Did you direct Mr. Seery or Pachulski to  14 these people for assistance?  <b>15 A Well, they were asking questions of</b>  <b>16 Mr. Klos, and Mr. Throckmorton responded to</b>  <b>17 Mr. Klos. So that wasn't my chain of command.</b>  18 Q I'm going to -- so turning back, though,  19 to Exhibit 70, which is dated August 15, 2020.  20 You say at that time you didn't know -- did you  21 know at that time that UBS was asking for all  22 information relating to the assets, both current  23 and historical, for HFP, SOHC and CDO Fund?  24 MS. SMITH: Objection, form.  <b>25 A I think my prior testimony is that I knew</b></p>
<p style="text-align: right;">330</p> <p>1 Q And you ultimately say that the CDO Fund  2 number should be about 530 million which accounts  3 for the accrued interest, correct, on the first  4 page?  <b>5 A I think that was reflective of the</b>  <b>6 judgment that had been handed down by the Court.</b>  7 Q Right. So you knew as of -- obviously  8 knew as of July 16, 2020, that CDO Fund had a  9 judgment against it totaling approximately  10 \$530 million including interest, correct?  <b>11 A Yes.</b>  12 Q And you asked why they were doing  13 financials for CDO Fund and you were told it was  14 for tax purposes, correct?  <b>15 A Where did I ask that?</b>  16 Q In the -- your e-mail on page -- the first  17 page of Exhibit 71.  18 MS. SMITH: Review the exhibit.  19 BY MR. CLUBOK:  20 Q Look at the first page. Do you see where  21 it says -- where you give the fund number, and  22 then you say: However, more generally, why are we  23 doing financials for CDO Fund at all?  <b>24 A Yes, I see that.</b>  25 Q Why did you ask that question?</p>	<p style="text-align: right;">332</p> <p><b>1 UBS wanted a lot of information, but that exact</b>  <b>2 characterization I don't know. I don't remember.</b>  <b>3 BY MR. CLUBOK:</b>  4 Q In words or substance, you knew that the  5 gist of what UBS had been looking for for at least  6 weeks, if not months prior to this, was  7 information about the assets that CDO Fund, SOHC  8 and HFP had both then and historically since 2009;  9 isn't that true?  10 MS. SMITH: Objection. He answered that  11 he didn't remember.  <b>12 A I mean, I --</b>  13 MR. CLUBOK: Move to -- look, I -- please  14 don't start making speaking objections just  15 because it's getting late.  16 BY MR. CLUBOK:  17 Q I'm asking you a slightly different  18 question and I'm saying, didn't you understand, as  19 of August 15, 2020, that the gist of requests that  20 UBS had made at least weeks before, if not months  21 before, was to get whatever information was  22 available about the assets of CDO Fund, HFP and  23 SOHC, both currently and historically since 2009;  24 isn't that true?  <b>25 A I knew -- I knew UBS was asking for a lot</b></p>

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<p style="text-align: right;">333</p> <p><b>1 of information about what happened to the assets</b>  <b>2 in those funds and then we went through an</b>  <b>3 iterative process between myself and Mr. Demo to</b>  <b>4 determine what it was that we were going to send,</b>  <b>5 but I -- I don't recall ever seeing UBS's</b>  <b>6 requests. Really I was getting my tasking orders</b>  <b>7 from Pachulski.</b>              8 Q Okay. I'm going to hand you what's been              9 marked as Exhibit 72.              10 (Deposition Exhibit 72 marked for              11 identification.)              12 BY MR. CLUBOK:              13 Q It's an e-mail from ten days earlier,              14 August 5th, 2020, from you to Jim Seery, copying              15 Brad Sharp, James Romey, David Klos, and the              16 subject is UBS Supplemental Information Request.              17 Do you see that?  <b>18 A I do.</b>              19 Q And this -- UBS had made information              20 requests and then they had made supplemental              21 information requests, and this is all before the              22 more formal document requests that we previously              23 reviewed, correct?              24 MS. SMITH: Please let him review the              25 document.</p>	<p style="text-align: right;">335</p> <p>1 Do you see that?  <b>2 A Yes.</b>              3 Q And so when you gave this answer, did you              4 know what the current requests were? When you              5 wrote this e-mail, at that -- even if you don't              6 remember now, this is almost a year ago, but at              7 the time, had you reviewed UBS's then current              8 request for information when you advised Mr. Seery              9 that they supposedly exceeded what UBS was              10 entitled to under the special master order?  <b>11 A I apparently knew that you were asking for</b>  <b>12 documents from 12/31/07 through 12/31/19.</b>              13 Q Did you know what the current requests for              14 information were at that time when you wrote this              15 e-mail, yes or no?  <b>16 A I don't recall if I did one way or</b>  <b>17 another.</b>              18 Q Okay. And you go on to say: HFP and              19 CDO Fund informed their investors that they had              20 zero net asset values.              21 Do you see that?  <b>22 A Yes.</b>              23 Q And then you say you've been tracking the              24 assets through on SOHC and CDO Fund. Do you see              25 that?</p>
<p style="text-align: right;">334</p> <p><b>1 A I see that it says supplemental</b>  <b>2 information request. I was not interfacing with</b>  <b>3 UBS on these requests. I don't even remember</b>  <b>4 being sent them.</b>  <b>5 BY MR. CLUBOK:</b>              6 Q That's not my question. Let's listen to              7 my question, please, and answer my question.              8 Isn't it true that UBS had made information              9 requests and supplemental information requests              10 with respect to the assets of HFP, CDO Fund and              11 SOHC all before the more formal document requests              12 that we reviewed earlier today?  <b>13 A I don't have any personal knowledge of</b>  <b>14 those.</b>              15 Q Okay. But on August 5th, 2020, you              16 were -- in response to an e-mail from James Seery,              17 the subject being, RE: UBS Supplemental              18 Information Request, you respond: UBS's current              19 requests for information exceed what it was              20 entitled to under the Special Master Discovery              21 Order (attached).              22 Do you see that?  <b>23 A I do.</b>              24 Q You said: UBS is asking for documents              25 from 12/31/07 through 12/31/19.</p>	<p style="text-align: right;">336</p> <p><b>1 A Right. That was the task that they had</b>  <b>2 put me on, was to track the assets from May of '09</b>  <b>3 forward.</b>              4 Q Well, you talk about -- well, first of              5 all, every single asset that it -- had been there              6 in May of '09 that was still there in August 17th,              7 you knew exactly what had had happened to those              8 assets, right?              9 MS. SMITH: Objection to form.  <b>10 A Actually, I didn't.</b>  <b>11 BY MR. CLUBOK:</b>              12 Q Well, you knew that any assets that were              13 there in May of 2009 that were still there in              14 August of 2017, had been transferred, pursuant to              15 that e-mail that you were copied on, to Sentinel              16 for consideration for the ATE policy, didn't you?  <b>17 A There were only two such assets and I</b>  <b>18 researched extensively what happened to both of</b>  <b>19 those assets. And so I don't necessarily agree</b>  <b>20 that they were effectively transferred by the</b>  <b>21 ATE policy -- whatever -- whatever it is that</b>  <b>22 people did, it didn't work, I think.</b>              23 Q What were those two assets that you're              24 talking about?  <b>25 A The NV -- well, sorry, let me rephrase.</b></p>

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**1 The interest in Multi Strat, at whichever level it**  
**2 existed and the records are inconsistent on that,**  
**3 and that creates another problem because at one**  
**4 level, equity interest got extinguished --**  
 5 Q We'll come to that.  
**6 A -- and then Greenbriar --**  
 7 Q So you had extensively researched  
 8 CDO Fund's interest in Multi Strat and Greenbriar  
 9 and you came to the conclusion that those assets  
 10 had not been properly transferred to Sentinel as  
 11 part of the August 2017 transaction, correct?  
**12 A Can we break it up into a Greenbriar**  
**13 question and a Multi Strat question? Would that**  
**14 be possible?**  
 15 Q Sure. With respect to Greenbriar, you  
 16 concluded that Greenbriar's -- the assets that  
 17 CDO Fund held in Greenbriar had never been  
 18 transferred to Sentinel, correct?  
**19 A I concluded that the -- so I was tracking**  
**20 title of assets, and the title of what were**  
**21 preference 2 shares issued by Greenbriar never**  
**22 left CDO Fund's possession. And so this -- when I**  
**23 say I was tracking assets, I was tracking title to**  
**24 assets. That's what this whole process was, was**  
**25 tracking basically if it's -- if you have to**

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**1 deliver them to UBS tomorrow, how do you do that,**  
**2 who do you call. And that's why title was the**  
**3 important inquiry that I was being asked.**  
 4 Q So with respect to Greenbriar, title to  
 5 the assets were never transferred to Sentinel from  
 6 CDO Fund, correct?  
**7 A As far as I'm aware, the title -- as far**  
**8 as my research showed, the title to the Greenbriar**  
**9 Class 2 preference shares were never transferred**  
**10 from CDO Fund to Sentinel.**  
 11 Q And are still to this day, as far as you  
 12 know -- or at least as of the time you left  
 13 Highland, owned by CDO Fund, correct?  
**14 A They're titled to CDO Fund. I believe**  
**15 that's the right answer.**  
 16 Q Okay. And with respect to the assets in  
 17 Multi Strat, you believed, at least as of the time  
 18 you left Highland, that the title to those  
 19 assets -- that there had been -- strike that.  
 20 That CDO Fund had not transferred any  
 21 interest that it may have had in Multi Strat to  
 22 Sentinel, correct?  
**23 A Well, I actually wasn't sure, and to this**  
**24 day I'm not sure. And I actually highlighted in**  
**25 green on the chart that I was making for Mr. Demo**

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**1 and said this one I can't tell you, this one I**  
**2 don't know about.**  
 3 Q Not sure what? Not sure whether or not  
 4 they were transferred to Sentinel? That's my only  
 5 question. I want to know if you're saying that  
 6 you were not sure one way or the other whether  
 7 CDO Fund's interest in Multi Strat, if any, were  
 8 ever transferred to Sentinel. Were you either  
 9 sure they weren't or were you sure they were or  
 10 were you not sure?  
 11 MS. SMITH: Objection, form.  
**12 A I was not sure, and I can explain why.**  
**13 BY MR. CLUBOK:**  
 14 Q I didn't ask for that. So you thought  
 15 there was -- based on all the research you did,  
 16 you thought there was some chance that some assets  
 17 that CDO Fund held in Multi Strat had been  
 18 transferred to Sentinel but you were not sure; is  
 19 that correct?  
**20 A That was one of the possibilities.**  
 21 Q And did you ever say that possibility, in  
 22 words or substance, to Greg Demo?  
**23 A I didn't give him any of the**  
**24 possibilities, I just told him I can't figure out**  
**25 what's going on with this asset.**

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1 Q But you didn't tell him that one of the  
 2 reasons you couldn't figure it out is because  
 3 there was a possibility that that asset had been  
 4 transferred to Sentinel? You didn't say that in  
 5 words or substance to Greg Demo, correct?  
**6 A That actually wasn't one of the reasons I**  
**7 couldn't tell. That wasn't one of the reasons I**  
**8 didn't know.**  
 9 Q You did not tell Mr. Demo that there was  
 10 some possibility that assets that were held by  
 11 CDO Fund had been transferred -- strike that.  
 12 You never told anyone at the Pachulski  
 13 firm that assets that CDO Fund held with respect  
 14 to Multi Strat may have been transferred to  
 15 Sentinel, correct?  
**16 A That's correct.**  
 17 Q Why not?  
**18 A So I'm at the point where -- well, let me**  
**19 rephrase. In my research I arrived at at least a**  
**20 preliminary conclusion, that that asset had been**  
**21 extinguished back in 2011.**  
 22 Q Did you share that conclusion with  
 23 Mr. Demo?  
**24 A I told him that that was a concern of mine**  
**25 and that I was still trying to track it down and I**

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<p style="text-align: right;">341</p> <p><b>1 told him that was my preliminary conclusion.</b></p> <p>2 Q When did you tell him that?</p> <p><b>3 A It was around this time period.</b></p> <p>4 Q When?</p> <p><b>5 A It was in August of 2020.</b></p> <p>6 Q And did you tell him to share that</p> <p>7 information with UBS?</p> <p><b>8 A I didn't give him any instructions on what</b></p> <p><b>9 to share with UBS one way or another.</b></p> <p>10 Q Did you advise ever affirmatively that</p> <p>11 they should not share that information with UBS?</p> <p>12 MS. SMITH: Objection, form.</p> <p><b>13 A I don't remember -- I don't remember if we</b></p> <p><b>14 talked about it. I do remember that I was</b></p> <p><b>15 concerned that if we didn't have the answer, that</b></p> <p><b>16 was going to create more -- that if we gave a</b></p> <p><b>17 partial -- well, let me start over.</b></p> <p><b>18 I was concerned that if we told them -- if</b></p> <p><b>19 we told you where we were, that was going to</b></p> <p><b>20 create more problems because we had uncertainty</b></p> <p><b>21 and that was not an easy thing to say.</b></p> <p><b>22 BY MR. CLUBOK:</b></p> <p>23 Q My question is did you ever affirmatively</p> <p>24 advise them not to share information about</p> <p>25 CDO Fund's possible ownership interest in</p>	<p style="text-align: right;">343</p> <p>1 Multi Strat position being written off.</p> <p>2 Do you see that?</p> <p><b>3 A I do.</b></p> <p>4 Q And if you look, you can see then on the</p> <p>5 first page of the attachment that write-off</p> <p>6 occurred August 11th, 2017. Do you see that?</p> <p><b>7 A I do see that's what it says.</b></p> <p>8 Q And you recall, of course, in your</p> <p>9 Appendix 1, there was an amount identified for</p> <p>10 CDO Fund's interest in Multi Strat as of April</p> <p>11 2017, right?</p> <p>12 MS. SMITH: Objection, form. What are you</p> <p>13 referring to on the exhibit?</p> <p>14 MR. CLUBOK: Let me restate the question.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q You know that August 11, 2017, was the</p> <p>17 date that the transfers of substantially all of</p> <p>18 CDO Fund's assets were made to Sentinel?</p> <p><b>19 A I knew that it took place in August of</b></p> <p><b>20 2017. I didn't know the exact date, but yes.</b></p> <p>21 Q Right. So you directed Mr. Seery and</p> <p>22 Mr. Ellington -- sorry, you directed Mr. Seery and</p> <p>23 Mr. Demo to an attached that showed the</p> <p>24 Multi Strat position being written off on</p> <p>25 August 11th, 2017, right?</p>
<p style="text-align: right;">342</p> <p>1 Multi Strat with UBS?</p> <p><b>2 A I don't remember one way or another.</b></p> <p>3 Q Let's mark a document as Exhibit 73.</p> <p>4 (Deposition Exhibit 73 marked for</p> <p>5 identification.)</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q I'm going to mark an e-mail from you to</p> <p>8 Mr. Seery, dated August 21st, as Exhibit 73. And</p> <p>9 it's got an attachment that says Screenshot:</p> <p>10 WSO_Trade_No.9684001.pdf. We'll have the cover</p> <p>11 e-mail and the two-page attachment marked</p> <p>12 collectively as Exhibit 73.</p> <p>13 And at the bottom of this e-mail chain,</p> <p>14 you say to Jim Seery, copying Scott Ellington and</p> <p>15 Greg Demo and James Romey, that here's a revised</p> <p>16 package of UBS documents without mention of</p> <p>17 Multi Strat.</p> <p>18 MS. SMITH: Can you read that?</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Do you see that?</p> <p><b>21 A Yes.</b></p> <p>22 Q And you at the top of the e-mail say:</p> <p>23 All - I do -- and in all caps, underlined -- NOT</p> <p>24 want to include this in the UBS package until we</p> <p>25 discuss, but please see attached showing the</p>	<p style="text-align: right;">344</p> <p><b>1 A I see that.</b></p> <p>2 Q And did you also affirmatively say, oh,</p> <p>3 and by the way, that was the time when</p> <p>4 substantially all of CDO Fund's assets, including</p> <p>5 any interest it may have had in Multi Strat, were</p> <p>6 attempted to be transferred to Sentinel? Did you</p> <p>7 say that, in words or substance, in any way to</p> <p>8 Mr. Seery or Mr. Demo in connection with the</p> <p>9 statement directing them to the attached that</p> <p>10 showed the Multi Strat position being written off?</p> <p>11 MS. SMITH: Objection, form.</p> <p><b>12 A At -- I did not mention Sentinel in the</b></p> <p><b>13 context of these documents. I was still</b></p> <p><b>14 researching why the financial records showed what</b></p> <p><b>15 they showed.</b></p> <p><b>16 BY MR. CLUBOK:</b></p> <p>17 Q Well, but you're still researching why the</p> <p>18 records showed a write-off on the exact day in</p> <p>19 August of 2017 when you had been told that all the</p> <p>20 assets of CDO Fund were supposed to be transferred</p> <p>21 to Sentinel for an after-the-event insurance</p> <p>22 policy, correct?</p> <p>23 MS. SMITH: Objection, form.</p> <p><b>24 A My concern is that that write-off should</b></p> <p><b>25 have actually taken place much, much earlier.</b></p>



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<p style="text-align: right;">345</p> <p><b>1 BY MR. CLUBOK:</b></p> <p>2 Q I understand what you're saying now, but</p> <p>3 the fact is you did know that that write-off that</p> <p>4 you referred them to was the date that all of the</p> <p>5 assets of CDO Fund were supposed to be transferred</p> <p>6 to Sentinel, correct?</p> <p>7 MS. SMITH: Objection, form.</p> <p><b>8 A I knew that the ATE transfer had taken</b></p> <p><b>9 place on or about August 2017.</b></p> <p><b>10 BY MR. CLUBOK:</b></p> <p>11 Q And when you referred them to this</p> <p>12 document that showed a write-off for this asset</p> <p>13 related to Multi Strat as of that date, you failed</p> <p>14 to mention that, correct?</p> <p>15 MS. SMITH: Objection, form.</p> <p><b>16 A I did not mention that.</b></p> <p>17 MR. CLUBOK: Let's go off the record.</p> <p>18 MS. SMITH: Good. Because I need to take</p> <p>19 a break.</p> <p>20 THE VIDEOGRAPHER: We are off the record</p> <p>21 at 7:04 p.m.</p> <p>22 (Recess taken from 7:04 p.m. CDT to</p> <p>23 7:25 p.m. CDT)</p> <p>24 THE VIDEOGRAPHER: The time is 7:25 p.m.</p> <p>25 We are back on the record.</p>	<p style="text-align: right;">347</p> <p>1 supposedly traded and settled August 11th, 2017,</p> <p>2 correct?</p> <p><b>3 A It shows that it was written off on that</b></p> <p><b>4 date. Any entry in WSO generates a "trade ticket"</b></p> <p><b>5 even if it's not technically a trade.</b></p> <p>6 Q But, in fact, it says, Trade Type, Sell,</p> <p>7 on the document, correct?</p> <p><b>8 A It says sell because it's -- well, because</b></p> <p><b>9 it's coming from the perspective of Highland</b></p> <p><b>10 CDO Fund. So, yes, that's what it says.</b></p> <p>11 Q Then it says the counterparty is just a</p> <p>12 write-off, supposedly, pursuant to this document,</p> <p>13 right?</p> <p><b>14 A It does say that.</b></p> <p>15 Q But, in fact, following August 11th, 2017,</p> <p>16 Sentinel appeared as a significant redeemer in</p> <p>17 Multi Strat; isn't that true?</p> <p><b>18 A I'm sorry, after which date, sir?</b></p> <p>19 Q Following -- after -- at some point after</p> <p>20 August of 2017, Multi Strat started showing up as</p> <p>21 one of the significant redeemers in the interest</p> <p>22 in Multi Strat, correct?</p> <p>23 MS. SMITH: Objection, form.</p> <p><b>24 A I'm sorry, you lost me, sir.</b></p> <p>25 MR. CLUBOK: Beg your pardon?</p>
<p style="text-align: right;">346</p> <p><b>1 BY MR. CLUBOK:</b></p> <p>2 Q Mr. Leventon, referring back to</p> <p>3 Exhibit 73, this was the cover sheet e-mail on the</p> <p>4 first page that -- in which you said you did not</p> <p>5 want to include certain information in the UBS</p> <p>6 package until you discussed, and then you referred</p> <p>7 Mr. Seery and Mr. Demo and Mr. Romey, copying</p> <p>8 Scott Ellington, to the attachments showing the</p> <p>9 Multi Strat position being written off in August</p> <p>10 of 2017. Do you see that?</p> <p><b>11 A Sorry, I'm losing a little focus. I think</b></p> <p><b>12 what you represented is what the document says.</b></p> <p>13 Q Right.</p> <p><b>14 A Yeah.</b></p> <p>15 Q And so we looked at the first attachment</p> <p>16 to Exhibit 73, but I want to refer you to the</p> <p>17 second attachment to Exhibit 73, which you --</p> <p>18 which according to the attachments is a WSO Trade</p> <p>19 No. 9684001. Do you see that?</p> <p><b>20 A Yes.</b></p> <p>21 Q And that shows -- what is this document?</p> <p><b>22 A So this is what's called a WSO trade</b></p> <p><b>23 ticket.</b></p> <p>24 Q And this document reflects the fact that</p> <p>25 the interest in Multi Strat for CDO Fund was</p>	<p style="text-align: right;">348</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q At some point after August of 2017,</p> <p>4 Sentinel shows up on a list of redeemers with</p> <p>5 respect to the Multi Strat partnership, correct?</p> <p><b>6 A At some point Sentinel does show up as a</b></p> <p><b>7 redeemer from Multi Strat.</b></p> <p>8 Q And I'm going to hand you what's been</p> <p>9 marked as Exhibit 74, which is a two-page cover</p> <p>10 e-mail with an attachment that says Request for</p> <p>11 Redemption of Shares, that purports to be with</p> <p>12 respect to an entity called Sentinel Reinsurance</p> <p>13 to Highland Multi Strategy Credit Fund.</p> <p>14 (Deposition Exhibit 74 marked for</p> <p>15 identification.)</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Do you see Exhibit 74? Do you see</p> <p>18 Exhibit 74, sir?</p> <p><b>19 A Yes. I haven't had a chance to review it</b></p> <p><b>20 yet.</b></p> <p>21 Q Well, I just want to ask you something</p> <p>22 simple. If you look at the request for redemption</p> <p>23 of shares for Sentinel Reinsurance, have you ever</p> <p>24 seen this request before today, as far as you</p> <p>25 know?</p>

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<p style="text-align: right;">349</p> <p>1 <b>A I don't recall ever having seen this</b>                  2 <b>before.</b>                  3 Q Did you know that Sentinel Reinsurance was                  4 listed as a redeemer with respect to Multi Strat?                  5 <b>A I think I did, yes.</b>                  6 Q And did you ever, in words or substance,                  7 convey any issues that you might have had with                  8 respect to Sentinel's supposed stake in                  9 Multi Strat based on any of the work you did?                  10 <b>A I'm sorry, I don't understand that</b>                  11 <b>question, sir.</b>                  12 Q Did you ever talk to either the directors                  13 or the Pachulski firm about Sentinel's redemption                  14 interest in Multi Strat?                  15 <b>A I know that there were extensive</b>                  16 <b>discussions about redeemers in that fund, but I</b>                  17 <b>don't remember if there was a specific discussion</b>                  18 <b>about Sentinel.</b>                  19 Q Did you ever mention, in words or                  20 substance, that Sentinel had some connection to                  21 Jim Dondero or Scott Ellington, to either the                  22 directors or the Pachulski firm?                  23 <b>A I never spoke to them about it one way or</b>                  24 <b>another.</b>                  25 Q And did you ever -- in the course of that</p>	<p style="text-align: right;">350</p> <p>1 research you did with respect to CDP Fund's                  2 interest, if any, in Multi Strat, to the extent                  3 that they were -- one of the conclusions you came                  4 to was that they may have been extinguished in                  5 2011 or '12?                  6 <b>A Yes.</b>                  7 Q How were they extinguished? By a sale?                  8 By them just disappearing? By redemption? How?                  9 <b>A Restructuring.</b>                  10 Q What do you mean?                  11 <b>A So if the interests were -- if the limited</b>                  12 <b>partnership interest was at the level that we</b>                  13 <b>colloquially called MVCDO, my understanding was</b>                  14 <b>that MVCDO had issued notes prior to the financial</b>                  15 <b>crisis and then it went through a restructuring</b>                  16 <b>transaction sometime in 2011, where the notes</b>                  17 <b>essentially wiped out the equity holders and then</b>                  18 <b>noteholders became the new equity of MVCDO and</b>                  19 <b>then, I think, they had to be essentially redeemed</b>                  20 <b>out in cash over time.</b>                  21 Q Who redeemed out the cash interest in                  22 Multi Strat?                  23 <b>A The noteholders.</b>                  24 Q Who were they?                  25 <b>A Third-party investors. I don't remember</b></p>
<p style="text-align: right;">351</p> <p>1 <b>who they are, but they weren't affiliated with</b>                  2 <b>Highland or Dondero or anybody in any way.</b>                  3 Q So you're saying based on the research                  4 you've done, any interest that Sentinel believes                  5 they obtained in August of 2017 from CDO Fund in                  6 Multi Strat is nonexistent?                  7 <b>A That was my preliminary conclusion.</b>                  8 Q And did you share that specific conclusion                  9 with Mr. Demo?                  10 <b>A The conclusion I shared with him was that</b>                  11 <b>I thought that those interests may have been wiped</b>                  12 <b>out in 2011 and that that was my preliminary</b>                  13 <b>conclusion.</b>                  14 Q And did you ever tell anyone at Sentinel                  15 that that's the conclusion you reached, that what                  16 they have on their books as a redemption interest                  17 is really worthless as far as you believe?                  18 <b>A I don't generally talk to any -- I'm</b>                  19 <b>trying to -- I don't want to say at Sentinel</b>                  20 <b>because that's characterizing what people's roles</b>                  21 <b>are, but I do remember at one point telling</b>                  22 <b>Mr. DiOrio this may not exist.</b>                  23 Q When was that?                  24 <b>A You may not own this.</b>                  25 Q When did you tell Mr. DiOrio that?</p>	<p style="text-align: right;">352</p> <p>1 <b>A Would have been August or September 2020.</b>                  2 Q Around the time you were tasked with                  3 tracking down what happened with CDO Fund's                  4 assets?                  5 <b>A Yes.</b>                  6 Q And so you -- why did you go to Mr. DiOrio                  7 to share this belief you had with respect to                  8 Sentinel's interest or lack thereof in                  9 Multi Strat? Why Mr. DiOrio, of all the people                  10 you could have told?                  11 <b>A I believe he was on the board of Sentinel.</b>                  12 Q You knew he was a director at the time of                  13 Sentinel, right?                  14 <b>A Actually, I didn't. I knew he was -- had</b>                  15 <b>day-to-day responsibility kind of for Sentinel,</b>                  16 <b>but I don't actually know he was a director.</b>                  17 Q You just imagined right now when you said                  18 you knew he was on the board?                  19 <b>A Well, I know today that he was on the</b>                  20 <b>board.</b>                  21 Q How do you know today?                  22 <b>A Really through this discovery and lawsuit</b>                  23 <b>process.</b>                  24 Q Who told you?                  25 <b>A I don't recall. I may have gotten it from</b></p>

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1 **Mr. DiOrio, I may have gotten it from counsel who**  
 2 **got it from Mr. DiOrio.**  
 3 Q So you've spoken with Mr. DiOrio about  
 4 this process?  
 5 **A About this deposition?**  
 6 Q About this litigation -- this adversary  
 7 proceeding.  
 8 MS. SMITH: Objection to form.  
 9 **A No, what I said was I either found out**  
 10 **that he was a director -- it wasn't -- I mean, I**  
 11 **either found out that he was a director from him**  
 12 **or I found out from outside counsel.**  
 13 **BY MR. CLUBOK:**  
 14 Q You spoke --  
 15 MS. SMITH: Objection, I don't want him to  
 16 reveal privileged information.  
 17 **BY MR. CLUBOK:**  
 18 Q I'm not asking about what you found out  
 19 from your lawyers. But you have spoken with  
 20 Mr. DiOrio about this -- about the subject of this  
 21 adversary proceeding, correct?  
 22 **A I'm trying to parse out -- well, I'm**  
 23 **trying to parse out what conversations I would**  
 24 **have had with him -- I mean, really, the**  
 25 **conversations I would have had with him, if any,**

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1 **would have been including our lawyers.**  
 2 Q You had a conversation with Mr. DiOrio  
 3 with your lawyers present?  
 4 **A I honestly don't remember, sir. I don't**  
 5 **remember how I found out. It was one of those two**  
 6 **ways.**  
 7 Q Did you have any conversations with any  
 8 other witnesses with your lawyers present about  
 9 the subject matter of this adversary proceeding?  
 10 **A We spoke about motions that were pending.**  
 11 Q Did you talk about the substance of this  
 12 adversary proceeding with other individuals  
 13 involved in this proceeding in your lawyers -- in  
 14 one group meeting?  
 15 **A No. We would have -- our group meetings**  
 16 **would have addressed pending procedural motions.**  
 17 Q Okay. But Mr. DiOrio at some point during  
 18 one of those group meetings disclosed that he was  
 19 a director of Sentinel?  
 20 **A Again, I don't recall if he disclosed that**  
 21 **or if I was told that by my outside counsel.**  
 22 Q But back -- so back in 2017 -- sorry, back  
 23 in 2020, you didn't know he was the director, you  
 24 just understood he had day-to-day responsibility  
 25 for Sentinel at the Highland organization?

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1 **A That's right.**  
 2 Q And so you went to him -- he didn't -- did  
 3 he task you with reporting to him your views about  
 4 Sentinel's redemption interest in Multi Strat?  
 5 **A No.**  
 6 Q But you affirmatively made the choice to  
 7 go tell him that, you thought that was information  
 8 that was important for him to know, correct?  
 9 **A I decided to tell him.**  
 10 Q And you didn't make a similar decision to  
 11 tell Mr. Seery or the Pachulski lawyers about that  
 12 subject at the time, correct?  
 13 **A I did tell them the same thing at the**  
 14 **time.**  
 15 Q No, you didn't tell them that Sentinel's  
 16 interest -- redemption interest in Multi Strat  
 17 might be worthless, like you told Mr. DiOrio,  
 18 correct?  
 19 MS. SMITH: Objection to form.  
 20 **A We -- I don't think we ever talked about**  
 21 **Sentinel's redemption interest.**  
 22 **BY MR. CLUBOK:**  
 23 Q Right. So you told Mr. DiOrio that the  
 24 interest that Sentinel believed it had purchased  
 25 from CDO Fund that was on the books as a

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1 redemption interest might be worthless in your  
 2 view, or words to that effect, correct?  
 3 **A I think that's fair.**  
 4 Q But you didn't tell that same information  
 5 to Mr. Seery or any of the Pachulski lawyers,  
 6 correct?  
 7 **A I think I more talked about --**  
 8 Q Is that yes or no? I didn't ask what you  
 9 more talked about.  
 10 **A Fair enough.**  
 11 Q I just want to ask about this.  
 12 **A I didn't talk about Sentinel at all with**  
 13 **the Pachulski lawyers.**  
 14 Q Even though you affirmatively went to  
 15 Mr. DiOrio to tell him that, correct? Correct?  
 16 **A I did not speak to the Pachulski lawyers**  
 17 **about Sentinel, that I recall.**  
 18 Q Okay. Getting back to subject we talked  
 19 about earlier today -- oh, you said you had  
 20 discussions with Mr. DiOrio about the ATE policy.  
 21 You said there were two people you've ever spoken  
 22 to about it, Mr. DiOrio and Mr. Ellington, right?  
 23 **A That's not 100 percent accurate.**  
 24 Q Okay. What is -- why is that not  
 25 accurate?

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<p style="text-align: right;">357</p> <p>1 <b>A I mean, I had already spoken to</b>                  2 <b>Mr. Sevilla about the ATE policy.</b>                  3 Q Okay. But Mr. DiOrion, what, if anything,                  4 did you talk to him about with respect to the                  5 ATE policy, other than this subject?                  6 <b>A On an annual basis, we would talk to</b>                  7 <b>Beecher Carlson and he would set up those</b>                  8 <b>conversations.</b>                  9 Q On an annual basis, meaning 2017, 2018,                  10 2019 and 2020?                  11 <b>A I think that's right, yes.</b>                  12 Q How about 2021, before you were                  13 terminated?                  14 <b>A I don't think so.</b>                  15 Q Who is responsible for speaking to Beecher                  16 Carlson in 2021 about the policy?                  17 <b>A I don't know. Not me.</b>                  18 Q Did you ever suggest to anyone, in words                  19 or substance, that they should make a claim on a                  20 policy once you learned about the judgment in the                  21 New York litigation?                  22 <b>A I don't remember if I spoke -- if I did,</b>                  23 <b>it would have been with Mr. Ellington.</b>                  24 Q And did you suggest, in words or                  25 substance, that Mr. Ellington should cause a claim</p>	<p style="text-align: right;">359</p> <p>1 that was being contemplated that we talked about                  2 in April of 2017, you know the settlement that had                  3 the first step being purchase a \$100 million                  4 ATE policy from Sentinel using substantially all                  5 of the assets of CDO Fund, HFP -- remember that                  6 discussion?                  7 <b>A I remember we had a discussion around a</b>                  8 <b>document from April of 2017 related to settlement</b>                  9 <b>analysis.</b>                  10 Q Prior to that contemplated transaction,                  11 was there another potential transaction that would                  12 have resulted in a settlement whereby there would                  13 be some new company established that would                  14 purchase claims from UBS as part of a settlement                  15 structure that you were involved in helping draft?                  16 <b>A That would buy claims from UBS?</b>                  17 Q Yeah. That as part of a settlement would                  18 result in some new company in the Caymans                  19 purchasing claims from UBS and then settling those                  20 claims with the funds so that the funds would end                  21 up still insolvent to avoid the tax liability? Is                  22 that a concept that you ever were involved in                  23 discussing with anyone?                  24 <b>A Not that I recall.</b>                  25 Q Anyone ever raise the fact that the -- all</p>
<p style="text-align: right;">358</p> <p>1 to be made on the ATE policy?                  2 <b>A I may have. I just don't remember.</b>                  3 Q You don't remember at all whether you did                  4 or didn't?                  5 MS. SMITH: Objection, form.                  6 BY MR. CLUBOK:                  7 Q That's what you're saying?                  8 <b>A That's correct.</b>                  9 Q Did you believe that he should -- strike                  10 that.                  11 Did you believe that a claim should have                  12 been made on the ATE policy at any point while you                  13 were still employed with Highland?                  14 <b>A I don't know that I came to a view one way</b>                  15 <b>or another.</b>                  16 Q You might have, but you just don't know if                  17 you did or you didn't?                  18 <b>A I don't remember -- I might have. I don't</b>                  19 <b>remember.</b>                  20 Q And did you ever share any view about                  21 whether a claim should be made on the policy with                  22 any of the independent directors or with the                  23 Pachulski lawyers?                  24 <b>A No.</b>                  25 Q Prior to April -- prior to the transaction</p>	<p style="text-align: right;">360</p> <p>1 these ideas of transferring assets were                  2 potentially illegal efforts to avoid taxes?                  3 MS. SMITH: Objection to form.                  4 BY MR. CLUBOK:                  5 Q Did anyone ever raise that possibility in                  6 any of the discussions you had?                  7 <b>A No, no one ever said anything like that.</b>                  8 Q Okay. And I believe this may be the last                  9 topic, I think. You -- we asked you earlier about                  10 Skyview Legal PC. Asked you about whose idea it                  11 was to start it. Can you answer that question                  12 now?                  13 <b>A Yes. It was -- the idea for it came from</b>                  14 <b>a gentleman by the name of Jim McCormack, who</b>                  15 <b>is -- was a legal ethics counsel that we retained.</b>                  16 Q Why?                  17 <b>A Skyview Group wanted to determine if it</b>                  18 <b>was providing legal services. And if it was</b>                  19 <b>providing legal services, if that was appropriate</b>                  20 <b>under its current structure or whether or not it</b>                  21 <b>needed to essentially create an affiliated law</b>                  22 <b>firm or a dedicated law firm in order to avoid</b>                  23 <b>unauthorized practice of law issues.</b>                  24 Q Okay. And you're the sole director at                  25 this point of Skyview Legal PC?</p>

<p style="text-align: right;">361</p> <p><b>1 A I am, I think. We just formed it like a</b></p> <p><b>2 couple weeks ago.</b></p> <p>3 Q Okay. And then I do have one last</p> <p>4 document that my colleague handed me that I'm</p> <p>5 going to just ask you about, and that's</p> <p>6 Exhibit 75.</p> <p>7 (Deposition Exhibit 75 marked for</p> <p>8 identification.)</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q It's a one -- it's a double-sided,</p> <p>11 single-page document that reflects an e-mail</p> <p>12 exchange that starts with an e-mail from me to</p> <p>13 Scott Ellington, copying some other counsel, which</p> <p>14 is then forwarded to you and Scott Ellington and</p> <p>15 Scott Ellington confirms approved.</p> <p>16 MS. SMITH: What number are we on?</p> <p>17 MR. CLUBOK: 75. Thank you.</p> <p>18 MS. SMITH: I missed 74.</p> <p>19 MR. CLUBOK: Exhibit 75.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q And this is an e-mail chain that is from</p> <p>22 December 2nd, 2019, the subject, Confirmation of</p> <p>23 our understanding. And I asked Mr. Ellington to</p> <p>24 respond confirmed if you agree that it reflects</p> <p>25 our discussion. And the first item is that we</p>	<p style="text-align: right;">362</p> <p>1 were going to tell the Court that we are committed</p> <p>2 to having good faith settlement discussions, and</p> <p>3 we asked the Court to hold the opinion and the</p> <p>4 attached judgment, the form of which we have</p> <p>5 already agreed to and advised her of such during</p> <p>6 our call, for another ten business days from today</p> <p>7 with the possibility we'll extend further as</p> <p>8 needed.</p> <p>9 Do you see that?</p> <p><b>10 A I do.</b></p> <p>11 Q So you were aware that the Court had</p> <p>12 already made a decision awarding roughly a billion</p> <p>13 dollars in damages, at least as of December 2nd,</p> <p>14 2019, although that had not yet been made public,</p> <p>15 correct?</p> <p><b>16 A Correct.</b></p> <p>17 Q And we agreed also that we were going to</p> <p>18 tell the Court that we planned to enter into the</p> <p>19 attached stipulation, which was an agreed upon</p> <p>20 request for relief from automatic stay, correct?</p> <p><b>21 A Are you talking about bullet point 2?</b></p> <p>22 Q Yeah. If a settlement could be resolved,</p> <p>23 the parties were going to jointly request relief</p> <p>24 from automatic stay according to this</p> <p>25 understanding, correct?</p>
<p style="text-align: right;">363</p> <p><b>1 A I think that's a fair -- I'm just reading</b></p> <p><b>2 bullet point 2, but that sounds like a fair</b></p> <p><b>3 characterization of that bullet point.</b></p> <p>4 Q Okay. And Scott -- Angela Somers sends an</p> <p>5 e-mail to you and Scott Ellington, asking to</p> <p>6 confirm that you've agreed to the terms below</p> <p>7 since we were not involved in these discussions</p> <p>8 and we assumed you've worked with bankruptcy</p> <p>9 counsel on the stay relief and possible claim.</p> <p>10 Do you see that?</p> <p><b>11 A Yes.</b></p> <p>12 Q And then Mr. Ellington writes back, yes,</p> <p>13 approved, in response to that question from</p> <p>14 Ms. Somers. Do you see that?</p> <p><b>15 A Yes.</b></p> <p>16 Q Was that truthful what Mr. Ellington said</p> <p>17 in that e-mail?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q As far as you knew at the time?</p> <p><b>21 A That he had agreed to the terms below?</b></p> <p>22 Q Yes.</p> <p><b>23 A I had no idea. I wasn't involved in those</b></p> <p><b>24 conversations between you and Mr. Ellington.</b></p> <p>25 Q Did you know whether he had worked with</p>	<p style="text-align: right;">364</p> <p>1 bankruptcy counsel on the stay relief and possible</p> <p>2 claim?</p> <p><b>3 A I didn't know one way or another.</b></p> <p>4 Q Did you ask him whether or not what he</p> <p>5 said was true on this e-mail that you were copied</p> <p>6 on, or that was actually sent to you by Angela?</p> <p><b>7 A No, I never asked him if his statement was</b></p> <p><b>8 true or false.</b></p> <p>9 Q Did you follow up at all?</p> <p><b>10 A I saw no reason to follow up, so no, I</b></p> <p><b>11 didn't.</b></p> <p>12 Q As part of the good-faith settlement</p> <p>13 discussions, do you know whether or not</p> <p>14 Mr. Ellington ever disclosed that there was a</p> <p>15 after-the-event insurance policy that could be</p> <p>16 used to satisfy a judgment in the New York</p> <p>17 litigation?</p> <p>18 MS. SMITH: Objection to form.</p> <p><b>19 A I wasn't part of Mr. Ellington's</b></p> <p><b>20 conversations with you. I don't know.</b></p> <p><b>21 BY MR. CLUBOK:</b></p> <p>22 Q But you knew at the time that there was an</p> <p>23 ATE policy that could be used to satisfy the</p> <p>24 judgment that was about to be made public,</p> <p>25 correct?</p>

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<p style="text-align: right;">365</p> <p>1 <b>A I knew of the existence of the ATE policy,</b>                  2 <b>yes.</b>                  3 Q Did you make any effort to disclose that                  4 to UBS?                  5 MS. SMITH: Objection, form.                  6 <b>A I didn't -- I didn't talk to -- the only</b>                  7 <b>person that would be UBS would be you and I didn't</b>                  8 <b>talk do you about this.</b>                  9 <b>BY MR. CLUBOK:</b>                  10 Q So you made no effort to disclose in any                  11 way to UBS through counsel that there was an                  12 ATE policy from Sentinel that could be invoked to                  13 pay up to roughly \$91 million or more with respect                  14 to the judgment in the New York litigation,                  15 correct?                  16 MS. SMITH: Objection, form.                  17 <b>A I never -- I'm sorry, I got lost in who</b>                  18 <b>all the people were that I didn't speak to.</b>                  19 <b>BY MR. CLUBOK:</b>                  20 Q Okay. This is my last question, so I just                  21 want to -- I'll try to say this as simply as                  22 possible. I'll break it down.                  23 <b>A Okay.</b>                  24 Q You knew as of December 2nd, 2019, that                  25 the Court was about to enter judgment of roughly a</p>	<p style="text-align: right;">367</p> <p>1 <b>in my face.</b>                  2 Q I totally understand.                  3 Sir, in December of 2019, you understood                  4 that there was roughly 80 to \$100 million of                  5 insurance money available to the defendants in the                  6 New York litigation to either satisfy the judgment                  7 or settle the claims, correct?                  8 <b>A I knew that there was 80 to \$100 million</b>                  9 <b>of insurance on the after-the-event policy with</b>                  10 <b>Sentinel so that, yeah, probably could be used to</b>                  11 <b>settle or pay some amounts to UBS.</b>                  12 Q And did you ever, you ever cause that                  13 information to be transferred or communicated --                  14 sorry. Did you ever cause that information to be                  15 communicated to UBS in any way?                  16 MS. SMITH: Objection, form.                  17 <b>A I did not -- I didn't -- did I cause that</b>                  18 <b>information to be communicated to UBS? I didn't</b>                  19 <b>instruct people what to tell UBS; they instructed</b>                  20 <b>me. So, no, I -- we never -- that never came up.</b>                  21 <b>BY MR. CLUBOK:</b>                  22 Q And you knew at the time, that UBS was a                  23 creditor in the restructuring, correct?                  24 <b>A You mean in the Highland bankruptcy?</b>                  25 Q Sorry. You knew at the time that UBS was</p>
<p style="text-align: right;">366</p> <p>1 billion dollars, correct?                  2 <b>A Yes.</b>                  3 Q And you knew that there was an ATE policy                  4 that could be used to satisfy that judgment or to                  5 settle the remaining claims, correct?                  6 <b>A I knew about the ATE policy and that it</b>                  7 <b>could be used to pay UBS some amounts.</b>                  8 Q And you knew that the amount was roughly                  9 \$100 million, maybe minus the legal fees that you                  10 had already authorized to be paid, correct?                  11 <b>A I don't think I knew the exact amount, no.</b>                  12 Q But you knew it was in the neighborhood of                  13 \$100 million at the time?                  14 <b>A My recollection is somewhere between 80</b>                  15 <b>and 100, but I wasn't sure where. It was clearly</b>                  16 <b>a big number.</b>                  17 Q Okay. You understood that there was                  18 roughly 80 to \$100 million of insurance money                  19 available to either satisfy the judgment or to                  20 settle the claims that were the subject of the                  21 judgment in the New York litigation, correct?                  22 <b>A Can you repeat that one more time? Sorry,</b>                  23 <b>the sun literally was right in my eyes.</b>                  24 Q That is totally fine. This is really it.                  25 <b>A I'm not trying to play games. The sun was</b></p>	<p style="text-align: right;">368</p> <p>1 a creditor in the Highland bankruptcy, correct?                  2 <b>A Yes.</b>                  3 MR. CLUBOK: That's all I have. Thank                  4 you.                  5 THE VIDEOGRAPHER: This concludes the                  6 videotaped deposition of Isaac Leventon. The time                  7 is 7:52 p.m. We are off the record.                  8 (Deposition concluded at 7:52 p.m. CDT)                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>

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ACKNOWLEDGMENT OF DEPONENT

I, ISAAC D. LEVENTON, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

(DATE) (SIGNATURE)

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REPORTER'S CERTIFICATION

I, Micheal A. Johnson, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of July, 2021.

*Micheal A. Johnson*

MICHEAL A. JOHNSON, RDR, CRR  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



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INFORMATION REDACTED**

# Transcript of Matthew T. DiOrio

**Date:** July 23, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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<p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION</p> <p>4 In re § 5 HIGHLAND CAPITAL § Chapter 11 6 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11 7 Debtor. § 8 UBS SECURITIES LLC AND § 9 UBS AG LONDON BRANCH, § 10 Plaintiffs, § Adversary Proceeding 11 VS. § No. 21-03020-sgj 12 HIGHLAND CAPITAL § 13 MANAGEMENT, L.P., § 14 Defendant. §</p> <p>15 HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION REDACTED</p> <p>18 Videotaped Deposition of 19 MATTHEW T. DiORIO 20 Dallas, Texas 21 Friday, July 23, 2021 22 9:44 a.m.</p> <p>23 Job No.: 386790 24 Pages: 1 - 346 25 Reported by: Micheal A. Johnson, RDR, CRR</p>	<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS 3 UBS SECURITIES LLC AND 4 UBS AG LONDON BRANCH:</p> <p>5 Sarah Tomkowiak 6 LATHAM &amp; WATKINS LLP 7 555 Eleventh Street, N.W., Suite 1000 8 Washington, D.C. 20004 9 (202) 637-2200 10 sarah.tomkowiak@lw.com</p> <p>11 Shannon E. McLaughlin 12 LATHAM &amp; WATKINS LLP 13 885 Third Avenue 14 New York, New York 10022-4834 15 (212) 906-4612 16 shannon.mclaughlin@lw.com</p> <p>17 ON BEHALF OF DEFENDANT 18 HIGHLAND CAPITAL MANAGEMENT, L.P.:</p> <p>19 Robert J. Feinstein (Via Zoom) 20 PACHULSKI STANG ZIEHL &amp; JONES LLP 21 780 Third Avenue, 34th Floor 22 New York, New York 10017-2024 23 (212) 561-7700 24 rfeinstein@pszjlaw.com</p> <p>25 ON BEHALF OF THE WITNESS:</p> <p>26 Frances A. Smith 27 ROSS &amp; SMITH, PC 28 700 N. Pearl Street, Suite 1610 29 Dallas, Texas 75201 30 (214) 377-7879 31 frances.smith@judithwross.com</p> <p>32 Debra A. Dandeneau 33 Michelle Hartmann 34 BAKER &amp; MCKENZIE, LLP 35 452 Fifth Avenue 36 New York, New York 10018 37 (212) 626-4875 38 debra.dandeneau@bakermckenzie.com 39 michelle.hartmann@bakermckenzie.com</p>
<p>1 Deposition of MATTHEW T. DiORIO, held at 2 the location of:</p> <p>3 Butler Snow LLP 4 2911 Turtle Creek Boulevard, Suite 1400 5 Dallas, Texas 75219 6 (469) 680-5500</p> <p>7 Pursuant to Notice, before Micheal A. 8 Johnson, Registered Diplomat Reporter and 9 Certified Realtime Reporter.</p>	<p>1 APPEARANCES CONTINUED</p> <p>2 VIDEOGRAPHER: 3 Brian Krieger</p>

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9	<p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: Here begins disk No. 1</p> <p>3 in the videotaped deposition of Matthew DiOrio.</p> <p>4 This is in regards to the Highland Capital</p> <p>5 Management, LP. It is in the matter of UBS</p> <p>6 Securities LLC and UBS AG, London Branch versus</p> <p>7 Highland Capital Management, LP. This is in the</p> <p>8 United States Bankruptcy Court for the Northern</p> <p>9 District of Texas, Dallas Division, filed as case</p> <p>10 number 19-34054-SGJ11.</p> <p>11 Today's date is Friday, July 23rd, 2021.</p> <p>12 Our time on the video monitor is 9:44 a.m. The</p> <p>13 videographer today is Brian Krieger representing</p> <p>14 PlanetDepos. This video deposition is taking</p> <p>15 place at Butler Snow at 2911 Turtle Creek</p> <p>16 Boulevard in Dallas, Texas.</p> <p>17 If counsel would please identify</p> <p>18 themselves for the record and whom they represent.</p> <p>19 MS. SMITH: Frances Smith with Ross &amp;</p> <p>20 Smith PC on behalf of the witness, Matt DiOrio.</p> <p>21 MS. HARTMANN: Michelle Hartmann of Baker</p> <p>22 McKenzie, also on behalf of the witness.</p> <p>23 MS. DANDENEAU: Debra Dandeneau from Baker</p> <p>24 McKenzie, also on behalf of the witness.</p> <p>25 MS. McLAUGHLIN: Shannon McLaughlin with</p>	11
10	<p>1 Latham &amp; Watkins on behalf of UBS.</p> <p>2 MS. TOMKOWIAK: Sarah Tomkowiak with</p> <p>3 Latham &amp; Watkins on behalf of UBS.</p> <p>4 MR. FEINSTEIN: On the Zoom, Robert</p> <p>5 Feinstein, Pachulski Stang Ziehl &amp; Jones, counsel</p> <p>6 for defendant, Highland Capital Management, LP.</p> <p>7 THE VIDEOGRAPHER: The court reporter</p> <p>8 today is Micheal Johnson also representing</p> <p>9 PlanetDepos. If the court would please swear in</p> <p>10 the witness.</p> <p>11 MATTHEW T. DiORIO,</p> <p>12 called as a witness, having been duly sworn by a</p> <p>13 Notary Public, was examined and testified as</p> <p>14 follows:</p> <p>15 EXAMINATION</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Mr. DiOrio, can you please state your full</p> <p>18 name for the record.</p> <p>19 A <b>Matthew Thomas DiOrio.</b></p> <p>20 Q Where do you live?</p> <p>21 A <b>In Dallas.</b></p> <p>22 Q Can you please state your address.</p> <p>23 &lt;-- HIGHLY CONFIDENTIAL</p> <p>24 --&gt;</p> <p>25 Q Have you ever been deposed before?</p>	12
	<p>1 A <b>No.</b></p> <p>2 Q Okay. So just a couple of ground rules.</p> <p>3 I'm sure your counsel has gone over this with you,</p> <p>4 but most importantly, let's try not to talk over</p> <p>5 each other today and if you don't understand a</p> <p>6 question that I've asked, please ask me to clarify</p> <p>7 it. Otherwise, I'm going to assume that you do</p> <p>8 understand the question that I've asked. Is that</p> <p>9 fair?</p> <p>10 A <b>Yes.</b></p> <p>11 Q Okay. Do you understand that you're</p> <p>12 testifying here today under oath?</p> <p>13 A <b>I do.</b></p> <p>14 Q What did you do to prepare for today's</p> <p>15 deposition?</p> <p>16 A <b>I met with counsel. They kind of laid out</b></p> <p>17 <b>what this would be like, the setup and everything.</b></p> <p>18 <b>That was about it.</b></p> <p>19 Q And when you say counsel, do you mean the</p> <p>20 individuals in this room?</p> <p>21 A <b>Yes.</b></p> <p>22 Q How many times did you meet?</p> <p>23 A <b>Once or twice.</b></p> <p>24 Q For how long?</p> <p>25 A <b>We met last Friday for most of the day.</b></p>	
	<p>1 Q Was that all?</p> <p>2 A <b>Yes.</b></p> <p>3 Q And without telling me what you looked at,</p> <p>4 did you look at any documents?</p> <p>5 A <b>No. It was mainly conversational.</b></p> <p>6 Q You're not a lawyer, right?</p> <p>7 A <b>That's correct.</b></p> <p>8 Q Okay. Do you have any professional</p> <p>9 licenses?</p> <p>10 A <b>No.</b></p> <p>11 Q Where are you currently employed?</p> <p>12 A <b>Skyview Group.</b></p> <p>13 Q What does Skyview Group do?</p> <p>14 A <b>Provides kind of back and middle office</b></p> <p>15 <b>services to financial services companies, banks,</b></p> <p>16 <b>that sort of thing.</b></p> <p>17 Q Who hired you?</p> <p>18 A <b>Who hired me?</b></p> <p>19 Q Uh-huh.</p> <p>20 A <b>Skyview Group.</b></p> <p>21 Q Who at Skyview Group hired you?</p> <p>22 A <b>I'm not sure who was on my employment</b></p> <p>23 <b>letter, but...</b></p> <p>24 Q Well, is there an individual who reached</p> <p>25 out to you to -- how did you come to work for</p>	

<p style="text-align: right;">13</p> <p>1 Skyview?</p> <p>2 <b>A A lot of the former Highland employees</b></p> <p>3 <b>like myself were sent offer letters, I believe by</b></p> <p>4 <b>Brian Collins, who's the HR manager.</b></p> <p>5 Q Okay. And so you were sent an offer</p> <p>6 letter?</p> <p>7 <b>A That's correct.</b></p> <p>8 Q Okay. Do you recall when that was?</p> <p>9 <b>A Early March, late February. I don't know</b></p> <p>10 <b>the exact date.</b></p> <p>11 Q Okay. And what is your title at Skyview?</p> <p>12 <b>A Managing director.</b></p> <p>13 Q What are your responsibilities as managing</p> <p>14 director?</p> <p>15 <b>A I've been taking on a variety of projects</b></p> <p>16 <b>for one of our bank clients, and then I'm helping</b></p> <p>17 <b>find us office space, for example, at the moment.</b></p> <p>18 Q Do you have an office now?</p> <p>19 <b>A No.</b></p> <p>20 Q Okay. You don't -- okay. So Skyview</p> <p>21 doesn't have any physical office space right now?</p> <p>22 <b>A No.</b></p> <p>23 Q Okay. And when did you start working</p> <p>24 there?</p> <p>25 <b>A Early March. I'm not sure of the date.</b></p>	<p style="text-align: right;">15</p> <p>1 Skyview, how would I send it?</p> <p>2 <b>A I actually don't know.</b></p> <p>3 Q Okay. What if I wanted to call Skyview,</p> <p>4 is there a number I could call?</p> <p>5 <b>A You'd have to call the person directly</b></p> <p>6 <b>that you wanted to speak to.</b></p> <p>7 Q Would it go to your cell phone?</p> <p>8 <b>A Probably. If you were looking for me,</b></p> <p>9 <b>yeah.</b></p> <p>10 Q You said that you were working for a</p> <p>11 particular client. Is that client affiliated with</p> <p>12 Highland in any way?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A We have confidentiality agreements with</b></p> <p>15 <b>our clients. I'm not entirely sure if I can</b></p> <p>16 <b>answer that.</b></p> <p>17 <b>BY MS. TOMKOWIAK:</b></p> <p>18 Q Well, this is a -- first of all, this</p> <p>19 proceeding itself can be designated confidential.</p> <p>20 You'll have an opportunity to review the</p> <p>21 transcript. In any event, I'm not asking for the</p> <p>22 name of the client, I'm just asking you if they're</p> <p>23 affiliated in any way with Highland.</p> <p>24 <b>A I don't believe so.</b></p> <p>25 Q Okay. Do you work with any clients that</p>
<p style="text-align: right;">14</p> <p>1 Q Who do you report to?</p> <p>2 <b>A JP Sevilla, I guess.</b></p> <p>3 Q Do you know who he reports to?</p> <p>4 <b>A Scott Ellington.</b></p> <p>5 Q Mr. Sevilla is a lawyer, right?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Is there a reason that you report to him,</p> <p>8 or do you know?</p> <p>9 <b>A I sat in the legal group at Highland and</b></p> <p>10 <b>that's kind of where they put me at Skyview.</b></p> <p>11 Q Who owns Skyview?</p> <p>12 <b>A I believe Scott Ellington.</b></p> <p>13 Q What's your compensation at Skyview?</p> <p>14 <b>A Base salary or bonus or --</b></p> <p>15 Q Both. Total compensation.</p> <p>16 <b>A It will be about \$400,000 this year.</b></p> <p>17 Q How does that compare to your salary at</p> <p>18 Highland?</p> <p>19 <b>A About the same. I get a base salary</b></p> <p>20 <b>raise, but everything else has been flat.</b></p> <p>21 Q And you said that you currently don't have</p> <p>22 office space. Are you currently working out of</p> <p>23 NexPoint's office space?</p> <p>24 <b>A No.</b></p> <p>25 Q No. Okay. What if I want to send mail to</p>	<p style="text-align: right;">16</p> <p>1 are affiliated with Mr. Dondero?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And what about Mr. Ellington? Do you work</p> <p>4 with any clients who are affiliated with</p> <p>5 Mr. Ellington?</p> <p>6 <b>A No. I mean, he owns the company that I</b></p> <p>7 <b>work for.</b></p> <p>8 Q Right.</p> <p>9 <b>A But other than that, no.</b></p> <p>10 Q Do you know if Mr. Ellington's the sole</p> <p>11 owner of that company?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 <b>A I believe he is at the moment.</b></p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q Do you believe that's going to change?</p> <p>16 <b>A It's supposed to at some point.</b></p> <p>17 Q How is it supposed to change?</p> <p>18 <b>A Employees that were hired from Highland</b></p> <p>19 <b>are supposed to at some point receive some sort of</b></p> <p>20 <b>equity grant.</b></p> <p>21 Q Do you --</p> <p>22 MS. SMITH: Objection, form. I'm going to</p> <p>23 object to the relevance of this line of</p> <p>24 questioning as it's not in accordance with the</p> <p>25 orders of the Court on the -- it's supposed to be</p>

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<p style="text-align: right;">17</p> <p>1 related to the temporary restraining order -- or</p> <p>2 the motion for temporary restraining order and</p> <p>3 motion for preliminary injunction, as I've done</p> <p>4 the last two days. And it's not within the scope</p> <p>5 of the judge's ruling when she said we can talk</p> <p>6 about Sentinel and what it's all related to.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Is the legal name of Skyview, Highgate; do</p> <p>9 you know?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 A <b>It's not Highgate.</b></p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q It's not?</p> <p>14 A <b>No.</b></p> <p>15 Q Do you know what the legal name is?</p> <p>16 A <b>It's Highgate Consulting Group, Inc., dba</b></p> <p>17 <b>Skyview Group.</b></p> <p>18 Q Does Skyview have any subsidiaries?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A <b>I don't know the answer to that.</b></p> <p>21 BY MS. TOMKOWIAK:</p> <p>22 Q What about an entity called CPCM? Do you</p> <p>23 know what that is?</p> <p>24 A <b>I've heard the name.</b></p> <p>25 Q Do you know what it is?</p>	<p style="text-align: right;">19</p> <p>1 A <b>No.</b></p> <p>2 Q Do you currently sit on the board of any</p> <p>3 companies?</p> <p>4 A <b>Yes.</b></p> <p>5 Q What companies?</p> <p>6 A <b>GLA Resorts Holdings, LLC. It's a</b></p> <p>7 <b>Delaware company.</b></p> <p>8 Q Any others?</p> <p>9 A <b>No.</b></p> <p>10 Q What does GAL [sic] Resorts Holdings do?</p> <p>11 A <b>It's GLA.</b></p> <p>12 Q I'm sorry, what?</p> <p>13 A <b>GLA.</b></p> <p>14 Q GLA. Thank you. What does that do?</p> <p>15 A <b>It owns a piece of property in the west</b></p> <p>16 <b>end of Grand Bahamas that it's in the process of</b></p> <p>17 <b>trying to sell.</b></p> <p>18 Q Does it have any operations?</p> <p>19 A <b>Just trying to sell the property.</b></p> <p>20 Q Does anybody else sit on the board of that</p> <p>21 company?</p> <p>22 A <b>Yes.</b></p> <p>23 Q Who?</p> <p>24 A <b>Scott Ellington.</b></p> <p>25 Q Anybody else?</p>
<p style="text-align: right;">18</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A <b>Something to do with employment claims.</b></p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Okay. And, in fact, you assigned your</p> <p>5 claim in the bankruptcy matter to CPCM, right?</p> <p>6 A <b>I think that's right.</b></p> <p>7 MS. SMITH: Objection, form.</p> <p>8 BY MS. TOMKOWIAK:</p> <p>9 Q Do you know what consideration you</p> <p>10 received for that claim?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A <b>Employment at Skyview.</b></p> <p>13 BY MS. TOMKOWIAK:</p> <p>14 Q Okay. So assigning your claim to CPCM was</p> <p>15 a condition of your employment at Skyview?</p> <p>16 A <b>That's my understanding.</b></p> <p>17 Q Do you know what the amount of that claim</p> <p>18 was with respect to you?</p> <p>19 A <b>I don't.</b></p> <p>20 MS. SMITH: Objection, form.</p> <p>21 A <b>I don't.</b></p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q Do you have any other current employers?</p> <p>24 A <b>No.</b></p> <p>25 Q Do you have any other sources of income?</p>	<p style="text-align: right;">20</p> <p>1 A <b>A gentleman by the name of Mark Rechan.</b></p> <p>2 Q Can you spell that?</p> <p>3 A <b>M-a-r-k R-e-c-h-a-n.</b></p> <p>4 Q Anybody else?</p> <p>5 A <b>That's it.</b></p> <p>6 Q How long have you served as a director</p> <p>7 for -- can I call it GLA?</p> <p>8 A <b>Yes.</b></p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A <b>I was appointed in November of 2019.</b></p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q How did you come to sit on the board of</p> <p>13 that entity?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A <b>Highland appointed me.</b></p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Is it owned by Highland?</p> <p>18 A <b>Partially.</b></p> <p>19 Q Who else owns GLA?</p> <p>20 MS. SMITH: Objection as to form.</p> <p>21 A <b>It's owned by -- I think there are about</b></p> <p>22 <b>50 partners all-in in the ownership structure.</b></p> <p>23 BY MS. TOMKOWIAK:</p> <p>24 Q Do you know who specifically from Highland</p> <p>25 appointed you?</p>

<p style="text-align: right;">21</p> <p>1 MS. SMITH: Objection as to form.</p> <p>2 <b>A I don't know who specifically appointed</b></p> <p>3 <b>me.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q Have you ever served as a managing member</p> <p>6 of an LLC?</p> <p>7 <b>A I'm not sure.</b></p> <p>8 Q Why aren't you sure?</p> <p>9 <b>A I'm just -- I'm not sure.</b></p> <p>10 Q Like, do you have a management position at</p> <p>11 an LLC and you're just not sure if it's a managing</p> <p>12 member, or why aren't you sure?</p> <p>13 <b>A Yeah, I'm not sure if anything I've ever</b></p> <p>14 <b>done would be considered managing member</b></p> <p>15 <b>specifically.</b></p> <p>16 Q So that's not a term that you've used to</p> <p>17 describe your own role?</p> <p>18 <b>A No, not that I recall.</b></p> <p>19 Q How long have you known Scott Ellington?</p> <p>20 <b>A Ten, 11 years.</b></p> <p>21 Q How did you meet?</p> <p>22 <b>A Through a friend.</b></p> <p>23 Q What friend?</p> <p>24 <b>A What's his name?</b></p> <p>25 Q Yeah.</p>	<p style="text-align: right;">23</p> <p>1 Q Okay. So prior to receiving that</p> <p>2 complaint, you had no idea that Mr. Ellington</p> <p>3 owned part of Sentinel Reinsurance?</p> <p>4 <b>A I assumed, but I never knew one way or the</b></p> <p>5 <b>other.</b></p> <p>6 Q Why did you assume?</p> <p>7 <b>A Why did I assume that he owned it?</b></p> <p>8 Q Yeah.</p> <p>9 <b>A That's just what I had heard, but I never</b></p> <p>10 <b>saw any specific documentation that said he owns</b></p> <p>11 <b>XYZ or whatever. That's what I meant.</b></p> <p>12 Q And when you say that's just what I heard,</p> <p>13 who did you hear that from?</p> <p>14 <b>A I don't specifically remember.</b></p> <p>15 Q Do you recall when you heard that?</p> <p>16 <b>A I don't.</b></p> <p>17 Q Was it -- well, let me ask you. How -- in</p> <p>18 what capacity did you do work for Sentinel</p> <p>19 Reinsurance?</p> <p>20 <b>A I was a director.</b></p> <p>21 Q Okay. So did you hear that Mr. Ellington</p> <p>22 was an owner in Sentinel Reinsurance before or</p> <p>23 after you became a director?</p> <p>24 <b>A Not entirely sure. Maybe around the same</b></p> <p>25 <b>time.</b></p>
<p style="text-align: right;">22</p> <p>1 <b>A Matt Okolita.</b></p> <p>2 Q And other than Skyview, have you ever done</p> <p>3 work for any other companies owned by</p> <p>4 Mr. Ellington?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 <b>A Owned how? What do you mean by owned?</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Owned in any way, directly, indirectly,</p> <p>9 partly, wholly owned in any way.</p> <p>10 <b>A I believe I have.</b></p> <p>11 Q Okay. And what are those companies or</p> <p>12 entities?</p> <p>13 <b>A Sentinel Reinsurance.</b></p> <p>14 Q Okay. Anything else?</p> <p>15 <b>A SAS Asset Recovery.</b></p> <p>16 Q Anything else? Just give a verbal answer</p> <p>17 just so we have a clear record.</p> <p>18 <b>A Oh, no, not that I'm aware of.</b></p> <p>19 Q Okay. And what's your understanding of</p> <p>20 how Mr. Ellington owns Sentinel Reinsurance?</p> <p>21 <b>A I just know generally. I heard in court</b></p> <p>22 <b>it's a split between he and Mr. Dondero.</b></p> <p>23 Q Okay. And you heard that from whom?</p> <p>24 <b>A It was said in, I believe the complaint</b></p> <p>25 <b>that we were allowed to review.</b></p>	<p style="text-align: right;">24</p> <p>1 Q And did you understand at that same time</p> <p>2 that Mr. Dondero was also an owner of Sentinel?</p> <p>3 <b>A I had an idea.</b></p> <p>4 Q How did you have an idea?</p> <p>5 <b>A Well, I was appointed by -- Mr. Ellington</b></p> <p>6 <b>told me I was going on the board and then I just</b></p> <p>7 <b>knew that he had some sort of arrangement with</b></p> <p>8 <b>Jim.</b></p> <p>9 Q Some sort of arrangement with Jim, meaning</p> <p>10 some type of ownership arrangement with Jim?</p> <p>11 <b>A That was my understanding.</b></p> <p>12 Q Okay. Did Mr. Ellington tell you that?</p> <p>13 <b>A I don't recall.</b></p> <p>14 Q Okay. So you came to an understanding</p> <p>15 that Mr. Ellington and Mr. Dondero had some type</p> <p>16 of ownership arrangement with respect to Sentinel</p> <p>17 around the time that you became a director; is</p> <p>18 that fair?</p> <p>19 <b>A Sounds right.</b></p> <p>20 Q Do you recall when you became a director</p> <p>21 of Sentinel?</p> <p>22 <b>A I think it was September of 2017. I don't</b></p> <p>23 <b>recall the exact date.</b></p> <p>24 Q Okay. And we'll come back to that, but</p> <p>25 you said Mr. Ellington appointed you; is that</p>

<p style="text-align: right;">25</p> <p>1 right?</p> <p>2 <b>A Well, he told me I was going on the board.</b></p> <p>3 Q He told you you were going on the board.</p> <p>4 <b>A Asked if I wanted to serve, I guess would</b></p> <p>5 <b>be a better phrasing.</b></p> <p>6 Q Okay. And you agreed to?</p> <p>7 <b>A That's right.</b></p> <p>8 Q Okay. Was that a condition of your</p> <p>9 employment at Highland?</p> <p>10 <b>A I don't believe so.</b></p> <p>11 Q Do you do any work for Mr. Ellington in</p> <p>12 his personal capacity?</p> <p>13 <b>A At times.</b></p> <p>14 Q What type of work?</p> <p>15 <b>A He has a -- I pay rent on his warehouse</b></p> <p>16 <b>space that he has.</b></p> <p>17 Q Anything else?</p> <p>18 <b>A No.</b></p> <p>19 Q Do you manage any of his finances?</p> <p>20 <b>A No.</b></p> <p>21 Q Why do you pay rent on his warehouse?</p> <p>22 <b>A He asked me to take care of it.</b></p> <p>23 Q Do you do that -- are you compensated for</p> <p>24 that?</p> <p>25 <b>A No.</b></p>	<p style="text-align: right;">26</p> <p>1 Q Do you perform any type of investment</p> <p>2 services for Mr. Ellington?</p> <p>3 <b>A No.</b></p> <p>4 Q Are you familiar with an entity called</p> <p>5 TT3 Partners?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Okay. And that's an LLC, right?</p> <p>8 <b>A That's correct.</b></p> <p>9 Q Okay. And I know you said earlier you</p> <p>10 would not use this term, but -- so you're not a</p> <p>11 managing member of TT3 Partners, LLC?</p> <p>12 <b>A I don't know, honestly.</b></p> <p>13 Q You don't know. Did you form that</p> <p>14 company?</p> <p>15 <b>A I believe so.</b></p> <p>16 Q Okay. So you formed the company but</p> <p>17 you're not sure what your title is?</p> <p>18 <b>A That's right.</b></p> <p>19 Q Did you prepare the formation</p> <p>20 documentation?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 <b>A I don't honestly know if I did or not.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q So who would have done that?</p> <p>25 <b>A Possibly --</b></p>	<p style="text-align: right;">27</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 <b>A -- Sarah Goldsmith.</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q Who is Sarah Goldsmith?</p> <p>5 <b>A She was the legal group admin at Highland</b></p> <p>6 <b>Capital.</b></p> <p>7 Q What is TT3 Partners?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 <b>A It's a company I joined with a friend to</b></p> <p>10 <b>make an investment in a venture capital fund.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q What friend?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A Matt Okolita.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q That's the person you said introduced you</p> <p>17 to Mr. Ellington?</p> <p>18 <b>A Yes.</b></p> <p>19 Q How do you know Mr. Okolita?</p> <p>20 <b>A I went to high school with him.</b></p> <p>21 Q And what venture capital fund are you</p> <p>22 investing in?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 <b>A I'd have to look for the exact name. I</b></p> <p>25 <b>think it's Preface something, Preface Ventures or</b></p>	<p style="text-align: right;">28</p> <p>1 <b>something like that.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q And why would Ms. Goldsmith have prepared</p> <p>4 those paperwork?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 <b>A Because she knew how to do it.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Okay. So was that done in her capacity as</p> <p>9 a Highland employee?</p> <p>10 <b>A I don't know.</b></p> <p>11 Q Well, did you ask her to prepare that</p> <p>12 paperwork?</p> <p>13 <b>A If she did it, I would have asked her,</b></p> <p>14 <b>yes.</b></p> <p>15 Q Okay. And if you would have asked her,</p> <p>16 would you be asking her as a personal favor or in</p> <p>17 her capacity as some employee of some entity?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A I wouldn't have thought about that either</b></p> <p>20 <b>way.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q Okay. Did you pay her to do that?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 <b>A I don't believe so. Or if I -- sorry. If</b></p> <p>25 <b>I -- if she did it, I don't -- I wouldn't have</b></p>
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<p style="text-align: right;">29</p> <p><b>1 paid her, no.</b></p> <p><b>2 BY MS. TOMKOWIAK:</b></p> <p>3 Q Okay. So -- just to be clear, so you --</p> <p>4 do you recall that you filed papers with the</p> <p>5 Secretary of State of Texas to form TT3 Partners?</p> <p>6 MS. SMITH: Objection, form.</p> <p><b>7 A I'm sure that happened, yeah.</b></p> <p><b>8 BY MS. TOMKOWIAK:</b></p> <p>9 Q Okay. But you don't know who prepared</p> <p>10 those papers?</p> <p><b>11 A Right. I don't recall.</b></p> <p>12 Q Okay. That was in October of 2020; is</p> <p>13 that right?</p> <p>14 MS. SMITH: Objection, form.</p> <p><b>15 A Sounds right.</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q Did Mr. Okolita previously work at</p> <p>18 Highland?</p> <p><b>19 A He did.</b></p> <p>20 Q Do you know when?</p> <p><b>21 A It was -- I don't know the exact dates. I</b></p> <p><b>22 think he left around 2010 or '11.</b></p> <p>23 Q Do you know why he left?</p> <p><b>24 A I believe to take another job.</b></p> <p>25 Q Do you know where he works today?</p>	<p style="text-align: right;">31</p> <p>1 Highland or HCM, you'll understand that I mean</p> <p>2 Highland Capital Management?</p> <p><b>3 A I think so.</b></p> <p>4 Q Okay. And when did -- were you employed</p> <p>5 by Highland?</p> <p><b>6 A Again, I don't remember the exact date,</b></p> <p><b>7 but March of 2017.</b></p> <p>8 Q And how did you come to start working at</p> <p>9 Highland?</p> <p><b>10 A I'm not sure I understand. What do you</b></p> <p><b>11 mean?</b></p> <p>12 Q How did you come to work at Highland? Did</p> <p>13 you fill out an application? Did somebody call</p> <p>14 you? How did you come to start working there?</p> <p><b>15 A I was hired by Mr. Ellington.</b></p> <p>16 Q Did you apply?</p> <p><b>17 A I'm sure I filled out an application.</b></p> <p>18 Q Did he invite you to fill out an</p> <p>19 application?</p> <p><b>20 A I believe I would have had to as a</b></p> <p><b>21 condition of being employed.</b></p> <p>22 Q Okay. But did you approach him or did he</p> <p>23 approach you?</p> <p>24 MS. SMITH: Objection, form.</p> <p><b>25 A I'm not entirely sure. I don't really</b></p>
<p style="text-align: right;">30</p> <p><b>1 A Yes.</b></p> <p>2 Q Where?</p> <p><b>3 A Greyline Partners or Greyline Solutions or</b></p> <p><b>4 Greyline something.</b></p> <p>5 Q What is Greyline?</p> <p><b>6 A It's a -- I think it's a consulting</b></p> <p><b>7 company in the financial services industry.</b></p> <p>8 Q Is it Greyline or Greystone, if you know?</p> <p><b>9 A It would be Greyline.</b></p> <p>10 Q Greyline. Okay. Is Greyline affiliated</p> <p>11 at all with Highland?</p> <p><b>12 A Not to my knowledge.</b></p> <p>13 Q Is Greyline affiliated with Mr. Ellington?</p> <p><b>14 A Not to my knowledge.</b></p> <p>15 Q Is Greyline affiliated with Mr. Dondero?</p> <p><b>16 A Not to my knowledge.</b></p> <p>17 Q Do you provide any services to Greyline?</p> <p><b>18 A No.</b></p> <p>19 MS. SMITH: Objection, form.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q So before you worked at -- you came to</p> <p>22 work at Skyview, you were employed by Highland</p> <p>23 Capital Management, right?</p> <p><b>24 A That's correct.</b></p> <p>25 Q Okay. And if I refer to them today as</p>	<p style="text-align: right;">32</p> <p><b>1 remember.</b></p> <p><b>2 BY MS. TOMKOWIAK:</b></p> <p>3 Q So at some point it just came up with</p> <p>4 Mr. Ellington that you should apply to work at</p> <p>5 Highland?</p> <p>6 MS. SMITH: Objection, form.</p> <p><b>7 A At some point.</b></p> <p><b>8 BY MS. TOMKOWIAK:</b></p> <p>9 Q At some point do you recall in proximity</p> <p>10 to when you actually started working there in</p> <p>11 March 2017?</p> <p><b>12 A My best guess would be I was in grad</b></p> <p><b>13 school at the time and a group of my fellow</b></p> <p><b>14 students were -- there's these things called MBA+</b></p> <p><b>15 projects in my program, where you go seek someone</b></p> <p><b>16 out in a different industry and get experience</b></p> <p><b>17 doing a different project, and our MBA+ project</b></p> <p><b>18 was with Highland via Mr. Ellington. So I assume</b></p> <p><b>19 our work there had something to do with it.</b></p> <p>20 Q Did you know Mr. Ellington before that</p> <p>21 MBA+ project?</p> <p><b>22 A Yes.</b></p> <p>23 Q Was it your idea to do your project with</p> <p>24 Highland?</p> <p><b>25 A If it -- probably. Yeah, no one else knew</b></p>



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33	<p>1 anyone at Highland, so it was probably my idea.</p> <p>2 Q Where did you go to grad school?</p> <p>3 A UT, University of Texas.</p> <p>4 Q So was Highland your first job after grad</p> <p>5 school?</p> <p>6 A I graduated in May, but I started in</p> <p>7 March, so I was just wrapping up.</p> <p>8 Q And where -- were you working while you</p> <p>9 were in grad school?</p> <p>10 A A company called Constellation Brands.</p> <p>11 Q What does Constellation Brands do?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 A What's its business, its industry?</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Uh-huh.</p> <p>16 A It's in the alcohol industry.</p> <p>17 Q Okay. And what was your role there?</p> <p>18 A I worked in the beer division as a -- I</p> <p>19 guess -- I think my title was analysis manager.</p> <p>20 Q What does an analysis manager do?</p> <p>21 A Made a lot of --</p> <p>22 Q What did you do as an analysis manager?</p> <p>23 A Made a lot of spreadsheets and financial</p> <p>24 modeling.</p> <p>25 Q Financial modeling for what?</p>	35
34	<p>1 A Different scenarios that would come up in</p> <p>2 the, I guess, beer sales process, any promotions,</p> <p>3 potential sales, that sort of thing.</p> <p>4 Q Okay. What's your graduate degree in? Is</p> <p>5 it an MBA?</p> <p>6 A It's an MBA, yes.</p> <p>7 Q Do you have any specific focus?</p> <p>8 A No, no concentration.</p> <p>9 Q Where did you work before Constellation</p> <p>10 Brands?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A Sorry. It's been a while. I think my</p> <p>13 last job was at Dean Foods.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Okay. I'm sorry, like approximately what</p> <p>16 period of time did you work for Constellation</p> <p>17 Brands?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A It was, I think, the three years prior.</p> <p>20 So '14 to '17, three years.</p> <p>21 BY MS. TOMKOWIAK:</p> <p>22 Q Okay. And then you said you worked at</p> <p>23 Dean Foods before that, for approximately how</p> <p>24 long?</p> <p>25 A I think a couple years.</p>	36

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<p style="text-align: right;">37</p> <p><b>1 table. It's an open floor plan.</b></p> <p>2 Q So I've heard. Did anybody report to you?</p> <p><b>3 A No.</b></p> <p>4 Q Okay. And did you stay in the legal</p> <p>5 department your entire time at HCM?</p> <p><b>6 A Sort of.</b></p> <p>7 Q What do you mean by that?</p> <p><b>8 A Eventually private equity -- the private</b></p> <p><b>9 equity group moved into the legal department which</b></p> <p><b>10 I worked for, so technically it still fell under</b></p> <p><b>11 the legal umbrella, I guess. But my function</b></p> <p><b>12 changed to mainly private equity starting in 2019.</b></p> <p>13 Q Were you still a director?</p> <p><b>14 A In 2019, yes.</b></p> <p>15 Q Did that title change at any point in</p> <p>16 time?</p> <p><b>17 A Yes. Yes. Excuse me.</b></p> <p>18 Q No worries. When did it change?</p> <p><b>19 A Early 2020.</b></p> <p>20 Q What did it change to?</p> <p><b>21 A Managing director.</b></p> <p>22 Q So that was a promotion?</p> <p><b>23 A In name, I guess.</b></p> <p>24 Q And anything else?</p> <p><b>25 A No.</b></p>	<p style="text-align: right;">39</p> <p>1 Q And were you managing director until you</p> <p>2 were terminated from Highland?</p> <p><b>3 A Yes.</b></p> <p>4 Q When did you leave Highland?</p> <p><b>5 A I don't remember the exact date, but a day</b></p> <p><b>6 before everyone else.</b></p> <p>7 Q So in early February 2020?</p> <p><b>8 A Mid, late February maybe, but</b></p> <p><b>9 February 2020 -- 2021, excuse me.</b></p> <p>10 Q Okay. And you were terminated; is that</p> <p>11 right?</p> <p><b>12 A That's correct.</b></p> <p>13 Q Who terminated you?</p> <p><b>14 A Jim Seery.</b></p> <p>15 Q Did Mr. Seery tell you why you were being</p> <p>16 terminated?</p> <p><b>17 A He said performance issues.</b></p> <p>18 Q Did he say anything besides performance</p> <p>19 issues?</p> <p><b>20 A No.</b></p> <p>21 Q Did you ask him what he meant by</p> <p>22 performance issues?</p> <p><b>23 A I didn't.</b></p> <p>24 Q You didn't want to know what performance</p> <p>25 issues were -- had led to your termination?</p>
<p style="text-align: right;">38</p> <p>1 Q Same compensation?</p> <p><b>2 A That's correct.</b></p> <p>3 Q You may have said this, but did you report</p> <p>4 to Mr. Ellington the entire time that you were</p> <p>5 employed at Highland?</p> <p><b>6 A Until private equity matters rolled up to</b></p> <p><b>7 JP Sevilla and Tim Cournoyer. They were made</b></p> <p><b>8 co-heads of private equity.</b></p> <p>9 Q So would you say that in 2019 you reported</p> <p>10 to Tim and JP?</p> <p><b>11 A On private equity matters.</b></p> <p>12 Q And then did you continue to also report</p> <p>13 to Mr. Ellington on other matters?</p> <p><b>14 A On distressed matters.</b></p> <p>15 Q Were you ever told that the work that you</p> <p>16 were doing was considered to be attorney-client</p> <p>17 privileged in any way?</p> <p><b>18 A What specific work?</b></p> <p>19 Q Any of the work that you were doing,</p> <p>20 either for the distressed investments or the</p> <p>21 private equity stuff.</p> <p><b>22 A Not that I recall.</b></p> <p>23 Q When you came to work for the private</p> <p>24 equity side, did anybody report to you?</p> <p><b>25 A No.</b></p>	<p style="text-align: right;">40</p> <p>1 MS. SMITH: Objection, form.</p> <p><b>2 A I was curious, but I wasn't going to say</b></p> <p><b>3 anything.</b></p> <p><b>4 BY MS. TOMKOWIAK:</b></p> <p>5 Q Why not?</p> <p><b>6 A Didn't seem to be a productive next step</b></p> <p><b>7 in the conversation.</b></p> <p>8 Q You said a day before everybody else. Who</p> <p>9 were you referring to by everybody else?</p> <p><b>10 A There was -- as part of the -- as I</b></p> <p><b>11 understand it anyway, as part of the bankruptcy,</b></p> <p><b>12 several -- or many of the Highland employees were</b></p> <p><b>13 terminated on the last -- I think the last day of</b></p> <p><b>14 February or the last weekday in February. And I</b></p> <p><b>15 say a day before because Mr. Seery mentioned when</b></p> <p><b>16 he was terminating me that I know it's a day</b></p> <p><b>17 before everyone else.</b></p> <p>18 Q So I just want to make sure I understood</p> <p>19 the pronouns. He mentioned that when he was</p> <p>20 terminating you that he knew it was a day before</p> <p>21 everybody else?</p> <p><b>22 A Uh-huh.</b></p> <p>23 Q Okay. Sorry, what do you -- so he let you</p> <p>24 know that he was terminating you a day before he</p> <p>25 was terminating other people?</p>

41	<p>1 <b>A I think it was public at that point or</b></p> <p>2 <b>known by the employees that their last day was</b></p> <p>3 <b>whatever the day was.</b></p> <p>4 Q Had you been told prior to that</p> <p>5 conversation with Mr. Seery that you would be</p> <p>6 included in the groups of -- the group of</p> <p>7 employees that were being terminated?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 <b>A I assumed I was.</b></p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Why?</p> <p>12 <b>A No one asked me to stay, at the debtor.</b></p> <p>13 Q So you thought that unless you were asked</p> <p>14 to stay, you would be terminated?</p> <p>15 <b>A That was my assumption.</b></p> <p>16 Q So you weren't surprised when you were</p> <p>17 terminated?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A I was very surprised when I was</b></p> <p>20 <b>terminated.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q Okay. Why?</p> <p>23 <b>A Because it was for some sort of cause, and</b></p> <p>24 <b>I was just expecting to be let go as part of the</b></p> <p>25 <b>bankruptcy, like everyone else.</b></p>
42	<p>1 Q So it was your understanding that</p> <p>2 everybody else who was fired in February 2021 was</p> <p>3 let go because of the bankruptcy?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Okay. And you believe that you were let</p> <p>6 go for cause and that was unique to you?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Did you come to that understanding on your</p> <p>9 own?</p> <p>10 <b>A I was the only one in the room when I was</b></p> <p>11 <b>fired. No one else was a part of that, so that</b></p> <p>12 <b>was my assumption.</b></p> <p>13 Q You and Mr. Seery?</p> <p>14 <b>A He was on the phone.</b></p> <p>15 Q Oh, he was on the phone. So you were at</p> <p>16 Highland's office?</p> <p>17 <b>A I was at the Highland office, that's</b></p> <p>18 <b>correct.</b></p> <p>19 Q And he was on the phone?</p> <p>20 <b>A That's correct.</b></p> <p>21 Q Okay. Were you expecting his call?</p> <p>22 <b>A No.</b></p> <p>23 Q Was that your last day in the office?</p> <p>24 <b>A I was walked out shortly thereafter.</b></p> <p>25 Q Did you have a chance to clean out your</p>
43	<p>1 desk?</p> <p>2 <b>A Yeah.</b></p> <p>3 Q You did?</p> <p>4 <b>A I did.</b></p> <p>5 Q All right. And what -- did you take</p> <p>6 anything with you?</p> <p>7 <b>A Just papers and whatever I had there,</b></p> <p>8 <b>under the supervision of a DSI employee.</b></p> <p>9 Q Did you leave any files there?</p> <p>10 <b>A There was -- I didn't take everything on</b></p> <p>11 <b>my desk, so I assume, yeah.</b></p> <p>12 Q What did you take?</p> <p>13 <b>A Personal stuff, that I thought was</b></p> <p>14 <b>personal. Again, it was kind of a high-pressure</b></p> <p>15 <b>stressful situation. I was just grabbing stuff</b></p> <p>16 <b>and leaving, while the guy was standing there.</b></p> <p>17 Q Did Mr. Seery tell you you needed to leave</p> <p>18 immediately?</p> <p>19 <b>A Yes. Or if he didn't, one of the DSI guys</b></p> <p>20 <b>who was in the room did.</b></p> <p>21 Q And just so I understand, so you -- you</p> <p>22 said there was an open floor plan. So when you</p> <p>23 say the room, were you --</p> <p>24 <b>A I was called into the Bois d'Arc</b></p> <p>25 <b>conference room.</b></p>
44	<p>1 Q Okay. Who called you into there?</p> <p>2 <b>A James Romey from DSI.</b></p> <p>3 Q So Mr. -- were you finished?</p> <p>4 <b>A He had another guy with him, but I don't</b></p> <p>5 <b>know his name.</b></p> <p>6 Q So they called you into the Bois d'Arc</p> <p>7 conference room and said -- and said what?</p> <p>8 <b>A They came to my desk and said, not</b></p> <p>9 <b>verbatim obviously, but Mr. Seery or Jim wants to</b></p> <p>10 <b>speak to you, he's on the phone in the conference</b></p> <p>11 <b>room.</b></p> <p>12 Q Okay. So then you went into the</p> <p>13 conference room and that's where you had your</p> <p>14 conversation with Mr. Seery?</p> <p>15 <b>A That's correct.</b></p> <p>16 Q Do you recall approximately how long that</p> <p>17 lasted?</p> <p>18 <b>A Couple minutes.</b></p> <p>19 Q And again, other than performance issues,</p> <p>20 you don't recall Mr. Seery saying -- giving you</p> <p>21 any other reason for why you were being let go?</p> <p>22 <b>A Not specific reasons, no. He read some --</b></p> <p>23 <b>I assume it's a standard letting-you-go letter and</b></p> <p>24 <b>then I said, may I ask why, and he said,</b></p> <p>25 <b>performance issues and I said nothing further.</b></p>

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<p style="text-align: right;">45</p> <p>1 Q And after you hung up the phone, did 2 somebody from DSI come back into the room? 3 <b>A They were in the room the entire time.</b> 4 Q Okay. So you were in the room with two 5 individuals from DSI? 6 <b>A That's correct.</b> 7 Q And they -- what did they say to you after 8 that? 9 <b>A Not much. Just that I had to get my stuff</b> 10 <b>and get out of there.</b> 11 Q Did you have a computer that was given to 12 you by Highland? 13 <b>A I did.</b> 14 Q And what did you do with that? 15 <b>A I left it on my desk.</b> 16 Q Did you have a phone that was given to you 17 by Highland? 18 <b>A No.</b> 19 Q Did you have any other technology devices 20 that were provided to you by Highland? 21 <b>A At that time?</b> 22 Q At the time that you were terminated, 23 yeah. 24 <b>A No, just the laptop.</b> 25 Q Okay. And are you -- did you qualify your</p>	<p style="text-align: right;">46</p> <p>1 answer because you had other devices previously 2 during your employment at Highland? 3 <b>A I had a tablet at one point before I got</b> 4 <b>the laptop, but never -- never multiple devices at</b> 5 <b>the same time. That is why I asked.</b> 6 Q Understood. Have you done any work for 7 Highland -- any entity affiliated with Highland 8 since your separation? 9 MS. SMITH: Objection, form. 10 <b>A I was allowed to stay on the board of the</b> 11 <b>GLA Resorts Holdings that I mentioned, which I</b> 12 <b>still sit on.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q And when you say that you were allowed, 15 was that -- did you have like a specific 16 conversation with somebody about that? 17 <b>A I did, via e-mail.</b> 18 Q With who? 19 <b>A I e-mailed Jim Seery and Thomas Surgent</b> 20 <b>asking to stay on the board.</b> 21 Q What did they say? 22 <b>A They allowed me to stay on the board.</b> 23 Q Did they say why? 24 <b>A Not specifically.</b> 25 Q Did they say why generally?</p>
<p style="text-align: right;">47</p> <p>1 <b>A Just -- in my e-mail to them, I said that</b> 2 <b>we were in the process of selling the underlying</b> 3 <b>property that I mentioned earlier and that it</b> 4 <b>wouldn't make sense to put someone else in at this</b> 5 <b>point due to all the work we had done just to</b> 6 <b>get -- and when I say put someone else, replace me</b> 7 <b>on the board. And they said that I would be</b> 8 <b>allowed to continue and just to keep them updated,</b> 9 <b>after I was terminated.</b> 10 Q Have you kept them updated? 11 <b>A Yes.</b> 12 Q I think you said this earlier, but you 13 still haven't sold that property, right? By you, 14 I mean GLA. 15 <b>A It's under a purchase and sale agreement.</b> 16 <b>It has not closed yes.</b> 17 Q You also stayed on the board of Sentinel 18 after you were terminated, right? 19 <b>A Correct.</b> 20 Q Did you discuss that with anybody? 21 MS. SMITH: Objection, form. 22 <b>A No, not that I recall.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q So you reached out to Mr. Seery to ask if 25 you could stay on the board of GLA, but you did</p>	<p style="text-align: right;">48</p> <p>1 not have a similar outreach with respect to 2 Sentinel? 3 <b>A That's correct.</b> 4 Q Or outreach to anybody else of that 5 nature? 6 <b>A Not that I recall.</b> 7 Q Does Skyview have any contract with 8 Highland to provide shared services? 9 <b>A I believe so.</b> 10 Q Do you know generally what the nature of 11 those services are? 12 <b>A I believe it's IT related and I think</b> 13 <b>there's a tax and accounting function, possibly</b> 14 <b>HR. Other than that, not sure. I don't know the</b> 15 <b>specifics of the actual contract.</b> 16 Q When you were at Highland, were you -- did 17 all of your compensation come from Highland 18 itself? 19 <b>A That's my understanding.</b> 20 Q So you didn't receive a paycheck or wire 21 transfer from any entity other than Highland? 22 <b>A Correct.</b> 23 Q What about as a director of Sentinel? Did 24 you receive any compensation for that? 25 <b>A No.</b></p>

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<p style="text-align: right;">49</p> <p>1 Q And what about for the work that you did</p> <p>2 at SAS Asset Recovery? Did you receive any</p> <p>3 compensation for that?</p> <p>4 <b>A No.</b></p> <p>5 Q Since leaving Highland, have you had any</p> <p>6 communications with Mr. Dondero?</p> <p>7 <b>A Yes.</b></p> <p>8 Q What communications have you had with him?</p> <p>9 <b>A I met him for the first time in March --</b></p> <p>10 <b>or spoke to him for the first time in March of</b></p> <p>11 <b>this year.</b></p> <p>12 Q What do you mean by for the first time?</p> <p>13 <b>A I had never spoken to him prior in my time</b></p> <p>14 <b>at Highland.</b></p> <p>15 Q So you worked at Highland for almost</p> <p>16 four years and never spoke to Mr. Dondero during</p> <p>17 that time?</p> <p>18 <b>A That's correct.</b></p> <p>19 Q And are you making some distinction there</p> <p>20 in terms of like speaking to him face-to-face?</p> <p>21 <b>A I make no distinctions. I've never -- I</b></p> <p>22 <b>never spoke to him.</b></p> <p>23 Q Never spoke to him by e-mail? Never had a</p> <p>24 phone conversation with him?</p> <p>25 <b>A Never.</b></p>	<p style="text-align: right;">50</p> <p>1 Q Does that strike you as weird?</p> <p>2 <b>A Not particularly.</b></p> <p>3 Q What about Mr. Ellington? Since leaving</p> <p>4 Highland, have you -- you know what, actually,</p> <p>5 before we get to that, so you said you met him for</p> <p>6 the first time in March of this year and can you</p> <p>7 tell me about that meeting?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 <b>A We were reviewing a pitch deck.</b></p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Was this before or -- well, this would be</p> <p>12 after you left Highland, right?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Yeah. Okay. And so a pitch deck for</p> <p>15 what?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 <b>A Services that Skyview may provide to</b></p> <p>18 <b>entities that he may control.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Okay. So were you pitching to him?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 <b>A No, I was not.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q So then can you help me understand the</p> <p>25 pitch deck. Were you putting this together? Like</p>
<p style="text-align: right;">51</p> <p>1 were you working on it collaboratively with</p> <p>2 Mr. Dondero?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 <b>A No, I put a pitch deck -- or our group put</b></p> <p>5 <b>a pitch deck together for, again, services. I'm</b></p> <p>6 <b>not sure if I can name -- I'm trying not -- I'm</b></p> <p>7 <b>not trying to be evasive. I'm not sure I can name</b></p> <p>8 <b>the actual businesses.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Well, without naming the businesses, I'm</p> <p>11 just trying to understand who's pitching to who.</p> <p>12 So are you saying that your group -- sorry, that</p> <p>13 was a fast thing.</p> <p>14 Are you saying that your group at Skyview</p> <p>15 put together a pitch deck to provide services to</p> <p>16 entities that are affiliated with Mr. Dondero?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 <b>A That's correct. He's a client of Skyview.</b></p> <p>19 <b>Or his businesses are.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q And so you met with him to review the</p> <p>22 pitch deck but not to give the actual pitch?</p> <p>23 <b>A That's right.</b></p> <p>24 Q Was anybody else at that meeting?</p> <p>25 <b>A No.</b></p>	<p style="text-align: right;">52</p> <p>1 Q Why were you the person who met with</p> <p>2 Mr. Dondero?</p> <p>3 <b>A Because I was building the PowerPoint</b></p> <p>4 <b>presentation.</b></p> <p>5 Q So did you discuss the substance of the</p> <p>6 deck?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 <b>A The substance of the deck?</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Yeah.</p> <p>11 <b>A I suppose so.</b></p> <p>12 Q Okay. Did you ever actually pitch for the</p> <p>13 work?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 <b>A To Mr. Dondero?</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q Yeah.</p> <p>18 <b>A No.</b></p> <p>19 Q So were you already hired by Mr. Dondero</p> <p>20 at the time that you were reviewing this pitch</p> <p>21 book?</p> <p>22 <b>A Was I hired by Mr. Dondero?</b></p> <p>23 MS. SMITH: Objection, form.</p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q Was Skyview hired -- already hired by</p>

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53	<p>1 Mr. Dondero at the time you met to review this 2 deck? 3 <b>A Not with respect to this particular 4 business, no.</b> 5 Q After you met with Mr. Dondero, did -- was 6 Skyview hired by Mr. Dondero to do that work? 7 MS. SMITH: Objection, form. 8 <b>A Several months later, yes.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Approximately when? 11 MS. SMITH: Objection, form. 12 <b>A Between March and June, a couple months 13 after. I don't know the exact date. Again, not 14 trying to be evasive.</b> 15 <b>BY MS. TOMKOWIAK:</b> 16 Q Since leaving Highland, have you had any 17 other communications with Mr. Dondero? 18 <b>A No.</b> 19 Q So when he reached out to hire Skyview, 20 did he reach out to you? 21 <b>A No. That was -- I had nothing to do with 22 any of that.</b> 23 Q Do you know who he reached out to? 24 <b>A I assume JP Sevilla, Brian Collins, Frank 25 Waterhouse, the kind of top guys.</b></p>	55	<p>1 Q How many times? 2 <b>A I have no idea. I've seen him in person.</b> 3 Q Hundreds of times? 4 MS. SMITH: Objection, form. 5 <b>A Hundreds? No. Wouldn't be that much.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Okay. Dozens? 8 <b>A Probably less.</b> 9 Q And have those communications related to 10 your work at Skyview? 11 <b>A Small percentage probably.</b> 12 Q Okay. And what else have you talked to 13 him about? 14 MS. SMITH: Objection, form. 15 <b>A My kids, you know, friendly personal-type 16 stuff.</b> 17 <b>BY MS. TOMKOWIAK:</b> 18 Q So you're -- a small percentage of those 19 conversations were about work and a much larger 20 percentage of those conversations were more 21 personal or social in nature? 22 <b>A That's right.</b> 23 Q And you said you've seen him in person. 24 What was the nature of that in-person 25 communication?</p>
54	<p>1 Q So how did you come to learn that Skyview 2 had been hired for that work? 3 <b>A Well, I was part of the -- I built the 4 deck, so they said -- I was told that we were 5 hired.</b> 6 Q You were told by one of your colleagues at 7 Skyview? 8 <b>A That's right.</b> 9 Q Do you remember who? 10 <b>A It was probably on a group e-mail. I 11 don't know. I don't know specifically.</b> 12 Q You don't know specifically or you just 13 don't recall? 14 <b>A What's the difference here? I don't 15 recall. I don't know specifically who delivered 16 that message.</b> 17 Q Since leaving Highland, have you had any 18 communications with Mr. Ellington? 19 <b>A Yes.</b> 20 MS. SMITH: Objection, form. 21 <b>BY MS. TOMKOWIAK:</b> 22 Q Okay. What type of communications? 23 MS. SMITH: Objection, form. 24 <b>A We've spoken on the phone.</b> 25 <b>BY MS. TOMKOWIAK:</b></p>	56	<p>1 MS. SMITH: Objection, form. 2 <b>A We've had lunch a couple times.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q Anything else? 5 <b>A Not really that I can recall, no.</b> 6 Q Have you had any communications with 7 Mr. Ellington while he's been on his vacation in 8 Africa? 9 MS. SMITH: Objection, form. 10 <b>A A brief e-mail.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Do you recall when that was? 13 <b>A Late June, early July. Several weeks ago.</b> 14 Q Anything else? 15 <b>A No.</b> 16 Q Have you spoken with Mr. Ellington about 17 this deposition? 18 <b>A No.</b> 19 Q Have you spoken with Mr. Ellington about 20 this matter more generally? 21 <b>A When? Can you be -- specify which time -- 22 or what time frame?</b> 23 Q At any time after you left Highland. 24 <b>A No.</b> 25 Q While at Highland, did you speak with</p>

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<p style="text-align: right;">57</p> <p>1 Mr. Ellington about topics relevant to this 2 matter? 3 MS. SMITH: Objection, form. 4 <b>A I think early on, when I -- like late '17 5 probably, early '18.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q What did you talk about? 8 <b>A What did I talk about with respect to --</b> 9 Q With respect to the topics that are 10 relevant to this matter. 11 <b>A Can you be more specific, please?</b> 12 Q What were you thinking of when you said 13 that? 14 <b>A Do you mean in respect to UBS; something 15 else?</b> 16 Q UBS, Sentinel. 17 MS. SMITH: Objection, form. 18 <b>A I was, I believe, given a high-level kind 19 of summary of the case way back when, due to being 20 on the board of Sentinel and having involvement.</b> 21 <b>BY MS. TOMKOWIAK:</b> 22 Q Okay. We will come back to that. Let's 23 see. Since leaving Highland, have you had any 24 communications with Mr. Leventon? 25 <b>A Yes.</b></p>	<p style="text-align: right;">59</p> <p>1 <b>space.</b> 2 Q So where is your temporary office space? 3 <b>A It's at the NexBank building in uptown.</b> 4 Q Okay. So when I asked you about if you're 5 working at NexPoint, your answer was no because 6 you're actually working at NexBank? 7 <b>A That's right.</b> 8 MS. SMITH: Objection, form. 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Okay. And so you've seen Mr. Leventon in 11 person in those offices? 12 <b>A That's correct.</b> 13 Q Okay. Have you seen Mr. Ellington in 14 person in those offices? 15 <b>A Once maybe.</b> 16 Q Have you spoken with Mr. Leventon about 17 this deposition? 18 <b>A Only in the context of logistics, as I've 19 never been deposed before. I just generally asked 20 how it goes.</b> 21 Q What did he say? 22 <b>A Lawyers on two sides of the table, camera 23 up front. He said it's tiring.</b> 24 Q That's pretty accurate. 25 <b>A So far seems to be.</b></p>
<p style="text-align: right;">58</p> <p>1 Q What types of communications? 2 <b>A Similar to Mr. Ellington, a mix of 3 personal and professional. Isaac is a friend of 4 mine.</b> 5 Q And does he work at Skyview? 6 <b>A He does.</b> 7 Q What percentage of those conversations 8 have been personal versus professional? 9 MS. SMITH: Objection, form. 10 <b>A A low percentage of professional, a high 11 percentage of personal. Isaac likes to talk about 12 World War II history and I don't, so I listen to 13 that a lot.</b> 14 <b>BY MS. TOMKOWIAK:</b> 15 Q Have you seen Mr. Leventon in person? 16 <b>A I have.</b> 17 Q How many times? 18 <b>A I don't know.</b> 19 Q Approximately? 20 MS. SMITH: Objection, form. 21 <b>A Ten.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q And have those all been for personal 24 reasons? 25 <b>A No, generally in our temporary office</b></p>	<p style="text-align: right;">60</p> <p>1 Q Other than that, have you had any other 2 communications with Mr. Leventon about the subject 3 matter of this -- about the subject matter of this 4 proceeding? 5 <b>A Since leaving Highland, is that the time 6 frame?</b> 7 Q Yes. 8 <b>A No.</b> 9 Q What about Mr. Sevilla? You said that you 10 report to him at Skyview; is that right? 11 <b>A That's correct.</b> 12 Q Okay. So I assume you've had 13 communications with him prior to leaving -- I'm 14 sorry, after leaving Highland? 15 <b>A That's correct.</b> 16 Q And have the nature of those 17 communications also been both professional and 18 personal? 19 <b>A Yeah, probably 50/50.</b> 20 Q Have you seen him in person? 21 <b>A Almost every day.</b> 22 Q At the temporary office? 23 <b>A (Nods head.)</b> 24 Q Just a verbal -- 25 <b>A Yes, sorry. Correct. Sorry.</b></p>

<p style="text-align: right;">61</p> <p>1 Q Mr. Leventon should have told you that.</p> <p>2 <b>A The one thing he left out.</b></p> <p>3 Q Yes. Need verbal answers.</p> <p>4 And have you had any communications with</p> <p>5 Mr. Sevilla about the subject matter of this</p> <p>6 proceeding?</p> <p>7 <b>A No.</b></p> <p>8 Q Have you had any communications with</p> <p>9 Mr. Sevilla about today's deposition?</p> <p>10 <b>A No.</b></p> <p>11 Q What about Ms. Lucas, formerly Katie</p> <p>12 Irving? Have you had any communications with her</p> <p>13 since you left Highland?</p> <p>14 <b>A Yes.</b></p> <p>15 Q What types of communications?</p> <p>16 <b>A I check in every two or three weeks to see</b></p> <p>17 <b>how her kids are doing, how she's doing. Again,</b></p> <p>18 <b>she's a friend, as JP is as well.</b></p> <p>19 Q Did you know Mr. Leventon prior to working</p> <p>20 at Highland?</p> <p>21 <b>A I met him on our consulting project during</b></p> <p>22 <b>my MBA that I mentioned before.</b></p> <p>23 Q Did you know Mr. Sevilla prior to working</p> <p>24 at Highland?</p> <p>25 <b>A Same.</b></p>	<p style="text-align: right;">62</p> <p>1 Q Did you know Ms. Irving prior to working</p> <p>2 at Highland?</p> <p>3 <b>A Same. Same working group.</b></p> <p>4 Q So you met all of them during your MBA+</p> <p>5 project?</p> <p>6 <b>A Yeah.</b></p> <p>7 Q Do you know when Ms. Lucas is coming back</p> <p>8 from maternity leave?</p> <p>9 <b>A I don't.</b></p> <p>10 MS. SMITH: Objection, form.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Have you had any other communications --</p> <p>13 strike that.</p> <p>14 Have you had any communications with</p> <p>15 anybody who currently works at Highland since you</p> <p>16 left Highland?</p> <p>17 <b>A I believe I exchanged a few texts with</b></p> <p>18 <b>Tim Cournoyer.</b></p> <p>19 Q Anybody else?</p> <p>20 <b>A I don't believe so.</b></p> <p>21 Q What did you text Tim Cournoyer about?</p> <p>22 <b>A I think just, hey, how are you doing type</b></p> <p>23 <b>stuff. Tim was a friend as well.</b></p> <p>24 Q And you said nobody else?</p> <p>25 <b>A No. And I ran into Tim at a grocery store</b></p>
<p style="text-align: right;">63</p> <p>1 <b>also, if that counts.</b></p> <p>2 Q While working at Highland, you had e-mail</p> <p>3 addresses that used the HighlandCapital.com and</p> <p>4 hcmlp.com domains; is that right?</p> <p>5 <b>A I think so.</b></p> <p>6 Q Can you think of any other e-mail</p> <p>7 addresses that you used while you were employed at</p> <p>8 Highland?</p> <p>9 <b>A Yes.</b></p> <p>10 Q What are those?</p> <p>11 <b>A It was an SAS Management e-mail.</b></p> <p>12 Q And anything else?</p> <p>13 <b>A That's it.</b></p> <p>14 Q Did you ever use your personal e-mail</p> <p>15 address in connection with your work at Highland?</p> <p>16 <b>A No. Not that I recall.</b></p> <p>17 Q What is your personal e-mail address?</p> <p>18 <b>A What is my e-mail address?</b></p> <p>19 Q Uh-huh.</p> <p>20 &lt;-- HIGHLY CONFIDENTIAL --&gt;</p> <p>21 Q What is SAS Management?</p> <p>22 <b>A It was an asset recovery/litigation</b></p> <p>23 <b>funding business.</b></p> <p>24 Q Do you know what SAS stands for?</p> <p>25 <b>A I don't.</b></p>	<p style="text-align: right;">64</p> <p>1 Q Do you have any guesses?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 <b>A I don't.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q Did you ever ask?</p> <p>6 <b>A I didn't.</b></p> <p>7 Q Why did you have an e-mail address at SAS</p> <p>8 Management?</p> <p>9 <b>A I provided service to SAS Management.</b></p> <p>10 Q Was that in your capacity as a Highland</p> <p>11 employee?</p> <p>12 <b>A I never really thought about it. I'm not</b></p> <p>13 <b>sure.</b></p> <p>14 Q Did you receive compensation from SAS</p> <p>15 Management?</p> <p>16 <b>A No.</b></p> <p>17 Q How much time did you spend working on</p> <p>18 matters for SAS?</p> <p>19 <b>A On what time frame?</b></p> <p>20 Q Well, let's start from when you first</p> <p>21 started at Highland. How much of your time did</p> <p>22 you spend working on SAS matters?</p> <p>23 <b>A Twenty-five percent, maybe.</b></p> <p>24 Q Did that change over time?</p> <p>25 <b>A It got less and less.</b></p>



Conducted on July 23, 2021

<p style="text-align: right;">65</p> <p>1 Q And by February 2021, how much time were</p> <p>2 you spending on SAS matters?</p> <p>3 <b>A Zero.</b></p> <p>4 Q What types of services did you provide for</p> <p>5 SAS?</p> <p>6 <b>A I did -- I performed a lot of due</b></p> <p>7 <b>diligence on potential cases, investments,</b></p> <p>8 <b>whatever you want to call it, financial modeling,</b></p> <p>9 <b>different scenarios, different outcomes.</b></p> <p>10 Q Who asked you to work on that?</p> <p>11 <b>A Mr. Ellington.</b></p> <p>12 Q Anybody else?</p> <p>13 <b>A No. Not that I recall.</b></p> <p>14 Q Does -- did SAS have an office?</p> <p>15 <b>A In -- where?</b></p> <p>16 Q Anywhere.</p> <p>17 <b>A I think there's office space in Cayman,</b></p> <p>18 <b>Cayman Islands.</b></p> <p>19 Q Did you ever go there?</p> <p>20 <b>A To the Cayman Islands?</b></p> <p>21 Q Uh-huh.</p> <p>22 <b>A Yes.</b></p> <p>23 Q Did you ever go to SAS's office in the</p> <p>24 Caymans?</p> <p>25 <b>A Yeah, once.</b></p>	<p style="text-align: right;">66</p> <p>1 Q Did SAS have any employees that worked</p> <p>2 full-time at the office in the Cayman Islands?</p> <p>3 <b>A I don't believe so.</b></p> <p>4 Q When you went there, was there anybody</p> <p>5 else there?</p> <p>6 <b>A Not the day I was there.</b></p> <p>7 Q What about the day before you were there?</p> <p>8 <b>A I have no idea.</b></p> <p>9 MS. SMITH: Objection, form.</p> <p>10 <b>A I wasn't there.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q Okay. So you were just -- it was just you</p> <p>13 in the office alone that day?</p> <p>14 <b>A I'm sure I was with Mr. Ellington.</b></p> <p>15 Q Oh, okay. So it was you and Mr. Ellington</p> <p>16 in the office that day?</p> <p>17 <b>A Sorry. I thought you meant people there</b></p> <p>18 <b>work -- like there working already when we showed</b></p> <p>19 <b>up.</b></p> <p>20 Q Do you recall approximately when that was?</p> <p>21 <b>A Sometime maybe late 2017, early 2018. I</b></p> <p>22 <b>don't know exactly.</b></p> <p>23 Q Did Mr. Ellington ask you to come with him</p> <p>24 to the Cayman Islands?</p> <p>25 <b>A Yes, he would have.</b></p>
<p style="text-align: right;">67</p> <p>1 Q And what was the purpose of that trip?</p> <p>2 <b>A We did business development-type stuff.</b></p> <p>3 Q What type of business development?</p> <p>4 <b>A Meeting with attorneys, meeting with</b></p> <p>5 <b>potential people -- or potential clients who could</b></p> <p>6 <b>use the services that SAS would provide.</b></p> <p>7 Q Was your -- were these business</p> <p>8 development-type stuff solely related to SAS</p> <p>9 Management or SAS -- if I say SAS, can we agree</p> <p>10 that means SAS Asset Recovery, SAS Management, the</p> <p>11 SAS structure, or would you prefer that it's a</p> <p>12 specific entity?</p> <p>13 <b>A I can agree to that, yeah.</b></p> <p>14 Q Okay. So were the -- was the business</p> <p>15 development that you and Mr. Ellington were doing</p> <p>16 in the Cayman Islands solely related to SAS?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And it wasn't on behalf of Highland?</p> <p>19 <b>A I don't know.</b></p> <p>20 Q Who paid for that trip?</p> <p>21 <b>A I have no idea.</b></p> <p>22 Q Did you pay for that trip?</p> <p>23 <b>A I did not, no.</b></p> <p>24 Q How long were you there?</p> <p>25 <b>A I don't know.</b></p>	<p style="text-align: right;">68</p> <p>1 Q A week?</p> <p>2 <b>A Probably less.</b></p> <p>3 Q A few days?</p> <p>4 <b>A Sounds about right.</b></p> <p>5 Q Do you recall which attorneys you met</p> <p>6 with?</p> <p>7 <b>A I don't.</b></p> <p>8 Q Did you get any new business as a result</p> <p>9 of that trip?</p> <p>10 <b>A I want to say no, I don't believe so.</b></p> <p>11 Q Where did you stay?</p> <p>12 <b>A At a house.</b></p> <p>13 Q Who owned that house, if you know?</p> <p>14 <b>A I don't know.</b></p> <p>15 Q Did Mr. Ellington own that house?</p> <p>16 <b>A I don't believe so.</b></p> <p>17 Q Was it a private house?</p> <p>18 <b>A What do you mean?</b></p> <p>19 Q Well, it wasn't a hotel. Was it a hotel?</p> <p>20 <b>A It was a house at a hotel, if that makes</b></p> <p>21 <b>sense.</b></p> <p>22 Q It does make sense. That's kind of what I</p> <p>23 was getting at. So it was a residence affiliated</p> <p>24 with a hotel property?</p> <p>25 <b>A Correct.</b></p>

<p style="text-align: right;">69</p> <p>1 Q Okay. And so you don't know one way or 2 the other if Mr. Ellington owns that house? 3 <b>A I don't believe he owns the house.</b> 4 Q You don't believe he owns the house. Was 5 that your only trip to the Cayman Islands? 6 <b>A In --</b> 7 Q During the time that you worked at 8 Highland. 9 <b>A No.</b> 10 Q When else did you travel to the Cayman 11 Islands? 12 <b>A I don't know specific dates, but we'd go</b> 13 <b>one or two times a year probably.</b> 14 Q Were those -- and when you say we, do you 15 mean you and Mr. Ellington? 16 <b>A Yeah. Sorry.</b> 17 Q Were those trips always for SAS? 18 <b>A Not always.</b> 19 Q What were the other purposes of those 20 trips? 21 <b>A There was -- we had -- we had to go meet</b> 22 <b>with CIMA, the Cayman Islands Monetary Authority,</b> 23 <b>on behalf of Sentinel Reinsurance.</b> 24 Q Any other purposes? 25 <b>A Yes. We were exploring a -- launching a</b></p>	<p style="text-align: right;">71</p> <p>1 Q Those are the ones I'm interested in. 2 <b>A And then we met on behalf of the bank --</b> 3 <b>or with the banking division on exploring that</b> 4 <b>bank project. That's why I'm specifying.</b> 5 Q Understood. So with respect to Sentinel, 6 what was the purpose of those meetings? 7 <b>A CIMA performs inspections, routine</b> 8 <b>inspections every five years, as I understand it,</b> 9 <b>on at least insurance companies that operate in</b> 10 <b>Cayman. That was a part of that inspection.</b> 11 Q But you said during your four-year period, 12 you went once or twice a year to the Cayman 13 Islands. So how many -- how many times did you 14 meet with CIMA with respect to Sentinel? 15 <b>A I believe twice.</b> 16 Q Other than routine inspections, was there 17 any other purpose of those meetings? 18 <b>A With CIMA?</b> 19 Q Uh-huh. 20 <b>A No. It was all related to the inspection.</b> 21 Q Why did you go to those meetings? 22 <b>A Why did I attend the meetings? I was a</b> 23 <b>director at Sentinel.</b> 24 Q You weren't the only director, right? 25 <b>A That's correct.</b></p>
<p style="text-align: right;">70</p> <p>1 <b>potential bank -- or potentially launching a bank,</b> 2 <b>excuse me, and we met with a different department</b> 3 <b>at the Cayman Islands Monetary Authority with</b> 4 <b>respect to that project.</b> 5 Q Did you ever launch that bank? 6 <b>A We did not.</b> 7 Q Why not? 8 MS. SMITH: Objection, form. 9 <b>A I don't entirely know the reason why it</b> 10 <b>never got off the ground.</b> 11 <b>BY MS. TOMKOWIAK:</b> 12 Q Do you partially know? 13 MS. SMITH: Objection, form. 14 <b>A I don't. It wouldn't have been my</b> 15 <b>decision to go forward or stop.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q When you met with CIMA, was that a 18 mandatory meeting? Let me ask a better question. 19 What was the purpose of your meeting with 20 CIMA? 21 <b>A Which meetings?</b> 22 Q How many different types of meetings did 23 you have with CIMA? 24 <b>A Well, I said we went and met on behalf of</b> 25 <b>Sentinel Reinsurance.</b></p>	<p style="text-align: right;">72</p> <p>1 Q Did the other directors attend? 2 <b>A One of them attended in person.</b> 3 Q Did the other directors live in the Cayman 4 Islands? 5 <b>A Yes. I don't know if full-time, but they</b> 6 <b>lived down there. They're European guys. I don't</b> 7 <b>know how much time they spend in Europe.</b> 8 Q Did CIMA require a director to attend? 9 <b>A I actually don't know.</b> 10 Q Did Mr. Ellington ask you to attend? 11 <b>A Yes. We went together.</b> 12 Q And why did Mr. Ellington go? 13 <b>A I don't know.</b> 14 Q Was that in his role as an owner of 15 Sentinel? 16 MS. SMITH: Objection, form. 17 <b>A You'd have to ask him why he attended.</b> 18 <b>I'm not entirely sure.</b> 19 <b>BY MS. TOMKOWIAK:</b> 20 Q So you didn't ask him why he was attending 21 the meeting with CIMA on behalf of Sentinel? 22 MS. SMITH: Objection, form. 23 <b>A No, I didn't.</b> 24 <b>BY MS. TOMKOWIAK:</b> 25 Q You didn't say, hey -- you never asked him</p>

<p style="text-align: right;">73</p> <p>1 what his role was at those meetings?                  2 MS. SMITH: Objection, form.                  3 <b>A No.</b>                  4 <b>BY MS. TOMKOWIAK:</b>                  5 Q Did CIMA ask why he was there?                  6 <b>A Not that I recall.</b>                  7 Q What did they ask about during those                  8 meetings?                  9 <b>A We reviewed the inspection report, chatted</b>                  10 <b>about the business.</b>                  11 Q What about the business?                  12 <b>A Just day-to-day, what -- you know, again,</b>                  13 <b>it's a -- every five years they kind of look under</b>                  14 <b>the hood and see if the companies that operate in</b>                  15 <b>the Caymans actually have a presence there or that</b>                  16 <b>sort of thing and are meeting the governance</b>                  17 <b>requirements, that sort of thing.</b>                  18 Q And what I'm trying to understand about                  19 every five years is that you said you went twice                  20 in a four-year period. So was there some other                  21 purpose besides this routine five-year inspection?                  22 <b>A No. We went when we got the initial</b>                  23 <b>report, if I remember correctly, around the -- or</b>                  24 <b>a draft report, to discuss it with them and then</b>                  25 <b>the company had a few housekeeping things to clean</b></p>	<p style="text-align: right;">75</p> <p>1 <b>A No, not that I recall.</b>                  2 Q When, approximately, was the date of the                  3 first report?                  4 MS. SMITH: Objection, form.                  5 <b>A I think it was early 2019 maybe.</b>                  6 <b>BY MS. TOMKOWIAK:</b>                  7 Q And then you and Mr. Ellington went to                  8 meet with CIMA shortly after that?                  9 <b>A I don't remember the timing, but</b>                  10 <b>subsequent to the report at some point.</b>                  11 Q When was the date of the final report?                  12 <b>A Later in the year at some point. I'm not</b>                  13 <b>entirely sure.</b>                  14 Q To the best of your recollection, later in                  15 2019?                  16 <b>A Yeah. That sounds right.</b>                  17 Q Did you and Mr. Ellington -- was your                  18 second meeting after that second -- the final                  19 report?                  20 <b>A I believe it was before.</b>                  21 Q Okay. So you had, to the best of your                  22 recollection, two trips to the Cayman Islands in                  23 2019 to meet with CIMA to review their inspection                  24 of Sentinel?                  25 <b>A That sounds right.</b></p>
<p style="text-align: right;">74</p> <p>1 <b>up and we went back and just spoke to them again</b>                  2 <b>and said this is what we did, are you guys happy.</b>                  3 Q What were the housekeeping things to clean                  4 up?                  5 <b>A For example, we had one board meeting one</b>                  6 <b>year, we were supposed to have two, that sort of</b>                  7 <b>thing. So we had to appoint one of the directors</b>                  8 <b>as, I think it was an anti-money laundering</b>                  9 <b>officer as a requirement and I think it was a</b>                  10 <b>newer requirement that maybe had come up in the</b>                  11 <b>last five years, so we just basically assigned one</b>                  12 <b>of the board members that role. Or one of the</b>                  13 <b>directors, excuse me, that role, stuff like that.</b>                  14 Q So you identified two issues. So you were                  15 supposed to have two board meetings a year and you                  16 were only having one?                  17 <b>A I think so.</b>                  18 Q And then another issue was this anti-money                  19 laundering officer as a requirement?                  20 <b>A Yeah. And I think it was a regulatory</b>                  21 <b>change that had come up at some point in the</b>                  22 <b>five years between inspections. It's my</b>                  23 <b>understanding anyway.</b>                  24 Q Do you recall any other issues that you                  25 had to clean up for CIMA?</p>	<p style="text-align: right;">76</p> <p>1 Q And did CIMA ask Mr. Ellington why he was                  2 there?                  3 <b>A Not that I recall.</b>                  4 Q Did CIMA need to know for purposes of its                  5 inspection who the owners of Sentinel were?                  6 MS. SMITH: Objection, form.                  7 <b>A I don't know.</b>                  8 <b>BY MS. TOMKOWIAK:</b>                  9 Q Did you need to know that as a director of                  10 Sentinel?                  11 <b>A I don't know.</b>                  12 Q So you were comfortable being the director                  13 of a company without knowing who owned it?                  14 MS. SMITH: Objection, form.                  15 <b>A Yeah, I was put on -- I was put on the</b>                  16 <b>board as a director -- or made a director, excuse</b>                  17 <b>me, and I did my job. I didn't really question</b>                  18 <b>what was going on, who ultimately owned anything.</b>                  19 <b>BY MS. TOMKOWIAK:</b>                  20 Q What do you mean by anything?                  21 MS. SMITH: Objection, form.                  22 <b>A I mean I was doing my job in the context</b>                  23 <b>of what had to be done as a director. I did not</b>                  24 <b>really stop to think about who owned what or how.</b>                  25 <b>BY MS. TOMKOWIAK:</b></p>

<p style="text-align: right;">77</p> <p>1 Q Okay. So it was completely irrelevant to 2 you who owned Sentinel? 3 MS. SMITH: Objection, form. 4 <b>A Kind of.</b> 5 <b>BY MS. TOMKOWIAK:</b> 6 Q You could do your job without knowing who 7 owned Sentinel? 8 <b>A I could.</b> 9 Q You could satisfy all of your fiduciary 10 duties to Sentinel -- 11 MS. SMITH: Objection. 12 BY MS. TOMKOWIAK: 13 Q -- as you understood them without knowing 14 who Sentinel's owners were? 15 MS. SMITH: Objection, form. 16 <b>A I'm not an attorney. I don't know what</b> 17 <b>satisfies all points under fiduciary duty. But I</b> 18 <b>think if I'm looking out in the best interest of</b> 19 <b>the company as a director, which I was, then</b> 20 <b>ultimately that inures to the benefit of whoever</b> 21 <b>owns it.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q So did you believe as a director -- not an 24 as attorney because I understand you're not an 25 attorney, but as a director, did you have an</p>	<p style="text-align: right;">79</p> <p>1 Q Did you have a conversation with anybody 2 at any time during which you were a director at 3 Sentinel about what your fiduciary duties were? 4 <b>A Not that I recall.</b> 5 Q And you said that you were working for the 6 best interest of the company; is that right? 7 <b>A Yeah, I believe so.</b> 8 Q And who did you understand the company to 9 be? 10 <b>A Sentinel Reinsurance --</b> 11 Q Right. 12 <b>A -- was the company that I was a director</b> 13 <b>of, so that's the company I'm referring to.</b> 14 Q And you didn't understand that company to 15 be comprised of any particular people? 16 MS. SMITH: Objection, form. 17 <b>A Again, like I said before, I assumed there</b> 18 <b>was some ownership between Mr. Ellington and</b> 19 <b>Mr. Dondero, but I don't know how or what, other</b> 20 <b>than what I read in the -- I think it was a</b> 21 <b>complaint or said in court or something.</b> 22 <b>BY MS. TOMKOWIAK:</b> 23 Q Did you know if Sentinel Reinsurance had 24 any shareholders? 25 MS. SMITH: Objection, form.</p>
<p style="text-align: right;">78</p> <p>1 understanding of what your fiduciary duties were? 2 MS. SMITH: Objection, form. 3 <b>A Not particularly. Again, I'm not an</b> 4 <b>attorney. I did my job the best I could to what I</b> 5 <b>thought was the benefit of the company, which is</b> 6 <b>my very high-level understanding of fiduciary</b> 7 <b>duty.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q Did Sentinel have attorneys? 10 <b>A On staff?</b> 11 Q That represented it. 12 <b>A For -- at times, when necessary.</b> 13 Q And none of those attorneys explained to 14 you what your fiduciary duties were as a director? 15 MS. SMITH: Objection, form and privilege 16 what he discussed with the attorneys for Sentinel. 17 THE WITNESS: Do I have to answer that? 18 MS. TOMKOWIAK: Are you instructing him 19 not to answer that question? 20 MS. SMITH: Not to answer it if you have 21 to divulge privileged information. 22 <b>A I think it's safe to say that I've never</b> 23 <b>had that conversation with an attorney about what</b> 24 <b>my fiduciary duty was as a director of Sentinel.</b> 25 <b>BY MS. TOMKOWIAK:</b></p>	<p style="text-align: right;">80</p> <p>1 <b>A I assume it does. I don't know who the</b> 2 <b>shareholders are.</b> 3 <b>BY MS. TOMKOWIAK:</b> 4 Q And during -- and you never learned who 5 the shareholders were, if any, at any point while 6 you were a director of Sentinel? 7 MS. SMITH: Objection, form. 8 <b>A Not that I recall.</b> 9 <b>BY MS. TOMKOWIAK:</b> 10 Q Did you ask any questions about Sentinel 11 before you agreed to be a director? 12 <b>A I asked what it was, what sort of business</b> 13 <b>it was in, products it provided, what the</b> 14 <b>day-to-day responsibilities would be.</b> 15 Q And what did they tell you -- well, who 16 did you ask? 17 <b>A I would have asked JP Sevilla.</b> 18 Q You would have -- did Mr. Sevilla ask you 19 to be a director? 20 <b>A No.</b> 21 Q So why did you ask him? 22 <b>A Because in the -- my understanding was</b> 23 <b>that he handled kind of day-to-day stuff for</b> 24 <b>Sentinel if it came up, which at -- my</b> 25 <b>understanding at the time was there was not much</b></p>

Conducted on July 23, 2021

<p style="text-align: right;">81</p> <p><b>1 going on day to day. So that was passed off to</b></p> <p><b>2 me.</b></p> <p>3 MS. TOMKOWIAK: Let's take a break.</p> <p>4 THE VIDEOGRAPHER: We are off the record</p> <p>5 at 10:55 a.m.</p> <p>6 (Recess taken from 10:55 a.m. CDT to</p> <p>7 11:22 a.m. CDT)</p> <p>8 THE VIDEOGRAPHER: The time is 11:22 a.m.</p> <p>9 We are back on the record.</p> <p>10 BY MS. TOMKOWIAK:</p> <p>11 Q Mr. DiOrio, I understand that you recalled</p> <p>12 another conversation that you had with Mr. Dondero</p> <p>13 after you left Highland; is that right?</p> <p><b>14 A That's correct.</b></p> <p>15 Q Tell me about that conversation.</p> <p><b>16 A He -- his admin asked me to come down to</b></p> <p><b>17 his -- or come to his office and he asked me</b></p> <p><b>18 where -- if I had heard from Mr. Ellington. It</b></p> <p><b>19 was very brief.</b></p> <p>20 Q When did that take place?</p> <p><b>21 A Earlier this week.</b></p> <p>22 Q Earlier this week?</p> <p><b>23 A I think so.</b></p> <p>24 Q What day?</p> <p><b>25 A Monday or Tuesday.</b></p>	<p style="text-align: right;">83</p> <p>1 Q Why did he want to know if you had heard</p> <p>2 from Mr. Ellington?</p> <p>3 MS. SMITH: Objection, form.</p> <p><b>4 A Not entirely sure, but he must -- I don't</b></p> <p><b>5 know.</b></p> <p><b>6 BY MS. TOMKOWIAK:</b></p> <p>7 Q Did he say why he wanted to know if you</p> <p>8 had heard from Mr. Ellington?</p> <p><b>9 A Because I don't think anyone's heard from</b></p> <p><b>10 Mr. Ellington since he's been gone, or in several</b></p> <p><b>11 weeks anyway.</b></p> <p>12 Q Okay. So did you -- what was your</p> <p>13 response?</p> <p><b>14 A I told him I would try to contact him.</b></p> <p>15 Q Did you try to contact him?</p> <p><b>16 A I did.</b></p> <p>17 Q How?</p> <p><b>18 A I sent an e-mail and a text message.</b></p> <p>19 Q Did you receive an e-mail back?</p> <p><b>20 A I did not.</b></p> <p>21 Q Did you receive a text back?</p> <p><b>22 A I did not.</b></p> <p>23 Q Have you talked to anybody else about</p> <p>24 whether they've been able to reach Mr. Ellington?</p> <p><b>25 A Not specifically. It sounds like no one's</b></p>
<p style="text-align: right;">82</p> <p>1 Q Who is Mr. Dondero's admin?</p> <p><b>2 A Her name is Tara.</b></p> <p>3 Q Tara what?</p> <p><b>4 A Was Loiben at Highland, but I think she</b></p> <p><b>5 got married since. I'm not sure.</b></p> <p>6 Q But Tara is his current assistant?</p> <p><b>7 A One of. I think he has a couple.</b></p> <p>8 Q When you say Mr. Dondero's office, which</p> <p>9 office?</p> <p><b>10 A His office on -- at the NexBank, I guess</b></p> <p><b>11 corporate office.</b></p> <p>12 Q So is that the same office building where</p> <p>13 you're currently working?</p> <p><b>14 A It's the same building we're temporarily</b></p> <p><b>15 in, yes. Different floor.</b></p> <p>16 Q So when you went to his office, you just</p> <p>17 went to a different floor?</p> <p><b>18 A That's right.</b></p> <p>19 Q So you were already in the office that</p> <p>20 day?</p> <p><b>21 A Yes.</b></p> <p>22 Q And you said that he wanted to know -- I</p> <p>23 don't want to put words in your mouth -- if you</p> <p>24 had heard from Mr. Ellington?</p> <p><b>25 A That's correct.</b></p>	<p style="text-align: right;">84</p> <p><b>1 heard from him in a few weeks.</b></p> <p>2 Q Did Mr. Dondero say anything else during</p> <p>3 that conversation?</p> <p><b>4 A No.</b></p> <p>5 Q Did he tell you why he was trying to get</p> <p>6 in touch with Mr. Ellington?</p> <p>7 MS. SMITH: Objection, form.</p> <p><b>8 A Just that he hadn't heard from him.</b></p> <p><b>9 BY MS. TOMKOWIAK:</b></p> <p>10 Q And then I understand that you also --</p> <p>11 right. And the last time that you heard from</p> <p>12 Mr. Ellington was the e-mail that you received</p> <p>13 from him you said a few weeks ago?</p> <p><b>14 A Yeah.</b></p> <p>15 Q And then I understand that you also</p> <p>16 recalled another e-mail address that you used</p> <p>17 while at Highland; is that right?</p> <p><b>18 A Yes, that's correct.</b></p> <p>19 Q What is that?</p> <p><b>20 A It was mdiorio@ -- I think it was</b></p> <p><b>21 ogventures.com.</b></p> <p>22 Q What is OG Ventures?</p> <p><b>23 A Mr. Ellington had a -- had a couple of</b></p> <p><b>24 investments in oil and gas that predated my time</b></p> <p><b>25 and I was tasked with monitoring, ultimately</b></p>

<p style="text-align: right;">85</p> <p><b>1 selling one of them.</b></p> <p>2 Q Was that -- did you receive compensation</p> <p>3 for that separate from the compensation that you</p> <p>4 received from Highland?</p> <p><b>5 A No.</b></p> <p>6 Q Okay. Did you do that work out of your</p> <p>7 Highland office?</p> <p><b>8 A Partly probably.</b></p> <p>9 Q How did you know while at Highland which</p> <p>10 e-mail address to use?</p> <p><b>11 A For -- what do you mean?</b></p> <p>12 Q For anything. Like if you were sending an</p> <p>13 e-mail, how did you choose which one to use?</p> <p><b>14 A Well, the OG one, for example, I barely</b></p> <p><b>15 used. But generally if it was SAS-related items,</b></p> <p><b>16 offshore, I guess, another way I think of it, I'd</b></p> <p><b>17 use that. Everything else I would use Highland</b></p> <p><b>18 for distressed and private equity stuff.</b></p> <p>19 Q What about with respect to Sentinel?</p> <p>20 Which e-mail address would you use?</p> <p><b>21 A SAS.</b></p> <p>22 Q What is the relationship between Sentinel</p> <p>23 and SAS?</p> <p><b>24 A I don't believe there is one.</b></p> <p>25 Q Then why would you use your SAS e-mail</p>	<p style="text-align: right;">86</p> <p>1 account for your work with Sentinel?</p> <p><b>2 A I never had a -- there's no Sentinel</b></p> <p><b>3 e-mail addresses.</b></p> <p>4 Q Why not use your Highland e-mail address?</p> <p><b>5 A Because I -- again, I think of it as kind</b></p> <p><b>6 of offshore, onshore-type stuff and that just fell</b></p> <p><b>7 into the offshore bucket since it was Cayman</b></p> <p><b>8 based.</b></p> <p>9 Q So to your knowledge, there is no</p> <p>10 relationship at all between Sentinel and SAS?</p> <p><b>11 A Not to my knowledge.</b></p> <p>12 Q Sentinel is not owned directly or</p> <p>13 indirectly in any way by SAS, to your knowledge?</p> <p>14 MS. SMITH: Objection, form.</p> <p><b>15 A Not to my knowledge.</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q Sentinel didn't provide any insurance</p> <p>18 services to any SAS companies, to your knowledge?</p> <p><b>19 A It used to.</b></p> <p>20 Q Okay. And you just don't consider that to</p> <p>21 be a relationship between Sentinel and SAS?</p> <p><b>22 A I would think it's more of a -- define</b></p> <p><b>23 relationship, I guess. I was thinking more they</b></p> <p><b>24 were a client -- those entities would be</b></p> <p><b>25 considered clients. When I think relationship,</b></p>
<p style="text-align: right;">87</p> <p><b>1 I'm thinking org chart-type stuff.</b></p> <p>2 Q So you were aware that Sentinel provided</p> <p>3 insurance services to SAS entities?</p> <p>4 MS. SMITH: Objection, form.</p> <p><b>5 A In the past, yes.</b></p> <p><b>6 BY MS. TOMKOWIAK:</b></p> <p>7 Q Do you recall what time frame?</p> <p><b>8 A My recollection is it ended at the end of</b></p> <p><b>9 2017.</b></p> <p>10 Q Did Sentinel have any other clients?</p> <p><b>11 A I'm not sure. What time -- sorry, what</b></p> <p><b>12 time frame?</b></p> <p>13 Q Well, after that ended in 2017, did</p> <p>14 Sentinel provide insurance coverage to any other</p> <p>15 clients?</p> <p><b>16 A Yes.</b></p> <p>17 Q Okay. Any other non-Highland affiliated</p> <p>18 clients?</p> <p>19 MS. SMITH: Objection, form.</p> <p><b>20 A No, I don't believe so.</b></p> <p><b>21 BY MS. TOMKOWIAK:</b></p> <p>22 Q A few follow-up questions to the topics we</p> <p>23 were discussing before the break.</p> <p>24 Does -- did Sentinel have an office?</p> <p><b>25 A Not that I'm aware of.</b></p>	<p style="text-align: right;">88</p> <p>1 Q And you mentioned attorneys on staff. Did</p> <p>2 Sentinel have staff?</p> <p><b>3 A Not that I'm aware of.</b></p> <p>4 Q So if Sentinel needed to have paperwork</p> <p>5 submitted, who would do it?</p> <p><b>6 A What type -- paperwork? What do you mean?</b></p> <p>7 Q Like if Sentinel needed to submit a report</p> <p>8 to CIMA, who would do that?</p> <p><b>9 A It would be -- it depends, I guess.</b></p> <p><b>10 Sentinel would retain counsel if it was that sort</b></p> <p><b>11 of matter. It has auditors, it has -- you know,</b></p> <p><b>12 it's regulated by CIMA. There's a lot of</b></p> <p><b>13 different, I guess, agencies that would touch it,</b></p> <p><b>14 or businesses.</b></p> <p>15 Q Sorry, were you done?</p> <p><b>16 A Yes.</b></p> <p>17 Q So all of -- all of those are third</p> <p>18 parties, so auditors, accountants, lawyers. Did</p> <p>19 Sentinel have anybody who was just employed by</p> <p>20 Sentinel?</p> <p><b>21 A No. Sorry, to back up. It has a</b></p> <p><b>22 registered office where it receives mail, but no</b></p> <p><b>23 physical office. I don't think I asked you to</b></p> <p><b>24 specify, but I'm just clarifying.</b></p> <p>25 Q Did any Highland employees ever do any</p>

89	<p>1 work for Sentinel?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Which ones?</p> <p>4 <b>A At what time?</b></p> <p>5 Q At any time during 2017 to 2021.</p> <p>6 <b>A Yes, I think a good number of Highland</b></p> <p>7 <b>employees.</b></p> <p>8 Q Which ones?</p> <p>9 <b>A Do you want -- I don't know the specifics</b></p> <p>10 <b>of time spent, anything like that. Do you just</b></p> <p>11 <b>want names?</b></p> <p>12 Q I just want their names right now.</p> <p>13 <b>A Okay. In some form or fashion,</b></p> <p>14 <b>JP Sevilla, Katie Irving, Isaac Leventon,</b></p> <p>15 <b>Dave Klos, Lauren Thedford, Thomas Surgent,</b></p> <p>16 <b>Carter Chism. I think -- that's all I can really</b></p> <p>17 <b>think of at the moment.</b></p> <p>18 Q And when you say did work for Sentinel, do</p> <p>19 you mean their work touched upon Sentinel or they</p> <p>20 actually took actions on Sentinel's behalf?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 <b>A A mix of both, I think. Also Stetson</b></p> <p>23 <b>Clark. Sorry. Forgot a name.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q Who was that?</p>	91	<p>1 <b>paid, advised on, you know, anything -- anything</b></p> <p>2 <b>insurance-related.</b></p> <p>3 Q What about Maples? What was their role?</p> <p>4 <b>A When?</b></p> <p>5 Q Any time during the 2017 to 2021 time</p> <p>6 frame.</p> <p>7 <b>A Well, prior to my coming on board, I'm not</b></p> <p>8 <b>sure what they did. But when I came on board,</b></p> <p>9 <b>there were two directors -- the two directors that</b></p> <p>10 <b>were on the board, excuse me, were from Maples. I</b></p> <p>11 <b>assume in the past that's what they did, but I</b></p> <p>12 <b>can't say for sure.</b></p> <p>13 Q Do you know when Sentinel was formed?</p> <p>14 <b>A I believe 2012 or '13. I don't -- again,</b></p> <p>15 <b>I don't know the exact date.</b></p> <p>16 Q What was Mr. Ellington's economic interest</p> <p>17 in SAS?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A I'm not entirely sure.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q Do you know if he had one?</p> <p>22 <b>A I would assume so.</b></p> <p>23 Q Do you know if he received monetary</p> <p>24 payments from SAS?</p> <p>25 <b>A I don't.</b></p>
90	<p>1 <b>A Stetson Clark, like the hat.</b></p> <p>2 Q Gotcha. And you mentioned reports that</p> <p>3 you received from CIMA. Where would those reports</p> <p>4 be kept?</p> <p>5 <b>A I believe Sentinel's counsel -- or</b></p> <p>6 <b>third-party counsel, I guess, whatever you --</b></p> <p>7 Q External counsel?</p> <p>8 <b>A Thank you.</b></p> <p>9 Q Which counsel?</p> <p>10 <b>A Carey Olsen.</b></p> <p>11 Q Any other counsel?</p> <p>12 <b>A That would have that report?</b></p> <p>13 Q Uh-huh.</p> <p>14 <b>A No.</b></p> <p>15 Q What about Beecher Carlson? Would they</p> <p>16 have a copy of those reports?</p> <p>17 <b>A Probably.</b></p> <p>18 Q What was Beecher -- can I just say</p> <p>19 Beecher?</p> <p>20 <b>A You can.</b></p> <p>21 Q What was Beecher's role with respect to</p> <p>22 Sentinel?</p> <p>23 <b>A Beecher was the insurance manager and also</b></p> <p>24 <b>as part of that function, they would prepare</b></p> <p>25 <b>financial statements, facilitated expenses being</b></p>	92	<p>1 MS. TOMKOWIAK: I am handing the court</p> <p>2 reporter what we will mark as Exhibit 76.</p> <p>3 (Deposition Exhibit 76 marked for</p> <p>4 identification.)</p> <p>5 BY MS. TOMKOWIAK:</p> <p>6 Q Mr. DiOrio, can you take a look at</p> <p>7 Exhibit 76 and take a few minutes if you'd like</p> <p>8 and then let me know when you're ready.</p> <p>9 MS. SMITH: I would just like to raise one</p> <p>10 objection, that the account number is not redacted</p> <p>11 on here. So before this goes into the record, I</p> <p>12 want to make sure that account number gets</p> <p>13 redacted except for the last four digits.</p> <p>14 MS. TOMKOWIAK: We can do that, Counsel.</p> <p>15 <b>A Are there -- should there be other pages I</b></p> <p>16 <b>need to see on this or is it's -- it's 4 of 5.</b></p> <p>17 <b>That's the reason I asked.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Okay. Well, yeah, we can -- we can get</p> <p>20 into that. Have you had a chance to look it over?</p> <p>21 This is the only page that I have.</p> <p>22 <b>A Oh, okay. I was just reading at the top</b></p> <p>23 <b>that it's 4 of 5. That's the only reason I'm</b></p> <p>24 <b>asking.</b></p> <p>25 Q That's a fair question.</p>

<p style="text-align: right;">93</p> <p>1 <b>A Give me one more second. Sorry.</b></p> <p>2 Q No worries.</p> <p>3 (Witness reviews document.)</p> <p>4 <b>A Okay.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q Mr. DiOrio, have you seen this document</p> <p>7 before?</p> <p>8 MS. SMITH: Objection. This is not the</p> <p>9 complete document. It's pages 4 of 5.</p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Okay. Have you seen this document before?</p> <p>12 <b>A I don't believe I've seen this page</b></p> <p>13 <b>before, no.</b></p> <p>14 Q Do you know why it was found on your desk</p> <p>15 at Highland earlier this year?</p> <p>16 <b>A I have no idea.</b></p> <p>17 Q No idea. So to your knowledge, you</p> <p>18 have -- you did not have a copy of Mr. Ellington's</p> <p>19 private bank interest checking account statement?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 <b>A If it was on my desk -- I genuinely have</b></p> <p>22 <b>no recollection of ever seeing this.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q Did you ever receive checking statements</p> <p>25 from Mr. Ellington?</p>	<p style="text-align: right;">95</p> <p>1 <b>checking account.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Did you ever receive payments from SAS</p> <p>4 Asset Recovery Ltd.?</p> <p>5 <b>A I don't believe so.</b></p> <p>6 Q You don't believe so?</p> <p>7 <b>A No. I don't believe I did, no.</b></p> <p>8 Q Who else had access to your desk at</p> <p>9 Highland?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 <b>A To my physical desk?</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q Uh-huh.</p> <p>14 <b>A I mean, it's an open floor plan. Nothing</b></p> <p>15 <b>was locked up, but I generally think that no one</b></p> <p>16 <b>bothered with it.</b></p> <p>17 Q Okay. You can set that aside.</p> <p>18 What's your general understanding of the</p> <p>19 litigation between Highland and UBS that -- in</p> <p>20 New York State court?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 <b>A I understand it's about a decade's old</b></p> <p>23 <b>dispute about some sort of warehouse facility, but</b></p> <p>24 <b>that's about all I know.</b></p> <p>25</p>
<p style="text-align: right;">94</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 <b>A I don't recall ever seeing his personal</b></p> <p>3 <b>checking, no.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q In any of the work that you did for</p> <p>6 Mr. Ellington in his personal capacity, would you</p> <p>7 have had reason to look at his personal checking</p> <p>8 account?</p> <p>9 <b>A No.</b></p> <p>10 Q If you look at this statement, you'll see</p> <p>11 that on October 3rd, October 16th and</p> <p>12 October 24th, there are what look to be payments</p> <p>13 from SAS Asset Recovery Ltd. Do you see that?</p> <p>14 <b>A I see them, yes.</b></p> <p>15 Q Do you have any knowledge of why</p> <p>16 Mr. Ellington would be receiving payments from SAS</p> <p>17 Asset Recovery?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A I don't.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q Did you know that Mr. Ellington received</p> <p>22 hundreds of thousands of dollars from SAS Asset</p> <p>23 Recovery?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 <b>A Again, I don't have access to his personal</b></p>	<p style="text-align: right;">96</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q When did you first obtain that</p> <p>3 understanding?</p> <p>4 <b>A Probably around the time I came on to</b></p> <p>5 <b>the -- sometime after I came on to the board at</b></p> <p>6 <b>Sentinel -- or was appointed director, excuse me.</b></p> <p>7 Q So sometime around September 2017?</p> <p>8 <b>A Probably after that.</b></p> <p>9 Q Is there any formal piece of paper</p> <p>10 appointing you to the board of Sentinel?</p> <p>11 <b>A There would be. I don't have one. But if</b></p> <p>12 <b>I remember correctly, there was a letter issued by</b></p> <p>13 <b>CIMA just confirming that the appointment was</b></p> <p>14 <b>accepted.</b></p> <p>15 Q Do you know who would have a copy of that?</p> <p>16 <b>A Probably Carey Olsen.</b></p> <p>17 Q How did you come to have that</p> <p>18 understanding of the UBS litigation?</p> <p>19 <b>A I don't recall specifically, but I think</b></p> <p>20 <b>once I kind of figured out what I had to do as a</b></p> <p>21 <b>director and I knew that the policy was in place,</b></p> <p>22 <b>I said what's the underlying issue, but it was --</b></p> <p>23 <b>I tried reading it once, but honestly it was a</b></p> <p>24 <b>little above my head.</b></p> <p>25 Q You tried reading what?</p>



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<p style="text-align: right;">97</p> <p><b>1 A Some court document at some point. I</b>  <b>2 don't know if it was a complaint or what, but I</b>  <b>3 didn't make it all the way through.</b>  <b>4 Q</b> And you said that you knew a policy was in  <b>5</b> place. So you're referring to the policy that  <b>6</b> Sentinel had issued to cover legal liability to  <b>7</b> UBS in connection with that litigation?  <b>8</b> MS. SMITH: Objection, form.  <b>9 A Yes.</b>  <b>10 BY MS. TOMKOWIAK:</b>  <b>11 Q</b> Are you aware there was a trial in that  <b>12</b> matter in July of 2018?  <b>13 A Yes.</b>  <b>14 Q</b> And did you ever hear anybody in the legal  <b>15</b> department at Highland express a view as to  <b>16</b> whether UBS was likely to prevail in that case?  <b>17 A Not that I recall.</b>  <b>18 Q</b> Did you ever form a view?  <b>19 A Again, it was a little above my head. I</b>  <b>20 had no idea.</b>  <b>21 Q</b> Did you hear the legal people discussing  <b>22</b> that case in the legal department?  <b>23 A Not specifically with me, but it's an open</b>  <b>24 floor plan. Isaac talks on the phone a lot to</b>  <b>25 lawyers, so I'm sure I heard something.</b></p>	<p style="text-align: right;">99</p> <p><b>1</b> please?  <b>2 BY MS. TOMKOWIAK:</b>  <b>3 Q</b> Were you aware that the defendants in that  <b>4</b> case were potentially going to be liable for over  <b>5</b> a billion dollars?  <b>6</b> MS. SMITH: Objection, form.  <b>7 A Was I aware when?</b>  <b>8 BY MS. TOMKOWIAK:</b>  <b>9 Q</b> When -- at any point in time.  <b>10</b> MS. SMITH: Objection, form.  <b>11 A I came to learn that.</b>  <b>12 BY MS. TOMKOWIAK:</b>  <b>13 Q</b> When did you come to learn that?  <b>14 A I think at some -- after the Phase 1 trial</b>  <b>15 was over.</b>  <b>16 Q</b> So just to pin that down, was it after the  <b>17</b> trial or after the judgment?  <b>18 A I don't recall.</b>  <b>19 Q</b> So did you recall hearing before UBS won a  <b>20</b> \$1 billion, approximate, judgment, that they might  <b>21</b> be liable, that the defendants in that case might  <b>22</b> be liable for a billion dollars?  <b>23</b> MS. SMITH: Objection, form.  <b>24 A I can't say. I don't recall when, if it</b>  <b>25 was before or after.</b></p>
<p style="text-align: right;">98</p> <p><b>1 Q</b> Were you aware that the defendants in that  <b>2</b> case were potentially going to be liable for over  <b>3</b> a billion dollars?  <b>4</b> MS. SMITH: Objection, form.  <b>5</b> And be careful here. Don't disclose any  <b>6</b> privileged information.  <b>7</b> MS. TOMKOWIAK: Well, do you mean that he  <b>8</b> learned from any of Highland's lawyers?  <b>9</b> MS. SMITH: I guess I need to go on the  <b>10</b> record with my normal agreement with  <b>11</b> Mr. Feinstein, that Mr. DiOrio can answer  <b>12</b> questions regarding what lawyers at Highland or  <b>13</b> outside counsel may or may not have told him in  <b>14</b> his capacity at Highland without waiving  <b>15</b> privilege.  <b>16</b> MR. FEINSTEIN: I don't know if we have an  <b>17</b> agreement, but certainly if I find that there's a  <b>18</b> question as to which we want to assert  <b>19</b> attorney-client privilege, you will hear me  <b>20</b> object. I did not object to the last question so  <b>21</b> the witness can answer.  <b>22</b> MS. SMITH: Just wanted to make sure the  <b>23</b> rules apply to all the deposition -- each  <b>24</b> deposition individually.  <b>25 A Would you mind restating the question,</b></p>	<p style="text-align: right;">100</p> <p><b>1 BY MS. TOMKOWIAK:</b>  <b>2 Q</b> Okay. So when you first joined the board  <b>3</b> of Sentinel, did you ask anybody what the  <b>4</b> potential liability to UBS was?  <b>5 A Possibly.</b>  <b>6 Q</b> You just don't recall?  <b>7 A I don't specifically recall. I don't</b>  <b>8 recall that conversation specifically.</b>  <b>9 Q</b> And you didn't think that that was  <b>10</b> relative to your -- to the policy?  <b>11</b> MS. SMITH: Objection, form.  <b>12 A The policy had a limit, so I think the</b>  <b>13 understanding was that the -- that was the most</b>  <b>14 the company would have to pay under the -- you</b>  <b>15 know, if the policy satisfied whatever.</b>  <b>16 BY MS. TOMKOWIAK:</b>  <b>17 Q</b> Do you recall what the policy limit was?  <b>18 A The policy limit's \$91 million.</b>  <b>19 Q</b> You believe it was \$91 million?  <b>20 A Yes.</b>  <b>21 Q</b> And do you recall anybody forming a view  <b>22</b> at any -- strike that.  <b>23</b> Do you recall anybody expressing a view at  <b>24</b> any point in time that the defendant's potential  <b>25</b> liability in the case would be greater than</p>

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<p style="text-align: right;">101</p> <p>1 \$100 million?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 <b>A I don't recall.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q Did you ask anybody whether Sentinel, the</p> <p>6 company that you were a director of, was likely to</p> <p>7 be on the hook for \$91 million?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 <b>A Well, I think by issuing the policy, the</b></p> <p>10 <b>company was potentially on the hook for</b></p> <p>11 <b>\$91 million. So my assumption was any judgment</b></p> <p>12 <b>could probably be above that, yeah. But I just</b></p> <p>13 <b>don't remember specific -- I don't remember the</b></p> <p>14 <b>billion dollar number until I heard the billion</b></p> <p>15 <b>dollar number after the -- around the first</b></p> <p>16 <b>judgment or the trial or whatever it was.</b></p> <p>17 <b>BY MS. TOMKOWIAK:</b></p> <p>18 Q Okay. But you believed as -- you believed</p> <p>19 that Sentinel was -- would potentially pay out up</p> <p>20 to \$91 million to UBS?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A That's correct.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q Do you know whether anyone at Highland put</p> <p>25 together any analysis of potential damages to UBS?</p>	<p style="text-align: right;">102</p> <p>1 <b>A Not specifically.</b></p> <p>2 Q In your capacity as a director of</p> <p>3 Sentinel, did you ask for any of that type of</p> <p>4 analysis?</p> <p>5 <b>A Any settlement analysis?</b></p> <p>6 Q Any damages analysis.</p> <p>7 <b>A Damages analysis. No. I don't recall</b></p> <p>8 <b>doing that.</b></p> <p>9 Q Did you ask for any settlement analysis?</p> <p>10 <b>A We came to -- one was kind of provided at</b></p> <p>11 <b>the end of each year by working with an actuary.</b></p> <p>12 <b>They would kind of fill out a table, basically --</b></p> <p>13 <b>an actuarial table to see probabilities of, you</b></p> <p>14 <b>know, multiple outcomes.</b></p> <p>15 Q Who was the actuary?</p> <p>16 <b>A His name was Jason Stubbs, I believe.</b></p> <p>17 Q Who hired him?</p> <p>18 <b>A He would have been a referral from Beecher</b></p> <p>19 <b>Carlson, I believe.</b></p> <p>20 Q When you joined Sentinel as a director,</p> <p>21 had he already been hired?</p> <p>22 <b>A I don't know if he had done any work in</b></p> <p>23 <b>the past on Sentinel's prior business. I don't</b></p> <p>24 <b>know.</b></p> <p>25 Q You weren't involved in hiring him?</p>
<p style="text-align: right;">103</p> <p>1 <b>A I don't remember if he was there or</b></p> <p>2 <b>Beecher -- sorry. I remember being involved with</b></p> <p>3 <b>speaking to him. I don't know if he was hired to</b></p> <p>4 <b>do anything prior to my being appointed on the</b></p> <p>5 <b>board. Does that make sense?</b></p> <p>6 Q It does.</p> <p>7 <b>A Sorry.</b></p> <p>8 Q Do you know whether anybody at Highland</p> <p>9 was given the opportunity to review the analysis</p> <p>10 that you received from Mr. Stubbs?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 <b>A It would be in kind of an annual meeting.</b></p> <p>13 <b>Isaac Leventon and myself and Beecher Carlson</b></p> <p>14 <b>would get on the phone with Mr. Stubbs, and Isaac</b></p> <p>15 <b>would talk about the potential outcomes, give him</b></p> <p>16 <b>basically the in-house lawyer's view of the case</b></p> <p>17 <b>and then he would do whatever actuaries do from</b></p> <p>18 <b>there.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Were you the only director that</p> <p>21 participated in those phone calls?</p> <p>22 <b>A Yes.</b></p> <p>23 Q Why?</p> <p>24 <b>A The other two independent directors</b></p> <p>25 <b>weren't day to day. They would see the result and</b></p>	<p style="text-align: right;">104</p> <p>1 <b>have the rights to -- or the ability to set a new</b></p> <p>2 <b>meeting and follow up if they had questions,</b></p> <p>3 <b>but...</b></p> <p>4 Q You weren't an independent director,</p> <p>5 right?</p> <p>6 <b>A I guess not.</b></p> <p>7 MS. SMITH: Objection, form. Sorry.</p> <p>8 Objection, form. I wasn't quick enough there.</p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did anybody ever tell you that you were</p> <p>11 not an independent director?</p> <p>12 <b>A No.</b></p> <p>13 Q So you just came to that conclusion</p> <p>14 yourself?</p> <p>15 <b>A I don't know the specific -- the</b></p> <p>16 <b>classification, if I was classified as an</b></p> <p>17 <b>independent director, director, managing director.</b></p> <p>18 <b>I never thought of it.</b></p> <p>19 Q Okay. Because you mentioned the other</p> <p>20 independent directors, and so I didn't know if you</p> <p>21 were drawing a distinction between them as</p> <p>22 independent directors and you as an inside</p> <p>23 director?</p> <p>24 <b>A The reason I say that is because they're</b></p> <p>25 <b>professional directors, that's their job and</b></p>

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<p style="text-align: right;">105</p> <p>1 they're just referred to as independent directors.                  2 For example, the guy on our board could serve on a                  3 hundred boards. They don't do day-to-day                  4 generally type stuff. So they're just referred to                  5 as independent directors.                  6 Q Was this the first board that you had ever                  7 served on?                  8 A I believe so.                  9 Q Do you know why you were asked to serve on                  10 the Sentinel board?                  11 A Not particularly.                  12 Q Did you have any experience with insurance                  13 prior to serving on the Sentinel board?                  14 A No, I don't. I didn't.                  15 Q So you said that you were aware that there                  16 was a trial in the UBS litigation in July 2018,                  17 correct?                  18 A Correct.                  19 Q And then at some point in time, you became                  20 aware that UBS won a \$1 billion judgment against                  21 the Highland funds in that matter?                  22 A Yes.                  23 Q Okay. And you don't know exactly when you                  24 became aware of that?                  25 A I can't say for certain.</p>	<p style="text-align: right;">106</p> <p>1 Q Was it prior to Highland going into                  2 bankruptcy?                  3 A Probably.                  4 Q How did you become aware of that judgment?                  5 A I genuinely don't know. I don't remember.                  6 Q Did somebody at Highland tell you?                  7 A Probably. Of the judgment?                  8 Q Uh-huh.                  9 A Yeah, probably.                  10 Q But you just don't recall who?                  11 A It may have come up during the actuary                  12 meeting, you know, that would have happened in                  13 Decemberish of that year, or '19, I guess. So                  14 probably around that time I think is a safe bet.                  15 Q Were your auditors aware of the                  16 judgment -- I'm sorry, let me be specific. Were                  17 Sentinel's auditors aware of that judgment?                  18 A Yes.                  19 Q Did you make them aware?                  20 A I don't know if it was myself or Beecher                  21 Carlson, but they would have been made aware                  22 during the audit process.                  23 Q And did the insureds make a claim on the                  24 policy after that judgment was entered?                  25 MS. SMITH: Objection, form.</p>
<p style="text-align: right;">107</p> <p>1 A No, not -- at what point in time?                  2 BY MS. TOMKOWIAK:                  3 Q Prior to the bankruptcy.                  4 A No.                  5 Q What about prior to your termination from                  6 Highland?                  7 MS. SMITH: Objection, form.                  8 A I don't believe so.                  9 BY MS. TOMKOWIAK:                  10 Q Did that surprise you?                  11 A That a claim was not made?                  12 Q Yeah.                  13 A Not particularly.                  14 Q Why not?                  15 A It was my understanding that there was                  16 still a Phase 2 to the trial, so -- and I thought                  17 everything had been kind of stayed, due to the                  18 bankruptcy, so it seemed like it was just in a                  19 holding pattern to me.                  20 Q Did you expect a claim to be made on the                  21 policy in the future?                  22 A At some point.                  23 Q Did you discuss that possibility with the                  24 other Sentinel directors?                  25 A Yeah. They were aware of it.</p>	<p style="text-align: right;">108</p> <p>1 MS. SMITH: Objection. Don't get into                  2 privileged conversations with the other directors.                  3 BY MS. TOMKOWIAK:                  4 Q Okay. I mean, did -- how were they aware                  5 of it?                  6 A I believe I would have told them once I                  7 became aware of it.                  8 Q Okay. To your knowledge, did Mr. Dondero                  9 or Mr. Ellington make any investment in Sentinel?                  10 MS. SMITH: Objection, form.                  11 A Can you repeat the question? I'm sorry.                  12 BY MS. TOMKOWIAK:                  13 Q To your knowledge, did -- let's break them                  14 up. Did Mr. Dondero make any investment in                  15 Sentinel?                  16 A I don't know specifically. When the                  17 company started up, it had -- I assume it was                  18 capitalized in some form or fashion, but I don't                  19 know who or how.                  20 Q Same question for Mr. Ellington. Do you                  21 know if he made any capital contribution to                  22 Sentinel?                  23 A It would be the same answer. I don't                  24 know.                  25 Q You assume that he did?</p>

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<p style="text-align: right;">109</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 <b>A Do I assume that Mr. Ellington did?</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q Yes.</p> <p>5 <b>A I don't know.</b></p> <p>6 Q You don't know.</p> <p>7 MS. TOMKOWIAK: I am handing the court</p> <p>8 reporter what we will mark as Exhibit 77.</p> <p>9 (Deposition Exhibit 77 marked for</p> <p>10 identification.)</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Take a couple of minutes to look at that</p> <p>13 as well and let me know when you're ready.</p> <p>14 (Witness reviews document.)</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q Have you seen this document before?</p> <p>17 <b>A Yes.</b></p> <p>18 Q When have you seen it?</p> <p>19 <b>A I mean, probably around the time it was</b></p> <p>20 <b>issued.</b></p> <p>21 Q And why did you see it?</p> <p>22 <b>A This was prepared as part of our</b></p> <p>23 <b>contemplated bank application that I mentioned</b></p> <p>24 <b>earlier. Part of the process is the person who</b></p> <p>25 <b>would ultimately own the bank license needed to</b></p>	<p style="text-align: right;">111</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q Understood. But thinking about it now,</p> <p>3 would it possibly have been part of that same bank</p> <p>4 application?</p> <p>5 <b>A Possibly.</b></p> <p>6 Q And if you look at this statement of</p> <p>7 assets, do you see the line where it says</p> <p>8 investment in Sentinel Reinsurance Ltd.?</p> <p>9 <b>A Yes.</b></p> <p>10 Q And it says 11,803,954?</p> <p>11 <b>A Uh-huh.</b></p> <p>12 Q Were you aware at the time that you</p> <p>13 received this statement that Mr. Ellington had a</p> <p>14 \$11.8 million investment in Sentinel?</p> <p>15 <b>A If I remember correctly -- are you</b></p> <p>16 <b>characterizing investment as cash invested in the</b></p> <p>17 <b>business or just -- how are you characterizing --</b></p> <p>18 <b>or how should I characterize investment here?</b></p> <p>19 Q Well, all I have to go by is this line,</p> <p>20 investment in Sentinel reinsurance. So do you</p> <p>21 know how he invested \$11.8 million in Sentinel?</p> <p>22 <b>A If I remember correctly, it would have</b></p> <p>23 <b>been not capital contributed, but whatever the</b></p> <p>24 <b>shareholder equity line was on the balance sheet,</b></p> <p>25 <b>it would have been some percentage of that, not --</b></p>
<p style="text-align: right;">110</p> <p>1 <b>provide, among other things, a statement of net</b></p> <p>2 <b>worth.</b></p> <p>3 Q And so to your recollection, Mr. Ellington</p> <p>4 provided this to you in connection with that bank</p> <p>5 application?</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 <b>A He provided this statement to me?</b></p> <p>8 <b>BY MS. TOMKOWIAK:</b></p> <p>9 Q Yes.</p> <p>10 <b>A I believe I provided -- gathered some of</b></p> <p>11 <b>this info, sent it to the accounting firm and they</b></p> <p>12 <b>would have sent it back.</b></p> <p>13 Q Okay. So if -- do you believe that's why</p> <p>14 this document would have -- was also on your desk</p> <p>15 at Highland?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 <b>A Probably.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Does that refresh your mind at all as to</p> <p>20 whether Mr. -- as to why you also had a copy of</p> <p>21 Mr. Ellington's personal checking account</p> <p>22 statement?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 <b>A That seems to track. I just don't</b></p> <p>25 <b>remember seeing that particular --</b></p>	<p style="text-align: right;">112</p> <p>1 <b>not he invested \$11.8 million. Does that make</b></p> <p>2 <b>sense?</b></p> <p>3 Q To my lawyer brain, slightly. So you're</p> <p>4 saying that Mr. Ellington -- again, I'm not an</p> <p>5 accounting expert, but I think the distinction</p> <p>6 you're trying to make is that Mr. Ellington did</p> <p>7 not contribute \$11.8 million of cash to Sentinel;</p> <p>8 is that right?</p> <p>9 <b>A That's my understanding. I don't know if</b></p> <p>10 <b>he ever contributed a dollar, a million dollars, I</b></p> <p>11 <b>don't know. But that's how this number would have</b></p> <p>12 <b>been calculated.</b></p> <p>13 Q Okay. But you knew -- when were you</p> <p>14 putting together the application for this bank?</p> <p>15 <b>A During, I think, 2018, prior to October.</b></p> <p>16 Q Okay. So you at least knew at that time</p> <p>17 that Mr. Ellington had some financial interest in</p> <p>18 Sentinel?</p> <p>19 <b>A That was my understanding.</b></p> <p>20 Q And if I understood you correctly, some</p> <p>21 type of equity in Sentinel?</p> <p>22 <b>A Yes.</b></p> <p>23 Q As a shareholder?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 <b>A Again, I don't know if it's in a</b></p>

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<p style="text-align: right;">113</p> <p><b>1 shareholder or in a personal capacity. I don't</b></p> <p><b>2 know.</b></p> <p><b>3 BY MS. TOMKOWIAK:</b></p> <p>4 Q You just mentioned the shareholder equity</p> <p>5 line of the balance sheet is why I asked.</p> <p><b>6 A Right. But I don't know -- yes. Sorry.</b></p> <p><b>7 Yes, as a shareholder.</b></p> <p>8 Q Okay. Did you actually -- and by you, I</p> <p>9 don't mean you personally, but you said -- you</p> <p>10 said you didn't know why your application for the</p> <p>11 bank was not approved. Is that a fair</p> <p>12 characterization of your testimony?</p> <p><b>13 A That's not what I said.</b></p> <p>14 Q Yeah, what did you say?</p> <p><b>15 A I don't know why the project didn't move</b></p> <p><b>16 forward.</b></p> <p>17 Q Do you know whether an application was</p> <p>18 made?</p> <p><b>19 A I don't know.</b></p> <p>20 Q So you compiled this information, but you</p> <p>21 don't recall if you ever actually submitted it to</p> <p>22 anyone?</p> <p>23 MS. SMITH: Objection, form.</p> <p><b>24 A I didn't personally submit it to anyone.</b></p> <p>25</p>	<p style="text-align: right;">115</p> <p>1 one.</p> <p>2 MS. HARTMANN: That's okay. Shannon</p> <p>3 already gave me that yesterday.</p> <p>4 THE WITNESS: Can I start reviewing?</p> <p>5 MS. SMITH: Yeah.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Yeah, please do.</p> <p>8 (Witness reviews document.)</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Let me know when you're ready. Take your</p> <p>11 time.</p> <p><b>12 A Is it best if I review the whole thing or</b></p> <p><b>13 specific pages?</b></p> <p>14 Q Well, my first question is have you ever</p> <p>15 seen this document before?</p> <p><b>16 A I have not.</b></p> <p>17 MS. SMITH: You need to review the whole</p> <p>18 thing.</p> <p>19 THE WITNESS: Okay.</p> <p><b>20 A I have not.</b></p> <p><b>21 BY MS. TOMKOWIAK:</b></p> <p>22 Q As a general matter today, you can take</p> <p>23 the time that you need to review documents as much</p> <p>24 or as -- all of them as you would like. If</p> <p>25 they're very lengthy, I will direct you to</p>
<p style="text-align: right;">114</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q And you don't personally know if somebody</p> <p>3 else submitted it to anyone?</p> <p><b>4 A Right. I can't be sure.</b></p> <p>5 Q You don't recall discussing with</p> <p>6 Mr. Ellington whether or not he was -- he had</p> <p>7 submitted the information to anyone?</p> <p><b>8 A There were a few items that he was</b></p> <p><b>9 responsible for collecting, personal</b></p> <p><b>10 recommendations, again, it was part of the</b></p> <p><b>11 application process, and we passed everything off</b></p> <p><b>12 to him and from there, I don't know.</b></p> <p>13 Q So you don't know if he submitted the</p> <p>14 application and it was denied?</p> <p><b>15 A I don't know --</b></p> <p>16 MS. SMITH: Objection, form.</p> <p><b>17 A I don't know that.</b></p> <p><b>18 BY MS. TOMKOWIAK:</b></p> <p>19 Q I am handing you what has been previously</p> <p>20 marked as Exhibit 48.</p> <p>21 MS. TOMKOWIAK: Counsel, do you have your</p> <p>22 copies?</p> <p>23 MS. HARTMANN: If you have one more, we'd</p> <p>24 appreciate it. Actually, we can share.</p> <p>25 MS. TOMKOWIAK: Let me see if we can find</p>	<p style="text-align: right;">116</p> <p>1 specific pages, but if you need to read more of</p> <p>2 the document to answer the question, just let me</p> <p>3 know.</p> <p><b>4 A Okay. Fair. Thank you.</b></p> <p>5 (Witness reviews document.)</p> <p><b>6 A Okay.</b></p> <p><b>7 BY MS. TOMKOWIAK:</b></p> <p>8 Q Have you ever seen this document before?</p> <p><b>9 A I have not.</b></p> <p>10 Q Do you know why a copy of it was found on</p> <p>11 your desk at Highland?</p> <p><b>12 A I do not.</b></p> <p>13 Q Do you know whether people were in the</p> <p>14 business of randomly placing documents on your</p> <p>15 desk at Highland?</p> <p>16 MS. SMITH: Objection, form.</p> <p><b>17 A I don't.</b></p> <p><b>18 BY MS. TOMKOWIAK:</b></p> <p>19 Q Did you share your desk with anyone at</p> <p>20 Highland?</p> <p>21 MS. SMITH: Objection, form.</p> <p><b>22 A I shared a file cabinet space with JP</b></p> <p><b>23 because we sat next to each other, but not my</b></p> <p><b>24 desk.</b></p> <p>25</p>

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<p style="text-align: right;">117</p> <p>1 BY MS. TOMKOWIAK:                  2 Q Are you familiar at all with the                  3 settlement analysis set forth in this document,                  4 despite the fact that you haven't seen the                  5 document itself before?                  6 <b>A Not this detailed, but I think I have a                  7 general understanding of what a settlement would                  8 have looked like.</b>                  9 Q What is that -- where did that general                  10 understanding come from?                  11 <b>A It was part of the actuarial table that we                  12 would see at the end of the year. Settlement, I                  13 think was a possibility, one of the potential                  14 outcomes.</b>                  15 Q So if you could go turn to page Bates                  16 ending in 5311. I'm sorry, when I say Bates                  17 number, do you know what I mean?                  18 <b>A I don't. I apologize.</b>                  19 Q That's okay. That lengthy number at the                  20 bottom.                  21 <b>A Yeah.</b>                  22 Q It's Slide 8, Bates number ending 5311.                  23 It's just a lawyer term for how we stamp the                  24 documents.                  25 <b>A Got it.</b></p>	<p style="text-align: right;">119</p> <p>1 <b>defend themselves through the length of whatever                  2 potential future litigation was on the horizon.</b>                  3 Q Okay. And that the funds might not have                  4 enough money to cover the potential damages to                  5 UBS?                  6 MS. SMITH: Objection, form.                  7 <b>A I think so. I'm not entirely sure. Could                  8 you repeat? Sorry.</b>                  9 <b>BY MS. TOMKOWIAK:</b>                  10 Q Sure. That the funds might not have                  11 enough money to cover their potential damages to                  12 UBS?                  13 MS. SMITH: Objection, form.                  14 <b>A Right, yes. And I believe that's the                  15 purpose of the policy.</b>                  16 <b>BY MS. TOMKOWIAK:</b>                  17 Q Okay. If you look at the last page of                  18 this presentation, does the list of assets here in                  19 Appendix 1 look familiar to you?                  20 <b>A Some, yeah. Most.</b>                  21 Q How are you familiar with these?                  22 <b>A This looks like a list of assets used to                  23 pay for the ATE policy.</b>                  24 Q When did you come to learn that there                  25 was -- that these assets were used to pay for the</p>
<p style="text-align: right;">118</p> <p>1 Q Appreciating that you've never seen this                  2 document, have you ever seen a summary of how --                  3 of the structure of a settlement with UBS like                  4 this?                  5 <b>A Not like this, no. Like I said, my                  6 understanding was just generally settle for X or Y                  7 or Z or for whatever.</b>                  8 Q So at the time you became a director of                  9 Sentinel, did you understand that the Sentinel                  10 policy was one step in a potential settlement                  11 structure with UBS?                  12 MS. SMITH: Objection to form.                  13 <b>A I didn't understand -- I don't think so.</b>                  14 <b>BY MS. TOMKOWIAK:</b>                  15 Q Did anybody convey to you that the policy                  16 had been purchased from Sentinel in order to                  17 facilitate a settlement with UBS?                  18 MS. SMITH: Objection, form.                  19 <b>A My understanding was the policy was                  20 purchased because the funds couldn't afford to                  21 defend themselves or -- long term or something                  22 like that.</b>                  23 <b>BY MS. TOMKOWIAK:</b>                  24 Q What do you mean by something like that?                  25 <b>A That the funds may not have been able to</b></p>	<p style="text-align: right;">120</p> <p>1 ATE policy?                  2 <b>A At some point after I was appointed as                  3 director.</b>                  4 Q Who would be able to tell me whether                  5 Sentinel owns each of these assets today?                  6 <b>A I would be able to.</b>                  7 Q You would?                  8 <b>A Uh-huh.</b>                  9 Q Okay.                  10 <b>A Not -- the ones I'm familiar with. Sorry.                  11 Some of these I've never seen before.</b>                  12 Q Okay. Are you able to -- I can go one by                  13 one, or can you identify on this list which of                  14 these assets you believe Sentinel still owns                  15 today?                  16 <b>A Yes. Here, let's try to -- I'll tell you                  17 the ones --</b>                  18 MS. SMITH: You can use that if you need                  19 to.                  20 THE WITNESS: Thank you.                  21 <b>A And again, I can't give you a blanket                  22 answer because I don't -- some of these I've never                  23 seen. They may be known as something else or                  24 whatever, but I --</b>                  25</p>

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<p style="text-align: right;">121</p> <p>1 BY MS. TOMKOWIAK:                  2 Q I understand.                  3 <b>A Maybe it's best to go one by one. I don't</b>                  4 <b>want to draw this out, but I can't give you a good</b>                  5 <b>answer.</b>                  6 Q Okay. How about -- well, I have another                  7 list that looks similar to this and I think it                  8 would be better for us to use that list to go                  9 through that analysis, so let's do it --                  10 <b>A Okay.</b>                  11 Q -- in a little bit. Okay. You can set                  12 that aside.                  13 I'm handing you what has been previously                  14 marked in this case as Exhibit 26.                  15 MS. TOMKOWIAK: Do you have that?                  16 MS. SMITH: I do.                  17 MS. TOMKOWIAK: It is the beneficial owner                  18 chart we have been looking at with the Social                  19 Security names redacted -- numbers redacted.                  20 MS. SMITH: Oh, that one page?                  21 MS. TOMKOWIAK: Yeah.                  22 BY MS. TOMKOWIAK:                  23 Q Mr. DiOrio, have you ever seen this                  24 before?                  25 <b>A This particular document, no.</b></p>	<p style="text-align: right;">122</p> <p>1 Q Have you ever seen a document that sets                  2 forth the structure of Sentinel like this?                  3 <b>A Not like this.</b>                  4 Q So at any -- at no point in time during                  5 the time that you were a director of Sentinel did                  6 you know that Sentinel was owned 70/30 by entities                  7 called Patten and Nimitz?                  8 MS. SMITH: Objection, form.                  9 <b>A I had a general understanding, again, of</b>                  10 <b>the split, 70/30 split, I guess, but I've heard</b>                  11 <b>the names Patten and Nimitz, but I don't -- I</b>                  12 <b>can't -- other than that, I can't really speak to</b>                  13 <b>it.</b>                  14 BY MS. TOMKOWIAK:                  15 Q And you had that general understanding at                  16 some point in time while you were a director of                  17 Sentinel?                  18 <b>A I believe so.</b>                  19 Q And you said that you had heard of Patten                  20 and Nimitz. Who did you hear that from?                  21 <b>A I had heard the names and I'm sure at some</b>                  22 <b>point if it was on an org chart -- I've never seen</b>                  23 <b>it laid out like this, is what I was getting at.</b>                  24 Q And did you hear at some point in time                  25 that Mr. Dondero owned Patten?</p>
<p style="text-align: right;">123</p> <p>1 MS. SMITH: Objection, form.                  2 <b>A I don't believe so. I don't know.</b>                  3 BY MS. TOMKOWIAK:                  4 Q And did you hear at any point in time that                  5 Mr. Ellington was the sole owner of Nimitz?                  6 MS. SMITH: Objection, form.                  7 <b>A I don't recall. I know it seems like it</b>                  8 <b>says that here, but I don't recall hearing one way</b>                  9 <b>or the other.</b>                  10 BY MS. TOMKOWIAK:                  11 Q So you recall hearing about Patten and                  12 Nimitz, but you didn't ask any questions about who                  13 owned those two entities?                  14 MS. SMITH: Objection, form.                  15 <b>A Correct. As I remember, it would have</b>                  16 <b>been more like a PowerPoint-type org chart and I</b>                  17 <b>think these were one layer on a long, larger</b>                  18 <b>structure is my understanding. So I didn't</b>                  19 <b>specifically ask about who owned which of these.</b>                  20 BY MS. TOMKOWIAK:                  21 Q I think you said you had a general                  22 knowledge that Mr. Ellington owned Sentinel in                  23 some way; is that right?                  24 <b>A Uh-huh.</b>                  25 Q And you didn't ask which of these entities</p>	<p style="text-align: right;">124</p> <p>1 related to Mr. Ellington?                  2 MS. SMITH: Objection, form.                  3 <b>A Probably not.</b>                  4 BY MS. TOMKOWIAK:                  5 Q Did you consider Sentinel to be affiliated                  6 with Highland?                  7 MS. SMITH: Objection, form.                  8 <b>A I believe -- no, I believed it was not</b>                  9 <b>affiliated direct -- with HCMLP?</b>                  10 BY MS. TOMKOWIAK:                  11 Q Yes.                  12 <b>A Yeah. I believed it was not affiliated.</b>                  13 Q What was the basis for that belief?                  14 <b>A That it was a separate stand-alone</b>                  15 <b>business based in Cayman. Now, I don't know the</b>                  16 <b>legal definition of -- if there's a legal lawyer</b>                  17 <b>term for affiliate or not affiliate, that's going</b>                  18 <b>to be beyond me.</b>                  19 Q Okay. Did anybody ever tell you that                  20 Sentinel and Highland were not affiliated?                  21 <b>A Yes, I believe at some point I was told</b>                  22 <b>that.</b>                  23 Q When were you told that?                  24 <b>A At some point while I was a director. I</b>                  25 <b>don't remember specifically when, but obviously</b></p>

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<p style="text-align: right;">125</p> <p>1 after my involvement with Sentinel.</p> <p>2 Q Who told you that?</p> <p>3 A I think it was -- I don't remember who</p> <p>4 specifically said that, but Sentinel showed up on</p> <p>5 a list in compliance of affiliates for owning one</p> <p>6 of the assets that was on its balance sheet and I</p> <p>7 remember there was a big to-do about someone made</p> <p>8 a mistake and it was not an affiliate.</p> <p>9 Q What was the big to-do?</p> <p>10 A Again, I don't understand it. It was to</p> <p>11 get it -- make sure it was classified as a</p> <p>12 nonaffiliate as it always had been. Someone</p> <p>13 changed it at some point on a spreadsheet, the</p> <p>14 classification, as I understand it.</p> <p>15 Q Why was it a big deal if it was classified</p> <p>16 as an affiliate entity?</p> <p>17 A That, I don't know.</p> <p>18 Q What efforts did you make to separate out</p> <p>19 the work that you were doing in your capacity as a</p> <p>20 director for Sentinel from the work that you were</p> <p>21 doing in your capacity as a Highland employee?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A They didn't -- the work I did for Highland</p> <p>24 and the work I did for Sentinel didn't really</p> <p>25 overlap, in my opinion. In other words, the</p>	<p style="text-align: right;">126</p> <p>1 distressed private equity stuff had nothing to do</p> <p>2 with Sentinel and vice versa.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Well, did you do any of your work for</p> <p>5 Sentinel from the Highland office?</p> <p>6 A Yes.</p> <p>7 Q Did you use your Highland phone?</p> <p>8 A I don't have a Highland phone.</p> <p>9 Q Did you make phone calls regarding</p> <p>10 Sentinel matters while you were at the Highland</p> <p>11 office?</p> <p>12 A Yes.</p> <p>13 Q Did you -- did you have e-mail</p> <p>14 correspondence regarding Sentinel matters while</p> <p>15 you were working at the Highland office?</p> <p>16 A Yes.</p> <p>17 Q Did you ever ask anybody to be compensated</p> <p>18 for the time that you were spending on Sentinel</p> <p>19 matters?</p> <p>20 A No.</p> <p>21 Q Did Highland pay for your trips to the</p> <p>22 Cayman Islands on behalf of Sentinel?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 A I don't believe so. I doubt it.</p> <p>25</p>
<p style="text-align: right;">127</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Did you pay for those trips?</p> <p>3 A Personally?</p> <p>4 Q Yes.</p> <p>5 A No.</p> <p>6 Q Did Sentinel pay for those trips?</p> <p>7 A If-- they would have paid if it was</p> <p>8 Sentinel related, yes.</p> <p>9 Q And how do you know that?</p> <p>10 A I would have had to submit expenses.</p> <p>11 Q So when you went on those trips, who did</p> <p>12 you submit those expenses to?</p> <p>13 A So the process in general for expenses --</p> <p>14 this may help for other stuff. Any expense that</p> <p>15 came through Sentinel would be sent to Beecher</p> <p>16 Carlson with an invoice in detail and all that</p> <p>17 stuff. They would load it into the banking</p> <p>18 system. The -- never me, because the other two</p> <p>19 directors would approve it. They would ask</p> <p>20 questions, like what's this for, who's -- all that</p> <p>21 stuff. Once they got comfortable with the</p> <p>22 expense, they would approve it in the banking</p> <p>23 system and it would go back to Beecher Carlson and</p> <p>24 then they would release wires or payment or</p> <p>25 whatever from there. So it was like a three-step</p>	<p style="text-align: right;">128</p> <p>1 process. All I would do is submit expenses.</p> <p>2 Q So the other -- so the independent</p> <p>3 directors had to approve your expenses?</p> <p>4 A Every penny, yes.</p> <p>5 Q What is the -- you said there was like a</p> <p>6 list in compliance of affiliates. What -- have</p> <p>7 you ever seen that list?</p> <p>8 A No. I think -- I don't know if it was a</p> <p>9 specific general list of affiliates. This was</p> <p>10 with respect to shares that Sentinel owned and I</p> <p>11 think it was classified as an affiliate on the</p> <p>12 spreadsheet, if that makes sense. It wasn't a</p> <p>13 giant list of affiliates, nonaffiliates or</p> <p>14 whatever.</p> <p>15 Q Was it a list of investors in Multi Strat?</p> <p>16 Does that sound familiar?</p> <p>17 A It wouldn't have been Multi Strat. It was</p> <p>18 something to do with real estate, if I remember</p> <p>19 right.</p> <p>20 Q I am handing you what's been previously</p> <p>21 marked as Exhibit 28. You can set that other</p> <p>22 exhibit to the side.</p> <p>23 MS. SMITH: Do we have that one already?</p> <p>24 MS. TOMKOWIAK: You should.</p> <p>25</p>



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<p style="text-align: right;">129</p> <p>1 BY MS. TOMKOWIAK:                  2 Q Let me know when you're ready, Mr. DiOrio.                  3 (Witness reviews document.)                  4 A Okay.                  5 BY MS. TOMKOWIAK:                  6 Q Do you recall this e-mail chain?                  7 A Not particularly, but it's ringing a bell.                  8 Q Do you recall the issues described in the                  9 e-mail chain?                  10 A Some.                  11 Q Okay. So earlier you mentioned that in                  12 2019, CIMA raised certain issues. In this e-mail,                  13 it looks like CIMA is asking that the Sentinel                  14 structure be simplified. Do you recall CIMA                  15 raising that issue?                  16 A Yes.                  17 Q What do you recall about that?                  18 A There was a company that sat above -- let                  19 me see if it's in here actually. Okay. Yeah.                  20 My -- the rest of it I kind of heard. The one                  21 specific to Sentinel that I remember was the                  22 Sentinel Re Holdings.                  23 Q Are you looking at the last page of this?                  24 A I am. Sorry.                  25 Q That's okay.</p>	<p style="text-align: right;">131</p> <p>1 A If they're asking -- if it's contemplated                  2 in this e-mail that CIMA is telling -- or                  3 demanding this to happen, I'm sure it did. I just                  4 can't for sure say that it actually -- with                  5 respect to Nimitz and Patten. I know Sentinel Re                  6 Holdings was merged.                  7 Q So after they were merged, do you know who                  8 owned Sentinel Reinsurance?                  9 A I would assume the bones of this structure                  10 survived whatever was -- you know, with the two                  11 sides. So I assume the ownership didn't change,                  12 ultimately.                  13 Q So you would assume that ultimately USP1,                  14 SAS Holdings and USP2 owned Sentinel Reinsurance?                  15 MS. SMITH: Objection, form.                  16 A I think ultimately if you follow it all                  17 the way down, yeah, I think so.                  18 BY MS. TOMKOWIAK:                  19 Q Do you know who USP1 is?                  20 A I think it's probably Mr. Ellington.                  21 Q What about USP2?                  22 A I would say it's Mr. Dondero.                  23 Q And I think earlier we talked about the                  24 relationship between SAS and Sentinel. Do you                  25 agree, looking at this chart, that it appears that</p>
<p style="text-align: right;">130</p> <p>1 A 3126, the --                  2 Q The Bates number. Got it.                  3 A Bates number. There you go. Yeah. And I                  4 remember Sentinel had to -- or that entity had to                  5 be merged into Sentinel Reinsurance, Ltd. If I                  6 remember right, CIMA said the structure was not as                  7 simple as it could be.                  8 Q Do you know why that was an issue for                  9 CIMA?                  10 A I don't.                  11 Q And do you recall if, in fact, Sentinel Re                  12 Holdings was merged out of existence around this                  13 time?                  14 MS. SMITH: Objection, form.                  15 A It was at some point.                  16 BY MS. TOMKOWIAK:                  17 Q Do you know whether Patten and Nimitz were                  18 also merged out of existence at that time?                  19 MS. SMITH: Objection, form.                  20 A That, I don't know. My involvement would                  21 have been Sentinel Re Holdings down, if that makes                  22 sense.                  23 BY MS. TOMKOWIAK:                  24 Q So you just don't recall one way or the                  25 other?</p>	<p style="text-align: right;">132</p> <p>1 SAS owns Sentinel in some manner?                  2 MS. SMITH: Objection, form.                  3 A Can you direct me to where you're looking                  4 specifically on here?                  5 BY MS. TOMKOWIAK:                  6 Q Sure. I'm looking at the top line, that                  7 rectangle box that says SAS Holdings, SVP -- I'm                  8 sorry, SPV Ltd.                  9 A It looks from here like, yeah, the -- I                  10 guess if you follow it all the way down, SAS                  11 Holdings SPV Ltd. is a 1 percent value owner                  12 ultimately -- of how Holdings, which, you know,                  13 follow the thing down. I don't think this is an                  14 up-to-date org chart. Just seeing Sentinel Re                  15 Holdings on here, I guess would tell me that. I                  16 don't know about above that.                  17 Q Do you know whether it's an accurate chart                  18 as of April 9th, 2018?                  19 MS. SMITH: Objection, form.                  20 A If it says it, I'm sure it is or I'm sure                  21 it was.                  22 BY MS. TOMKOWIAK:                  23 Q Looking at the -- looking at the last                  24 page, do you know what SeaOne (US) means?                  25 A That particular entity, no, but -- I don't</p>

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<p style="text-align: right;">133</p> <p><b>1 know if it's even -- are we considering that an</b>  <b>2 entity on here?</b>  <b>3 Q Do you know what it is?</b>  <b>4 A SeaOne is an investment held at</b>  <b>5 SS Holdings, that predated my time at Sentinel. I</b>  <b>6 believe the investment was made in 2014ish.</b>  <b>7 Q SS Holdings is a wholly owned sub of</b>  <b>8 Sentinel Reinsurance, right?</b>  <b>9 MS. SMITH: Objection, form.</b>  <b>10 A I think so.</b>  <b>11 BY MS. TOMKOWIAK:</b>  <b>12 Q Do you know whether Sentinel, through</b>  <b>13 SS Holdings, still has an investment in SeaOne, at</b>  <b>14 least as of June when you resigned from the board</b>  <b>15 of Sentinel?</b>  <b>16 A As far as I know, yeah.</b>  <b>17 Q Do you know whether that's a profitable</b>  <b>18 investment?</b>  <b>19 A I know it's -- well, it's largely</b>  <b>20 illiquid, so no money has been made so profitable,</b>  <b>21 I don't know if I would characterize it as that.</b>  <b>22 Q What do you mean by illiquid? Do you know</b>  <b>23 how Sentinel through SS Holdings is invested in</b>  <b>24 SeaOne?</b>  <b>25 A I don't know what -- the details of the</b></p>	<p style="text-align: right;">135</p> <p><b>1 purpose -- you know, what it was set up for.</b>  <b>2 Q Do you know if it has operations?</b>  <b>3 A I don't know -- I don't know if it has</b>  <b>4 operations.</b>  <b>5 Q How do you know the name?</b>  <b>6 A As part of the CIMA cleanup inspection,</b>  <b>7 all that good stuff, Sentinel was carrying some --</b>  <b>8 some of the assets from that list that we looked</b>  <b>9 at prior that were deemed worthless, but again</b>  <b>10 they all came over. We are were instructed --</b>  <b>11 Sentinel was instructed to remove those from its</b>  <b>12 balance sheet because they were worthless and it</b>  <b>13 was resulting in a qualification on the audit. So</b>  <b>14 the assets were all sold to Sebastian Clarke for a</b>  <b>15 dollar, just to warehouse them off Sentinel's</b>  <b>16 books.</b>  <b>17 Q So did CIMA ask Sentinel to remove those</b>  <b>18 from its balance sheet?</b>  <b>19 A CIMA instructed -- or dictated to Sentinel</b>  <b>20 that it was no longer to submit an audit with a</b>  <b>21 qualification. Do you know what that means?</b>  <b>22 Generally?</b>  <b>23 Q You mean a qualified audit?</b>  <b>24 A Yes.</b>  <b>25 Q Yeah.</b></p>
<p style="text-align: right;">134</p> <p><b>1 original transaction. Again, that was way before</b>  <b>2 my time. But Sentinel had a third-party valuation</b>  <b>3 done on it at some point during my time --</b>  <b>4 Q Do you know what --</b>  <b>5 A -- to ascertain the value. But you know,</b>  <b>6 again, third party.</b>  <b>7 Q Do you know what the third party concluded</b>  <b>8 was the value of that investment?</b>  <b>9 A This was pre-COVID and this is -- who</b>  <b>10 knows what happened to it after that, I haven't</b>  <b>11 seen anything, but it was about \$45 million, give</b>  <b>12 or take.</b>  <b>13 Q Pre-COVID, so early 2020?</b>  <b>14 A Would have been a valuation done for the</b>  <b>15 2019 audit. So it would have been as of year-end</b>  <b>16 12/31/19.</b>  <b>17 Q And if you look at the Offshore Fund</b>  <b>18 Structure, which is the chart before that.</b>  <b>19 A Okay.</b>  <b>20 Q There's an entity in the lower right-hand</b>  <b>21 corner called Sebastian Clarke. It's not the very</b>  <b>22 last one to the bottom right, but one over.</b>  <b>23 A I see it.</b>  <b>24 Q Do you know what that is?</b>  <b>25 A I know the name. I don't know what its</b></p>	<p style="text-align: right;">136</p> <p><b>1 A And that was one of the things that was</b>  <b>2 leading to the qualified audit. So indirectly</b>  <b>3 CIMA said get rid of these and then the audit was</b>  <b>4 clean last year, or unqualified.</b>  <b>5 Q Unqualified in 2020?</b>  <b>6 A For the 2019 financials.</b>  <b>7 Q 2019. Do you know whether the 2020 audit</b>  <b>8 has been completed?</b>  <b>9 A It has not.</b>  <b>10 MS. SMITH: Is now a good time for a</b>  <b>11 break?</b>  <b>12 MS. TOMKOWIAK: Give me just one minute to</b>  <b>13 see if I'm done with that Sebastian Clarke thing.</b>  <b>14 Just a few more follow-up questions on that.</b>  <b>15 BY MS. TOMKOWIAK:</b>  <b>16 Q What does it mean that the assets were</b>  <b>17 deemed worthless?</b>  <b>18 A A lot of the -- or a number of the assets</b>  <b>19 that were still sitting on the -- that list</b>  <b>20 basically sent the balance sheets of the insured</b>  <b>21 funds, were crisis era instruments that no longer</b>  <b>22 had -- was my understanding had no value. Like</b>  <b>23 you would see on there there's some zeros next to</b>  <b>24 them and they just were worthless and were never</b>  <b>25 going to have value again.</b></p>

<p style="text-align: right;">137</p> <p>1 Q Do you know who deemed them worthless?</p> <p>2 <b>A There were -- Highland marks, internal</b></p> <p>3 <b>valuation at Highland, and we sent -- Sentinel</b></p> <p>4 <b>sent all this information -- what we had over to</b></p> <p>5 <b>this third-party valuation firm and some of them</b></p> <p>6 <b>they said there wasn't even enough information</b></p> <p>7 <b>because they were so old to say that they're</b></p> <p>8 <b>worthless. And then you can look some of them up</b></p> <p>9 <b>on Bloomberg and they're worthless.</b></p> <p>10 Q So it's your understanding that at the</p> <p>11 time that they were transferred to Sentinel, some</p> <p>12 of the assets were already worthless?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A That's correct.</b></p> <p>15 MS. TOMKOWIAK: Yes, now is a good time</p> <p>16 for a break.</p> <p>17 THE VIDEOGRAPHER: We are off the record</p> <p>18 at 12:33 p.m.</p> <p>19 (Recess taken from 12:33 p.m. CDT to</p> <p>20 1:27 p.m. CDT)</p> <p>21 THE VIDEOGRAPHER: The time is 1:27 p.m.</p> <p>22 We are back on the record.</p> <p>23 BY MS. TOMKOWIAK:</p> <p>24 Q So, Mr. DiOrio, this morning we were</p> <p>25 talking a little bit about your role as a director</p>	<p style="text-align: right;">139</p> <p>1 Mr. Dean. Am I wrong about that?</p> <p>2 <b>A I don't know.</b></p> <p>3 Q Okay. What about Mr. Christopher Watler?</p> <p>4 Was he a director when you joined the board?</p> <p>5 <b>A What was the name?</b></p> <p>6 Q Christopher Watler?</p> <p>7 <b>A I don't believe I've ever heard that name.</b></p> <p>8 Q You've never heard that name?</p> <p>9 <b>A I don't think so. It's not ringing a</b></p> <p>10 <b>bell.</b></p> <p>11 Q He -- okay. So when you were on the board</p> <p>12 of Sentinel, he wasn't a director?</p> <p>13 <b>A If he was, I never spoke to him or met</b></p> <p>14 <b>with him.</b></p> <p>15 Q So to the best of your recollection, when</p> <p>16 you joined the board, Ms. Thompson and Mr. Dean</p> <p>17 were on the board and then Dilip Massand joined at</p> <p>18 the same time you did?</p> <p>19 <b>A Yeah. I know for sure Lesley was. I</b></p> <p>20 <b>don't know if she replaced Andrew Dean. I think</b></p> <p>21 <b>that's his name. I'm not sure.</b></p> <p>22 Q Okay.</p> <p>23 <b>A I just remember the only person I spoke to</b></p> <p>24 <b>that I can recall was Lesley Thompson.</b></p> <p>25 Q She worked at Maples?</p>
<p style="text-align: right;">138</p> <p>1 of Sentinel and you said you believed you were</p> <p>2 appointed to be a director of Sentinel in</p> <p>3 September 2017?</p> <p>4 <b>A That's correct.</b></p> <p>5 Q And you don't have any more precise</p> <p>6 recollection when in September?</p> <p>7 <b>A I don't know the exact date.</b></p> <p>8 Q And you said Mr. Ellington asked you to be</p> <p>9 on the board of Sentinel; is that right?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Anybody else?</p> <p>12 <b>A No, not that I recall.</b></p> <p>13 Q Did you replace a director on the board?</p> <p>14 <b>A I don't know if I directly replaced</b></p> <p>15 <b>anyone, but I was appointed along with a gentleman</b></p> <p>16 <b>by the name of Dilip Massand. And I think as I</b></p> <p>17 <b>mentioned before, Maples, there were two directors</b></p> <p>18 <b>from Maples.</b></p> <p>19 Q Who were the two directors from Maples at</p> <p>20 the time you joined the board?</p> <p>21 <b>A One was named Lesley Thompson. I think</b></p> <p>22 <b>the other was named Andrew something, Dean maybe.</b></p> <p>23 Q So I'm trying to understand the</p> <p>24 composition of the board because I've seen</p> <p>25 documents indicating that Lesley replaced</p>	<p style="text-align: right;">140</p> <p>1 <b>A Yes.</b></p> <p>2 Q Dilip, where did he work?</p> <p>3 <b>A He was based in the Middle East. He</b></p> <p>4 <b>provided service to SAS.</b></p> <p>5 Q And why was he asked to join the board?</p> <p>6 <b>A You'd have to ask Mr. Ellington. I don't</b></p> <p>7 <b>know.</b></p> <p>8 Q What role did he play on the board?</p> <p>9 <b>A Same as me, just a board -- a director.</b></p> <p>10 Q Did you have any interactions with him?</p> <p>11 <b>A I did, yeah.</b></p> <p>12 Q Do you know how long he stayed on the</p> <p>13 board?</p> <p>14 <b>A I believe we were appointed around the</b></p> <p>15 <b>same time. I want to say early 2020 he might have</b></p> <p>16 <b>come off.</b></p> <p>17 Q Do you know why?</p> <p>18 <b>A He resigned.</b></p> <p>19 Q Do you know why?</p> <p>20 <b>A I think he was exploring other</b></p> <p>21 <b>opportunities and no longer wanted to serve.</b></p> <p>22 Q Did he tell you why he was resigning from</p> <p>23 the board?</p> <p>24 <b>A No, not directly, that I recall.</b></p> <p>25 Q Did anybody else tell you why Mr. Massand</p>

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<p style="text-align: right;">141</p> <p>1 was resigning from the board?</p> <p>2 <b>A No, not that I recall.</b></p> <p>3 Q Was SAS entitled to appoint someone to the</p> <p>4 board?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 <b>A I don't know.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q So you don't know if SAS had some right to</p> <p>9 have a representative sit on the Sentinel board?</p> <p>10 <b>A Not to my knowledge.</b></p> <p>11 Q Did Mr. Massand work at Highland ever?</p> <p>12 <b>A I don't know.</b></p> <p>13 Q You don't know?</p> <p>14 <b>A Huh-uh.</b></p> <p>15 Q Did Ms. Thompson and Mr. Dean, do you know</p> <p>16 if they were on the board the entire time that you</p> <p>17 were on the board?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>A They were not.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q When did they come off the board?</p> <p>22 <b>A I believe sometime in the fall of 2017.</b></p> <p>23 Q And is that with respect to both</p> <p>24 Ms. Thompson and Mr. Dean?</p> <p>25 <b>A Again, I'm not sure as to the status of</b></p>	<p style="text-align: right;">143</p> <p>1 <b>A I don't. I don't remember.</b></p> <p>2 Q You don't know, or you don't remember?</p> <p>3 And the distinction there being you never knew or</p> <p>4 you knew but, as you sit here today, you don't</p> <p>5 recall?</p> <p>6 <b>A The latter.</b></p> <p>7 Q As you sit here today, you don't recall?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And both of those individuals worked at</p> <p>10 Maples as well, correct?</p> <p>11 <b>A That's incorrect.</b></p> <p>12 Q Where did they work?</p> <p>13 <b>A Mr. Neveril worked at a firm -- works, as</b></p> <p>14 <b>far as I know still at a firm called Compass,</b></p> <p>15 <b>based in Cayman.</b></p> <p>16 Q Compass like the compass?</p> <p>17 <b>A Yeah.</b></p> <p>18 Q Okay.</p> <p>19 <b>A And Mr. Austin worked at a firm called</b></p> <p>20 <b>IMS, also based in Cayman.</b></p> <p>21 Q Do you know if Sentinel was required to</p> <p>22 have a certain number of individuals sit on its</p> <p>23 board from the Cayman Islands?</p> <p>24 <b>A A certain number from the Cayman Islands</b></p> <p>25 <b>specifically?</b></p>
<p style="text-align: right;">142</p> <p>1 <b>Mr. Dean. When you said she replaced him, I never</b></p> <p>2 <b>heard that before, so I can't speak to that.</b></p> <p>3 Q But you believe that Ms. Thompson came off</p> <p>4 the board in 2017?</p> <p>5 <b>A At some point.</b></p> <p>6 Q So in 2018, who were the directors of</p> <p>7 Sentinel?</p> <p>8 <b>A Was myself, Dilip Massand and then around</b></p> <p>9 <b>whatever time Ms. Thompson left, two new -- two</b></p> <p>10 <b>independent directors were also appointed to the</b></p> <p>11 <b>Sentinel board.</b></p> <p>12 Q And what are their names?</p> <p>13 <b>A Jan Neveril is one, J-a-n N-e-v-e-r-i-l,</b></p> <p>14 <b>and the other gentleman is named Damien Austin.</b></p> <p>15 Q So Mr. Neveril and Mr. Austin joined the</p> <p>16 board when Ms. Thompson left?</p> <p>17 <b>A I would assume around the same time, yeah.</b></p> <p>18 Q Do you know who appointed them to the</p> <p>19 board?</p> <p>20 <b>A I remember, I think myself and Mr. Sevilla</b></p> <p>21 <b>interviewed a few perspective board members.</b></p> <p>22 Q How were those candidates identified?</p> <p>23 <b>A Referrals. I'm not entirely sure from</b></p> <p>24 <b>who.</b></p> <p>25 Q You don't know who referred them to you?</p>	<p style="text-align: right;">144</p> <p>1 Q Yes.</p> <p>2 <b>A That, I don't know.</b></p> <p>3 Q Do you know if there were any requirements</p> <p>4 with respect to the Sentinel board in terms of how</p> <p>5 had to sit on it or how many directors it had?</p> <p>6 <b>A The only -- my understanding is that a</b></p> <p>7 <b>minimum of two at all times.</b></p> <p>8 Q Do you know if that came from some type of</p> <p>9 regulation or some type of governing document that</p> <p>10 was specific to Sentinel?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 <b>A I don't know.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q Where did you get that understanding from?</p> <p>15 <b>A I had heard it over the years or at some</b></p> <p>16 <b>point, that we can't have less than two directors,</b></p> <p>17 <b>probably from an attorney at some point.</b></p> <p>18 Q You don't recall who?</p> <p>19 <b>A No.</b></p> <p>20 Q Are you aware that Mr. Neveril resigned</p> <p>21 from the board in June of this year?</p> <p>22 <b>A Yes.</b></p> <p>23 Q And are you aware that Mr. Austin resigned</p> <p>24 from the board in June of this year?</p> <p>25 <b>A Yes.</b></p>

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<p style="text-align: right;">145</p> <p>1 Q Do you understand why Mr. Neveril resigned 2 from the board? 3 <b>A Specific reasons why? I don't know.</b> 4 Q Do you have a general understanding of why 5 Mr. Neveril resigned from the board? 6 <b>A I'd rather not speculate as to his 7 motives. I don't know.</b> 8 Q Well, did he tell you why he resigned from 9 the board? 10 <b>A No.</b> 11 Q Did anybody else tell you why Mr. Neveril 12 resigned from the board? 13 <b>A Not that I recall.</b> 14 Q Okay. Do you have any basis at all to 15 know why Mr. Neveril resigned from the board? 16 MS. SMITH: Objection. I'm going to 17 caution you not to disclose confidential 18 information among the board members. 19 <b>A I don't know.</b> 20 MS. SMITH: Privileged -- I'm sorry, 21 privileged information. 22 MS. TOMKOWIAK: Sorry, what's the 23 privilege? 24 MS. SMITH: If you spoke to an attorney 25 for Sentinel, that would be privileged.</p>	<p style="text-align: right;">147</p> <p>1 same day? 2 <b>A That sounds -- sure.</b> 3 Q Do you know why they did that? 4 <b>A I don't.</b> 5 Q Did you receive a resignation letter from 6 either of them? 7 <b>A I don't know.</b> 8 Q Was anything happening at Sentinel at this 9 time that would cause them to resign? 10 <b>A I think there was a reconstitution of the 11 board. I was also resigning at some point.</b> 12 Q Anything else? 13 <b>A Not that I can think of. Excuse me. Not 14 that I can think of.</b> 15 Q Do you know who replaced Mr. Neveril and 16 Mr. Austin? 17 <b>A Yes, I do.</b> 18 Q Who is that? 19 <b>A A gentleman named Wade Kenny or Kenny or 20 Kenny. And then a gentleman named Casey McDonald.</b> 21 Q Do you know how they were appointed? 22 <b>A What do you mean, how they were appointed?</b> 23 Q Who appointed them; do you know? 24 <b>A I think that may be privileged.</b> 25 Q Well, just who appointed them? Was it the</p>
<p style="text-align: right;">146</p> <p>1 BY MS. TOMKOWIAK: 2 Q Okay. So without revealing any 3 communications that you had with -- the substance 4 with any attorneys who represented Sentinel, 5 setting that aside, do you have any other 6 understanding of why Mr. Neveril resigned from the 7 board? 8 MS. SMITH: Or with your -- excuse me. 9 Objection as to form. Or if you have any 10 privilege with your own attorneys for you 11 individually or attorneys for Sentinel. 12 <b>A I don't know.</b> 13 <b>BY MS. TOMKOWIAK:</b> 14 Q What about with respect to Mr. Austin? 15 <b>A I don't know.</b> 16 Q He didn't tell you why he was resigning? 17 <b>A Not that I recall.</b> 18 Q And nobody else told you why he was 19 resigning? 20 <b>A Not that I recall.</b> 21 Q Do you have term limits on the Sentinel 22 board? 23 <b>A I've never heard that. I don't know one 24 way or the other, but -- I don't know.</b> 25 Q Are you aware that they resigned on the</p>	<p style="text-align: right;">148</p> <p>1 Sentinel board? Was it you? Was it -- who 2 appointed them as directors of Sentinel? 3 MS. SMITH: Objection, form. 4 MS. HARTMANN: And if you have a question 5 on privilege, you can talk to us about it. 6 <b>A Yeah, can I ask them?</b> 7 <b>BY MS. TOMKOWIAK:</b> 8 Q Sure. Yeah, can we just be -- really sure 9 break to talk about the privilege issue. I mean, 10 I'm just asking for a person. 11 <b>A I understand.</b> 12 Q Yeah. 13 THE VIDEOGRAPHER: Off the record at 14 1:39 p.m. 15 (Recess taken from 1:39 p.m. CDT to 16 1:41 p.m. CDT) 17 THE VIDEOGRAPHER: 1:41 p.m., back on the 18 record. 19 MS. SMITH: I'm going to caution my 20 witness not to divulge any conversations that he 21 had with counsel that is privileged. I did not 22 realize until he said I heard from counsel, that 23 the information that he had previously shared 24 regarding the referrals was learned from 25 conversations with outside counsel for Sentinel at</p>

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<p style="text-align: right;">149</p> <p>1 the time.</p> <p>2 MS. TOMKOWIAK: Okay. But -- okay. Well,</p> <p>3 let me ask my question.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q So who appointed Mr. -- I'm sorry. Let me</p> <p>6 go back to my questions.</p> <p>7 Do you know who appointed Mr. Kenny to the</p> <p>8 board?</p> <p>9 <b>A He was referred by counsel and his</b></p> <p>10 <b>appointment was approved by CIMA.</b></p> <p>11 Q Okay. And what about Mr. McDonald?</p> <p>12 <b>A It was the same. Referred by counsel,</b></p> <p>13 <b>approved by CIMA.</b></p> <p>14 Q What counsel?</p> <p>15 <b>A Sentinel's counsel.</b></p> <p>16 Q Is that Carey Olsen? Attorneys at Carey</p> <p>17 Olsen? I'm just trying to understand. Seems to</p> <p>18 me that Sentinel has hired multiple external</p> <p>19 counsel. So which counsel?</p> <p>20 <b>A It was --</b></p> <p>21 MS. SMITH: Objection, privileged.</p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q Which law firm made the referral?</p> <p>24 MS. HARTMANN: You can answer.</p> <p>25 MS. SMITH: You can answer that question.</p>	<p style="text-align: right;">151</p> <p>1 information.</p> <p>2 MS. TOMKOWIAK: But that's --</p> <p>3 MS. SMITH: You can answer her yes-or-no</p> <p>4 question.</p> <p>5 <b>A Yes.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Okay. What type of interactions did you</p> <p>8 have?</p> <p>9 <b>A I would characterize it as onboarding for</b></p> <p>10 <b>them for the new directors.</b></p> <p>11 Q Okay. Did you have a meeting with them?</p> <p>12 <b>A A phone call.</b></p> <p>13 Q Phone call. Just one phone call?</p> <p>14 <b>A In that time frame, I think, yes.</b></p> <p>15 Q Okay. Have there been phone calls since</p> <p>16 then?</p> <p>17 <b>A No.</b></p> <p>18 Q Have you had any communications with</p> <p>19 Mr. Kenny or Mr. McDonald since your resignation</p> <p>20 from the board?</p> <p>21 <b>A I don't believe so.</b></p> <p>22 Q Okay. Did you discuss with Mr. Kenny or</p> <p>23 Mr. McDonald the Sentinel policy?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 <b>A They are aware of the policy, yes.</b></p>
<p style="text-align: right;">150</p> <p>1 <b>A Collas Crill.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Collas Crill. Okay. Did you do any work</p> <p>4 with Mr. Kenny and Mr. McDonald in your capacity</p> <p>5 as a Sentinel director, in between the time that</p> <p>6 they were appointed and you resigned?</p> <p>7 <b>A Work -- can you -- sorry, can you be more</b></p> <p>8 <b>specific what you mean?</b></p> <p>9 Q I mean, did you have any interactions with</p> <p>10 them in your mutual capacities as Sentinel</p> <p>11 directors between June 2nd when they were</p> <p>12 appointed and June 25th when you resigned?</p> <p>13 <b>A Between June -- sorry, between June 22nd</b></p> <p>14 <b>and June 25th?</b></p> <p>15 Q Between when they were appointed and you</p> <p>16 resigned.</p> <p>17 MS. SMITH: Objection.</p> <p>18 I'm going to caution you not to divulge</p> <p>19 confidential information about board member</p> <p>20 discussions.</p> <p>21 MS. TOMKOWIAK: I'm sorry, that's not --</p> <p>22 are you saying something different than privileged</p> <p>23 information?</p> <p>24 MS. SMITH: He's a member of a board of</p> <p>25 the company. They may have confidential</p>	<p style="text-align: right;">152</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q Okay. And what did you discuss?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 If there were any lawyers present on the</p> <p>5 phone calls, then it could be privileged.</p> <p>6 <b>A Then it was privileged, I believe.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q So you had a phone call with Mr. Neveril</p> <p>9 and Mr. McDonald during which counsel was present</p> <p>10 on the phone; is that what you're saying?</p> <p>11 <b>A No, not Mr. Neveril.</b></p> <p>12 Q Okay. So you had a conversation with --</p> <p>13 okay. So then, I'm sorry, Mr. Kenny and</p> <p>14 Mr. McDonald?</p> <p>15 <b>A That's correct.</b></p> <p>16 Q And attorneys were on the phone?</p> <p>17 <b>A Correct.</b></p> <p>18 Q Okay. And outside of that phone</p> <p>19 conversation, did you have any other</p> <p>20 communications with Mr. Kenny or Mr. McDonald,</p> <p>21 first, prior to your resignation from the board?</p> <p>22 MS. SMITH: Objection to form. If there</p> <p>23 was counsel present at the conversations, then</p> <p>24 it's privileged.</p> <p>25 MS. TOMKOWIAK: I'm just asking if. If.</p>

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<p style="text-align: right;">153</p> <p>1 BY MS. TOMKOWIAK:                  2 Q If you had any communications with those                  3 two individuals other than the phone call you                  4 already told me about --                  5 <b>A Right.</b>                  6 Q -- before you resigned from the board?                  7 <b>A With counsel present, yes.</b>                  8 Q Okay. How many other conversations?                  9 <b>A One that I can recall.</b>                  10 Q And were both Mr. Kenny and Mr. McDonald                  11 present?                  12 <b>A Yes.</b>                  13 Q Okay. So before you resigned from the                  14 board of Sentinel, you had two conversations with                  15 Mr. Kenny and Mr. McDonald on the phone and                  16 counsel from Collas Crill was on the phone as                  17 well?                  18 <b>A That's right.</b>                  19 Q Okay. Did you provide Mr. Kenny or                  20 Mr. McDonald with any documents?                  21 <b>A I don't believe so.</b>                  22 Q Do you know anything else about their                  23 onboarding process?                  24 MS. SMITH: Objection to form.                  25 <b>A Nothing other than what I was involved</b></p>	<p style="text-align: right;">155</p> <p>1 <b>A They're aware a claim had been made, yes.</b>                  2 <b>BY MS. TOMKOWIAK:</b>                  3 Q Did you make them aware?                  4 MS. SMITH: Objection to form.                  5 <b>A I'm not sure who made them aware.</b>                  6 <b>BY MS. TOMKOWIAK:</b>                  7 Q Okay. What about Mr. Neveril or                  8 Mr. Austin? Were either of those individuals                  9 aware that a claim had been made on the policy                  10 before they resigned from the board?                  11 MS. SMITH: I'm going to caution you not                  12 to divulge any privileged information.                  13 <b>A Yes, they were.</b>                  14 <b>BY MS. TOMKOWIAK:</b>                  15 Q Were you aware before you resigned from                  16 the board, that a claim had been made on the                  17 policy?                  18 MS. SMITH: I'm going to caution you not                  19 to divulge any privileged information.                  20 <b>A Yes.</b>                  21 <b>BY MS. TOMKOWIAK:</b>                  22 Q Did you receive a copy of that claim?                  23 MS. SMITH: I'm going to caution you not                  24 to divulge any privileged information.                  25 <b>A I received a claim letter, yes.</b></p>
<p style="text-align: right;">154</p> <p>1 <b>with.</b>                  2 <b>BY MS. TOMKOWIAK:</b>                  3 Q And you were only involved with those two                  4 phone calls?                  5 <b>A As best as I can remember, yeah.</b>                  6 Q What about e-mails? Did you have any                  7 e-mail communication with either of them?                  8 <b>A Some. None that wasn't privileged.</b>                  9 Q And by saying that, because you're not a                  10 lawyer, so I'm trying to figure out how you made                  11 that determination. Are you saying that all of                  12 the communications that you had with Mr. Kenny and                  13 Mr. McDonald, there were lawyers included on those                  14 e-mails?                  15 <b>A That's right.</b>                  16 Q And you were seeking advice from those                  17 attorneys on those e-mails?                  18 MS. SMITH: Objection to form.                  19 <b>A I don't -- I don't recall the nature of</b>                  20 <b>the e-mail with respect to counsel.</b>                  21 <b>BY MS. TOMKOWIAK:</b>                  22 Q Did you discuss with Mr. Kenny or                  23 Mr. McDonald that a claim had been made on the                  24 policy?                  25 MS. SMITH: Objection to form.</p>	<p style="text-align: right;">156</p> <p>1 <b>BY MS. TOMKOWIAK:</b>                  2 Q Did you take any actions -- and I'm not                  3 interested in the substance of your conversations                  4 with your attorneys, but when you received that                  5 claim letter, what did you do with it?                  6 MS. SMITH: I'm going to caution you not                  7 to divulge any privileged information.                  8 <b>A I forwarded it to counsel.</b>                  9 <b>BY MS. TOMKOWIAK:</b>                  10 Q Did you do anything else?                  11 <b>A Not that I recall.</b>                  12 Q Did you discuss it with your -- the other                  13 directors on the board outside of the presence of                  14 counsel?                  15 <b>A No.</b>                  16 Q Did you discuss it with anybody at                  17 Highland?                  18 <b>A No.</b>                  19 Q Did you discuss it with anybody at SAS?                  20 <b>A Not that I recall.</b>                  21 Q Did you discuss it with Mr. Ellington?                  22 <b>A Not that I recall.</b>                  23 Q Did you discuss it with Mr. Dondero?                  24 <b>A Not that I recall.</b>                  25 Q Other than forwarding it to counsel, did</p>

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<p style="text-align: right;">157</p> <p>1 you do anything else with a claim on the policy in                  2 your capacity as a director of Sentinel?                  3 <b>A No, not that I can recall.</b>                  4 Q Did you send it to Beecher Carlson?                  5 MS. SMITH: Objection.                  6 I'm going to caution you not to divulge                  7 any privileged information.                  8 <b>A I don't remember e-mailing to Beecher</b>                  9 <b>Carlson, no.</b>                  10 <b>BY MS. TOMKOWIAK:</b>                  11 Q Was it your understanding before you left                  12 Sentinel that the claim was being evaluated?                  13 MS. SMITH: Objection.                  14 I'm going to caution you not to divulge                  15 any privileged information.                  16 <b>A It's my understanding.</b>                  17 <b>BY MS. TOMKOWIAK:</b>                  18 Q Who at Sentinel would be in charge of                  19 making coverage decisions? Let me back up.                  20 Who -- if a claim was made on an insurance                  21 policy that Sentinel wrote, who would be in charge                  22 of evaluating that claim?                  23 <b>A I believe the board.</b>                  24 Q So during the time that you were a                  25 director of Sentinel, were you ever asked to</p>	<p style="text-align: right;">159</p> <p>1 MS. TOMKOWIAK: Well, it sounded like                  2 there was a chorus of objections.                  3 BY MS. TOMKOWIAK:                  4 Q Okay. So whenever you became a director                  5 of Sentinel till when you resigned from being a                  6 director of Sentinel --                  7 <b>A Yes.</b>                  8 Q -- that's the time frame I'm talking                  9 about.                  10 <b>A Okay. And can you repeat the question?</b>                  11 Q Sure. Do you know how many -- do you know                  12 approximately how many policies Sentinel wrote?                  13 <b>A I don't know the number.</b>                  14 Q Was it more than the -- more than one?                  15 <b>A Yes.</b>                  16 Q Other than the ATE policy that we've                  17 talked about today, do you know whether Sentinel                  18 wrote any other ATE policies?                  19 MS. SMITH: Objection to form.                  20 <b>A Not that I'm aware of.</b>                  21 <b>BY MS. TOMKOWIAK:</b>                  22 Q Do you know what an ATE policy is?                  23 <b>A I do.</b>                  24 Q What is it?                  25 <b>A It stands for after-the-event policy. An</b></p>
<p style="text-align: right;">158</p> <p>1 evaluate a claim that was made on a policy that                  2 Sentinel wrote?                  3 <b>A No, I was not.</b>                  4 Q So during the time that you were a                  5 director at Sentinel, were any claims made on any                  6 policies that Sentinel wrote?                  7 <b>A Just the one you referenced earlier.</b>                  8 Q Do you know approximately how many                  9 policies Sentinel wrote?                  10 <b>A At what point in time?</b>                  11 Q At the -- during the time you were a                  12 director.                  13 <b>A Which specific time, time frame?</b>                  14 Q Well, you weren't able to tell me exactly                  15 when you became a director, so whatever date that                  16 was in September 2017?                  17 MS. SMITH: Objection to form.                  18 <b>A Okay.</b>                  19 <b>BY MS. TOMKOWIAK:</b>                  20 Q Whatever date that was.                  21 <b>A Yeah.</b>                  22 MS. TOMKOWIAK: Counsel, I -- which one of                  23 you is objecting?                  24 MS. SMITH: Me.                  25 MS. HARTMANN: I didn't say anything.</p>	<p style="text-align: right;">160</p> <p>1 <b>uninsured pays a premium in exchange for coverage</b>                  2 <b>for -- that's based on the result of an event, not</b>                  3 <b>specific to any -- I believe it's pretty broad</b>                  4 <b>what you can write, as far as policies go.</b>                  5 Q How much time would you say that you spent                  6 on Sentinel matters on a monthly basis?                  7 <b>A It depends on the month.</b>                  8 Q What about on a yearly basis?                  9 <b>A The percentage of my time? Is that what</b>                  10 <b>you -- sorry, is that what you asked?</b>                  11 Q It could be a percentage, it could be                  12 hours, however you would best describe how much                  13 time you spent working as a director of Sentinel.                  14 <b>A Average for the year, probably, I don't</b>                  15 <b>know, couple hours a week, three or four hours a</b>                  16 <b>week.</b>                  17 Q What types of actions did the board -- the                  18 Sentinel board need to approve?                  19 <b>A Anything that the company did.</b>                  20 Q I don't mean this to sound snarky, but                  21 surely not like writing \$5 -- like was there some                  22 threshold or you're saying any action that the                  23 Sentinel board needed to do?                  24 MS. SMITH: Objection to form.                  25 <b>A Yeah, that's what I'm saying.</b></p>



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<p style="text-align: right;">161</p> <p><b>1 BY MS. TOMKOWIAK:</b>  <b>2 Q</b> Okay. So there was no -- there was  <b>3</b> nothing that specified that for a transaction over  <b>4</b> this particular limit, the board needs to approve,  <b>5</b> there was no materiality threshold whatsoever?  <b>6 A</b> <b>If there was, I wasn't aware of it. And</b>  <b>7</b> <b>like I said earlier, down to the penny, everything</b>  <b>8</b> <b>would go through the directors.</b>  <b>9 Q</b> And so when you say the board needed to  <b>10</b> approve, was that just referring to the  <b>11</b> independent directors or was your approval also  <b>12</b> needed?  <b>13</b> MS. SMITH: Objection to form.  <b>14 A</b> <b>I had no approval authority that I'm aware</b>  <b>15</b> <b>of. Everything was sent to the other two</b>  <b>16</b> <b>independent directors.</b>  <b>17 BY MS. TOMKOWIAK:</b>  <b>18 Q</b> Was that true with respect to -- was that  <b>19</b> all matters, not just financial matters but  <b>20</b> anything that needed to be approved was sent to  <b>21</b> the two other directors?  <b>22 A</b> <b>Yes.</b>  <b>23 Q</b> Did the board have regular meetings?  <b>24 A</b> <b>Well, as I mentioned earlier, we had one</b>  <b>25</b> <b>annual meeting the first year and then I believe</b></p>	<p style="text-align: right;">162</p> <p><b>1</b> <b>after that, CIMA instructed us we needed to have</b>  <b>2</b> <b>more. So two was generally the goal.</b>  <b>3 Q</b> And by the first year, so do you mean that  <b>4</b> in 2017, to the best of your memory, you had one  <b>5</b> meeting?  <b>6 A</b> <b>We may have had the 2017 meeting in early</b>  <b>7</b> <b>'18, because there was transition with the board.</b>  <b>8</b> <b>I don't remember the exact date.</b>  <b>9 Q</b> Did anybody take minutes at those  <b>10</b> meetings?  <b>11 A</b> <b>Beecher Carlson.</b>  <b>12 Q</b> So if we wanted to ask somebody for  <b>13</b> minutes of those meetings, that's who would have  <b>14</b> them?  <b>15 A</b> <b>I believe so.</b>  <b>16 Q</b> Did the board ever act by written consent?  <b>17</b> MS. SMITH: I'm going to caution you not  <b>18</b> to divulge privileged information.  <b>19 A</b> <b>I'm not sure what you mean by that either.</b>  <b>20 BY MS. TOMKOWIAK:</b>  <b>21 Q</b> Well, then, maybe you didn't do it, but  <b>22</b> did the board ever -- instead of meeting, did the  <b>23</b> board ever take an action by just signing  <b>24</b> something in writing?  <b>25 A</b> <b>I don't recall.</b></p>
<p style="text-align: right;">163</p> <p><b>1 Q</b> Did you take notes during your meetings?  <b>2 A</b> <b>Probably not very many, if any. There's</b>  <b>3</b> <b>usually a presentation by Beecher that was up on</b>  <b>4</b> <b>the screen.</b>  <b>5 Q</b> Were you provided with your own copy of  <b>6</b> that presentation?  <b>7 A</b> <b>I don't recall. Probably, if I asked.</b>  <b>8</b> <b>They probably sent it. I just don't know for</b>  <b>9</b> <b>sure.</b>  <b>10 Q</b> So you just don't recall if they sent you  <b>11</b> a copy of the presentation by e-mail?  <b>12 A</b> <b>I don't.</b>  <b>13 Q</b> Do you recall if they printed out hard  <b>14</b> copies for you to have at the meeting?  <b>15 A</b> <b>They were all -- they were never in</b>  <b>16</b> <b>person, the meetings.</b>  <b>17 Q</b> Okay. Great. That was my next question.  <b>18</b> So all of the meetings took place by phone?  <b>19 A</b> <b>That's correct.</b>  <b>20 Q</b> Of -- well, who attended the meetings?  <b>21 A</b> <b>I would attend, Mr. Massand when he was on</b>  <b>22</b> <b>the board would attend via phone, Beecher Carlson</b>  <b>23</b> <b>ran the meetings, and then the other two directors</b>  <b>24</b> <b>would attend via phone. They were in Cayman, so</b>  <b>25</b> <b>they may have called in from the same place, but</b></p>	<p style="text-align: right;">164</p> <p><b>1</b> <b>that's who would attend.</b>  <b>2 Q</b> If you were meeting by phone, then can you  <b>3</b> just explain how there was a presentation on the  <b>4</b> screen? What do you mean by that?  <b>5 A</b> <b>Like a Zoom-type meeting, where you can</b>  <b>6</b> <b>share screen, I guess.</b>  <b>7 Q</b> So your meetings were by videoconference,  <b>8</b> then?  <b>9 A</b> <b>I think so. Or they would send a</b>  <b>10</b> <b>presentation. Again, I'm not entirely sure. Like</b>  <b>11</b> <b>a Teams meeting you can just click on and</b>  <b>12</b> <b>everything shows up.</b>  <b>13 Q</b> Okay. And so again, you don't recall if  <b>14</b> they sent you an actual copy of the presentation  <b>15</b> or if it was just somehow shared with you via some  <b>16</b> type of web platform?  <b>17 A</b> <b>Right.</b>  <b>18 Q</b> And you don't recall if you took notes or  <b>19</b> not?  <b>20 A</b> <b>I don't.</b>  <b>21 Q</b> If you did take notes, where would those  <b>22</b> notes be now?  <b>23 A</b> <b>I have no idea.</b>  <b>24 Q</b> Did you have any regular practice with  <b>25</b> respect to notes?</p>

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<p style="text-align: right;">165</p> <p>1 <b>A I had a few notebooks over the years.</b></p> <p>2 Q And what would you do with them?</p> <p>3 <b>A I would -- it's one of those like reusable</b></p> <p>4 <b>ones to take the insert out and put it somewhere.</b></p> <p>5 <b>I never, ever remember going back and looking at</b></p> <p>6 <b>an old notebook.</b></p> <p>7 Q Would you throw them away?</p> <p>8 <b>A I don't know what happened to them.</b></p> <p>9 Q I'm handing you what we will mark as</p> <p>10 Exhibit 78.</p> <p>11 (Deposition Exhibit 78 marked for</p> <p>12 identification.)</p> <p>13 BY MS. TOMKOWIAK:</p> <p>14 Q Mr. DiOrio, is this the resignation letter</p> <p>15 that you submitted to the Sentinel Reinsurance?</p> <p>16 <b>A It looks like it, yes.</b></p> <p>17 Q Is that your signature?</p> <p>18 <b>A That is my signature.</b></p> <p>19 Q You say, Dear Sirs. Who did you mean by</p> <p>20 that?</p> <p>21 <b>A The two newly appointed directors.</b></p> <p>22 Q Mr. Kenny and Mr. McDonald?</p> <p>23 <b>A That's right.</b></p> <p>24 Q Why did you resign from the board?</p> <p>25 <b>A On advice of counsel.</b></p>	<p style="text-align: right;">167</p> <p>1 any privileged information.</p> <p>2 <b>A I believe this letter was sent to the two</b></p> <p>3 <b>directors you mentioned, probably Collas Crill as</b></p> <p>4 <b>well.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q Do you know whether anybody has replaced</p> <p>7 you on the board?</p> <p>8 <b>A I don't.</b></p> <p>9 MS. TOMKOWIAK: Counsel, we're going to</p> <p>10 look at Exhibit 53 next, if you want to try to</p> <p>11 find that.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Mr. DiOrio, I'm handing you what we have</p> <p>14 previously marked as Exhibit 53 in this case. If</p> <p>15 you can take a few minutes to look at that and let</p> <p>16 me know when you're ready.</p> <p>17 (Witness reviews document.)</p> <p>18 <b>A Okay. I have reviewed it.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Earlier this morning we talked about the</p> <p>21 settlement analysis that Mr. -- I believe his name</p> <p>22 is Stubbs, the actuary would provide to Sentinel</p> <p>23 Reinsurance regarding the UBS litigation. Do you</p> <p>24 remember that conversation?</p> <p>25 <b>A Yes.</b></p>
<p style="text-align: right;">166</p> <p>1 Q Any other reason?</p> <p>2 <b>A No.</b></p> <p>3 Q On advice of your personal counsel?</p> <p>4 MS. SMITH: Objection.</p> <p>5 I'm going to caution you not to divulge</p> <p>6 any privileged information.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Just which attorney?</p> <p>9 <b>A On advice of my attorneys here today.</b></p> <p>10 Q Okay. And you agree that you -- your</p> <p>11 resignation took effect June 25th, 2021, as it</p> <p>12 says here?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A I believe that's right.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Did anybody other than your counsel</p> <p>17 suggest that you resign?</p> <p>18 <b>A No.</b></p> <p>19 Q Did you ask anybody other than your</p> <p>20 counsel if you should resign?</p> <p>21 <b>A Not that I recall.</b></p> <p>22 Q Did you communicate your resignation to</p> <p>23 anybody but Mr. Kenny and Mr. McDonald?</p> <p>24 MS. SMITH: Objection.</p> <p>25 I'm going to caution you not to divulge</p>	<p style="text-align: right;">168</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q And does this e-mail chain reflect the</p> <p>4 type of analysis that you mentioned?</p> <p>5 <b>A I believe it does, yes.</b></p> <p>6 Q Is there some different type of analysis</p> <p>7 that you were thinking about this morning when you</p> <p>8 talked about the analysis that the actuary would</p> <p>9 provide?</p> <p>10 <b>A No. There was one actuarial analysis.</b></p> <p>11 Q I'm looking at the chart here on the first</p> <p>12 page of this e-mail. So Mr. Kemp, that's your</p> <p>13 auditor, right, at -- not your, that was</p> <p>14 Sentinel's auditor at Crowe Cayman; is that right?</p> <p>15 <b>A At the time, yes.</b></p> <p>16 Q At the time. And he's writing to</p> <p>17 Mr. Leventon and he says that: The actuary has</p> <p>18 provided the following table with the likely</p> <p>19 outcomes of the case.</p> <p>20 Do you understand that to mean the UBS</p> <p>21 case?</p> <p>22 <b>A Yes, I do.</b></p> <p>23 Q And then: Per your report, you have</p> <p>24 agreed that these estimates are reasonable.</p> <p>25 Is it your understanding that Mr. Leventon</p>

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<p style="text-align: right;">169</p> <p>1 would be required to review the actuary's report                  2 and provide his assessment as to whether these                  3 estimates were reasonable?                  4 <b>A Required by who?</b>                  5 Q Required by Sentinel.                  6 MS. SMITH: Objection to form.                  7 <b>A He was never -- he was never required to</b>                  8 <b>do anything, but he knew the case so he would</b>                  9 <b>opine on the potential -- any updates with the</b>                  10 <b>trial, all that stuff.</b>                  11 <b>BY MS. TOMKOWIAK:</b>                  12 Q During your time on the Sentinel board,                  13 did you have regular communications with                  14 Highland's counsel regarding the UBS litigation?                  15 <b>A About once a year.</b>                  16 Q What type of format? Was that like a                  17 formal meeting or informally?                  18 <b>A It was generally around the time that we</b>                  19 <b>had to meet with the actuary.</b>                  20 Q And was that the -- would the full board                  21 meet with UBS? I'm sorry, would the full board                  22 meet with Highland's counsel?                  23 <b>A No.</b>                  24 Q Just you?                  25 <b>A Myself, generally a representative from</b></p>	<p style="text-align: right;">171</p> <p>1 <b>afterwards and they reviewed -- they would review</b>                  2 <b>the report and if they had questions, they were</b>                  3 <b>allowed to reach out to Mr. Stubbs and whoever.</b>                  4 Q And on this chart here it says Expected                  5 Payout in the column to the right. Do you see                  6 that?                  7 <b>A I do.</b>                  8 Q And that was referring to Sentinel's                  9 expected payout, right?                  10 <b>A That's right.</b>                  11 Q And if you go -- middle of the chart, it                  12 says: Outcome, Phase 1 decision affirmed.                  13 You understand that to mean the Phase 1                  14 decision in the UBS trial in state court?                  15 <b>A Yes.</b>                  16 Q Plaintiff awarded substantial portion of                  17 Synthetic Warehouse Losses, and there's a                  18 probability, 20 percent, and expected payout, 91.                  19 What do you understand that to mean?                  20 <b>A Which part, the percentage or the 91?</b>                  21 Q The 91.                  22 <b>A That was the full limit of the policy.</b>                  23 Q So if UBS was awarded a substantial                  24 portion of its losses, you expected that Sentinel                  25 would pay out the full amount of its policy?</p>
<p style="text-align: right;">170</p> <p>1 <b>Beecher Carlson, Mr. Stubbs and Mr. Leventon.</b>                  2 Q Anybody else?                  3 <b>A Not that I recall.</b>                  4 Q Mr. Ellington?                  5 <b>A No.</b>                  6 Q Mr. Dondero?                  7 <b>A No.</b>                  8 Q And what did you discuss during those                  9 meetings?                  10 MS. SMITH: I'm going to caution you not                  11 to divulge any privileged information.                  12 <b>A It was just generally any update on the</b>                  13 <b>litigation, the trial and kind of Mr. Leventon's</b>                  14 <b>thoughts on likely outcomes.</b>                  15 <b>BY MS. TOMKOWIAK:</b>                  16 Q Why did Sentinel want to be kept up to                  17 date on the trial?                  18 <b>A You have to -- this actuarial analysis has</b>                  19 <b>to be done by -- mandated by CIMA, as part of the</b>                  20 <b>year-end audit.</b>                  21 Q Did you report on those meetings, did you                  22 go back and report to the independent directors                  23 what you discussed with Mr. Leventon and Beecher                  24 Carlson at those meetings?                  25 <b>A Yes. They would see the work product</b></p>	<p style="text-align: right;">172</p> <p>1 MS. SMITH: Objection to form.                  2 <b>A That's what this says, yeah.</b>                  3 <b>BY MS. TOMKOWIAK:</b>                  4 Q Did you agree with this?                  5 <b>A With the probabilities or --</b>                  6 Q No, with the conclusion.                  7 <b>A Yeah. It was always -- there was always a</b>                  8 <b>chance that the full policy would pay out, yes.</b>                  9 Q Were you aware that UBS made multiple                  10 payment demand letters to the insureds under the                  11 fund after they obtained the \$1 billion judgment                  12 in the case?                  13 <b>A The 1 million --</b>                  14 Q One -- if I said 1 million, I misspoke.                  15 Sorry, the \$1 billion judgment in the case.                  16 <b>A Sorry. I wanted to make sure we're</b>                  17 <b>talking about the same thing. I was not aware of</b>                  18 <b>that, no.</b>                  19 Q Do you know who drafted the ATE policy?                  20 <b>A I don't.</b>                  21 Q Was it already in place by the time you                  22 became a director of Sentinel?                  23 <b>A Yes.</b>                  24 Q Do you know who negotiated the policy on                  25 behalf of Sentinel?</p>

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<p style="text-align: right;">173</p> <p>1 <b>A I don't.</b></p> <p>2 Q Do you know who negotiated the policy on</p> <p>3 behalf of the insureds?</p> <p>4 <b>A I don't.</b></p> <p>5 Q Do you know what diligence Sentinel did</p> <p>6 before the policy was entered into?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A I don't.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did you ask when you became a director?</p> <p>11 <b>A Did I ask what diligence had been done?</b></p> <p>12 Q Yes.</p> <p>13 <b>A No, it was already in place, so I didn't</b></p> <p>14 <b>think to -- think to look back like that.</b></p> <p>15 Q After becoming a director and prior to the</p> <p>16 actual trial, did anybody at Highland tell you</p> <p>17 that they had concluded that the insureds were</p> <p>18 likely to be found liable to UBS?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 <b>A I don't recall specifically. Again, I</b></p> <p>21 <b>think it's always -- was always a chance.</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q All right. But there's a difference</p> <p>24 between always a chance and more likely than not.</p> <p>25 So you don't recall anybody saying that it was</p>	<p style="text-align: right;">175</p> <p>1 between the parties?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 <b>A I don't believe so.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q You don't believe so?</p> <p>6 <b>A I don't believe Sentinel had the right to</b></p> <p>7 <b>approve any settlement.</b></p> <p>8 Q So you believe that the insureds could</p> <p>9 have settled the UBS matter for any amount that</p> <p>10 they wanted to and then required Sentinel to pay</p> <p>11 that amount to UBS on their behalf?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 <b>A I'm not following. I'm sorry.</b></p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q So you believe -- so there were -- there</p> <p>16 were funds that were insured under the policy,</p> <p>17 right?</p> <p>18 <b>A That's correct.</b></p> <p>19 Q And they were defendants in the UBS</p> <p>20 litigation?</p> <p>21 <b>A That's correct.</b></p> <p>22 Q And you believe that they could have gone</p> <p>23 to UBS, settled the matter for any amount that</p> <p>24 they wanted to and then asked Sentinel to pay that</p> <p>25 to UBS?</p>
<p style="text-align: right;">174</p> <p>1 more likely than not that UBS would win the trial?</p> <p>2 <b>A No.</b></p> <p>3 Q If somebody had reached that conclusion at</p> <p>4 trial, would you have wanted to know that in your</p> <p>5 capacity as a director of Sentinel?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 <b>A I guess it would be good information to</b></p> <p>8 <b>have.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did you ever ask anybody to give you an</p> <p>11 opinion on that?</p> <p>12 <b>A No.</b></p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q Given Sentinel's potential obligation,</p> <p>16 would you have expected that Sentinel would have</p> <p>17 been invited to participate in any settlement</p> <p>18 discussions between the parties in the UBS case?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 <b>A I have no idea. I was not involved in any</b></p> <p>21 <b>settlement discussions with UBS.</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q Given Sentinel's potential obligation to</p> <p>24 fund any settlement, would you have expected that</p> <p>25 Sentinel would need to approve any settlement</p>	<p style="text-align: right;">176</p> <p>1 MS. SMITH: Objection to form, calls for a</p> <p>2 legal conclusion.</p> <p>3 <b>A Yeah, I can't -- I can't make that</b></p> <p>4 <b>conclusion. I don't know.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q That's not -- I'm not asking you for a</p> <p>7 legal conclusion because you're not a lawyer. I'm</p> <p>8 asking for you as a director of Sentinel, was it</p> <p>9 your understanding that the insureds under the</p> <p>10 policy did not need Sentinel's approval for a</p> <p>11 settlement?</p> <p>12 <b>A That's right.</b></p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q So they could have settled the matter with</p> <p>16 UBS, gone to Sentinel and say, hey, we settled</p> <p>17 this matter for \$50, pay UBS \$50, and that would</p> <p>18 have been okay?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 <b>A I follow now. And, yes, I think that</b></p> <p>21 <b>would have been okay.</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q Is your answer qualified at all by the</p> <p>24 limits of the policy or are you --</p> <p>25 <b>A Well, sure. It wouldn't be anything</b></p>

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<p style="text-align: right;">177</p> <p><b>1 above -- you couldn't settle for more than the</b></p> <p><b>2 policy was for and expect Sentinel to pay anything</b></p> <p><b>3 above that.</b></p> <p>4 Q But if they had settled for policy limits</p> <p>5 or less, they would have had a reasonable</p> <p>6 expectation that Sentinel would pay that?</p> <p>7 MS. SMITH: Objection to form.</p> <p><b>8 A I believe so.</b></p> <p><b>9 BY MS. TOMKOWIAK:</b></p> <p>10 Q You received a subpoena to produce</p> <p>11 documents in connection with this matter, right?</p> <p><b>12 A That's correct.</b></p> <p>13 Q What did you do to identify documents</p> <p>14 responsive to that subpoena?</p> <p><b>15 A I searched my e-mails.</b></p> <p>16 Q Which e-mails?</p> <p><b>17 A Wait, no, I didn't. I was thinking</b></p> <p><b>18 Highland. I didn't have my Highland e-mail</b></p> <p><b>19 anymore. I searched my personal e-mail. I</b></p> <p><b>20 searched the papers I took from my desk when I</b></p> <p><b>21 left and that was about all I had.</b></p> <p>22 Q What about your SAS Management e-mail?</p> <p><b>23 A I no longer had access to it.</b></p> <p>24 Q Did you check to see if you had access to</p> <p>25 it?</p>	<p style="text-align: right;">179</p> <p>1 you found -- everything that found that hit upon a</p> <p>2 search term or everything you found that you</p> <p>3 thought might be responsive?</p> <p><b>4 A Both.</b></p> <p>5 Q What search terms did you use?</p> <p><b>6 A Sentinel, reinsurance. I think that was</b></p> <p><b>7 about it.</b></p> <p>8 Q In your capacity as a director of</p> <p>9 Sentinel, was there a particular place that you</p> <p>10 kept documents related to Sentinel?</p> <p><b>11 A Like papers or actual electronic</b></p> <p><b>12 documents? What do you mean?</b></p> <p>13 Q Let's start with paper. So did you have a</p> <p>14 particular filing cabinet or shelf or drawer or</p> <p>15 anything like that that you had for Sentinel</p> <p>16 papers?</p> <p><b>17 A No. My desk was, you know, relatively</b></p> <p><b>18 messy. Sometimes I would leave stuff on my desk,</b></p> <p><b>19 but I generally didn't save much in the way of</b></p> <p><b>20 Sentinel-related documents.</b></p> <p>21 Q What about electronically? Did you have a</p> <p>22 specific folder or place that you would keep</p> <p>23 Sentinel documents?</p> <p><b>24 A I did.</b></p> <p>25 Q Where was that?</p>
<p style="text-align: right;">178</p> <p><b>1 A It popped up as logged out of my phone one</b></p> <p><b>2 day and I could never get back in.</b></p> <p>3 Q Do you have a personal computer?</p> <p><b>4 A I do not.</b></p> <p>5 Q Did you check your phone?</p> <p><b>6 A I did.</b></p> <p>7 Q Did you check your text messages?</p> <p><b>8 A I did.</b></p> <p>9 Q Did you look to see if you still had your</p> <p>10 notebooks?</p> <p><b>11 A I did.</b></p> <p>12 Q Okay.</p> <p><b>13 A I have one notebook that I still use today</b></p> <p><b>14 and there was nothing in there Sentinel related.</b></p> <p>15 Q Okay. When you searched your e-mail, did</p> <p>16 you use search terms or how did you try to find</p> <p>17 documents responsive to the subpoena?</p> <p><b>18 A I used search terms and then just kind of</b></p> <p><b>19 scanned to see if anything might have fallen</b></p> <p><b>20 through.</b></p> <p>21 Q So you made the decision whether or not</p> <p>22 something -- a document was responsive to the</p> <p>23 subpoena?</p> <p><b>24 A No. Everything I found I sent to counsel.</b></p> <p>25 Q Got it. And just to clarify, everything</p>	<p style="text-align: right;">180</p> <p><b>1 A It was on my computer.</b></p> <p>2 Q On your Highland computer?</p> <p><b>3 A It was, yeah.</b></p> <p>4 Q Was that on -- where was the folder?</p> <p><b>5 A There was a folder on my desktop of -- I</b></p> <p><b>6 had a tablet that was stolen out of my car in</b></p> <p><b>7 September of 2020, along with a notebook and a box</b></p> <p><b>8 of wine. And from then on, I -- yeah, there</b></p> <p><b>9 wasn't much going on Sentinel related, so I don't</b></p> <p><b>10 know that I had anything on my -- the new computer</b></p> <p><b>11 I got. And I have a few documents on my current</b></p> <p><b>12 computer that I produced to counsel.</b></p> <p>13 Q A box of wine or a case of wine?</p> <p><b>14 A Box, two bottles. Just came in the mail.</b></p> <p>15 Q Gotcha. And the folder that was on your</p> <p>16 tablet that was stolen, that was something that</p> <p>17 was only on the hard drive?</p> <p><b>18 A Yes.</b></p> <p>19 Q Okay. So it wasn't backed up somewhere in</p> <p>20 the --</p> <p><b>21 A I saved -- bad habit. I save everything</b></p> <p><b>22 on my desktop generally.</b></p> <p>23 Q And to your knowledge that wasn't backed</p> <p>24 up anywhere on Highland's servers?</p> <p><b>25 A I don't think so.</b></p>

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<p style="text-align: right;">181</p> <p>1 Q What about in your Highland e-mail? Did</p> <p>2 you have a folder for Sentinel?</p> <p>3 <b>A I don't believe so.</b></p> <p>4 Q What about in your SAS e-mail? Did you</p> <p>5 have a folder for Sentinel?</p> <p>6 <b>A I don't think so. I don't really file</b></p> <p>7 <b>much.</b></p> <p>8 Q I'm handing you what we have previously</p> <p>9 marked as Exhibit 58.</p> <p>10 <b>A Do you want me to review the whole thing?</b></p> <p>11 Q You can if you want to, but this is one of</p> <p>12 the documents that you provided to us, right?</p> <p>13 <b>A Yeah.</b></p> <p>14 Q Okay. Are you familiar with it?</p> <p>15 <b>A I know what it is, yes.</b></p> <p>16 Q I'm going to let your attorney find her</p> <p>17 copy if she would like to, before I ask you other</p> <p>18 questions about it.</p> <p>19 <b>A May I run to the restroom real quick</b></p> <p>20 <b>before we do this? Is that okay? Sorry.</b></p> <p>21 Q Yeah. Take a break.</p> <p>22 <b>A Sorry.</b></p> <p>23 Q That's okay.</p> <p>24 THE VIDEOGRAPHER: Off the record at</p> <p>25 2:20 p.m.</p>	<p style="text-align: right;">183</p> <p>1 <b>A I don't think so.</b></p> <p>2 Q I don't want to know any conversations</p> <p>3 with counsel, but other than that, do you know if</p> <p>4 Mr. Ellington is aware that you have resigned from</p> <p>5 the board of Sentinel?</p> <p>6 <b>A I don't know.</b></p> <p>7 Q Were the other Sentinel directors</p> <p>8 compensated for the work that they did with</p> <p>9 Sentinel?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Do you know how much?</p> <p>12 <b>A Each -- I think they were each paid about</b></p> <p>13 <b>\$10,000 a year.</b></p> <p>14 Q Did you --</p> <p>15 <b>A Give or take. It's in that ballpark.</b></p> <p>16 Q Did you ever ask to be compensated for</p> <p>17 your work as a director at Sentinel?</p> <p>18 <b>A No.</b></p> <p>19 Q Why not?</p> <p>20 <b>A Never thought to.</b></p> <p>21 Q And I think you said this, but I want to</p> <p>22 be clear. In the time that you were a director at</p> <p>23 Sentinel, the claim that was made on the</p> <p>24 ATE policy with respect to the UBS litigation was</p> <p>25 the only claim made on a Sentinel insurance policy</p>
<p style="text-align: right;">182</p> <p>1 (Recess taken from 2:20 p.m. CDT to</p> <p>2 2:36 p.m. CDT)</p> <p>3 THE VIDEOGRAPHER: The time is 2:36 p.m.</p> <p>4 We are back on the record.</p> <p>5 BY MS. TOMKOWIAK:</p> <p>6 Q Before we get to that exhibit, I have a</p> <p>7 few follow-up questions on some of the things that</p> <p>8 we were talking about before the break. You said</p> <p>9 earlier that Mr. Sevilla had some role in the</p> <p>10 day-to-day with Sentinel. What was that role?</p> <p>11 <b>A I think it was kind of an unofficial --</b></p> <p>12 <b>like he was the point person, I guess, for things</b></p> <p>13 <b>that had to happen with Sentinel. I don't know</b></p> <p>14 <b>exactly what, but --</b></p> <p>15 Q Do you know how he got that role?</p> <p>16 <b>A I think he was -- he helped with the</b></p> <p>17 <b>formation, as I understand it. He was part of the</b></p> <p>18 <b>team.</b></p> <p>19 Q Do you know who asked him to do that?</p> <p>20 <b>A I don't.</b></p> <p>21 Q Before you resigned from the Sentinel</p> <p>22 board, did you tell Mr. Ellington that you were</p> <p>23 going to do it?</p> <p>24 <b>A I don't recall if I told him or not.</b></p> <p>25 Q Did you tell him afterwards?</p>	<p style="text-align: right;">184</p> <p>1 that you're aware of?</p> <p>2 <b>A That's correct.</b></p> <p>3 Q So if you look at Exhibit 58. This is a</p> <p>4 document that you found when you were searching</p> <p>5 through your files; is that right?</p> <p>6 <b>A I believe so.</b></p> <p>7 Q Was this a hard copy or an electronic</p> <p>8 copy?</p> <p>9 <b>A I believe an electronic copy.</b></p> <p>10 Q So you had it in your e-mail?</p> <p>11 <b>A I think so.</b></p> <p>12 Q And this is the policy that we've been</p> <p>13 talking about today, right?</p> <p>14 <b>A I believe it is, yes.</b></p> <p>15 Q Okay. Again, you're not aware of any</p> <p>16 other policy that Sentinel wrote that relates to</p> <p>17 the UBS litigation, right?</p> <p>18 <b>A No, but I haven't looked at every single</b></p> <p>19 <b>page so far, but I believe it is, yeah.</b></p> <p>20 Q Why don't you take a minute to look at it</p> <p>21 because I'd like to know if you believe that this</p> <p>22 is a full and complete version of the ATE policy</p> <p>23 with all of the endorsements that you are aware</p> <p>24 of.</p> <p>25 <b>A Okay.</b></p>

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<p>1 (Witness reviews document.)</p> <p>2 <b>A Okay.</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q Is this a full and complete version of the</p> <p>5 ATE policy?</p> <p>6 <b>A To the best of my knowledge, it is.</b></p> <p>7 Q Are you aware of any other endorsements to</p> <p>8 this policy?</p> <p>9 <b>A I'm not.</b></p> <p>10 Q And you -- I asked you if you found this</p> <p>11 in your e-mail and you said you believe so. Was</p> <p>12 there a cover e-mail? Was this an attachment to</p> <p>13 an e-mail?</p> <p>14 MS. SMITH: Objection.</p> <p>15 I'm going to caution you not to divulge</p> <p>16 any privileged communications with counsel.</p> <p>17 <b>A It was an attachment.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Okay. Did you provide the cover e-mail to</p> <p>20 your counsel?</p> <p>21 <b>A What do you mean by cover e-mail?</b></p> <p>22 Q Well, if it was an attachment to an</p> <p>23 e-mail, did you provide the e-mail and the</p> <p>24 attachment to your counsel?</p> <p>25 <b>A Did I send the -- like did I write the</b></p>	<p>185</p>	<p>1 outline. Page 26.</p> <p>2 <b>A Bates 26?</b></p> <p>3 Q Yes.</p> <p>4 <b>A Okay. I'm there.</b></p> <p>5 Q You're with the lingo now.</p> <p>6 <b>A I'm getting there.</b></p> <p>7 Q So this schedule it says: Date of</p> <p>8 commencement of Period of Insurance, August 1st,</p> <p>9 2017?</p> <p>10 <b>A That's what it says.</b></p> <p>11 Q What is your understanding of the status</p> <p>12 of the UBS litigation as of August 1st, 2017?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A This would be -- I wasn't really aware of</b></p> <p>15 <b>it in August of 2017.</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q Did you have -- you said you sat in the</p> <p>18 legal department, right?</p> <p>19 <b>A That's right.</b></p> <p>20 Q Okay. Were you generally aware that</p> <p>21 Highland was engaged in litigation with UBS in</p> <p>22 August 2017?</p> <p>23 <b>A I don't recall, but Highland was engaged</b></p> <p>24 <b>in litigation with a lot of people. So you'd hear</b></p> <p>25 <b>a lot of different cases, I guess.</b></p>	<p>187</p>
<p>1 <b>e-mail, in other words?</b></p> <p>2 Q No. So when I think of a cover e-mail, if</p> <p>3 I send my colleague this document as an attachment</p> <p>4 to an e-mail, then the e-mail sending it to my</p> <p>5 colleague would be the cover e-mail. So when you</p> <p>6 went -- if you found this in your e-mails, was</p> <p>7 this attached to a particular e-mail</p> <p>8 communication?</p> <p>9 MS. SMITH: Objection.</p> <p>10 I'm going to caution you not to divulge</p> <p>11 privileged information.</p> <p>12 We did provide a privilege log.</p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q Let me ask it this way. When you went</p> <p>15 through your e-mails and you identified</p> <p>16 responsive -- potentially responsive materials,</p> <p>17 did you separate e-mails from attachments or did</p> <p>18 you just give everything to your attorneys?</p> <p>19 <b>A I provided everything to counsel.</b></p> <p>20 Q Okay. I believe you testified earlier</p> <p>21 that you don't know who drafted this policy?</p> <p>22 <b>A Yeah, that's correct.</b></p> <p>23 Q And if you look at the schedule, which I</p> <p>24 believe is on page 18 -- no, I'm wrong. I'm way</p> <p>25 off. That must have been a note from a different</p>	<p>186</p>	<p>1 Q The UBS litigation was one of the biggest</p> <p>2 ones, but you don't recall that being discussed</p> <p>3 particularly within the Highland legal department?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 <b>A I don't have any specific recollections of</b></p> <p>6 <b>UBS being discussed in August of 2017.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Do you recall when the first -- when is</p> <p>9 the first time you have a specific recollection of</p> <p>10 the UBS litigation being discussed?</p> <p>11 <b>A I think after I was appointed to the board</b></p> <p>12 <b>or I came on the board --</b></p> <p>13 Q How soon --</p> <p>14 <b>A -- of Sentinel.</b></p> <p>15 Q I'm sorry. Were you done?</p> <p>16 <b>A The board of Sentinel, sorry.</b></p> <p>17 Q How soon after you came on the board of</p> <p>18 Sentinel were you provided with a copy of this</p> <p>19 policy?</p> <p>20 <b>A I don't know specific dates. I'm going</b></p> <p>21 <b>to -- yeah, I don't know.</b></p> <p>22 Q Do you believe it was shortly thereafter?</p> <p>23 Months thereafter?</p> <p>24 <b>A I would say within a few months.</b></p> <p>25 Q Who provided you with a copy of the</p>	<p>188</p>

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<p style="text-align: right;">189</p> <p>1 policy?</p> <p>2 <b>A Probably -- I don't know, actually.</b></p> <p>3 Q Was it somebody at Highland?</p> <p>4 <b>A It probably would have been Beecher</b></p> <p>5 <b>Carlson.</b></p> <p>6 Q Do you remember the context in which you</p> <p>7 were being -- in which you were provided with a</p> <p>8 copy of the policy?</p> <p>9 <b>A I think when I came on board, I was</b></p> <p>10 <b>provided several documents from Beecher at some</b></p> <p>11 <b>point about what the company is, what it does,</b></p> <p>12 <b>that sort of thing, the operations, the financial</b></p> <p>13 <b>statements.</b></p> <p>14 Q If I wanted to find Sentinel's financial</p> <p>15 statements through the present, who would I ask?</p> <p>16 <b>A The last -- like last completed set of</b></p> <p>17 <b>financials was last year, so Beecher Carlson would</b></p> <p>18 <b>probably --</b></p> <p>19 Q Beecher Carlson is the one who would keep</p> <p>20 those?</p> <p>21 <b>A That's right.</b></p> <p>22 Q Okay. And the legal action listed here,</p> <p>23 it's a very long caption, but you understand that</p> <p>24 to be the litigation between UBS and the Highland</p> <p>25 entities listed here, in New York State court?</p>	<p style="text-align: right;">191</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Do you know if Sentinel had any other</p> <p>3 policies that provided anywhere close to</p> <p>4 \$100 million in coverage?</p> <p>5 <b>A I don't know.</b></p> <p>6 Q Can you think of any, sitting here today?</p> <p>7 <b>A I can't think of any.</b></p> <p>8 Q Do you think in your capacity as a</p> <p>9 director of Sentinel if there was another</p> <p>10 insurance policy that had \$100 million coverage,</p> <p>11 you would be aware of it?</p> <p>12 <b>A Probably.</b></p> <p>13 Q More likely than not?</p> <p>14 <b>A More likely than not, yes.</b></p> <p>15 Q And do you see the Premium is \$25 million?</p> <p>16 <b>A I do.</b></p> <p>17 Q Do you know who determined that?</p> <p>18 <b>A I do not.</b></p> <p>19 Q And on the insurance page to the left --</p> <p>20 I'm sorry, on the signature page to the left.</p> <p>21 <b>A Yes.</b></p> <p>22 Q That's Mr. Dondero's signature on behalf</p> <p>23 of the insureds; is that right?</p> <p>24 <b>A It appears to be.</b></p> <p>25 Q And I see that it says Andrew Dean,</p>
<p style="text-align: right;">190</p> <p>1 <b>A As best -- yeah, that's my understanding.</b></p> <p>2 Q And the Court says Supreme Court of the</p> <p>3 State of New York, County of New York?</p> <p>4 <b>A That's right.</b></p> <p>5 Q And there's three funds here that are</p> <p>6 listed as the insureds, right?</p> <p>7 <b>A That's right.</b></p> <p>8 Q And that's consistent with your</p> <p>9 understanding of which entities were insured under</p> <p>10 this policy?</p> <p>11 <b>A That's right.</b></p> <p>12 Q And the Limit of Indemnity is 100 million.</p> <p>13 Do you see that?</p> <p>14 <b>A I do.</b></p> <p>15 Q Do you know how that legal liability --</p> <p>16 I'm sorry. Do you know how that limit of</p> <p>17 indemnity was selected?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A I don't. I wasn't involved with the</b></p> <p>20 <b>transaction.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q Do you know who made that decision?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A I don't.</b></p> <p>25</p>	<p style="text-align: right;">192</p> <p>1 director. Do you know whether, in fact, that's</p> <p>2 Mr. Dean's signature?</p> <p>3 <b>A I don't know whether or not it is, but...</b></p> <p>4 Q I take it you have no reason to believe</p> <p>5 it's not, but you don't know?</p> <p>6 <b>A I have no reason to believe it's not, no.</b></p> <p>7 Q Okay. Is that your signature? I mean,</p> <p>8 I'm sorry, is that your handwriting, writing in</p> <p>9 the date at the top?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 <b>A No, it's not.</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q Do you know whose it is?</p> <p>14 <b>A I don't.</b></p> <p>15 Q And do you know the significance of this</p> <p>16 Cayman Islands stamp at the bottom?</p> <p>17 <b>A Just what it says. It's a government</b></p> <p>18 <b>stamp, but nothing further.</b></p> <p>19 Q Do you know if this policy was mailed to</p> <p>20 someone specifically in the Caymans?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A I know it was ultimately approved by CIMA,</b></p> <p>23 <b>but I'm not sure if that came via paper copy,</b></p> <p>24 <b>electronic copy.</b></p> <p>25</p>



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<p style="text-align: right;">193</p> <p>1 BY MS. TOMKOWIAK:                  2 Q So do you believe that this stamp is from                  3 CIMA?                  4 MS. SMITH: Objection to form.                  5 A <b>I don't know.</b>                  6 BY MS. TOMKOWIAK:                  7 Q And that's all I'm trying to understand.                  8 You don't know what this means?                  9 A <b>I've never seen that stamp before. I</b>                  10 <b>don't know what it means.</b>                  11 Q Well, other than on this document that you                  12 have, you mean you've never seen this stamp                  13 outside of this document?                  14 A <b>This stamp doesn't look like anything I've</b>                  15 <b>ever seen anywhere before, is all I'm saying.</b>                  16 Q Okay. So you don't recall seeing it at                  17 the time that you got this policy?                  18 A <b>I wasn't -- like when I received a copy of</b>                  19 <b>the policy?</b>                  20 Q Yeah.                  21 A <b>I'm sure it was on there, but...</b>                  22 Q There's no question in your mind that this                  23 policy was meant to provide the insureds with                  24 coverage in the event that they incurred liability                  25 to UBS in the New York State court action, right?</p>	<p style="text-align: right;">195</p> <p>1 <b>this 2017 year-end audit, so early 2018 or first</b>                  2 <b>half of 2018.</b>                  3 Q And how did it -- how would it have come                  4 up in the audit?                  5 A <b>The assets that were transferred over --</b>                  6 <b>or as part of the ATE policy, needed to be valued</b>                  7 <b>by a third party to perform the valuations.</b>                  8 <b>Again, this is -- I think the auditors demanded</b>                  9 <b>it, possibly Beecher as well. But when the</b>                  10 <b>third-party valuations came back, they were higher</b>                  11 <b>than 25 million, so the premium was adjusted</b>                  12 <b>accordingly.</b>                  13 Q Who made the decision to adjust the                  14 premium?                  15 A <b>It would have been between Beecher Carlson</b>                  16 <b>and the auditors. Beecher prepares the financial</b>                  17 <b>statements.</b>                  18 Q Did the insureds provide any additional                  19 consideration in the form of assets or cash, to                  20 account for the increased premium?                  21 A <b>No. The -- no.</b>                  22 Q Do you recall who did the valuation?                  23 A <b>The third-party valuation was a company</b>                  24 <b>called Valuation Research Corp. or corporation,</b>                  25 <b>VRC we refer to them as.</b></p>
<p style="text-align: right;">194</p> <p>1 MS. SMITH: Objection to form.                  2 A <b>Would you mind rephrasing?</b>                  3 BY MS. TOMKOWIAK:                  4 Q Is there something that you didn't                  5 understand about the question?                  6 A <b>It was more of a statement than a</b>                  7 <b>question, to me.</b>                  8 Q Okay. I'm asking you if you -- was there                  9 any question in your mind that this policy was                  10 meant to provide the funds listed as the insureds                  11 with insurance coverage in the event that they                  12 incurred liability to UBS?                  13 A <b>There was --</b>                  14 MS. SMITH: Objection to form.                  15 A <b>No. It's a real policy, if that's what</b>                  16 <b>you're asking.</b>                  17 BY MS. TOMKOWIAK:                  18 Q If you look at the Endorsement No. 1,                  19 which is Bates 27.                  20 A <b>Yes.</b>                  21 Q Do you know when this endorsement --                  22 there's no date on it. Do you know when this                  23 endorsement was added to the policy?                  24 A <b>This would have been part of -- I don't</b>                  25 <b>know exactly when, but would have come up during</b></p>	<p style="text-align: right;">196</p> <p>1 Q Did you receive a copy of that valuation?                  2 A <b>I would have, yeah.</b>                  3 Q Is that something that you looked for to                  4 respond to the subpoena?                  5 A <b>It would have been in my SAS e-mail that I</b>                  6 <b>no longer have access to.</b>                  7 THE REPORTER: Repeat that.                  8 A <b>It would have been in my SAS e-mail that I</b>                  9 <b>no longer have access to. Excuse me. They would</b>                  10 <b>have been. There are multiple valuations from</b>                  11 <b>multiple securities.</b>                  12 BY MS. TOMKOWIAK:                  13 Q When you say there are multiple                  14 valuations, was there -- were they in a single                  15 report? Did you receive multiple reports?                  16 A <b>There was a report for each security.</b>                  17 Q Do you recall approximately how many                  18 reports you received?                  19 A <b>Maybe tenish.</b>                  20 Q Okay. So to the best of your knowledge,                  21 this endorsement would have been executed sometime                  22 in early 2018; is that what you're saying?                  23 A <b>I would think so.</b>                  24 Q And to the best of your recollection,                  25 Ms. Thompson was authorized to sign on Sentinel's</p>

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<p style="text-align: right;">197</p> <p>1 behalf at this time?</p> <p>2 MS. SMITH: Objection, form, calls for a</p> <p>3 legal conclusion.</p> <p>4 <b>A If she were still on the board, then yes.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q Okay. And you just don't recall when</p> <p>7 Ms. Thompson was on the board?</p> <p>8 <b>A I don't remember when she resigned from</b></p> <p>9 <b>the board.</b></p> <p>10 Q Do you know why she resigned from the</p> <p>11 board?</p> <p>12 <b>A I don't.</b></p> <p>13 Q So she didn't tell you?</p> <p>14 <b>A I don't remember being given a reason.</b></p> <p>15 Q Did you think Ms. Thompson was good at her</p> <p>16 job?</p> <p>17 <b>A In my limited interactions, yeah, she was</b></p> <p>18 <b>competent.</b></p> <p>19 Q It says here that the premium received</p> <p>20 consists of cash of 11 million and change, and</p> <p>21 then miscellaneous receivables of 1.75 million,</p> <p>22 approximately. Do you know what the miscellaneous</p> <p>23 receivables refers to?</p> <p>24 <b>A I don't remember anything adding up to</b></p> <p>25 <b>that number. The only one I do remember was a</b></p>	<p style="text-align: right;">199</p> <p>1 Q And then with respect to the investment</p> <p>2 portfolio of 55.5, approximately, we'll look at</p> <p>3 the specific assets, but generally what do you</p> <p>4 recall that investment portfolio consisted of?</p> <p>5 <b>A It consisted of some CLO positions.</b></p> <p>6 <b>Sentinel already had several CLO positions from</b></p> <p>7 <b>several years prior so they were already on the</b></p> <p>8 <b>balance sheet. But there was some new CLOs.</b></p> <p>9 <b>There were some publicly traded equities, stocks</b></p> <p>10 <b>and an interest in Multi Strat, Highland</b></p> <p>11 <b>Multi Strat, I would assume as part of this</b></p> <p>12 <b>number.</b></p> <p>13 Q So as part of the assets that were paid to</p> <p>14 satisfy the premium, you understood that there was</p> <p>15 an interest in Multi Strat that had some value</p> <p>16 that would be included in this investment</p> <p>17 portfolio?</p> <p>18 <b>A I would assume it's part of the investment</b></p> <p>19 <b>portfolio number, yeah.</b></p> <p>20 Q It says here that all other terms and</p> <p>21 conditions remain unchanged.</p> <p>22 Do you take that to mean that, for</p> <p>23 example, the limit of indemnity was not changed?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 <b>A At that time, yes.</b></p>
<p style="text-align: right;">198</p> <p>1 <b>receivable from the IRS, an income tax receivable,</b></p> <p>2 <b>and that was approximately a half a million</b></p> <p>3 <b>dollars.</b></p> <p>4 Q Do you know if Sentinel ever received</p> <p>5 that?</p> <p>6 <b>A Not in full but in part, yes.</b></p> <p>7 Q Approximately how much of the half a</p> <p>8 million did it receive?</p> <p>9 <b>A 430, 25, 30 grand.</b></p> <p>10 Q Was that because the IRS didn't refund as</p> <p>11 much as was expected?</p> <p>12 <b>A I honestly don't know. It had been on the</b></p> <p>13 <b>books, as I understood it, for quite some time.</b></p> <p>14 <b>The books of whatever fund it came from. I'm not</b></p> <p>15 <b>sure which one it sat on.</b></p> <p>16 Q Okay. Yeah, and I was just trying to</p> <p>17 understand if you knew if that -- if that was</p> <p>18 because the fund received less than it expected or</p> <p>19 the fund paid Sentinel less than Sentinel expected</p> <p>20 to be paid?</p> <p>21 <b>A Oh, it had nothing to do with -- it was</b></p> <p>22 <b>just an asset that was transferred over as part of</b></p> <p>23 <b>the payment for the policy. Whatever -- the IRS</b></p> <p>24 <b>issue would have been with whatever fund it sat</b></p> <p>25 <b>on.</b></p>	<p style="text-align: right;">200</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q Did you -- were you personally involved in</p> <p>3 this endorsement; do you know?</p> <p>4 <b>A I would have been involved in the audit</b></p> <p>5 <b>and facilitating the valuations that would have</b></p> <p>6 <b>led to this endorsement.</b></p> <p>7 Q Do you know who drafted this endorsement?</p> <p>8 <b>A I do not.</b></p> <p>9 Q Do you know -- even if you don't know the</p> <p>10 person, do you know if it was someone at Beecher</p> <p>11 Carlson, for example?</p> <p>12 <b>A I'm not entirely sure.</b></p> <p>13 Q Would you have reviewed it before</p> <p>14 Ms. Thompson signed it?</p> <p>15 <b>A I would have been aware of what was</b></p> <p>16 <b>happening, yes.</b></p> <p>17 Q But would you have reviewed this</p> <p>18 endorsement specifically?</p> <p>19 <b>A The actual letter? Possibly.</b></p> <p>20 Q Do you recall doing so?</p> <p>21 <b>A Again, I know these numbers, I'm aware of</b></p> <p>22 <b>these numbers. I don't specifically recall</b></p> <p>23 <b>reviewing this exact document.</b></p> <p>24 Q So if the premium has increased by</p> <p>25 approximately 150 percent, why would the amount of</p>

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<p style="text-align: right;">201</p> <p>1 coverage stay the same?</p> <p>2 <b>A I don't know.</b></p> <p>3 Q Did you ask?</p> <p>4 <b>A I'm sure it came up, but for insurance</b></p> <p>5 <b>matters like that, we generally rely on Beecher,</b></p> <p>6 <b>the insurance manager. So if they didn't say the</b></p> <p>7 <b>policy had to go up or the limit went up, then it</b></p> <p>8 <b>wouldn't have gone up.</b></p> <p>9 Q Do you know if the insureds asked for</p> <p>10 increased coverage based on the increased policy</p> <p>11 amount -- I'm sorry, premium amount?</p> <p>12 <b>A Not that I'm aware of.</b></p> <p>13 Q Do you know why this is not signed by any</p> <p>14 of the insureds?</p> <p>15 <b>A I don't know.</b></p> <p>16 Q Does it seem to you like it should be?</p> <p>17 MS. SMITH: Objection, form, calls for a</p> <p>18 legal conclusion.</p> <p>19 <b>A I'm not sure.</b></p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q Do you know whether or not they agreed to</p> <p>22 this?</p> <p>23 <b>A The insureds?</b></p> <p>24 Q Yes.</p> <p>25 <b>A I don't know whether or not they agreed.</b></p>	<p style="text-align: right;">203</p> <p>1 <b>A Not specifically. Again, I think it came</b></p> <p>2 <b>up during an audit and I think Beecher -- since</b></p> <p>3 <b>there was some cash that came over with the policy</b></p> <p>4 <b>that was earmarked for litigation expense, they</b></p> <p>5 <b>decided to enter it on the balance sheet like</b></p> <p>6 <b>this, where -- they call it risk mitigation.</b></p> <p>7 Q So to you risk mitigation meant legal</p> <p>8 expense?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A It was a newly created line on the balance</b></p> <p>11 <b>sheet specifically to cover all litigation-related</b></p> <p>12 <b>costs for the insureds.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q You said that there was some cash that</p> <p>15 came over the policy that was earmarked for</p> <p>16 litigation expense. Who earmarked it?</p> <p>17 <b>A Again, I believe it was a suggestion by</b></p> <p>18 <b>Beecher Carlson, to move this cash to a certain</b></p> <p>19 <b>bucket on the balance sheet.</b></p> <p>20 Q So Beecher Carlson decided that with</p> <p>21 respect to all of the assets that were used to pay</p> <p>22 the premium on the policy, they would, I'm just</p> <p>23 using your word, earmark 9 million of it to pay</p> <p>24 litigation expenses?</p> <p>25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">202</p> <p>1 Q Do you know whether they had to agree?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 <b>A I don't know.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q With respect to the second endorsement,</p> <p>6 are you familiar with that one?</p> <p>7 <b>A Yes, I am.</b></p> <p>8 Q This one is also undated. Do you know</p> <p>9 approximately when this one would have been</p> <p>10 entered into?</p> <p>11 <b>A I would assume around the same time as</b></p> <p>12 <b>Endorsement No. 1.</b></p> <p>13 Q Why would you say that?</p> <p>14 <b>A They're related.</b></p> <p>15 Q Do you know why there's, then, two</p> <p>16 endorsements instead of just one?</p> <p>17 <b>A I don't know why it's broken out, no.</b></p> <p>18 Q Okay. And why do you say that they were</p> <p>19 related?</p> <p>20 <b>A Because it has to do with the premium</b></p> <p>21 <b>that -- from Endorsement 1, that had obviously</b></p> <p>22 <b>changed from the original premium in the policy.</b></p> <p>23 <b>That's why I would say they're related.</b></p> <p>24 Q So do you recall what led to Endorsement</p> <p>25 No. 2?</p>	<p style="text-align: right;">204</p> <p>1 <b>A That's my understanding. Could have been</b></p> <p>2 <b>with input from the auditor. I don't know, but...</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q So why did that reduce the premium?</p> <p>5 <b>A My understanding is that that cash amount</b></p> <p>6 <b>was taken away from -- or whatever the amount --</b></p> <p>7 <b>the \$9 million reduced the coverage because part</b></p> <p>8 <b>of the premium was being used -- was being spent</b></p> <p>9 <b>by the insurance company to cover the costs, so it</b></p> <p>10 <b>would reduce the -- dollar for dollar reduce the</b></p> <p>11 <b>limit of the policy.</b></p> <p>12 Q Well, so the original policy was \$25 --</p> <p>13 sorry. That would be a great policy. \$25 million</p> <p>14 premium, right?</p> <p>15 <b>A Uh-huh.</b></p> <p>16 Q For \$100 million worth of coverage?</p> <p>17 <b>A That's right.</b></p> <p>18 Q You agree with me that's not dollar for</p> <p>19 dollar, right?</p> <p>20 <b>A What's not dollar for dollar?</b></p> <p>21 Q You're not paying \$1 for every \$1 of</p> <p>22 coverage, right?</p> <p>23 <b>A Right. That's not what I said before.</b></p> <p>24 Q Okay. Then help me explain. Because what</p> <p>25 I took you to say is that because part of the</p>

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<p style="text-align: right;">205</p> <p>1 premium, \$9 million of the premium was being used                  2 to cover costs.                  3 <b>A Right.</b>                  4 Q And that coverage amount was going to be                  5 reduced dollar by dollar also by \$9 million.                  6 <b>A Right.</b>                  7 Q So I don't understand why that would be                  8 appropriate?                  9 MS. SMITH: Objection to form.                  10 <b>A My understanding is that since the policy</b>                  11 <b>wasn't paid for all cash; in other words, whatever</b>                  12 <b>the original 25 million, ideally you'd accept</b>                  13 <b>payment in cash for the premium. But since the</b>                  14 <b>funds did not have the cash, all their assets were</b>                  15 <b>illiquid, junk, not junk, whatever, were</b>                  16 <b>contributed as payment for the policy.</b>                  17 <b>The cash portion of that -- I believe it's</b>                  18 <b>a condition of the policy, but that the insurance</b>                  19 <b>company had to pay the ongoing legal expenses for</b>                  20 <b>the insureds. So it wouldn't accept cash, spend</b>                  21 <b>the cash on their legal expenses and then not</b>                  22 <b>reduce the coverage. Otherwise, I think you're</b>                  23 <b>getting an extra -- extra dollar's worth of</b>                  24 <b>coverage you didn't pay for is my understanding,</b>                  25 <b>my interpretation of it.</b></p>	<p style="text-align: right;">207</p> <p>1 BY MS. TOMKOWIAK:                  2 Q And that Sentinel issued the policy                  3 regardless?                  4 <b>A That's correct, in exchange for this</b>                  5 <b>basket of securities.</b>                  6 Q Just so I'm clear, this -- and this does                  7 not mean that at this point in time the insureds                  8 paid an additional \$9 million?                  9 <b>A That's correct.</b>                  10 Q It says here that: The insurer will have                  11 sole responsibility to settle all risk mitigation                  12 costs with respect to legal action.                  13 Do you know what that means?                  14 MS. SMITH: Objection, form.                  15 <b>A My understanding is that the insurer would</b>                  16 <b>pay for ongoing costs associated with trial,</b>                  17 <b>settlement, whatever.</b>                  18 BY MS. TOMKOWIAK:                  19 Q So does that mean if those costs exceeded                  20 \$9 million, that Sentinel was still on the hook                  21 for them?                  22 <b>A Yes. My understanding.</b>                  23 Q Do you know how much of that \$9 million                  24 was paid out during the course of time when you                  25 were a director?</p>
<p style="text-align: right;">206</p> <p>1 BY MS. TOMKOWIAK:                  2 Q Is that -- what's that interpretation                  3 based on?                  4 <b>A Just my experience working through this</b>                  5 <b>and whenever it happened with the audit and all</b>                  6 <b>the valuations came in.</b>                  7 Q So the -- there were other assets that                  8 were valued by a third party of having -- let's                  9 see. There was 1.75 in miscellaneous receivables,                  10 55.5 in an investment portfolio. So wasn't that                  11 already more than enough to cover the initial                  12 premium?                  13 MS. SMITH: Objection to form.                  14 <b>A I think this is specific to actual cash,</b>                  15 <b>not the other assets that were part of the policy,</b>                  16 <b>if that makes sense.</b>                  17 BY MS. TOMKOWIAK:                  18 Q Actually, it doesn't to me. I mean, so                  19 Sentinel did not require \$25 million of cash to be                  20 paid in order to issue this policy, right?                  21 MS. SMITH: Objection to form.                  22 <b>A I don't know what it required at the time,</b>                  23 <b>but looking back, I know that the funds did not</b>                  24 <b>have \$25 million in cash to pay for it.</b>                  25</p>	<p style="text-align: right;">208</p> <p>1 <b>A Most, if not all. There might be, I don't</b>                  2 <b>know, a million bucks left or so. I don't know</b>                  3 <b>exactly, but most of it was spent.</b>                  4 Q Were you personally involved in dispensing                  5 money to cover legal fees?                  6 <b>A It would have undergone the same procedure</b>                  7 <b>I outlined earlier, where I'd submit it to Beecher</b>                  8 <b>Carlson, they would send it to the directors,</b>                  9 <b>directors would approve or not approve, ask</b>                  10 <b>questions, whatever, and send it back to Beecher</b>                  11 <b>and then they would release the wires.</b>                  12 Q Okay. So, for example, McKool Smith was                  13 one of the attorneys in that litigation, so they                  14 would send an invoice to you; is that right?                  15 <b>A I would receive them from Isaac generally.</b>                  16 Q Okay. So attorneys would send it to                  17 Isaac, Isaac would send it to you, you would send                  18 it to Beecher, Beecher would send it to the                  19 independent directors, they would sign off or not                  20 and then how did counsel get paid?                  21 <b>A They would have -- I assume a wire. Yeah.</b>                  22 Q Do you know how many bank accounts                  23 Sentinel has?                  24 <b>A One, to my knowledge.</b>                  25 Q At what bank?</p>

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<p style="text-align: right;">209</p> <p>1 <b>A It's at CIBC, Cayman.</b></p> <p>2 Q Is that where all of the cash was kept?</p> <p>3 <b>A Yes.</b></p> <p>4 Q Do you know whether there were any</p> <p>5 litigation expenses or fees that Sentinel denied?</p> <p>6 <b>A I don't remember any being denied, no.</b></p> <p>7 Q Do you know who would review those for</p> <p>8 reasonableness?</p> <p>9 <b>A Well, Isaac would review any legal bill</b></p> <p>10 <b>that came into Highland generally, generally</b></p> <p>11 <b>speaking is my understanding, and then he'd send</b></p> <p>12 <b>it to me. Again, I'd send it to Beecher. The</b></p> <p>13 <b>directors generally had questions about is this</b></p> <p>14 <b>correct, is this market, whatever, and then from</b></p> <p>15 <b>there if they approved, which they did generally,</b></p> <p>16 <b>it would -- then it would get paid.</b></p> <p>17 Q We discussed earlier that the outcome of</p> <p>18 the trial in the New York State action was a</p> <p>19 judgment in favor of UBS for over a billion</p> <p>20 dollars, right?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A That's right.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q And I asked you if the insureds made a</p> <p>25 claim on the policy after that judgment and you</p>	<p style="text-align: right;">211</p> <p>1 the funds should make a claim on the policy?</p> <p>2 <b>A I don't think so.</b></p> <p>3 Q Why not?</p> <p>4 <b>A Same reason.</b></p> <p>5 Q So you were a Highland employee at the</p> <p>6 same time that you were a Sentinel director,</p> <p>7 right?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 <b>A Yeah, for the most part.</b></p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Did you think that presented any</p> <p>12 particular conflict of interest for you?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I didn't, no.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Why not?</p> <p>17 <b>A I was just, you know, doing what I was</b></p> <p>18 <b>asked to do. I had no involvement in any sort of</b></p> <p>19 <b>settlement talks, policy talks with Highland and</b></p> <p>20 <b>UBS, anything like that.</b></p> <p>21 Q Did anybody instruct you to keep the</p> <p>22 Sentinel policy a secret?</p> <p>23 <b>A No.</b></p> <p>24 Q Did anybody instruct you that if -- at</p> <p>25 Highland, that if a claim was made on the policy,</p>
<p style="text-align: right;">210</p> <p>1 said that you weren't aware; is that fair?</p> <p>2 <b>A Well, they -- the insureds -- one of the</b></p> <p>3 <b>insureds made a claim this spring, but in the</b></p> <p>4 <b>interim in between whenever that was issued and</b></p> <p>5 <b>now, there was no claim that I saw.</b></p> <p>6 Q Do you recall any discussion internally at</p> <p>7 Highland about whether a claim would be made on</p> <p>8 the policy before it was made in the spring of</p> <p>9 this year?</p> <p>10 <b>A No. My only real discussions again were</b></p> <p>11 <b>as part of this actuarial -- about the case</b></p> <p>12 <b>where -- about this actuarial update with Isaac at</b></p> <p>13 <b>the end of the year.</b></p> <p>14 Q So did you ever discuss with Mr. Leventon</p> <p>15 whether or not Highland -- the Highland funds were</p> <p>16 going to make a claim on the Sentinel policy?</p> <p>17 <b>A No.</b></p> <p>18 Q Did you ever suggest to him that they</p> <p>19 should?</p> <p>20 <b>A I don't think so.</b></p> <p>21 Q Why not?</p> <p>22 <b>A I don't know that it was my place to</b></p> <p>23 <b>suggest anyone make a claim or not make a claim</b></p> <p>24 <b>with respect to the policy.</b></p> <p>25 Q Did you ever suggest to Mr. Ellington that</p>	<p style="text-align: right;">212</p> <p>1 to let them know?</p> <p>2 <b>A No.</b></p> <p>3 Q If the insureds had made a claim on the</p> <p>4 policy in 2019 after the judgment in the UBS</p> <p>5 trial, would you agree that Sentinel would have</p> <p>6 had a duty to assess that claim at that time?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A To assess it, yes, if a claim was made.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did you think it was strange that no one</p> <p>11 made a claim on the policy after they had a</p> <p>12 \$1 billion judgment entered against them?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A My understanding was that it was -- there</b></p> <p>15 <b>was always going to be a Phase 2 to the trial and</b></p> <p>16 <b>that possibly appeal something down the line, so</b></p> <p>17 <b>it wasn't strange to me, no.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Do you understand that after Highland</p> <p>20 filed for bankruptcy, the litigation in that case</p> <p>21 was stayed?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A Yes.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q And do you understand that after Highland</p>

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<p style="text-align: right;">213</p> <p>1 was put into bankruptcy, that an independent board                  2 of directors was put into place at Highland?                  3 <b>A Yes.</b>                  4 Q And that occurred around January 2020; is                  5 that right?                  6 <b>A That sounds right.</b>                  7 Q Can you identify who those board members                  8 are?                  9 <b>A Jim Seery, a gentleman named, I think Russ</b>                  10 <b>Nelms and John -- John something. I don't -- the</b>                  11 <b>third gentleman's name escapes me unfortunately.</b>                  12 <b>John Dubel. John Dubel. Sorry. Getting there.</b>                  13 Q Did you have -- did you have any                  14 interaction with any of those board members?                  15 MS. SMITH: Objection to form.                  16 <b>A At what point in time?</b>                  17 <b>BY MS. TOMKOWIAK:</b>                  18 Q After they became -- between the time that                  19 they became appointed in approximately                  20 January 2020, to the time that you left Highland                  21 in approximately February of 2021.                  22 <b>A Very little.</b>                  23 Q What do you mean by very little?                  24 <b>A I mean, I met Nelms and I believe Seery.</b>                  25 <b>I don't know that I ever actually -- I met Dubel</b></p>	<p style="text-align: right;">215</p> <p>1 <b>A Not for the remainder of the year, I</b>                  2 <b>think. It was 2020, yeah. So I received an</b>                  3 <b>e-mail from Greg Demo at the end of the year or</b>                  4 <b>early 2021, I don't remember, and that was, I</b>                  5 <b>think the only time I -- I don't think in the</b>                  6 <b>interim I had any interactions at all.</b>                  7 Q Were you aware that the independent board                  8 was negotiating a settlement with UBS?                  9 <b>A I assumed they were negotiating</b>                  10 <b>settlements with any and all creditors of</b>                  11 <b>Highland. So UBS would fall under that I guess.</b>                  12 Q At any time between January 2020 and your                  13 departure from Highland, did you disclose to any                  14 members of the independent board that you were                  15 aware of an insurance policy that would provide                  16 for \$100 million of coverage in connection with                  17 the UBS litigation?                  18 MS. SMITH: Objection.                  19 <b>A No.</b>                  20 <b>BY MS. TOMKOWIAK:</b>                  21 Q Why not?                  22 <b>A Like I said, I had no involvement with any</b>                  23 <b>settlement discussions. I barely spoke to the</b>                  24 <b>board members at Pachulski. It was not my place,</b>                  25 <b>not my -- I was busy with private equity stuff.</b></p>
<p style="text-align: right;">214</p> <p>1 <b>as well. Had one meeting about private equity</b>                  2 <b>portfolio companies with, I believe Dubel in</b>                  3 <b>person and that was the last I believe I ever</b>                  4 <b>spoke to him. Never spoke to Mr. Nelms after the</b>                  5 <b>one time I met him. And I've only spoken to</b>                  6 <b>Mr. Seery prior to when we -- when he terminated</b>                  7 <b>me, once or twice about private equity.</b>                  8 Q What about counsel for the independent                  9 board, the individuals at Pachulski? Did you have                  10 any interaction with them?                  11 <b>A Initially I was asked to source D&amp;O</b>                  12 <b>coverage for the independent board, a task passed</b>                  13 <b>to me I think by Mr. Sevilla and I did that. I</b>                  14 <b>got a quote and handed it off, and then a few of</b>                  15 <b>them came over I, think it was Mr. Pomerantz had</b>                  16 <b>the piece of paper in his hand and said who did</b>                  17 <b>this and I said I did. And he threw it on my desk</b>                  18 <b>and said we don't need it. They were finding</b>                  19 <b>coverage elsewhere so...</b>                  20 Q So the -- I'm sorry, what was the piece of                  21 paper in his hand?                  22 <b>A It was a quote, like a D&amp;O insurance</b>                  23 <b>quote, something along those lines.</b>                  24 Q Did you have any other interactions with                  25 anybody at the -- at their firm?</p>	<p style="text-align: right;">216</p> <p>1 Q So you assumed that they were trying to                  2 settle claims with all creditors including UBS,                  3 right?                  4 <b>A That's right.</b>                  5 Q But you didn't think it was relevant to                  6 mention, hey, there might be \$100 million worth of                  7 insurance coverage available to you to help settle                  8 that claim?                  9 MS. SMITH: Objection to form.                  10 <b>A I wouldn't be involved with any of the</b>                  11 <b>settlement discussions. Whoever was most likely</b>                  12 <b>would have known.</b>                  13 <b>BY MS. TOMKOWIAK:</b>                  14 Q Most likely would have known of what?                  15 <b>A The policy.</b>                  16 Q Do you know who was involved in those                  17 settlement discussions?                  18 <b>A Not specifically.</b>                  19 Q Do you think Mr. Ellington was involved?                  20 <b>A I'm sure on some level he was, yeah.</b>                  21 Q Do you think Mr. Leventon was involved?                  22 <b>A Possibly.</b>                  23 Q Do you think Mr. Dondero was involved?                  24 MS. SMITH: Objection to form.                  25 <b>A I believe he was removed shortly</b></p>

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<p style="text-align: right;">217</p> <p><b>1 thereafter -- or shortly after the board was</b></p> <p><b>2 appointed, so I doubt it.</b></p> <p><b>3 BY MS. TOMKOWIAK:</b></p> <p>4 Q Mr. Ellington was aware of the ATE policy,</p> <p>5 right?</p> <p>6 MS. SMITH: Objection to form.</p> <p><b>7 A Yes.</b></p> <p><b>8 BY MS. TOMKOWIAK:</b></p> <p>9 Q So did you assume that he would tell the</p> <p>10 independent board, hey, we might have \$100 million</p> <p>11 worth of insurance coverage to help us settle with</p> <p>12 UBS?</p> <p>13 MS. SMITH: Objection to form.</p> <p><b>14 A I didn't assume anything. That wasn't my</b></p> <p><b>15 place.</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q Did you talk to Mr. Ellington about that?</p> <p><b>18 A I don't recall doing that.</b></p> <p>19 Q Did you ask him if he intended to inform</p> <p>20 the independent board about the ATE policy?</p> <p><b>21 A I don't think so.</b></p> <p>22 Q You don't think so because you don't</p> <p>23 remember?</p> <p><b>24 A I don't think that's a question I would</b></p> <p><b>25 have asked him.</b></p>	<p style="text-align: right;">219</p> <p>1 Q In the entire world.</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q I mean, is that a long list of people?</p> <p><b>5 A No, but it's -- we were talking about</b></p> <p><b>6 Highland specifically. So can you repeat the</b></p> <p><b>7 question?</b></p> <p>8 Q Sure. At any time between January 2020</p> <p>9 and your departure from Highland in February 2021,</p> <p>10 did you have discussions with anybody about the</p> <p>11 Sentinel policy?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 And you do not have to divulge privileged</p> <p>14 conversations.</p> <p><b>15 A I'm sure I spoke with the other board</b></p> <p><b>16 members a time or two about the Highland</b></p> <p><b>17 bankruptcy in general.</b></p> <p><b>18 BY MS. TOMKOWIAK:</b></p> <p>19 Q Anybody else?</p> <p><b>20 A I don't think so.</b></p> <p>21 Q What about Beecher Carlson?</p> <p><b>22 A Discuss this specific policy? We probably</b></p> <p><b>23 didn't -- we generally discussed more financial</b></p> <p><b>24 statement-type stuff, like expenses being paid.</b></p> <p><b>25 We didn't really chat much about the actual</b></p>
<p style="text-align: right;">218</p> <p>1 Q Okay. But you don't recall if you did one</p> <p>2 way or the other?</p> <p><b>3 A That's right.</b></p> <p>4 Q Sitting here today, do you think that's</p> <p>5 relevant information?</p> <p>6 MS. SMITH: Objection to form.</p> <p><b>7 A Relevant to who?</b></p> <p><b>8 BY MS. TOMKOWIAK:</b></p> <p>9 Q Relevant to the independent board</p> <p>10 attempting to settle litigation with UBS.</p> <p>11 MS. SMITH: Objection to form.</p> <p><b>12 A I suppose.</b></p> <p><b>13 BY MS. TOMKOWIAK:</b></p> <p>14 Q Well, that was -- the whole purpose of the</p> <p>15 policy, as we discussed, was to provide the funds</p> <p>16 with coverage in connection with the UBS claim,</p> <p>17 right?</p> <p><b>18 A That's correct.</b></p> <p>19 Q Anytime between January 2020 and your</p> <p>20 departure from Highland in February 2021, did you</p> <p>21 have discussions with anybody about the Sentinel</p> <p>22 policy?</p> <p><b>23 A Anybody?</b></p> <p>24 Q Anybody.</p> <p><b>25 A In the entire world?</b></p>	<p style="text-align: right;">220</p> <p><b>1 policy, which I believe was your question, right?</b></p> <p>2 Q It was. What about your auditors at</p> <p>3 Crowe? I think by that time they were just Crowe.</p> <p><b>4 A Yeah. I don't believe I've ever directly</b></p> <p><b>5 spoken to them about the policy.</b></p> <p>6 Q So when I say spoken to, are you drawing</p> <p>7 some distinction between having a face-to-face</p> <p>8 conversation?</p> <p><b>9 A No, communicated with.</b></p> <p>10 Q Okay. And I believe the actuary, and this</p> <p>11 is not meant to be a trick, but I believe the</p> <p>12 actuary analysis that we looked at was in the time</p> <p>13 period. Are you saying that's not about the</p> <p>14 policy?</p> <p><b>15 A It's about -- well, I guess it is, yeah.</b></p> <p><b>16 That's fair.</b></p> <p>17 Q Okay. So you would have also talked about</p> <p>18 the policy with at least Mr. Leventon and the</p> <p>19 actuary?</p> <p><b>20 A Right.</b></p> <p>21 Q And the auditors. Anybody else?</p> <p><b>22 A Not that I can think of.</b></p> <p>23 Q What about with Mr. Ellington?</p> <p><b>24 A Doubtful.</b></p> <p>25 Q Why is it doubtful?</p>

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<p style="text-align: right;">221</p> <p>1 <b>A Was just not a topic that ever really came</b>                  2 <b>up.</b>                  3 Q What about with Mr. Sevilla?                  4 <b>A Same thing, probably no discussions.</b>                  5 Q What about with Ms. Irving?                  6 <b>A Probably not.</b>                  7 Q Why not?                  8 <b>A Again, it's just not a topic that was</b>                  9 <b>discussed very often.</b>                  10 Q What did you discuss with the board                  11 members about the Sentinel policy in that time                  12 frame?                  13 MS. SMITH: Objection, form -- oh,                  14 objection, privileged. Sorry.                  15 <b>A Again, I'm not sure if I can divulge the</b>                  16 <b>actual conversations I would have had with the</b>                  17 <b>other board members.</b>                  18 <b>BY MS. TOMKOWIAK:</b>                  19 Q I'm asking for your communications with                  20 board members. If it's confidential, then I would                  21 like an answer to that question. It's not -- I'm                  22 not asking you about conversations with you and                  23 board members and counsels, but just with you and                  24 board members.                  25 <b>A They would check in generally for a</b></p>	<p style="text-align: right;">222</p> <p>1 <b>high-level how is the bankruptcy going.</b>                  2 Q And what did you tell them?                  3 MS. SMITH: Objection.                  4 If counsel was present, you don't need to                  5 divulge communications with counsel.                  6 THE WITNESS: Right.                  7 <b>A Generally that it was going slow and</b>                  8 <b>seemed to be no end in sight was my general</b>                  9 <b>feeling on the bankruptcy.</b>                  10 <b>BY MS. TOMKOWIAK:</b>                  11 Q Did you discuss the UBS claim?                  12 <b>A Not specifically that I remember.</b>                  13 Q The Sentinel -- the other Sentinel board                  14 members weren't interested in the status of the                  15 UBS claims in the bankruptcy?                  16 <b>A They were --</b>                  17 MS. SMITH: Objection to form.                  18 <b>A They were aware that the proceedings had</b>                  19 <b>been stayed, as you mentioned before, so it was</b>                  20 <b>kind of a holding pattern with respect to that.</b>                  21 <b>BY MS. TOMKOWIAK:</b>                  22 Q During this period of time, did you set up                  23 a call between yourself, Beecher and Mr. Leventon?                  24 <b>A Which period of time?</b>                  25 Q The January 2020 to February 2021 period</p>
<p style="text-align: right;">223</p> <p>1 of time.                  2 <b>A Probably.</b>                  3 Q Do you recall what that was about?                  4 <b>A The only calls I would have arranged with</b>                  5 <b>those people would have been with regards to the</b>                  6 <b>actuarial analysis.</b>                  7 Q Do you recall when the first time is that                  8 you saw that policy?                  9 <b>A Like I said before, probably after I came</b>                  10 <b>on board in September of '17 and before the end of</b>                  11 <b>the year.</b>                  12 Q And you would have seen it without the                  13 attachments, based on your testimony today about                  14 when those were -- I'm sorry, the endorsements,                  15 based on your testimony today about when those                  16 were added?                  17 <b>A I think so.</b>                  18 Q So you would have seen some earlier                  19 version of that insurance policy without the                  20 endorsements?                  21 MS. SMITH: Objection to form.                  22 <b>A I would assume it was the policy just</b>                  23 <b>without the two endorsements, yeah.</b>                  24 <b>BY MS. TOMKOWIAK:</b>                  25 Q Okay. You can set that aside.</p>	<p style="text-align: right;">224</p> <p>1 MS. TOMKOWIAK: Can we take a break,                  2 please.                  3 THE VIDEOGRAPHER: We are off the record                  4 at 3:26 p.m.                  5 (Recess taken from 3:26 p.m. CDT to                  6 3:50 p.m. CDT)                  7 THE VIDEOGRAPHER: The time is 3:50 p.m.                  8 We are back on the record.                  9 BY MS. TOMKOWIAK:                  10 Q Mr. DiOrio, have you had any contact with                  11 Sentinel since you resigned?                  12 <b>A I don't believe so.</b>                  13 Q What do you mean you don't believe so?                  14 <b>A I don't believe I have.</b>                  15 Q Can you recall any contact you've had with                  16 Sentinel since you resigned?                  17 <b>A No.</b>                  18 Q Do you recall testifying earlier to                  19 meetings that you would have with Mr. Leventon and                  20 Beecher Carlson to discuss the status of the UBS                  21 litigation?                  22 <b>A Yes.</b>                  23 Q And during those meetings, what did you                  24 discuss?                  25 <b>A The actuarial table that we looked at</b></p>



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<p style="text-align: right;">225</p> <p>1 earlier, just possible outcomes for the UBS                  2 matter.                  3 Q Did you discuss the funds' litigation                  4 strategy at all?                  5 A No, I don't believe so.                  6 Q Okay. Did you discuss, for example, what                  7 defenses were available to the funds with respect                  8 to UBS's claims?                  9 A I don't believe so.                  10 Q Did you ask Mr. Leventon how the funds                  11 planned to defend against UBS's claims?                  12 A I think, as I said before, I had a very,                  13 very high-level understanding of the case itself,                  14 so I wouldn't -- it would be a waste of both of                  15 our times for me to ask legal strategy. I just                  16 don't know.                  17 Q And the insurer wasn't interested in                  18 understanding how the insureds were defending                  19 against the claims in the case?                  20 MS. SMITH: Objection, form.                  21 A There were no attorneys on staff at the                  22 insurer. Just relied upon that litigation was                  23 being managed properly.                  24 BY MS. TOMKOWIAK:                  25 Q Was there anything that Sentinel asked the</p>	<p style="text-align: right;">227</p> <p>1 tables. And other than that, once the policy was                  2 paid for, there was not much to be done, is my                  3 understanding.                  4 Q Did you understand that Mr. Leventon                  5 represented the insureds?                  6 MS. SMITH: Objection to form.                  7 A I don't know that. I don't know.                  8 BY MS. TOMKOWIAK:                  9 Q Did you understand that he was a                  10 representative of the insureds?                  11 MS. SMITH: Objection to form.                  12 A I don't know if he was a representative of                  13 the insureds or not.                  14 BY MS. TOMKOWIAK:                  15 Q In the insurance policy that we looked at,                  16 the representative of the insureds is listed as                  17 Paul Lackey. Do you know who that is?                  18 A I've heard the name --                  19 MS. SMITH: Objection to form.                  20 A I've heard the name before.                  21 BY MS. TOMKOWIAK:                  22 Q Did you ever have any communications with                  23 Mr. Lackey during the time that you were a                  24 director at Sentinel?                  25 A I've never met Mr. Lackey.</p>
<p style="text-align: right;">226</p> <p>1 insureds to provide that it didn't receive?                  2 A Not that I recall.                  3 Q If Sentinel needed to contact the                  4 insureds, who did they contact?                  5 A I don't know that there was a contact                  6 person at the insureds.                  7 Q So you had -- so Sentinel had no way to                  8 contact the insureds?                  9 MS. SMITH: Objection to form.                  10 A The insureds directly?                  11 BY MS. TOMKOWIAK:                  12 Q Yes.                  13 A I don't know.                  14 Q So if Sentinel wanted to talk to CDO Fund                  15 about something, you don't know who Sentinel would                  16 have reached out to?                  17 A Not at CDO Fund specifically, no. There                  18 was nothing to talk to the insureds about as --                  19 was my understanding.                  20 Q I'm not sure I understand that. So the                  21 insurer, Sentinel, had nothing to talk to the                  22 insureds about during the four-year period of time                  23 in which you were a director?                  24 A Right. The insurer received, you know,                  25 periodic updates in the form of these actuarial</p>	<p style="text-align: right;">228</p> <p>1 Q Okay. So I take it you've had no -- I                  2 just want to be really precise. So you've never                  3 met him. Did you have any other types of                  4 communications with Mr. Lackey?                  5 A No.                  6 Q You said that you relied on the fact that                  7 litigation was being managed properly; is that                  8 right?                  9 A (Nods head.)                  10 Q Okay. And so Sentinel left case                  11 management entirely at the discretion of the                  12 insureds; is that right?                  13 MS. SMITH: Objection, form.                  14 A Sentinel was responsible for paying                  15 ongoing legal fees. And as I said, there was no                  16 one on -- there were no attorneys on staff to                  17 analyze the legal strategy.                  18 BY MS. TOMKOWIAK:                  19 Q Well, setting aside whether or not there                  20 were any attorneys, I just want to be clear, that                  21 with respect to litigation strategy and case                  22 management, that was -- discretion was given to                  23 the insureds to manage that on their own, right?                  24 MS. SMITH: Objection to form.                  25 A I suppose so.</p>

<p style="text-align: right;">229</p> <p><b>1 BY MS. TOMKOWIAK:</b></p> <p>2 Q Did you feel, as a director of Sentinel,</p> <p>3 that you were adequately informed of the status of</p> <p>4 the litigation?</p> <p><b>5 A I did, yes.</b></p> <p>6 Q I want to try one more time to nail down</p> <p>7 when you became aware of the \$1 billion judgment.</p> <p>8 Do you think that you were aware of that judgment</p> <p>9 by January of 2020?</p> <p><b>10 A I can't say for sure. I think I said</b></p> <p><b>11 late '19 or early '20, so that would fall in that</b></p> <p><b>12 time frame.</b></p> <p>13 Q I'm handing you what has been previously</p> <p>14 marked as Exhibit 2.</p> <p>15 MS. TOMKOWIAK: Counsel, do you have that?</p> <p>16 MS. HARTMANN: I don't think I do.</p> <p>17 MS. SMITH: I got it.</p> <p>18 MS. DANDENEAU: Yes, we have.</p> <p>19 MS. HARTMANN: Okay.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q You can take your time to look through</p> <p>22 that as well and let me know when you're ready.</p> <p><b>23 A Okay.</b></p> <p>24 (Witness reviews document.)</p> <p><b>25 A Okay.</b></p>	<p style="text-align: right;">231</p> <p><b>1 A Again, I was not involved in the</b></p> <p><b>2 transaction, but I believe so.</b></p> <p>3 Q If you turn to Schedule A.</p> <p><b>4 A First page?</b></p> <p>5 Q Yes. There are three sellers listed in</p> <p>6 the preamble that we just looked at, but there's</p> <p>7 more than three entities that are selling assets</p> <p>8 here, right?</p> <p>9 MS. SMITH: Objection to form.</p> <p><b>10 A It appears so, yes.</b></p> <p><b>11 BY MS. TOMKOWIAK:</b></p> <p>12 Q Do you know why that was the case?</p> <p><b>13 A I don't.</b></p> <p>14 Q Do you know if these entities received any</p> <p>15 consideration for any of these assets beyond the</p> <p>16 ATE policy?</p> <p><b>17 A I don't.</b></p> <p>18 Q Do you know who negotiated this document</p> <p>19 for Sentinel?</p> <p><b>20 A I do not.</b></p> <p>21 Q Do you know who drafted this document?</p> <p><b>22 A I do not.</b></p> <p>23 Q Do you know who negotiated this document</p> <p>24 on behalf of the sellers?</p> <p><b>25 A I do not.</b></p>
<p style="text-align: right;">230</p> <p><b>1 BY MS. TOMKOWIAK:</b></p> <p>2 Q Have you seen this document before?</p> <p><b>3 A I believe so.</b></p> <p>4 Q Is this the Purchase Agreement that</p> <p>5 transferred the assets to Sentinel to pay the</p> <p>6 premium on the ATE policy that we just discussed?</p> <p>7 MS. SMITH: Objection to form.</p> <p><b>8 A It looks like it.</b></p> <p><b>9 BY MS. TOMKOWIAK:</b></p> <p>10 Q And do you see on the first page it lists</p> <p>11 three Highland entities as the sellers, at the</p> <p>12 top?</p> <p><b>13 A Yes.</b></p> <p>14 Q And do you understand that those are the</p> <p>15 insured entities under the ATE policy?</p> <p><b>16 A Yes.</b></p> <p>17 Q And in Section 1, Payment of Premium, it</p> <p>18 says: Purchaser agrees to accept the assets</p> <p>19 listed in Schedule A hereto as 100 percent payment</p> <p>20 of the Premium -- and then I am going to omit the</p> <p>21 rest of the sentence.</p> <p>22 Do you agree that Sentinel accepted the</p> <p>23 assets listed in the schedule hereto as</p> <p>24 100 percent payment of the premium on the</p> <p>25 ATE policy?</p>	<p style="text-align: right;">232</p> <p>1 Q Do you know whether Sentinel did any</p> <p>2 diligence on the assets listed in Schedule A prior</p> <p>3 to accepting them as 100 percent payment of the</p> <p>4 premium?</p> <p><b>5 A I do not know.</b></p> <p>6 Q Did anybody ever tell you that Sentinel</p> <p>7 did?</p> <p><b>8 A Did diligence prior to?</b></p> <p>9 Q Accepting these assets as payment.</p> <p>10 MS. SMITH: Objection.</p> <p>11 Do not divulge any confidential</p> <p>12 communications with counsel.</p> <p><b>13 A I don't remember one way or the other</b></p> <p><b>14 having that conversation, no.</b></p> <p><b>15 BY MS. TOMKOWIAK:</b></p> <p>16 Q So earlier -- well, first of all, do you</p> <p>17 know if Sentinel actually took custody of all of</p> <p>18 the assets listed here in Schedule A?</p> <p>19 MS. SMITH: Objection to form.</p> <p><b>20 A Most of them.</b></p> <p><b>21 BY MS. TOMKOWIAK:</b></p> <p>22 Q So I would like to go through each of the</p> <p>23 assets and understand whether you know if Sentinel</p> <p>24 actually took custody of the asset and whether you</p> <p>25 know if Sentinel still holds the asset as of the</p>

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<p style="text-align: right;">233</p> <p>1 date that you resigned. Okay?</p> <p>2 <b>A As of June 25th?</b></p> <p>3 Q Correct.</p> <p>4 <b>A Okay.</b></p> <p>5 Q Unless you have any more recent knowledge,</p> <p>6 but you --</p> <p>7 <b>A No, I just wanted to be clear that's the</b></p> <p>8 <b>date.</b></p> <p>9 Q So with respect to the Aberdeen asset, do</p> <p>10 you know whether Sentinel took custody of that</p> <p>11 asset?</p> <p>12 <b>A That one in particular, I don't believe</b></p> <p>13 <b>so.</b></p> <p>14 Q Why not?</p> <p>15 <b>A I don't recall, but I just -- I know that</b></p> <p>16 <b>that one was not part of -- it's not on Sentinel's</b></p> <p>17 <b>balance sheet. I'm not entirely sure why.</b></p> <p>18 Q And -- well, then I suppose Sentinel would</p> <p>19 not have had -- still had it as of June 25th,</p> <p>20 2021, if it never had it?</p> <p>21 <b>A Right.</b></p> <p>22 Q Right. Okay. What about with respect to</p> <p>23 the Southfork CLO?</p> <p>24 <b>A Yes.</b></p> <p>25 Q Yes, they took custody?</p>	<p style="text-align: right;">235</p> <p>1 <b>A That was one of the worthless assets that</b></p> <p>2 <b>was, I think sold to Sebastian Clarke for a</b></p> <p>3 <b>dollar.</b></p> <p>4 Q So they took custody of it and then it was</p> <p>5 sold to Sebastian Clarke?</p> <p>6 <b>A I believe so.</b></p> <p>7 Q What about the Greenbriar CLO?</p> <p>8 <b>A There was an issue with the registration</b></p> <p>9 <b>of that, but it is I believe on Sentinel's balance</b></p> <p>10 <b>sheet.</b></p> <p>11 Q Does that mean that the issue with the</p> <p>12 registration was fixed?</p> <p>13 <b>A It's not fixed, as far as I know.</b></p> <p>14 Q So it's on Sentinel's balance sheet, but</p> <p>15 as far as you know that asset was never actually</p> <p>16 transferred to Sentinel?</p> <p>17 <b>A It was a paper certificate that I think</b></p> <p>18 <b>got lost in the mail or something. I don't know,</b></p> <p>19 <b>but it -- it's probably still registered to CDO</b></p> <p>20 <b>Opportunity Master Fund, LP, or whatever is listed</b></p> <p>21 <b>here.</b></p> <p>22 Q How did you come to learn that, unless it</p> <p>23 was through counsel?</p> <p>24 <b>A How did I come to learn?</b></p> <p>25 Q That -- this issue with the paper</p>
<p style="text-align: right;">234</p> <p>1 <b>A Yes.</b></p> <p>2 Q Do you know whether they still own that</p> <p>3 asset today?</p> <p>4 <b>A As -- yeah.</b></p> <p>5 Q Let's --</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 <b>A All my answers will be as of June 25th.</b></p> <p>8 <b>Can we agree there?</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Yes.</p> <p>11 <b>A Okay. Yes.</b></p> <p>12 Q That sounds great. What about with</p> <p>13 respect to the next Southfork CLO?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Yes, they took custody and, yes, they</p> <p>16 still own it?</p> <p>17 <b>A That's right.</b></p> <p>18 MS. SMITH: That's a two-part answer.</p> <p>19 THE WITNESS: Okay.</p> <p>20 <b>BY MS. TOMKOWIAK:</b></p> <p>21 Q Yes. What about with respect to the next</p> <p>22 Aberdeen asset?</p> <p>23 <b>A Yes to custody, yes to ownership.</b></p> <p>24 Q What about with respect to GC -- GSC ABS</p> <p>25 CDO?</p>	<p style="text-align: right;">236</p> <p>1 certificate being lost.</p> <p>2 <b>A There was issues with several. No one</b></p> <p>3 <b>really works with paper certificates anymore.</b></p> <p>4 <b>These things are very old. I think they're all</b></p> <p>5 <b>like mid-2005, '6, '7ish. And some of them, you</b></p> <p>6 <b>know, lost in the mail or someone didn't have</b></p> <p>7 <b>them, something like that. So I don't believe</b></p> <p>8 <b>this particular one ever arrived at Sentinel's</b></p> <p>9 <b>custody account.</b></p> <p>10 Q That's helpful, but how did you come to</p> <p>11 learn that? Like did somebody else at -- did one</p> <p>12 of your directors tell you that or how did you</p> <p>13 learn that?</p> <p>14 <b>A No, I think it -- we would have found out</b></p> <p>15 <b>when it never arrived at the custody account.</b></p> <p>16 Q Would that have been in connection with</p> <p>17 your audit, Sentinel's audit?</p> <p>18 <b>A I don't know.</b></p> <p>19 Q What about with respect to Highland</p> <p>20 Financial Partners, LP?</p> <p>21 <b>A Both of those interests I believe were</b></p> <p>22 <b>deemed worthless. I don't know if it was included</b></p> <p>23 <b>in -- it might have been written off, in all</b></p> <p>24 <b>honestly. We had a valuation done on it -- or</b></p> <p>25 <b>Sentinel had a valuation performed on it to say it</b></p>

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<p style="text-align: right;">237</p> <p>1 was worthless a couple years ago, so it may have                  2 just been written off rather than moved.                  3 Q What about Longstreet CDO?                  4 A I believe that's part of the worthless                  5 basket sold to Sebastian Clarke for a dollar.                  6 Q NexPoint, what about that one?                  7 A I don't know what that is.                  8 Q Okay. What about the Pam -- I don't know                  9 if I'm saying this right, but Pam Cap LP?                  10 A Another worthless asset.                  11 Q Do you know what that asset is?                  12 A Pam Cap?                  13 Q Yeah.                  14 A No idea.                  15 Q What about Tousa, Inc.?                  16 A Same answer for Tousa.                  17 Q That you don't know what it is or that it                  18 was worthless?                  19 A Sorry, that it was worthless. I believe                  20 Tousa at some point in the past went through a                  21 bankruptcy.                  22 Q How about the Valhalla CLO?                  23 A Yes to ownership, yes to still has it.                  24 Q So yes to custody, yes to ownership?                  25 A Yes.</p>	<p style="text-align: right;">239</p> <p>1 Reinsurance, Ltd.                  2 Q Which Sentinel entity, if you recall,                  3 already had an interest in Multi Strat prior to                  4 this?                  5 A It may have been Sentinel Re Holdings,                  6 that entity that was merged in. I'm not entirely                  7 sure, but all of that interest, now it all sits in                  8 Sentinel Reinsurance, Ltd.                  9 Q And that was not deemed worthless, right?                  10 A Correct.                  11 Q Do you know whether Sentinel still has it                  12 as of June 25th?                  13 A Its interest in Multi Strat?                  14 Q Yes.                  15 A Sentinel elected to redeem out of                  16 Multi Strat. It has not been paid anything. It                  17 is, as I understand it, behind a list of other                  18 redeemers in that fund.                  19 Q Do you know who sent -- well, did Sentinel                  20 send a redemption letter?                  21 A Yes.                  22 Q Did you send that or did somebody else                  23 from Sentinel send that?                  24 A I'm not entirely sure who sent it, but I                  25 would have -- as with any other investment</p>
<p style="text-align: right;">238</p> <p>1 Q Okay. What about the Vertical ABS CDO?                  2 A Another worthless one.                  3 Q Highland Credit Opportunities CDO, Ltd.,                  4 partnership interest?                  5 A That's actually wound up -- that's                  6 Multi Strat -- Highland Multi Strat.                  7 Q So that is -- the partnership interest                  8 referenced here is the partnership interest in                  9 Multi Strat?                  10 A Correct.                  11 Q And Sentinel took custody of that? Took                  12 custody might be the wrong word with respect to                  13 that, but it -- that interest was transferred or                  14 assigned to Sentinel?                  15 A Yes, that interest added to existing                  16 interest that Sentinel already had from years                  17 prior in Multi Strat and then subsequent to this                  18 transaction, Sentinel invested further into                  19 Multi Strat at the end of 2017.                  20 Q Was that through Sentinel Reinsurance or                  21 some other Sentinel entity?                  22 A It was through -- which one? Sorry. Was                  23 this --                  24 Q At the end of 2017.                  25 A I believe it was through Sentinel</p>	<p style="text-align: right;">240</p> <p>1 decisions, I would have offered it to the board                  2 and they agree or don't agree. To the independent                  3 directors, excuse me, the other two.                  4 Q So at Sentinel you were responsible for                  5 investment decisions?                  6 A Yes.                  7 Q Tell me about that. What did that                  8 responsibility entail?                  9 A Not much. It was very inactive. But as                  10 part of the conditions of the ATE policy, CIMA                  11 mandated that Sentinel keep cash in equal to its                  12 loss reserves, which is what you see on this                  13 actuarial table. So the premium was earned over                  14 two years and every quarter there was a milestone                  15 where Sentinel's cash balance had to increase.                  16 And once Sentinel -- once the requirement was more                  17 cash than Sentinel had and it would have to sell                  18 something to make -- just to generate cash to keep                  19 up with those loss reserves.                  20 Q When you say that the premium was earned                  21 over two years, do you mean as a matter of                  22 accounting, like that's how it was spread out?                  23 A That's right.                  24 Q Do you recall what the milestones were                  25 every quarter?</p>

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<p style="text-align: right;">241</p> <p>1 <b>A The actual cash numbers?</b></p> <p>2 Q Yes.</p> <p>3 <b>A I don't. It built up to the -- whatever</b></p> <p>4 <b>the loss reserve number was and it's generally</b></p> <p>5 <b>been around that 24, \$25 million.</b></p> <p>6 Q That was going to be my next question. So</p> <p>7 do you recall what the loss reserve was?</p> <p>8 <b>A It's -- yeah. The last -- well, I guess</b></p> <p>9 <b>in 2019, it was 25 million, or 25.3 million.</b></p> <p>10 Q And just for the record, can you identify</p> <p>11 which exhibit you're looking at?</p> <p>12 <b>A Bates 118, Exhibit 53.</b></p> <p>13 Q So that 25.3, I think it says million at</p> <p>14 the bottom of that table --</p> <p>15 <b>A That's right.</b></p> <p>16 Q -- that's the amount of Sentinel's loss</p> <p>17 reserves as of that date?</p> <p>18 <b>A That's right.</b></p> <p>19 Q Do you recall whether the milestones were</p> <p>20 some type of lock step? Like did they increase by</p> <p>21 the same percentage or dollar amount each quarter</p> <p>22 or did it vary?</p> <p>23 <b>A I think it was -- I think it was evenly --</b></p> <p>24 <b>you know, whenever we start -- wherever Sentinel</b></p> <p>25 <b>started and had to get to over those two years,</b></p>	<p style="text-align: right;">243</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q How did you make that proposal?</p> <p>3 <b>A Probably via SAS e-mail.</b></p> <p>4 Q How did you decide what to propose?</p> <p>5 <b>A There were very few liquid assets on</b></p> <p>6 <b>Sentinel's balance sheet; in other words, easy to</b></p> <p>7 <b>generate cash. So we -- I started with the --</b></p> <p>8 <b>they were publicly traded equities that can be</b></p> <p>9 <b>sold and generate cash quickly. So that's kind of</b></p> <p>10 <b>where we started.</b></p> <p>11 Q Were any of your proposals rejected?</p> <p>12 <b>A I don't believe so.</b></p> <p>13 Q Have any of the assets that we've</p> <p>14 discussed, I take it none of them were sold to</p> <p>15 generate cash?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A None that we've discussed so far.</b></p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Okay. As we go, if there is an asset that</p> <p>20 you sold and you generated for cash, I would like</p> <p>21 to know, but I'll try to ask that specifically if</p> <p>22 I think that one would potentially qualify for</p> <p>23 that.</p> <p>24 Is there anything else that you did as</p> <p>25 part of your responsibility to make investment</p>
<p style="text-align: right;">242</p> <p>1 <b>the only variable would be if the loss reserve</b></p> <p>2 <b>number changed in the interim, which it did but</b></p> <p>3 <b>not materially so. I think it was just a step up,</b></p> <p>4 <b>if that makes sense, to get from wherever Sentinel</b></p> <p>5 <b>started to that 24, \$25 million number, whatever</b></p> <p>6 <b>it was.</b></p> <p>7 Q So as part of your responsibility for</p> <p>8 making investment decisions, were you responsible</p> <p>9 for deciding whether or not Sentinel needed to</p> <p>10 sell an asset to generate cash?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 <b>A CIMA decided for Sentinel. In other</b></p> <p>13 <b>words, we -- if we -- Sentinel wanted to stay in</b></p> <p>14 <b>compliance, it had to sell something or sell</b></p> <p>15 <b>assets over the course of that -- those two years.</b></p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Would CIMA identify the specific asset?</p> <p>18 <b>A They just said get your cash balance up.</b></p> <p>19 Q And then were you responsible for</p> <p>20 identifying how to get the cash balance up?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A I would propose what I thought was best</b></p> <p>23 <b>and submit it to the other two directors and then</b></p> <p>24 <b>they would say yes or no.</b></p> <p>25</p>	<p style="text-align: right;">244</p> <p>1 decisions for Sentinel?</p> <p>2 <b>A No. Like I said, it was very inactive</b></p> <p>3 <b>with respect to investments, trading, whatever you</b></p> <p>4 <b>want to call it.</b></p> <p>5 Q All right. So for the next one, the 2.1</p> <p>6 promissory note from Governance Re and cash from</p> <p>7 the NexPoint Multifamily Capital Trust Interest.</p> <p>8 <b>A Yes to custody; yes, Sentinel still holds.</b></p> <p>9 <b>It has been paid down.</b></p> <p>10 Q Do you know what the note has been paid</p> <p>11 down to?</p> <p>12 <b>A There's approximately \$750,000 left.</b></p> <p>13 Q Governance Re is another insurance company</p> <p>14 that provided insurance services to Highland; is</p> <p>15 that right?</p> <p>16 <b>A It's an insurance company. I don't know</b></p> <p>17 <b>where it provides service.</b></p> <p>18 Q You don't know who its clients are?</p> <p>19 <b>A I don't.</b></p> <p>20 Q Do you know who owns Governance Re?</p> <p>21 <b>A I don't.</b></p> <p>22 Q Do you know if it's affiliated with</p> <p>23 Highland?</p> <p>24 <b>A I don't.</b></p> <p>25 Q Okay. What about the NexPoint Real Estate</p>

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<p style="text-align: right;">245</p> <p>1 Strategy Z?</p> <p>2 <b>A That has been -- yes, Sentinel still holds</b></p> <p>3 <b>its position, partially -- has been partially sold</b></p> <p>4 <b>off to generate cash.</b></p> <p>5 Q Would Sentinel receive any types of</p> <p>6 distributions relating to this particular</p> <p>7 investment?</p> <p>8 <b>A Yeah, that paid a dividend.</b></p> <p>9 Q Do you recall approximately how often?</p> <p>10 <b>A I think -- I believe quarterly.</b></p> <p>11 Q Do you recall approximately how much?</p> <p>12 <b>A I don't. I don't.</b></p> <p>13 Q Do you know approximately how much of it</p> <p>14 was sold off to generate cash?</p> <p>15 <b>A If I remember correctly, this -- these</b></p> <p>16 <b>97,000 shares were -- you know, the value</b></p> <p>17 <b>obviously changes month to month, but it was a</b></p> <p>18 <b>little under \$2 million. I believe Sentinel has</b></p> <p>19 <b>redeemed out approximately two-thirds of that. So</b></p> <p>20 <b>there's, call it, 6, 700 grand left, last I saw.</b></p> <p>21 <b>Hadn't seen a statement in a while.</b></p> <p>22 Q What about the Highland Gemini Program, I</p> <p>23 guess and is that -- yeah, that's separate from</p> <p>24 the next one. So what about the Highland Gemini</p> <p>25 Program?</p>	<p style="text-align: right;">247</p> <p>1 <b>A Yes.</b></p> <p>2 Q Okay. And since cash is fungible, there's</p> <p>3 no way to know if that cash is still at Sentinel.</p> <p>4 Does Sentinel still hold some cash balance?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Do you know approximately what that</p> <p>7 balance is as of June 2021?</p> <p>8 <b>A It's approximately -- I think it's</b></p> <p>9 <b>approximately \$27 million in cash.</b></p> <p>10 Q So 27 million in cash and 25.3 in loss</p> <p>11 reserves?</p> <p>12 <b>A No. That number satisfies the loss</b></p> <p>13 <b>reserve requirement.</b></p> <p>14 Q Gotcha. Okay. And then the last asset on</p> <p>15 that page is Cash.</p> <p>16 Okay. So then looking at the second page,</p> <p>17 HFT Real Estate, what about that?</p> <p>18 <b>A It was -- yeah, it -- Sentinel has custody</b></p> <p>19 <b>over that, but it's -- my understanding is it has</b></p> <p>20 <b>no value.</b></p> <p>21 Q Did you understand it had no value at the</p> <p>22 time or that it came to have no value?</p> <p>23 <b>A At the time and since.</b></p> <p>24 Q So Sentinel took custody of it, but it had</p> <p>25 no value?</p>
<p style="text-align: right;">246</p> <p>1 <b>A I don't know really what that is. That</b></p> <p>2 <b>sounds like it would have been one of the</b></p> <p>3 <b>worthless ones.</b></p> <p>4 Q Okay. And then the 2.4 -- approximately</p> <p>5 \$2.4 million promissory note from The Dugaboy</p> <p>6 Investment Trust and cash of nearly 600,000, RE:</p> <p>7 Survios Interest?</p> <p>8 <b>A I believe -- I believe that note was</b></p> <p>9 <b>deemed worthless as it never paid anything and it</b></p> <p>10 <b>was transferred to Sebastian Clarke.</b></p> <p>11 Q The Dugaboy Investment Trust, that's the</p> <p>12 trust that's affiliated with Mr. Dondero, correct?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I'm not sure.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q You don't know?</p> <p>17 <b>A I'm not sure.</b></p> <p>18 Q And do you know what the Survios Interest</p> <p>19 is?</p> <p>20 <b>A I don't.</b></p> <p>21 Q What about the next asset, something 5X</p> <p>22 Floating?</p> <p>23 <b>A Also a worthless asset.</b></p> <p>24 Q All right. And then the next one is Cash.</p> <p>25 I assume that Sentinel took custody of the cash?</p>	<p style="text-align: right;">248</p> <p>1 <b>A Right.</b></p> <p>2 Q And it still has it today, but it has no</p> <p>3 value?</p> <p>4 <b>A I believe so.</b></p> <p>5 Q And then the next line down, 144A F, is</p> <p>6 that a separate asset than the line above it?</p> <p>7 <b>A It's the same. It's some -- I forget why</b></p> <p>8 <b>there's some designation 144A. It's not the same.</b></p> <p>9 <b>It's the same asset. It's not two 750,000 shares,</b></p> <p>10 <b>if that makes sense. I just don't remember -- I</b></p> <p>11 <b>don't recall the specifics.</b></p> <p>12 Q With respect to the next, NexPoint asset?</p> <p>13 <b>A Yes. I believe that was -- NHF would be</b></p> <p>14 <b>the ticker.</b></p> <p>15 Q Okay. So this is a publicly traded --</p> <p>16 <b>A That's right.</b></p> <p>17 Q And Sentinel took custody of that?</p> <p>18 <b>A That's right.</b></p> <p>19 Q And still has it as of June?</p> <p>20 <b>A This was one of the assets that was sold</b></p> <p>21 <b>to generate cash.</b></p> <p>22 Q All of it?</p> <p>23 <b>A That's right.</b></p> <p>24 Q And what about the next one?</p> <p>25 <b>A That I believe is NexPoint Residential</b></p>

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<p style="text-align: right;">249</p> <p><b>1 Trust, also public equity.</b></p> <p>2 Q So Sentinel took custody of that?</p> <p><b>3 A That's right.</b></p> <p>4 Q Was it sold to generate cash?</p> <p><b>5 A It was.</b></p> <p>6 Q All of it?</p> <p><b>7 A Yes.</b></p> <p>8 Q How about Stratford CL?</p> <p><b>9 A Yes to custody; yes, still owned.</b></p> <p>10 Q And then same thing with respect to the</p> <p>11 144A, that's not actually a separate asset?</p> <p><b>12 A Right. I think that shows up a couple</b></p> <p><b>13 times in here. And again, I'm not entirely sure</b></p> <p><b>14 why, but it's one asset.</b></p> <p>15 Q Next is Highland Park?</p> <p><b>16 A I believe that was part of the worthless</b></p> <p><b>17 group.</b></p> <p>18 Q So took custody but worthless?</p> <p><b>19 A I think so. It may have been part of the</b></p> <p><b>20 asset -- you know, the transfer to Sebastian</b></p> <p><b>21 Clarke.</b></p> <p>22 Q And then what about the next item here,</p> <p>23 which looks like it's a promissory note from CLO</p> <p>24 Holdco?</p> <p><b>25 A Right. Same, also transferred to</b></p>	<p style="text-align: right;">251</p> <p>1 securities there is something for the Delphi -- I</p> <p>2 don't know if I'm saying that right -- Corp?</p> <p><b>3 A Yeah. So all of these, I can save us a</b></p> <p><b>4 few minutes, are -- were part of the -- so Delphi</b></p> <p><b>5 down to Vertical, worthless; if Sentinel took</b></p> <p><b>6 custody, would have been transferred to Sebastian</b></p> <p><b>7 Clarke.</b></p> <p>8 Q And then skipping down, we have two more</p> <p>9 lines of Cash and then there's a Tax Refund</p> <p>10 Receivable of 477,637. Is this the tax receivable</p> <p>11 that you were talking about earlier?</p> <p><b>12 A Yes.</b></p> <p>13 Q Okay. And to your knowledge, I believe</p> <p>14 you testified that Sentinel received approximately</p> <p>15 433 of that; is that right?</p> <p><b>16 A Around 430. Again, I'm not sure of the</b></p> <p><b>17 actual number and would have written off whatever</b></p> <p><b>18 the difference was.</b></p> <p>19 Q Okay. Do you know whether the -- for each</p> <p>20 of these entities, do you know whether any of them</p> <p>21 had any assets left after making these transfers</p> <p>22 to Sentinel?</p> <p><b>23 A I don't know.</b></p> <p>24 Q Do you know if that was the intent?</p> <p>25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">250</p> <p><b>1 Sebastian Clarke, never paid, was deemed to have</b></p> <p><b>2 no value.</b></p> <p>3 Q Do you know what CLO Holdco is?</p> <p><b>4 A I don't.</b></p> <p>5 Q Do you know if it's affiliated with</p> <p>6 Highland in any way?</p> <p><b>7 A I don't know for sure.</b></p> <p>8 Q Do you know not for sure?</p> <p><b>9 A I don't know.</b></p> <p>10 Q Okay. Then we have Cash and then</p> <p>11 Dividends Receivable - Highland Capital</p> <p>12 Management, Inc., what's that?</p> <p><b>13 A I don't know specifically what that is. I</b></p> <p><b>14 assume the -- I mean, just reading it, the fund</b></p> <p><b>15 was owed a dividend from HCMLP, but I don't know</b></p> <p><b>16 any more details. And I don't know if it paid or</b></p> <p><b>17 not.</b></p> <p>18 Q Okay. Do you know if it took -- if it --</p> <p>19 I don't know if took custody is the right term to</p> <p>20 use there, but --</p> <p>21 MS. SMITH: Objection to form.</p> <p><b>22 A Yeah, it may have. I don't remember</b></p> <p><b>23 seeing it ever.</b></p> <p><b>24 BY MS. TOMKOWIAK:</b></p> <p>25 Q And going down to Highland SOHC, the first</p>	<p style="text-align: right;">252</p> <p><b>1 A I assumed that all assets were</b></p> <p><b>2 contributed, but I don't know for sure.</b></p> <p><b>3 BY MS. TOMKOWIAK:</b></p> <p>4 Q Why did you make that assumption?</p> <p><b>5 A To me, it wouldn't make sense to hold</b></p> <p><b>6 anything back if you're trying to pay for coverage</b></p> <p><b>7 and you can't pay it.</b></p> <p>8 Q Did you reach that conclusion on your own?</p> <p><b>9 A I did.</b></p> <p>10 MS. DANDENEAU: Were you going to say</p> <p>11 something?</p> <p>12 MS. SMITH: I was going to say objection</p> <p>13 if he's going to divulge privileged information.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Do you know whether any of these funds</p> <p>16 made any attempt to settle any of their</p> <p>17 outstanding liabilities prior to selling all of</p> <p>18 these assets to Sentinel?</p> <p><b>19 A I don't know.</b></p> <p>20 MS. SMITH: Objection to form.</p> <p><b>21 A I don't know.</b></p> <p><b>22 BY MS. TOMKOWIAK:</b></p> <p>23 Q I'm handing you what's been marked</p> <p>24 previously as Exhibit 38.</p> <p>25 MS. SMITH: I don't think we have that</p>

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<p style="text-align: right;">253</p> <p>1 one.</p> <p>2 MS. TOMKOWIAK: Do we have extra copies of</p> <p>3 that one?</p> <p>4 MS. HARTMANN: I don't think I have that.</p> <p>5 MS. SMITH: Oh, yeah, we did get it.</p> <p>6 MS. HARTMANN: Do you have an extra one?</p> <p>7 MS. TOMKOWIAK: Is this extra? Is that</p> <p>8 okay?</p> <p>9 MS. McLAUGHLIN: Yeah.</p> <p>10 MS. SMITH: 38.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Have you had a chance to review that?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Let me know when you're ready if you want</p> <p>15 more time.</p> <p>16 (Witness reviews document.)</p> <p>17 <b>A I've reviewed it.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Are you familiar with this document?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Is this the -- does this agreement reflect</p> <p>22 the transfer of assets from Sentinel to Sebastian</p> <p>23 Clarke that you've been referring to throughout</p> <p>24 today?</p> <p>25 <b>A I believe it does, yes.</b></p>	<p style="text-align: right;">255</p> <p>1 <b>to go.</b></p> <p>2 Q Do you know why Sentinel would agree to</p> <p>3 accept worthless assets in exchange for -- to pay</p> <p>4 for the premium?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 <b>A I don't. I just assumed it was part of a</b></p> <p>7 <b>big, again, illiquid basket of securities used to</b></p> <p>8 <b>pay for the policy.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did any of Sentinel's other clients use</p> <p>11 illiquid securities to pay the premiums on their</p> <p>12 insurance policies?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A I don't know.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Were you aware of any other clients that</p> <p>17 did that?</p> <p>18 <b>A I was not aware of any others, no.</b></p> <p>19 Q Did Mr. Dondero provide any advice or</p> <p>20 consulting with respect to this transfer of</p> <p>21 assets?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A Not to my knowledge.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q Did Mr. Dondero provide any advice or</p>
<p style="text-align: right;">254</p> <p>1 Q Are you aware of any other agreements that</p> <p>2 transferred assets from Sentinel to Sebastian</p> <p>3 Clarke?</p> <p>4 <b>A I'm not aware of any other agreements.</b></p> <p>5 Q And just for the record, can you summarize</p> <p>6 one more time what was the purpose of transferring</p> <p>7 these assets from Sentinel to Sebastian Clarke?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 <b>A The assets were causing Sentinel's audit</b></p> <p>10 <b>to have a qualification and Sentinel was</b></p> <p>11 <b>instructed by CIMA, as part of its -- I think as</b></p> <p>12 <b>part of the inspection or at some point in a prior</b></p> <p>13 <b>audit, to no longer submit financials with</b></p> <p>14 <b>qualifications. So this was what the board</b></p> <p>15 <b>thought best to do to remove the worthless assets</b></p> <p>16 <b>from Sentinel's balance sheet.</b></p> <p>17 <b>BY MS. TOMKOWIAK:</b></p> <p>18 Q Who had deemed them worthless?</p> <p>19 <b>A These were assumed to be worthless when</b></p> <p>20 <b>they were transferred over. I think, like I</b></p> <p>21 <b>mentioned before, we tried to have that valuation</b></p> <p>22 <b>company value some of them and we couldn't even</b></p> <p>23 <b>provide enough information for them to make a</b></p> <p>24 <b>determination because some of them are really old.</b></p> <p>25 <b>So the board kind of agreed that these things need</b></p>	<p style="text-align: right;">256</p> <p>1 consulting to Sentinel with respect to any of its</p> <p>2 assets or investments?</p> <p>3 <b>A Not to my knowledge.</b></p> <p>4 Q Do you know why Sebastian Clarke was</p> <p>5 chosen as the entity to transfer these assets to?</p> <p>6 <b>A I don't recall why.</b></p> <p>7 Q Do you know what Sebastian Clarke did with</p> <p>8 these assets after they were transferred to it?</p> <p>9 <b>A My understanding is they're still sitting</b></p> <p>10 <b>at Sebastian Clarke.</b></p> <p>11 Q If you look at the signature page, which</p> <p>12 is the last page ending in Bates 76, is that your</p> <p>13 signature?</p> <p>14 <b>A Yes.</b></p> <p>15 Q And we don't have a signature for</p> <p>16 Sebastian Clarke. Do you know who signed on their</p> <p>17 behalf?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Strike that.</p> <p>21 Do you know if they signed this agreement?</p> <p>22 <b>A I seem to recall it being executed, yes.</b></p> <p>23 Q Do you know by who?</p> <p>24 <b>A Sebastian Clarke has independent directors</b></p> <p>25 <b>of its own. They work at Summit Management.</b></p>



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<p style="text-align: right;">257</p> <p>1 Q What is Summit Management?</p> <p>2 <b>A I believe it's similar to the two</b></p> <p>3 <b>companies that Sentinel's independent directors</b></p> <p>4 <b>worked at we mentioned earlier, a professional</b></p> <p>5 <b>director services business.</b></p> <p>6 Q Is it affiliated with Highland in any way?</p> <p>7 <b>A I don't believe so.</b></p> <p>8 Q Have you -- what is your understanding</p> <p>9 that Sebastian Clarke still has these assets based</p> <p>10 on?</p> <p>11 <b>A I don't generally -- I don't have an</b></p> <p>12 <b>understanding of why. I just assume that they're</b></p> <p>13 <b>still there.</b></p> <p>14 Q So you don't know for sure, you just</p> <p>15 assume?</p> <p>16 <b>A Correct.</b></p> <p>17 Q Is there a different way to get rid of</p> <p>18 worthless assets other than by transferring them</p> <p>19 to some other entity?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 <b>A I'm sure you could write them off, maybe.</b></p> <p>22 <b>I don't know. I'm not an accountant.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q I'm handing you what I will ask the court</p> <p>25 reporter to mark as Exhibit 79.</p>	<p style="text-align: right;">259</p> <p>1 you said earlier you received multiple reports; is</p> <p>2 that right?</p> <p>3 <b>A There was generally one report per</b></p> <p>4 <b>security.</b></p> <p>5 Q And so in 2018, you received one report</p> <p>6 per security?</p> <p>7 <b>A I believe so.</b></p> <p>8 Q And same thing in 2019?</p> <p>9 <b>A I believe so.</b></p> <p>10 Q And 2020?</p> <p>11 <b>A I believe so.</b></p> <p>12 Q Had you received those reports prior to</p> <p>13 your resignation in 2021?</p> <p>14 <b>A I don't remember seeing them this year.</b></p> <p>15 Q How did Sentinel identify VRC?</p> <p>16 <b>A I don't know. I assume a referral from</b></p> <p>17 <b>someone, but I don't know.</b></p> <p>18 Q If you turn to page 3, is that your</p> <p>19 handwriting?</p> <p>20 <b>A Looks like it.</b></p> <p>21 Q Do you know what the handwriting means?</p> <p>22 Do you know what that notation means?</p> <p>23 <b>A Looks like wire instructions and I'll -- I</b></p> <p>24 <b>believe that \$2,000 -- or 2,000 number was the</b></p> <p>25 <b>price per security valued.</b></p>
<p style="text-align: right;">258</p> <p>1 (Deposition Exhibit 79 marked for</p> <p>2 identification.)</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Let me know when you're ready.</p> <p>5 (Witness reviews document.)</p> <p>6 <b>A Okay.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Are you familiar with this document?</p> <p>9 <b>A Not particularly.</b></p> <p>10 Q Well, you signed it. So were you familiar</p> <p>11 with it at the time?</p> <p>12 <b>A I'm sure I was.</b></p> <p>13 Q And earlier today you spoke about Sentinel</p> <p>14 having a third party do an independent assessment</p> <p>15 or valuation analysis of its assets. Is this what</p> <p>16 you were referring to?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Is there -- other than this engagement,</p> <p>19 did you ever -- did you, and by you, I mean did</p> <p>20 Sentinel ever engage VRC to do any other valuation</p> <p>21 of assets?</p> <p>22 <b>A It became an annual exercise.</b></p> <p>23 Q So annually, VRC performed a valuation?</p> <p>24 <b>A That's right. And I -- yeah.</b></p> <p>25 Q Do you know when you received -- I think</p>	<p style="text-align: right;">260</p> <p>1 MS. SMITH: I'm going to raise another</p> <p>2 objection. It looks like y'all put the Sentinel</p> <p>3 account number on here without redacting it. So I</p> <p>4 would like these to be redacted.</p> <p>5 MS. TOMKOWIAK: I don't know if that is</p> <p>6 the Sentinel --</p> <p>7 THE WITNESS: It would be VRC's.</p> <p>8 MS. SMITH: Oh, it's VRC's.</p> <p>9 THE WITNESS: But still probably should</p> <p>10 be.</p> <p>11 MS. TOMKOWIAK: We'll look into that, but</p> <p>12 I don't think that's Sentinel's account.</p> <p>13 MS. SMITH: Okay.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Okay. And so you think that \$2,000 was</p> <p>16 the price of the valuation per security?</p> <p>17 <b>A That sounds -- yeah, I believe so.</b></p> <p>18 Q If you look on page 2 where it says</p> <p>19 Required Information in bold, do you know who</p> <p>20 would be in charge of providing VRC with that</p> <p>21 information?</p> <p>22 <b>A That probably would have been -- I</b></p> <p>23 <b>probably would have coordinated that.</b></p> <p>24 Q Do you recall actually providing VRC with</p> <p>25 any of that information?</p>

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<p style="text-align: right;">261</p> <p>1 MS. SMITH: I'm going to object to the                  2 extent that it requires you to divulge privileged                  3 communications with counsel.                  4 <b>A I can't speak to the specific list, but we</b>                  5 <b>provided them information to perform the</b>                  6 <b>valuation.</b>                  7 <b>BY MS. TOMKOWIAK:</b>                  8 Q That information came from you?                  9 <b>A I would have gathered it, yeah.</b>                  10 Q How would you have provided it to them?                  11 By mail? By e-mail?                  12 <b>A Probably via e-mail.</b>                  13 Q Would that have come from your SAS                  14 Management account?                  15 <b>A Most likely.</b>                  16 Q Do you know who you sent that information                  17 to?                  18 <b>A Generally there were multiple people on</b>                  19 <b>the e-mail, but my contact's name was Shane</b>                  20 <b>Newell.</b>                  21 Q And can you spell that?                  22 <b>A I think it's N-e-w-e-l-l, but don't hold</b>                  23 <b>me to that.</b>                  24 Q Was Shane your contact throughout the                  25 entire period of time from 2017 through 2020?</p>	<p style="text-align: right;">263</p> <p>1 (Deposition Exhibit 80 marked for                  2 identification.)                  3 BY MS. TOMKOWIAK:                  4 Q And then I'm also going to ask the court                  5 reporter to mark this as Exhibit 81.                  6 (Deposition Exhibit 81 marked for                  7 identification.)                  8 BY MS. TOMKOWIAK:                  9 Q So Exhibit 81 is a color copy of the page                  10 that's Bates-stamped UBSPROD2752264. Couldn't get                  11 it to print in color with the Bates stamp, so --                  12 but I thought having the color version available                  13 might be helpful.                  14 <b>A Okay.</b>                  15 Q So that's what that is. If you can review                  16 Exhibits 80 and 81 and let me know when you're                  17 ready.                  18 (Witness reviews document.)                  19 <b>A Okay.</b>                  20 <b>BY MS. TOMKOWIAK:</b>                  21 Q Okay. Are you -- do you recall seeing                  22 this e-mail before? Do you recall seeing -- do                  23 you recall seeing the e-mail in Exhibit 80 or do                  24 you recall what's being discussed in Exhibit 80?                  25 <b>A I don't recall the e-mail specifically,</b></p>
<p style="text-align: right;">262</p> <p>1 <b>A Yes.</b>                  2 Q And did you ask VRC to evaluate the CLO                  3 assets that Sentinel held even prior to                  4 August 2017?                  5 <b>A Yes.</b>                  6 Q Did you provide -- once Sentinel received                  7 the valuation report, did Sentinel provide them to                  8 anybody else?                  9 <b>A They would have been provided to Beecher</b>                  10 <b>Carlson so they could prepare financial</b>                  11 <b>statements.</b>                  12 Q And anybody else?                  13 <b>A I don't think so.</b>                  14 Q So earlier we looked at -- we looked at                  15 two endorsements to the ATE policy that contained                  16 a valuation of the assets that were provided to                  17 Sentinel. Was that number based on a valuation by                  18 VRC?                  19 <b>A I believe so. And I think at the year-end</b>                  20 <b>audit, VRC did a valuation as of August and as of</b>                  21 <b>December; so as of the time of transfer and as of</b>                  22 <b>the year end, if I remember correctly.</b>                  23 Q You can set that aside. Okay. I'm                  24 handing you what I will ask the court reporter to                  25 mark as Exhibit 80.</p>	<p style="text-align: right;">264</p> <p>1 <b>but I kind of understand what's being discussed,</b>                  2 <b>yes.</b>                  3 Q All right. So taking a look at it, who is                  4 Tom Adamczak?                  5 <b>A He works for Beecher Carlson.</b>                  6 Q And do you understand why he's reaching                  7 out to Mr. Swadley here?                  8 MS. SMITH: Objection to form.                  9 <b>A It looks like he's trying to gather</b>                  10 <b>information on the -- I think that's the tax</b>                  11 <b>refund we discussed earlier.</b>                  12 <b>BY MS. TOMKOWIAK:</b>                  13 Q Do you know why he copied you?                  14 <b>A No.</b>                  15 Q Okay. He says in his e-mail: I                  16 understand from discussion with Matt DiOrio that                  17 the tax refund receivable of 477,637 for Highland                  18 Financial Corp. was included and relates to a                  19 carryover of tax credits to 2017 tax return of                  20 Highland Financial Corp. (see attached).                  21 Do you recall this discussion with Mr. --                  22 am I pronouncing his name right; do you know?                  23 <b>A Adamczak, I think is right.</b>                  24 Q Adamczak. Okay.                  25 <b>A I don't recall the specific discussion,</b></p>

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<p style="text-align: right;">265</p> <p><b>1 but we would have discussed this at some point.</b></p> <p>2 Q Do you know why he was asking questions</p> <p>3 about that tax refund at this time?</p> <p>4 <b>A I assumed having to do with the audit.</b></p> <p>5 Q Okay. And if you look at Schedule A,</p> <p>6 which is the attached listing of assets, which is</p> <p>7 the one that I also provided to you in color as</p> <p>8 Exhibit 81.</p> <p>9 <b>A Yes.</b></p> <p>10 Q Do you know who put this list together?</p> <p>11 <b>A I don't.</b></p> <p>12 Q Do you know who marked it up and</p> <p>13 highlighted it?</p> <p>14 <b>A I don't.</b></p> <p>15 Q Was it you?</p> <p>16 <b>A I don't believe it was.</b></p> <p>17 Q Do you recognize whose handwriting that</p> <p>18 is?</p> <p>19 <b>A I don't.</b></p> <p>20 Q Do you have any idea what H&amp;C stands for?</p> <p>21 <b>A I don't.</b></p> <p>22 Q Could it be Hare &amp; Co; do you know?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A Probably. Could be, yeah.</b></p> <p>25</p>	<p style="text-align: right;">267</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 <b>A I don't know.</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q If you go back to Mr. Swadley's e-mail, he</p> <p>5 says -- I'm sorry. So then Mr. Adamczak sends</p> <p>6 that e-mail to Rick and then Rick Swadley forwards</p> <p>7 it to you, he copies Mr. Sevilla and Mr. Broadus.</p> <p>8 Who is that? Who is Mr. Broadus?</p> <p>9 <b>A It's Paul Broadus.</b></p> <p>10 Q Broadus.</p> <p>11 <b>A Worked in tax with Rick Swadley.</b></p> <p>12 Q Okay. And Mr. Swadley writes: I am not</p> <p>13 sure -- it's in the middle of his e-mail, the</p> <p>14 third sentence, maybe the fourth sentence. He</p> <p>15 says: I am not sure who determined that HFC's</p> <p>16 assets should be part of this transaction. I was</p> <p>17 only involved to the extent there would be any</p> <p>18 material tax consequences of transferring the</p> <p>19 assets that were ultimately identified as being</p> <p>20 part of the transaction.</p> <p>21 Do you know who determined that HFC's</p> <p>22 assets would be part of the transaction with</p> <p>23 Sentinel?</p> <p>24 <b>A I don't.</b></p> <p>25 Q Did you have any discussions with</p>
<p style="text-align: right;">266</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q And do you -- and knowing what you know</p> <p>3 about these assets, so with your own knowledge,</p> <p>4 and I recognize that you did not do this</p> <p>5 highlighting yourself, does the green and orange</p> <p>6 highlighting have any significance to you?</p> <p>7 <b>A Nothing outside of what the notes say.</b></p> <p>8 <b>Green, original, transfer docs, not executed;</b></p> <p>9 <b>Orange, Original, H&amp;C -- which I guess is Hare &amp;</b></p> <p>10 <b>Co.</b></p> <p>11 Q Do you understand that for the Aberdeen</p> <p>12 security listed there, the transfer docs were not</p> <p>13 executed?</p> <p>14 <b>A Do I understand that?</b></p> <p>15 Q Do you know that?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A I don't know one way or the other.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Same thing with respect to the GSC?</p> <p>20 <b>A I don't know.</b></p> <p>21 Q Same thing with respect to Highland -- I</p> <p>22 assume Financial Partners?</p> <p>23 <b>A I don't know.</b></p> <p>24 Q Same thing with Highland Park on the other</p> <p>25 side of that?</p>	<p style="text-align: right;">268</p> <p>1 Mr. Swadley regarding any material tax</p> <p>2 consequences of transferring the assets?</p> <p>3 <b>A I don't believe I did.</b></p> <p>4 Q Did you have any conversations with</p> <p>5 anybody else about any material tax consequences</p> <p>6 of transferring the assets?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 <b>A I don't believe so.</b></p> <p>9 <b>BY MS. TOMKOWIAK:</b></p> <p>10 Q Did anybody express concerns that the IRS</p> <p>11 might have concerns with the transfer of the</p> <p>12 assets to Sentinel?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A Not that I recall.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Or that the transfer of assets to Sentinel</p> <p>17 pursuant to the purchase agreement might be</p> <p>18 illegal in any way?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 And I caution you not to answer to the</p> <p>21 extent it reveals privileged information.</p> <p>22 <b>A Not that I recall.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q You can set that aside.</p> <p>25 <b>A Both?</b></p>

<p style="text-align: right;">269</p> <p>1 Q Both. I'm handing you what we have                  2 previously marked in this case as Exhibit 3. I                  3 see that you're already reviewing it. Just let me                  4 know when you're ready.                  5 <b>A Yeah. I've never seen this before.</b>                  6 (Witness reviews document.)                  7 MS. SMITH: Sarah, what was the number on                  8 this one again?                  9 MS. TOMKOWIAK: It's No. 3.                  10 Do you have another one?                  11 MS. SMITH: Yeah, Shannon, if you have                  12 another one. Thank you.                  13 (Witness reviews document.)                  14 <b>A Okay. I didn't read every word, but I</b>                  15 <b>think I get the gist of it.</b>                  16 <b>BY MS. TOMKOWIAK:</b>                  17 Q Have you ever seen this document before?                  18 <b>A I have not.</b>                  19 Q Had you ever heard at Highland that any                  20 analysis had been done regarding the tax                  21 consequences of the Sentinel acquisition of those                  22 assets?                  23 MS. SMITH: Objection.                  24 I'm going to caution you not to divulge                  25 any privileged information.</p>	<p style="text-align: right;">271</p> <p>1 BY MS. TOMKOWIAK:                  2 Q Did that change at some point in time?                  3 <b>A Yes.</b>                  4 Q And it changed through those endorsements                  5 that we looked at earlier?                  6 <b>A That's right.</b>                  7 Q Is that how you would characterize it,                  8 that Sentinel paid \$25 million for the assets?                  9 MS. SMITH: Objection to form.                  10 <b>A That's not how I would -- I think of it,</b>                  11 <b>but...</b>                  12 <b>BY MS. TOMKOWIAK:</b>                  13 Q How do you think of it?                  14 <b>A That Sentinel accepted a number of assets,</b>                  15 <b>a basket of securities, whatever you want to call</b>                  16 <b>it, in exchange for a liability policy.</b>                  17 Q The next sentence says: The aggregate                  18 fair market value of the assets on the date of the                  19 transaction was 105,647,679.                  20 Do you see that?                  21 <b>A I do.</b>                  22 Q Have you ever seen that figure before?                  23 MS. SMITH: Objection to form.                  24 <b>A I believe it was -- I believe I learned of</b>                  25 <b>it in reviewing the complaint, if I remember</b></p>
<p style="text-align: right;">270</p> <p>1 <b>A I never heard that at Highland, no.</b>                  2 <b>BY MS. TOMKOWIAK:</b>                  3 Q Did you ever hear that at Sentinel?                  4 <b>A No.</b>                  5 Q Do you know who Shawn Raver is?                  6 <b>A I've heard the name.</b>                  7 Q But you don't know who he is?                  8 <b>A I've never met him before.</b>                  9 Q Okay. Do you know that he worked with                  10 Mr. Swadley?                  11 <b>A That sounds right.</b>                  12 Q If you look at page 2 of the document, and                  13 if you look at the last paragraph, it says: The                  14 aggregate purchase price paid by Sentinel for the                  15 assets was \$25 million.                  16 Do you see that?                  17 <b>A Yes.</b>                  18 Q Do you agree with that?                  19 <b>A Do I agree that Sentinel paid \$25 million</b>                  20 <b>for the assets?</b>                  21 Q Yeah.                  22 MS. SMITH: Objection, form.                  23 <b>A I guess when the policy was put in place,</b>                  24 <b>yeah.</b>                  25</p>	<p style="text-align: right;">272</p> <p>1 <b>correctly, that we were allowed to review.</b>                  2 <b>BY MS. TOMKOWIAK:</b>                  3 Q Prior to reviewing the complaint, did you                  4 ever receive any documentation or any                  5 communication indicating that the fair market                  6 value of the assets that were transferred to                  7 Sentinel in exchange for the insurance policy was                  8 approximately 105 million?                  9 <b>A No.</b>                  10 MS. SMITH: Objection.                  11 You can answer if it does not reveal any                  12 privileged information from counsel for Sentinel.                  13 <b>A No.</b>                  14 <b>BY MS. TOMKOWIAK:</b>                  15 Q Do you know where Mr. Raver would have                  16 gotten this number?                  17 <b>A I have no idea.</b>                  18 Q In your capacity as Sentinel's director,                  19 if the insureds believed that the fair market                  20 value of the assets that were transferred were                  21 over \$105 million, would you have wanted to know                  22 that?                  23 MS. SMITH: Objection to form.                  24 <b>A In my capacity as a director, would I have</b>                  25 <b>wanted to know if the insureds believed their</b></p>

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<p style="text-align: right;">273</p> <p><b>1 assets were worth 105 million?</b></p> <p><b>2 BY MS. TOMKOWIAK:</b></p> <p>3 Q Yes.</p> <p><b>4 A I think it would have been irrelevant</b></p> <p><b>5 after we had our own third-party valuation done.</b></p> <p>6 Q Would you have expected them to negotiate</p> <p>7 for a higher limit of indemnity if they believed</p> <p>8 that what they were providing to Sentinel was</p> <p>9 greater than the coverage amount?</p> <p>10 MS. SMITH: Objection to form.</p> <p><b>11 A I'm not sure.</b></p> <p><b>12 BY MS. TOMKOWIAK:</b></p> <p>13 Q Are you aware of any other insurance</p> <p>14 policy issued by Sentinel where the purchase price</p> <p>15 exceeds the amount of coverage?</p> <p>16 MS. SMITH: Objection to form.</p> <p><b>17 A I'm not aware of any, no.</b></p> <p><b>18 BY MS. TOMKOWIAK:</b></p> <p>19 Q Are you okay to keep going?</p> <p><b>20 A Yeah.</b></p> <p>21 MS. TOMKOWIAK: You okay?</p> <p>22 THE WITNESS: Everybody else?</p> <p>23 MS. SMITH: We all good?</p> <p>24 MS. TOMKOWIAK: Are you good?</p> <p>25</p>	<p style="text-align: right;">275</p> <p>1 Q So to the best of your belief, you're the</p> <p>2 one that filled this out?</p> <p><b>3 A That's right.</b></p> <p>4 Q And then did you send it to somebody?</p> <p><b>5 A I mean, it had to be submitted somewhere.</b></p> <p><b>6 I just don't recall where.</b></p> <p>7 Q So you don't recall if you sent this to</p> <p>8 somebody by e-mail or mail or who you sent it to?</p> <p><b>9 A I'm sure it would have been an e-mail</b></p> <p><b>10 scan.</b></p> <p>11 Q Would you have done that yourself or would</p> <p>12 you have asked somebody to do it for you?</p> <p><b>13 A I would have done it myself.</b></p> <p>14 Q Did you have an assistant at Highland?</p> <p><b>15 A No.</b></p> <p>16 Q Did you have an assistant that -- well,</p> <p>17 for SAS?</p> <p><b>18 A No.</b></p> <p>19 Q Or for Sentinel?</p> <p><b>20 A No.</b></p> <p>21 Q Okay. And then did you receive any</p> <p>22 response to this letter?</p> <p>23 MS. SMITH: Objection, form.</p> <p><b>24 A To the redemption letter? I don't recall.</b></p> <p>25</p>
<p style="text-align: right;">274</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q I'm handing you what I will ask the court</p> <p>3 reporter to mark as Exhibit 82.</p> <p>4 (Deposition Exhibit 82 marked for</p> <p>5 identification.)</p> <p>6 (Witness reviews document.)</p> <p><b>7 A Okay. I've reviewed.</b></p> <p><b>8 BY MS. TOMKOWIAK:</b></p> <p>9 Q Okay. So earlier we discussed the fact</p> <p>10 that one of the assets that was transferred to</p> <p>11 Sentinel as part of the premium payment was an</p> <p>12 interest from CDO to -- in this Multi Strat fund.</p> <p>13 Do you recall that?</p> <p><b>14 A Yes.</b></p> <p>15 Q Okay. And you said that you believed that</p> <p>16 Sentinel had requested those shares to be</p> <p>17 redeemed?</p> <p><b>18 A Those and the rest of Sentinel's</b></p> <p><b>19 investment in Multi Strat, yes.</b></p> <p>20 Q Okay. And if you look at the document</p> <p>21 ended Bates 898, is this the request for</p> <p>22 redemption of shares that you were referring to?</p> <p><b>23 A Yes, it looks like it.</b></p> <p>24 Q Is that your handwriting?</p> <p><b>25 A I believe it is.</b></p>	<p style="text-align: right;">276</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q You don't recall if you did or not?</p> <p><b>3 A I don't recall receiving anything.</b></p> <p>4 Q At the top of this e-mail, Mike</p> <p>5 Throckmorton writes to you, Helen Kim, Surgent and</p> <p>6 David Klos, and he says: It appears the transfer</p> <p>7 from CDO Opportunity Fund to Reinsurance happened</p> <p>8 in August 2017, but I have not been able to find</p> <p>9 any transfer docs.</p> <p>10 Do you know -- earlier today you indicated</p> <p>11 that you believed that interest had been</p> <p>12 transferred to Sentinel in August 2017; is that</p> <p>13 right?</p> <p><b>14 A Yes.</b></p> <p>15 Q Do you know what documentation would exist</p> <p>16 in that respect?</p> <p><b>17 A If you'll recall, there was -- that</b></p> <p><b>18 Sentinel Re Holdings that's mentioned in this</b></p> <p><b>19 e-mail also held some interest in Multi Strat and</b></p> <p><b>20 I don't remember the specifics, I just remember</b></p> <p><b>21 trying to sort it out and have it all registered</b></p> <p><b>22 into Sentinel Reinsurance's name. So if they were</b></p> <p><b>23 looking for Sentinel Reinsurance and it was</b></p> <p><b>24 actually in Sentinel Re, because the names are</b></p> <p><b>25 similar, Sentinel Re Holdings, or whatever it's</b></p>

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<p style="text-align: right;">277</p> <p><b>1 called, that could be it.</b></p> <p>2 Q Okay. But to the best of your belief,</p> <p>3 that transfer did happen in August 2017?</p> <p><b>4 A Yes.</b></p> <p>5 Q Okay. And do you know if you submitted --</p> <p>6 this letter to me looks like it's incomplete</p> <p>7 because it's not signed or dated. Would you have</p> <p>8 done that before you sent it in?</p> <p>9 MS. SMITH: Objection to form.</p> <p><b>10 A I believe a full -- fully signed filled</b></p> <p><b>11 out form was submitted.</b></p> <p><b>12 BY MS. TOMKOWIAK:</b></p> <p>13 Q And did you keep a copy of that?</p> <p><b>14 A I don't think so.</b></p> <p>15 Q Do you know whether you would have signed</p> <p>16 this?</p> <p><b>17 A I may have or it may have been another</b></p> <p><b>18 director, other directors. They may have filled</b></p> <p><b>19 it out, provided and signed. I just don't recall.</b></p> <p>20 Q Were you authorized to sign documents on</p> <p>21 Sentinel's behalf?</p> <p>22 MS. SMITH: Objection to form.</p> <p><b>23 A Yes.</b></p> <p><b>24 BY MS. TOMKOWIAK:</b></p> <p>25 Q How did Sentinel decide that it -- without</p>	<p style="text-align: right;">279</p> <p><b>1 payments.</b></p> <p>2 Q Did Sentinel ever try to renegotiate the</p> <p>3 terms of those notes with anyone?</p> <p><b>4 A Not that I recall.</b></p> <p>5 Q Okay. So if a payment wasn't made on a</p> <p>6 note, then Sentinel deemed it to be worthless?</p> <p><b>7 A It was a year's worth of nonpayment.</b></p> <p>8 Q Were any of those notes past due?</p> <p><b>9 A I don't believe so.</b></p> <p>10 Q Okay. So Sentinel deemed them to be</p> <p>11 worthless before the maturity date?</p> <p><b>12 A I think so.</b></p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Why?</p> <p><b>16 A Again, there was no -- there were no</b></p> <p><b>17 payments coming in. Sentinel knew nothing really</b></p> <p><b>18 about the substance of the notes.</b></p> <p>19 Q Did Sentinel attempt to reach out to the</p> <p>20 maker of those notes to figure out why they</p> <p>21 weren't making payments and whether they would</p> <p>22 make any payments in the future?</p> <p><b>23 A I don't recall.</b></p> <p>24 Q And in your role at managing investment</p> <p>25 assets for Sentinel, don't you think that would be</p>
<p style="text-align: right;">278</p> <p>1 revealing the content of any conversations you had</p> <p>2 with counsel, how did Sentinel decide that it</p> <p>3 wanted to redeem its shares in Multi Strat?</p> <p><b>4 A It was an idea I had, just uncertainty</b></p> <p><b>5 with bankruptcy, with Highland filing bankruptcy,</b></p> <p><b>6 what would happen with Multi Strat. So I flagged</b></p> <p><b>7 it for the directors and suggested that we redeem</b></p> <p><b>8 and they agreed.</b></p> <p>9 Q Okay.</p> <p>10 MS. TOMKOWIAK: Why don't we go ahead and</p> <p>11 take a break.</p> <p>12 THE VIDEOGRAPHER: We are off the record</p> <p>13 at 5:08 p.m.</p> <p>14 (Recess taken from 5:08 p.m. CDT to</p> <p>15 5:31 p.m. CDT)</p> <p>16 THE VIDEOGRAPHER: The time is 5:31 p.m.</p> <p>17 We are back on the record.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Mr. DiOrio, you testified before the break</p> <p>20 that certain of the promissory notes that were</p> <p>21 transferred to Sentinel were deemed worthless. Do</p> <p>22 you recall that?</p> <p><b>23 A Yes.</b></p> <p>24 Q And how -- how were they deemed worthless?</p> <p><b>25 A I don't believe they ever paid, made any</b></p>	<p style="text-align: right;">280</p> <p>1 something Sentinel would want to do?</p> <p>2 MS. SMITH: Objection to form.</p> <p><b>3 A I'm not sure.</b></p> <p><b>4 BY MS. TOMKOWIAK:</b></p> <p>5 Q If there was a way for Sentinel to get</p> <p>6 more assets instead of writing something off or</p> <p>7 deeming it worthless, don't you think that would</p> <p>8 be worthwhile to do?</p> <p>9 MS. SMITH: Objection to form.</p> <p><b>10 A Conceptually, sure.</b></p> <p><b>11 BY MS. TOMKOWIAK:</b></p> <p>12 Q Does Sentinel still hold those notes</p> <p>13 today?</p> <p><b>14 A Which notes?</b></p> <p>15 Q Well, for example, the -- I think it was</p> <p>16 about a \$32 million promissory note. Does it</p> <p>17 still hold that one?</p> <p>18 MS. SMITH: Objection to form.</p> <p><b>19 A I believe that was transferred to</b></p> <p><b>20 Sebastian Clarke.</b></p> <p><b>21 BY MS. TOMKOWIAK:</b></p> <p>22 Q And to your knowledge, I think you</p> <p>23 testified that Sebastian Clarke still would hold</p> <p>24 that today?</p> <p>25 MS. SMITH: Objection to form.</p>

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<p style="text-align: right;">281</p> <p><b>1 A I believe so.</b></p> <p><b>2 BY MS. TOMKOWIAK:</b></p> <p>3 Q I'm going to hand you what's been</p> <p>4 previously marked as Exhibit 61. So Exhibit 61,</p> <p>5 there's a black-and-white copy and then there is a</p> <p>6 color copy attached to the end that I understand</p> <p>7 that that was what was agreed upon yesterday.</p> <p>8 Maybe agreed upon is the wrong word, but the same</p> <p>9 document was used yesterday in that format so that</p> <p>10 you could see the color version as well.</p> <p><b>11 A Okay.</b></p> <p>12 Q Let me know when you're ready.</p> <p>13 (Witness reviews document.)</p> <p><b>14 A I'm sorry. The second set is just the</b></p> <p><b>15 same stuff but in color; is that correct?</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q Yeah.</p> <p><b>18 A Okay. Does it matter which one I look at?</b></p> <p>19 MS. SMITH: Use the colored one because</p> <p>20 she's going to -- she may ask you some questions</p> <p>21 and the shading doesn't show up on the black and</p> <p>22 white.</p> <p>23 THE WITNESS: Understood. Let me have a</p> <p>24 quick look, then.</p> <p><b>25 A Sorry, should have started with these.</b></p>	<p style="text-align: right;">283</p> <p>1 lines are not. Do you agree with that?</p> <p>2 MS. SMITH: Objection to form.</p> <p><b>3 A I don't know.</b></p> <p><b>4 BY MS. TOMKOWIAK:</b></p> <p>5 Q Do you know if Starck, Ltd., for example,</p> <p>6 was a Highland affiliate?</p> <p><b>7 A I don't believe I ever heard of Starck,</b></p> <p><b>8 Ltd., before.</b></p> <p>9 Q What about The Dugaboy Investment Trust?</p> <p><b>10 A I've heard the name.</b></p> <p>11 Q Do you know if that's a Highland</p> <p>12 affiliate?</p> <p>13 MS. SMITH: Objection to form.</p> <p><b>14 A I don't know much about it, so I don't</b></p> <p><b>15 know.</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q What about Mark Okada? Do you know if</p> <p>18 that's -- he's a Highland affiliate?</p> <p>19 MS. SMITH: Objection to form.</p> <p><b>20 A He was a former owner or co-owner.</b></p> <p><b>21 BY MS. TOMKOWIAK:</b></p> <p>22 Q Okay. And what about Sentinel Re? Would</p> <p>23 you consider that to be a Highland affiliate?</p> <p>24 MS. SMITH: Objection to form.</p> <p><b>25 A I don't believe it was.</b></p>
<p style="text-align: right;">282</p> <p><b>1 BY MS. TOMKOWIAK:</b></p> <p>2 Q That's okay.</p> <p>3 (Witness reviews document.)</p> <p><b>4 A Okay. I think I'm good.</b></p> <p><b>5 BY MS. TOMKOWIAK:</b></p> <p>6 Q Okay. With respect to the attachments,</p> <p>7 have you ever seen that before or a chart like</p> <p>8 that?</p> <p>9 MS. SMITH: Objection to form.</p> <p><b>10 A I don't recall ever seeing any of these</b></p> <p><b>11 charts before.</b></p> <p><b>12 BY MS. TOMKOWIAK:</b></p> <p>13 Q Do you recall seeing any other breakdown</p> <p>14 of investors in Multi Strat?</p> <p><b>15 A I don't.</b></p> <p>16 Q Okay. If you look at the version that</p> <p>17 says Credit Ops Investors by NAV. You see that?</p> <p><b>18 A Yeah, I have it open.</b></p> <p>19 Q Okay. Are you able to discern what the</p> <p>20 shading on this chart means?</p> <p><b>21 A I'm not.</b></p> <p>22 Q Okay. From the math, it looks like that</p> <p>23 the nonshaded lines are the affiliates, the</p> <p>24 Highland affiliates, and the shaded lines are</p> <p>25 Highland affiliates -- I'm sorry, and the shaded</p>	<p style="text-align: right;">284</p> <p><b>1 BY MS. TOMKOWIAK:</b></p> <p>2 Q Okay. Why not?</p> <p><b>3 A Why do I believe it wasn't an affiliate?</b></p> <p>4 Q Yes.</p> <p><b>5 A As I think I said earlier -- well,</b></p> <p><b>6 Sentinel Re Holdings also doesn't exist anymore.</b></p> <p><b>7 Is that what you were talking about?</b></p> <p>8 Q No. I mean, I don't -- you say it doesn't</p> <p>9 exist anymore. This looks to me like it's dated</p> <p>10 October 30th, 2017. Did it exist at the time?</p> <p><b>11 A Yes, but -- yes, it did.</b></p> <p>12 Q Okay. So at the time was that a Highland</p> <p>13 affiliate?</p> <p><b>14 A I don't --</b></p> <p>15 MS. SMITH: Objection to form.</p> <p><b>16 A I don't think it was.</b></p> <p><b>17 BY MS. TOMKOWIAK:</b></p> <p>18 Q And why not?</p> <p><b>19 A Again, not an attorney, but it's, you</b></p> <p><b>20 know, a stand-alone Cayman company.</b></p> <p>21 Q Is that your same answer with respect to</p> <p>22 Sentinel Reinsurance?</p> <p><b>23 A Yes.</b></p> <p>24 Q Mr. Colbert in the e-mail attachment sends</p> <p>25 this to Mr. Parker, amongst other folks, and says:</p>

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<p style="text-align: right;">285</p> <p>1 As discussed, please see the updated file with                  2 Sentinel being presented as an affiliated                  3 investor.                  4 Earlier today you mentioned that there was                  5 a big to-do, I think you said, I think those were                  6 your words, over Sentinel being presented as an                  7 affiliated investor. Is this what you were                  8 referring to?                  9 <b>A This is not what I was referring to.</b>                  10 Q Okay. What were you referring to?                  11 <b>A I think as I stated earlier, it had</b>                  12 <b>something to do with one of the real estate</b>                  13 <b>investments Highland -- sorry, Sentinel held.</b>                  14 Q Okay. And just to refresh, since that was                  15 this morning, what was the big to-do?                  16 <b>A That it was classified on some spreadsheet</b>                  17 <b>as an affiliate and ultimately through compliance,</b>                  18 <b>it was determined it was not an affiliate.</b>                  19 Q And when you say through compliance, who                  20 are you referring to?                  21 <b>A I believe it was Lauren Thedford and</b>                  22 <b>Tom Surgent.</b>                  23 Q How did you come to learn about this real                  24 estate investment and this issue with Sentinel                  25 being presented as an affiliated investor?</p>	<p style="text-align: right;">287</p> <p>1 Q Okay. So then what was the context for                  2 that conversation?                  3 <b>A Again, just that it was on a sheet or</b>                  4 <b>something that said Sentinel was listed as an</b>                  5 <b>affiliate.</b>                  6 Q Did you see the sheet?                  7 <b>A Probably.</b>                  8 Q Do you have any other details about the                  9 sheet?                  10 <b>A I don't, none that I can recall.</b>                  11 Q No other context for why people were                  12 working on the sheet or why people were upset that                  13 Sentinel was being presented as an affiliate?                  14 MS. SMITH: Objection to form.                  15 <b>A None that I recall.</b>                  16 <b>BY MS. TOMKOWIAK:</b>                  17 Q Do you know why that mattered?                  18 MS. SMITH: Objection to form.                  19 <b>A I don't.</b>                  20 <b>BY MS. TOMKOWIAK:</b>                  21 Q Did you ask?                  22 <b>A Probably not.</b>                  23 Q Why not?                  24 <b>A I don't recall.</b>                  25 Q Well, did you think it was important for</p>
<p style="text-align: right;">286</p> <p>1 <b>A I don't recall how it came to my</b>                  2 <b>attention.</b>                  3 Q Do you recall approximately when this was?                  4 <b>A Probably summer of maybe -- '18, maybe.</b>                  5 <b>Maybe '19. I'm not entirely sure.</b>                  6 Q Do you recall who told you about it?                  7 <b>A I don't.</b>                  8 Q Do you recall anything at all about how                  9 you came to learn about this?                  10 MS. SMITH: Objection to form.                  11 <b>A I don't remember how it started, but I</b>                  12 <b>know it ultimately -- there was a conversation, I</b>                  13 <b>believe I spoke to Ms. Thedford and then</b>                  14 <b>Mr. Surgent at some point.</b>                  15 <b>BY MS. TOMKOWIAK:</b>                  16 Q So why were you speaking to Ms. Thedford                  17 about this?                  18 <b>A I think because she knew I worked --</b>                  19 <b>provided service to Sentinel.</b>                  20 Q So was she informing you of this                  21 conclusion?                  22 <b>A Informing me of what conclusion?</b>                  23 Q That Sentinel was not an affiliated                  24 investor.                  25 <b>A I don't believe so.</b></p>	<p style="text-align: right;">288</p> <p>1 you to know as a director of Sentinel whether or                  2 not Sentinel was an affiliate of Highland or not?                  3 <b>A Yeah. My general understanding is that it</b>                  4 <b>was not an affiliate.</b>                  5 Q Okay. But you don't know why that                  6 mattered?                  7 MS. SMITH: Objection to form.                  8 <b>A Why it mattered whether it was or was not</b>                  9 <b>an affiliate? I don't know why it matters.</b>                  10 <b>BY MS. TOMKOWIAK:</b>                  11 Q Did Ms. Thedford tell you why that                  12 mattered?                  13 <b>A I don't believe so.</b>                  14 Q Did Mr. Surgent tell you why that                  15 mattered?                  16 <b>A I don't believe so.</b>                  17 Q If you had already talked to Ms. Thedford,                  18 why did you need to talk to Mr. Surgent?                  19 MS. SMITH: Objection to form.                  20 <b>A Generally anything compliance related</b>                  21 <b>would lead up to Mr. Surgent. He was the chief</b>                  22 <b>compliance officer.</b>                  23 <b>BY MS. TOMKOWIAK:</b>                  24 Q So did you approach him about this?                  25 <b>A I don't remember.</b></p>



<p style="text-align: right;">289</p> <p>1 Q Did he approach you?</p> <p>2 A <b>Probably not.</b></p> <p>3 Q Okay. So you probably approached him?</p> <p>4 A <b>Ms. Thedford may have approached him, I</b></p> <p>5 <b>may have approached him. I don't recall.</b></p> <p>6 Q Was Ms. Thedford there when you spoke to</p> <p>7 Mr. Surgent?</p> <p>8 A <b>I don't recall.</b></p> <p>9 Q And what did Mr. Surgent say to you?</p> <p>10 A <b>I think the ultimate outcome was that</b></p> <p>11 <b>Sentinel Reinsurance was not an affiliate, if I</b></p> <p>12 <b>remember correctly.</b></p> <p>13 Q Was this a meeting in his office?</p> <p>14 A <b>Maybe, but I sat right outside his office,</b></p> <p>15 <b>so people were in and out.</b></p> <p>16 Q But you recall this being in person?</p> <p>17 A <b>I believe so.</b></p> <p>18 Q And do you know how long that conversation</p> <p>19 lasted?</p> <p>20 A <b>I don't.</b></p> <p>21 Q Five minutes? An hour? Two hours?</p> <p>22 A <b>It was probably short.</b></p> <p>23 Q Okay. And do you recall if he provided</p> <p>24 you any reasoning for that conclusion?</p> <p>25 A <b>I don't recall.</b></p>	<p style="text-align: right;">291</p> <p>1 with Ms. Thedford or Mr. Surgent?</p> <p>2 A <b>Not that I recall.</b></p> <p>3 Q Did you discuss that with Scott Ellington?</p> <p>4 A <b>When?</b></p> <p>5 Q Any time.</p> <p>6 A <b>I had heard him say it's not an affiliate.</b></p> <p>7 Q When did you hear him say that?</p> <p>8 A <b>I heard it -- I don't remember</b></p> <p>9 <b>specifically, but something I had heard before.</b></p> <p>10 Q Can you put any time frame around that?</p> <p>11 Was that before you -- after you became a director</p> <p>12 of Sentinel?</p> <p>13 A <b>Most likely.</b></p> <p>14 Q And you don't recall any other context?</p> <p>15 A <b>I don't.</b></p> <p>16 Q Okay. I'm handing the court reporter a</p> <p>17 document to mark as Exhibit 83. The Bates number</p> <p>18 got cut off at the bottom, so I wrote it on there</p> <p>19 just so that we can refer to it in that way and we</p> <p>20 can replace the official copy with that version.</p> <p>21 MS. TOMKOWIAK: I only have two of those.</p> <p>22 I'm sorry.</p> <p>23 (Deposition Exhibit 83 marked for</p> <p>24 identification.)</p> <p>25 (Witness reviews document.)</p>
<p style="text-align: right;">290</p> <p>1 Q Did he ever provide you with that</p> <p>2 conclusion in writing?</p> <p>3 A <b>I don't remember. I don't know.</b></p> <p>4 Q Did you ask for it to be in writing?</p> <p>5 A <b>I don't know.</b></p> <p>6 Q Did you do anything with that information?</p> <p>7 A <b>Not that I recall.</b></p> <p>8 Q So then do you know why it was being</p> <p>9 provided to you?</p> <p>10 A <b>Why it was being provided to me? Why what</b></p> <p>11 <b>was being provided to me?</b></p> <p>12 Q Why did you need to know whether or not</p> <p>13 Sentinel was an affiliate?</p> <p>14 A <b>Again, I think it was a question that came</b></p> <p>15 <b>up somehow and I think it was generally known that</b></p> <p>16 <b>I worked on Sentinel -- or provided service for</b></p> <p>17 <b>Sentinel Reinsurance, so...</b></p> <p>18 Q And you don't recall how the question came</p> <p>19 up?</p> <p>20 A <b>I don't.</b></p> <p>21 Q Did you ever ask whether or not Sentinel</p> <p>22 was an affiliate?</p> <p>23 A <b>It was my understanding that it was not.</b></p> <p>24 Q And was that understanding based on</p> <p>25 anything other than the conversations that you had</p>	<p style="text-align: right;">292</p> <p>1 A <b>Okay.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Okay. Do you -- are you familiar with</p> <p>4 these documents?</p> <p>5 A <b>I just refamiliarized myself, yes.</b></p> <p>6 Q Okay. Is that your signature on the</p> <p>7 signature of transfer?</p> <p>8 A <b>I believe it is.</b></p> <p>9 Q Okay. And do you know why in</p> <p>10 February 2019, you issued a power of attorney to</p> <p>11 transfer shares in the Greenbriar CLO and</p> <p>12 Stratford CLO to CIBC bank?</p> <p>13 A <b>I believe this was to register -- or to</b></p> <p>14 <b>make it so the cash distributions went directly to</b></p> <p>15 <b>CIBC.</b></p> <p>16 Q Okay. Prior to this time, where were the</p> <p>17 cash distributions going to?</p> <p>18 A <b>They would be received at some custody</b></p> <p>19 <b>account in somewhere -- I think State Street, I</b></p> <p>20 <b>think is where it went.</b></p> <p>21 Q Okay. And I think earlier today we</p> <p>22 testified that there -- you testified that there</p> <p>23 had been an issue with respect to certain of the</p> <p>24 certificates with respect to the Greenbriar CLO;</p> <p>25 is that right?</p>

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<p style="text-align: right;">293</p> <p>1 <b>A That's right.</b></p> <p>2 Q So at this point in time, did you believe</p> <p>3 that Sentinel Reinsurance had those certificates?</p> <p>4 <b>A This is a different amount of Greenbriar.</b></p> <p>5 <b>I'm not sure if it's the same share class or not.</b></p> <p>6 Q Okay. So this is one that you believe</p> <p>7 Sentinel did actually take and have custody of?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 <b>A I don't know where the actual shares went,</b></p> <p>10 <b>but I believe this paperwork was to just directly</b></p> <p>11 <b>make sure the cash distributions directly went to</b></p> <p>12 <b>Sentinel's custody account.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q And did they, in fact, at this time go to</p> <p>15 Sentinel's CIBC account?</p> <p>16 <b>A I believe they did.</b></p> <p>17 Q Do you know whose signature that is,</p> <p>18 witness to signatures of transfer?</p> <p>19 <b>A I don't.</b></p> <p>20 Q Do you know why this document was sitting</p> <p>21 on your desk in February of 2021?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 <b>A I don't.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q Do you recall reviewing it in February of</p>	<p style="text-align: right;">295</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q You don't recall who you -- if you wrote</p> <p>3 anybody in that line and if so, who?</p> <p>4 <b>A Right.</b></p> <p>5 Q Do you have any reason -- is there any</p> <p>6 reason why you would have redacted or shaded out</p> <p>7 that information?</p> <p>8 <b>A No.</b></p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A None that I can think of.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q Okay. You can set that aside.</p> <p>13 Mr. DiOrio, do you know who's paying for your</p> <p>14 counsel's fees in this matter?</p> <p>15 <b>A I don't.</b></p> <p>16 Q You don't? Are you?</p> <p>17 <b>A I haven't -- I don't think so. I haven't</b></p> <p>18 <b>paid anything.</b></p> <p>19 Q Okay. And you don't know if you will have</p> <p>20 to pay anything?</p> <p>21 <b>A That's right.</b></p> <p>22 Q Is your employer paying for your counsel's</p> <p>23 fees?</p> <p>24 <b>A My current employer?</b></p> <p>25 Q Yes.</p>
<p style="text-align: right;">294</p> <p>1 2021?</p> <p>2 <b>A I don't.</b></p> <p>3 Q Do you know how the par value is</p> <p>4 determined?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 <b>A The par value?</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Uh-huh.</p> <p>9 <b>A I believe it's determined when the</b></p> <p>10 <b>securities are established.</b></p> <p>11 Q Okay. So where would you have gotten that</p> <p>12 information?</p> <p>13 <b>A It may say it on the certificates. I</b></p> <p>14 <b>think it says it on there.</b></p> <p>15 Q Okay. So do you recall going to look at</p> <p>16 the certificates for that information?</p> <p>17 <b>A I don't recall going to look at it, but I</b></p> <p>18 <b>think all the CLOs had the same one cent par</b></p> <p>19 <b>value.</b></p> <p>20 Q Do you know who you appointed as your</p> <p>21 lawful attorney? Looks to us like that was shaded</p> <p>22 out.</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A I don't.</b></p> <p>25</p>	<p style="text-align: right;">296</p> <p>1 <b>A I don't know.</b></p> <p>2 Q What about your former employer?</p> <p>3 <b>A I don't know.</b></p> <p>4 Q Do you know when you're going to find out?</p> <p>5 <b>A I don't.</b></p> <p>6 MS. TOMKOWIAK: I am handing the court</p> <p>7 reporter a document to mark as Exhibit 83 -- 84.</p> <p>8 I only have two of these too. I'm sorry.</p> <p>9 (Deposition Exhibit 84 marked for</p> <p>10 identification.)</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Let me know when you're ready.</p> <p>13 (Witness reviews document.)</p> <p>14 <b>A Okay.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Have you seen a version of this</p> <p>17 presentation before?</p> <p>18 <b>A Yes.</b></p> <p>19 Q Do you know who drafted it?</p> <p>20 <b>A I believe it was a collaborative effort.</b></p> <p>21 Q Who was involved in the collaboration?</p> <p>22 <b>A It would have been myself and Mr. Sevilla</b></p> <p>23 <b>and possibly Katie Irving.</b></p> <p>24 Q Okay. What was Katie Irving's role with</p> <p>25 respect to Sentinel?</p>

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<p style="text-align: right;">297</p> <p><b>1 A She didn't really have one, generally.</b></p> <p>2 Q Why is she helping to put together this</p> <p>3 presentation?</p> <p><b>4 A I'm not entirely sure.</b></p> <p>5 Q You --</p> <p><b>6 A I don't remember.</b></p> <p>7 Q Well, you had a chance to flip through it.</p> <p>8 Are there any parts of this presentation that</p> <p>9 would have -- you believe would have come from</p> <p>10 Ms. Irving specifically?</p> <p><b>11 A No.</b></p> <p>12 Q Who's Lauren Baker?</p> <p><b>13 A She is -- she was at one point an admin at</b></p> <p><b>14 Highland now I think, and then she moved to PR,</b></p> <p><b>15 marketing, something like that.</b></p> <p>16 Q So when Katie is asking Lauren to help put</p> <p>17 these together, you believe that Lauren's job was</p> <p>18 just more administrative, just to bind these</p> <p>19 presentations together?</p> <p>20 MS. SMITH: Objection to form.</p> <p><b>21 A I believe so.</b></p> <p><b>22 BY MS. TOMKOWIAK:</b></p> <p>23 Q Do you believe that this is the final</p> <p>24 version of the presentation?</p> <p><b>25 A I can't say one way or the other. It</b></p>	<p style="text-align: right;">299</p> <p><b>1 asking her to print something.</b></p> <p>2 Q Okay. So Ms. Irving had a relationship</p> <p>3 with Ms. Baker. I mean, was that your</p> <p>4 understanding?</p> <p><b>5 A More so than I would have, yeah.</b></p> <p>6 Q Okay. So you believe that Ms. Baker would</p> <p>7 have been helping you out because Ms. Goldsmith</p> <p>8 might have been out of the office; is that what</p> <p>9 you're saying?</p> <p><b>10 A That's right.</b></p> <p>11 Q And do you -- did you -- did you actually</p> <p>12 give this presentation to CIMA?</p> <p><b>13 A I believe we did, yes.</b></p> <p>14 Q Okay. And who is we?</p> <p><b>15 A I believe myself and Mr. Sevilla.</b></p> <p>16 Q Anybody else?</p> <p><b>17 A I don't recall if anyone else was in</b></p> <p><b>18 there.</b></p> <p>19 Q And was this an in-person meeting?</p> <p><b>20 A Yes.</b></p> <p>21 Q Did Mr. Sevilla travel with you to the</p> <p>22 Cayman Islands to provide -- to give presentations</p> <p>23 to CIMA?</p> <p>24 MS. SMITH: Objection to form.</p> <p><b>25 A He did on this one, yes.</b></p>
<p style="text-align: right;">298</p> <p><b>1 doesn't indicate draft or otherwise.</b></p> <p>2 Q Did you typically wait until you had the</p> <p>3 final version of a presentation to have it bound?</p> <p><b>4 A Generally, I think so.</b></p> <p>5 Q So again, do you know why Ms. Irving would</p> <p>6 have been helping you put this presentation</p> <p>7 together?</p> <p><b>8 A She --</b></p> <p>9 MS. SMITH: Objection, form.</p> <p><b>10 A She may have just been helping us get it</b></p> <p><b>11 bound. If Lauren Baker, now Short, wasn't doing</b></p> <p><b>12 it -- or was doing it, that would mean that the</b></p> <p><b>13 legal group admin was out.</b></p> <p><b>14 BY MS. TOMKOWIAK:</b></p> <p>15 Q Was Katie Irving in the legal group at the</p> <p>16 time?</p> <p><b>17 A Yes. In private equity.</b></p> <p>18 Q Okay. Is there a reason that you or</p> <p>19 Mr. Sevilla couldn't have e-mailed Ms. Baker and</p> <p>20 asked her to print this out or bind it and print</p> <p>21 it out?</p> <p><b>22 A I don't want to speak for Mr. Sevilla, but</b></p> <p><b>23 the only admin I knew at Highland was Sarah</b></p> <p><b>24 Goldsmith, and I wouldn't have felt comfortable</b></p> <p><b>25 just randomly e-mailing a different admin and</b></p>	<p style="text-align: right;">300</p> <p><b>1 BY MS. TOMKOWIAK:</b></p> <p>2 Q Did he go on any other ones -- let me</p> <p>3 strike that.</p> <p>4 Did Mr. Sevilla -- is that the only time</p> <p>5 that he traveled with you to the Cayman Islands</p> <p>6 with respect to -- well, is that the only time</p> <p>7 that you and Mr. Sevilla traveled to the Cayman</p> <p>8 Islands together?</p> <p>9 MS. SMITH: Objection to form.</p> <p><b>10 A No. I mentioned before, we met with CIMA</b></p> <p><b>11 twice so he would have attended both meetings.</b></p> <p><b>12 BY MS. TOMKOWIAK:</b></p> <p>13 Q Okay. Before, you talked about you and</p> <p>14 Mr. Ellington, so I wasn't aware that Mr. Sevilla</p> <p>15 was there. Did anybody else besides you,</p> <p>16 Mr. Ellington and Mr. Sevilla go to the Cayman</p> <p>17 Islands to meet with CIMA?</p> <p><b>18 A Yes. And you didn't ask before, which is</b></p> <p><b>19 why I didn't offer it. Katie Irving would have</b></p> <p><b>20 been on those trips as well.</b></p> <p>21 Q Okay. Anybody else?</p> <p><b>22 A I believe that's it.</b></p> <p>23 Q Okay. So I will ask again, what was</p> <p>24 Ms. Irving's role with respect to Sentinel?</p> <p><b>25 A She really didn't have one.</b></p>

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<p style="text-align: right;">301</p> <p>1 Q Then why did she travel with you to the 2 Cayman Islands? 3 <b>A I don't know.</b> 4 Q Just wanted to go to the Cayman Islands? 5 <b>A I don't --</b> 6 MS. SMITH: Objection to form. 7 <b>A I don't set the roster for trips.</b> 8 <b>BY MS. TOMKOWIAK:</b> 9 Q Okay. Who did? 10 <b>A Generally Mr. Ellington.</b> 11 Q Okay. So is it your -- to the best of 12 your knowledge, Mr. Ellington invited Ms. Irving 13 to these trips? 14 MS. SMITH: Objection to form. 15 <b>A I don't know.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q So Ms. Irving just showed up at the 18 airport and you have no idea why? 19 MS. SMITH: Objection to form. 20 <b>A I don't want to assume. I didn't hear an</b> 21 <b>invite. I didn't hear an invite extended. She</b> 22 <b>most likely didn't just show up at the airport.</b> 23 <b>BY MS. TOMKOWIAK:</b> 24 Q You didn't ask her, hey, why are you here? 25 <b>A No.</b></p>	<p style="text-align: right;">303</p> <p>1 that, were those expenses submitted to Sentinel's 2 independent directors for approval? 3 <b>A I never processed an expense for</b> 4 <b>Ms. Irving that I can remember or submit an</b> 5 <b>expense.</b> 6 Q What about for Mr. Sevilla? 7 <b>A Same.</b> 8 Q What about for yourself? I believe, but 9 maybe I'm wrong, let me know, that you submitted 10 your own expenses for these trips to 11 Sentinel [sic]. Is that correct or no? 12 MS. SMITH: Objection to form. 13 <b>A Once I had one expense. Generally</b> 14 <b>Mr. Ellington would pay for everything and just --</b> 15 <b>he would be reimbursed.</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q So once you submitted -- one time you 18 submitted to Sentinel expenses for a trip to the 19 Cayman Islands; is that right? 20 <b>A That was for a dinner.</b> 21 Q For a dinner. Is that the only 22 Sentinel-related expense that you incurred 23 personally that you submitted to Sentinel's 24 directors for reimbursement? 25 <b>A That's the only one I can think of, yeah.</b></p>
<p style="text-align: right;">302</p> <p>1 Q Okay. Did she attend the meeting? 2 <b>A I believe so.</b> 3 Q Okay. Did she just sit there? 4 MS. SMITH: Objection to form. 5 <b>A I believe so.</b> 6 <b>BY MS. TOMKOWIAK:</b> 7 Q Who spoke at these meetings? 8 <b>A Myself and Mr. Sevilla.</b> 9 Q Mr. Ellington didn't speak? 10 <b>A I don't remember him speaking.</b> 11 Q Who paid for Ms. Irving to travel to these 12 meetings that she didn't speak at? 13 MS. SMITH: Objection to form. 14 <b>A I'm not -- I'm not entirely sure who paid</b> 15 <b>for her --</b> 16 <b>BY MS. TOMKOWIAK:</b> 17 Q Is that -- sorry. Go ahead. 18 <b>A I'm not sure who paid for her</b> 19 <b>specifically.</b> 20 Q Is that an expense that was submitted to 21 Sentinel's directors for approval, for their 22 approval? 23 <b>A Was what an expense?</b> 24 Q Her trips to the Cayman Islands. Her 25 hotels, her flights, her meals, anything like</p>	<p style="text-align: right;">304</p> <p>1 Q Okay. So every other time that you went 2 to Cayman Islands for Sentinel matters, 3 Mr. Ellington paid all of your expenses? 4 <b>A That's correct.</b> 5 Q And you don't know if he also paid 6 Mr. Sevilla's expenses? 7 <b>A I believe he paid for the group or -- paid</b> 8 <b>for the group.</b> 9 Q Okay. So earlier you testified that 10 Sentinel would have paid if these trips were 11 Sentinel related. So were you just mistaken 12 earlier? 13 <b>A How would I be mistaken?</b> 14 Q Well, I asked you did Sentinel -- when we 15 were talking about the Cayman trips earlier today, 16 I asked you did Sentinel pay for them and you said 17 yes, they would have paid if it was Sentinel 18 related. 19 <b>A Right.</b> 20 Q Okay. So were these trips -- these trips 21 to talk to CIMA about Sentinel were not Sentinel 22 related? 23 <b>A They were.</b> 24 Q Okay. 25 <b>A Mr. Ellington would pay and be reimbursed.</b></p>

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<p style="text-align: right;">305</p> <p>1 Q So Mr. Ellington submitted expenses to 2 Sentinel and then Sentinel would approve them? 3 <b>A He would submit them to me and then I</b> 4 <b>would submit them to -- again, the same process we</b> 5 <b>outlined earlier.</b> 6 Q Okay. 7 <b>A And it was all up to the directors to</b> 8 <b>approve them.</b> 9 Q So on both of the trips in 2019 to meet 10 with CIMA, did the four of you attend both of 11 those trips? 12 <b>A I believe so.</b> 13 Q And during both of those meetings, were 14 you and Mr. Sevilla the only persons who 15 presented? 16 <b>A That's my recollection, yeah.</b> 17 Q How long did those meetings last? 18 <b>A Probably an hour or so.</b> 19 Q Okay. How long were you in the Cayman 20 Islands for? 21 <b>A I don't recall.</b> 22 Q Did you fly in for the meeting and fly out 23 that same day? 24 <b>A No.</b> 25 Q On any of your other trips to the Cayman</p>	<p style="text-align: right;">306</p> <p>1 Islands with Mr. Ellington, did anybody else 2 attend with you? 3 <b>A I went once with Mr. Ellington and</b> 4 <b>Mr. Surgent.</b> 5 Q Okay. And what was the purpose of that 6 trip? 7 <b>A A conference.</b> 8 Q For what? 9 <b>A Like alternative investments.</b> 10 Q Any other trips that you can think of 11 where you went to the Cayman Islands with 12 Mr. Ellington where somebody else attended? 13 <b>A No one outside of the group we mentioned.</b> 14 Q Okay. So Ms. Irving is sending this to 15 Ms. Baker on Tuesday, August 6th. Do you see 16 that? 17 <b>A Yes.</b> 18 Q Okay. And the presentation is dated 19 August 7th, 2019. So was Ms. Baker binding them 20 in the next hour for you to take on the plane with 21 you? 22 <b>A Possibly.</b> 23 Q Do you recall taking presentations with 24 you on the plane to CIMA? 25 <b>A Yes.</b></p>
<p style="text-align: right;">307</p> <p>1 Q Okay. So you went to CIMA the next day. 2 MS. SMITH: Objection, form. 3 BY MS. TOMKOWIAK: 4 Q If you look at Slide 2, it refers to a 5 meeting with CIMA on June 25th, 2019. 6 <b>A I see that.</b> 7 Q Okay. And is that the first meeting that 8 you reference where the four of you, you, 9 Mr. Sevilla, Ms. Irving and Mr. Ellington traveled 10 to the Cayman Islands to meet with CIMA? 11 <b>A I think so.</b> 12 Q And August 7th was the second meeting? 13 <b>A I think so.</b> 14 Q And were there any other meetings with 15 CIMA in the Cayman Islands that year? 16 <b>A Not that I'm aware of.</b> 17 Q Did CIMA ask you to come back to the 18 Cayman Islands for a follow-up meeting? 19 <b>A I don't recall if they asked or not.</b> 20 Q Who was present at this meeting from CIMA? 21 <b>A I'm not going to remember their names, but</b> 22 <b>people from the insurance division.</b> 23 Q How many? 24 <b>A Three or four.</b> 25 Q And did you put your presentation on a</p>	<p style="text-align: right;">308</p> <p>1 screen for them? 2 <b>A I think we had printouts.</b> 3 Q Bound printouts? 4 <b>A (Nods head.)</b> 5 Q Okay. On Slide 3, Slide 3 is UBS versus 6 Insureds. Do you agree that relates -- that this 7 slide is referencing the UBS litigation that's the 8 subject of the ATE policy? 9 <b>A Yes.</b> 10 Q Okay. Who would have put the -- who would 11 have drafted this slide? 12 <b>A This slide, probably Mr. Sevilla.</b> 13 Q You don't recall drafting any part of 14 this? 15 <b>A This particular slide?</b> 16 Q Yes. 17 <b>A I wouldn't have written this slide.</b> 18 Q Where would Mr. Sevilla have gotten this 19 information? 20 MS. SMITH: Objection, form. 21 <b>A Not sure.</b> 22 BY MS. TOMKOWIAK: 23 Q Okay. If you see the last bullet, it 24 says: Assuming the insureds lose on liability but 25 win their damages arguments, insured damages could</p>

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<p style="text-align: right;">309</p> <p>1 be as low as 6 million.</p> <p>2 Do you recall ever being told in your</p> <p>3 capacity as a director at Sentinel that damages</p> <p>4 could be as low as 6 million?</p> <p>5 MS. SMITH: Objection.</p> <p>6 I'm going to caution you not to divulge</p> <p>7 any privileged information.</p> <p>8 <b>A I think in the actuarial table, I think I</b></p> <p>9 <b>had seen something around that number.</b></p> <p>10 <b>BY MS. TOMKOWIAK:</b></p> <p>11 Q Okay. And then you're conveying that to</p> <p>12 CIMA, right?</p> <p>13 <b>A It looks like it, yeah.</b></p> <p>14 Q Okay. Do you recall any analysis of how</p> <p>15 high insured damages could be?</p> <p>16 <b>A With respect to Sentinel, it would have</b></p> <p>17 <b>been the limit of the policy.</b></p> <p>18 Q Okay. But that's a slightly different</p> <p>19 point. I mean, do you recall anybody doing any</p> <p>20 analysis of how -- about the size of a potential</p> <p>21 judgment against the funds even if it exceeded</p> <p>22 Sentinel's insurance policy?</p> <p>23 <b>A I don't recall specifics.</b></p> <p>24 Q Do you know why CIMA wanted -- did CIMA</p> <p>25 request this information?</p>	<p style="text-align: right;">311</p> <p>1 have just put this together himself?</p> <p>2 <b>A The entire presentation?</b></p> <p>3 Q No, this slide.</p> <p>4 <b>A I mean, I'm better than him at PowerPoint.</b></p> <p>5 <b>It's easy for me to do.</b></p> <p>6 Q And what did Mr. Sevilla tell you about</p> <p>7 how the ATE opportunity arose in June of 2017?</p> <p>8 <b>A I don't remember specifics. We were just</b></p> <p>9 <b>filling out kind of bubbles on a slide.</b></p> <p>10 Q Bubbles on -- I'm sorry, go ahead.</p> <p>11 <b>A It's more about getting the presentation</b></p> <p>12 <b>done. I didn't ask follow-up questions to every</b></p> <p>13 <b>bullet point provided.</b></p> <p>14 Q Well, were you the person in charge of</p> <p>15 presenting the slide?</p> <p>16 <b>A We presented the presentation together. I</b></p> <p>17 <b>don't recall who spoke to which slide.</b></p> <p>18 Q Okay. But you're speaking to a regulatory</p> <p>19 authority, so I assume you would have wanted to be</p> <p>20 knowledgeable about the information on the slide,</p> <p>21 right?</p> <p>22 <b>A That's correct.</b></p> <p>23 Q Okay. And you just don't remember knowing</p> <p>24 anything about how the ATE opportunity actually</p> <p>25 arose in June of 2017?</p>
<p style="text-align: right;">310</p> <p>1 <b>A I believe this was a result of the</b></p> <p>2 <b>inspection -- or part of the inspection that I</b></p> <p>3 <b>mentioned earlier.</b></p> <p>4 Q Okay. And this was their five-year</p> <p>5 inspection?</p> <p>6 <b>A Yes.</b></p> <p>7 Q If you look at the second -- I'm sorry,</p> <p>8 the next slide. I don't know why some slides have</p> <p>9 numbers and some don't. Have you seen a version</p> <p>10 of this policy timeline before?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Okay. Who would have put this together?</p> <p>13 <b>A I would have put most of this together.</b></p> <p>14 Q Okay. So the first thing on here is</p> <p>15 June 2017, ATE opportunity arises. What does that</p> <p>16 mean?</p> <p>17 <b>A I think it's referring to when this</b></p> <p>18 <b>ATE policy may have been contemplated.</b></p> <p>19 Q Well, where did you get that information?</p> <p>20 <b>A Probably Mr. Sevilla.</b></p> <p>21 Q Probably Mr. Sevilla. So do you recall</p> <p>22 one way or the other?</p> <p>23 <b>A I don't.</b></p> <p>24 Q Okay. So if you got that from</p> <p>25 Mr. Sevilla, is there some reason why he wouldn't</p>	<p style="text-align: right;">312</p> <p>1 <b>A I would have asked further questions if I</b></p> <p>2 <b>was presenting by myself, but things I didn't</b></p> <p>3 <b>know, I knew Mr. Sevilla could speak to.</b></p> <p>4 Q So if CIMA had a question about that, you</p> <p>5 would have deflected that to Mr. Sevilla?</p> <p>6 <b>A That's right.</b></p> <p>7 Q And you in your capacity as a director of</p> <p>8 Sentinel didn't care about knowing how the</p> <p>9 opportunity arose?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 <b>A I came to -- you know, when I was</b></p> <p>12 <b>appointed, the policy was in place. So I don't</b></p> <p>13 <b>think I went and had a look back of however many</b></p> <p>14 <b>months prior.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Okay. The next thing on this timeline is</p> <p>17 July 2017. Diligence performed on the potential</p> <p>18 insureds and underlying litigation and risk</p> <p>19 surrounding directors, engage counsel, actuary and</p> <p>20 other service providers.</p> <p>21 Who provided you with that information?</p> <p>22 <b>A I think anything prior to the January 2018</b></p> <p>23 <b>bullet on the -- or portion of the timeline would</b></p> <p>24 <b>have come from Mr. Sevilla.</b></p> <p>25 Q Well, you became a director of Sentinel in</p>

<p style="text-align: right;">313</p> <p>1 September of 2019 -- of 2017, right?</p> <p>2 <b>A That's right.</b></p> <p>3 Q Okay. So you're just making that</p> <p>4 distinction because the only other thing before</p> <p>5 January 2018 is this August 2017?</p> <p>6 <b>A That's right.</b></p> <p>7 Q Okay. So with respect to August 2017 --</p> <p>8 I'm sorry. With respect to July 2017, you don't</p> <p>9 know what diligence Sentinel performed on the</p> <p>10 potential insureds and the underlying litigation</p> <p>11 and risk?</p> <p>12 <b>A That's right.</b></p> <p>13 Q And you didn't ask Sentinel when you</p> <p>14 joined the board what diligence it had performed</p> <p>15 before issuing a \$100 million policy?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A I didn't. The policy was active and as I</b></p> <p>18 <b>understood it, already approved by CIMA.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q Do you know when CIMA approved the policy?</p> <p>21 <b>A I don't.</b></p> <p>22 Q Do you know how they approved the policy?</p> <p>23 <b>A I don't.</b></p> <p>24 Q Who told you that they had approved the</p> <p>25 policy?</p>	<p style="text-align: right;">315</p> <p>1 Q Okay. And then with respect to June,</p> <p>2 where the auditors and actuary recommend that the</p> <p>3 board authorize adjusting the ATE premium to</p> <p>4 68 million to account for the value of the</p> <p>5 underlying securities, that is the issue that we</p> <p>6 discussed earlier today in connection with</p> <p>7 Endorsement No. 1?</p> <p>8 <b>A I believe so.</b></p> <p>9 Q Does this help refresh your recollection</p> <p>10 as to when Endorsement No. 1 was executed?</p> <p>11 <b>A It doesn't.</b></p> <p>12 Q You don't know if Endorsement No. 1 would</p> <p>13 have been executed around the time that the</p> <p>14 auditors and the actuary made the recommendation</p> <p>15 to make the adjustment?</p> <p>16 <b>A Possibly. I just don't recall when it was</b></p> <p>17 <b>actually completed.</b></p> <p>18 Q Okay. Same thing for the next bullet, you</p> <p>19 don't -- I realize they're not bullets, but same</p> <p>20 thing for the next entry, you don't -- says here:</p> <p>21 Premium readjusted to 59 million. That is</p> <p>22 consistent with Endorsement No. 2 that we looked</p> <p>23 at, right?</p> <p>24 <b>A That's right.</b></p> <p>25 Q Okay. But that -- you still don't know if</p>
<p style="text-align: right;">314</p> <p>1 <b>A I'm not entirely sure.</b></p> <p>2 Q You just at some point came to know it?</p> <p>3 <b>A Right. At least after Sentinel was</b></p> <p>4 <b>audited for the year of 2017, had there been an</b></p> <p>5 <b>issue with CIMA with the policy, we would have --</b></p> <p>6 <b>Sentinel would have heard about that.</b></p> <p>7 Q Okay. So then with respect to</p> <p>8 August 2017, who would have provided you with that</p> <p>9 information?</p> <p>10 <b>A I'm not sure.</b></p> <p>11 Q Would that be Mr. Sevilla?</p> <p>12 <b>A I'm not sure.</b></p> <p>13 Q Did anybody besides Mr. Sevilla or</p> <p>14 Ms. Irving help you put together this deck?</p> <p>15 <b>A I don't believe so.</b></p> <p>16 Q Okay. So it was either Ms. Irving or</p> <p>17 Mr. Sevilla?</p> <p>18 <b>A Oh, I'm sorry, I thought you were asking a</b></p> <p>19 <b>different question. I thought you were -- yes.</b></p> <p>20 <b>Mr. Sevilla would have provided this August '17</b></p> <p>21 <b>bullet.</b></p> <p>22 Q And then for the January bullet, that's</p> <p>23 the VRC valuations that we discussed earlier</p> <p>24 today?</p> <p>25 <b>A That's right.</b></p>	<p style="text-align: right;">316</p> <p>1 Endorsement No. 2 was executed around this time?</p> <p>2 <b>A I don't.</b></p> <p>3 Q Okay. Is that something that you would</p> <p>4 have sat on?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 <b>A Sat on, what do you mean?</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q Well, if the -- if a recommendation was</p> <p>9 made to the board to authorize doing something,</p> <p>10 would they have waited a long time to actually do</p> <p>11 it?</p> <p>12 <b>A Oh. Generally, no.</b></p> <p>13 Q And then here it says: Sentinel audit</p> <p>14 issued with third-party valuations and actuary</p> <p>15 approved premium.</p> <p>16 Is that an audit by Crowe?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Okay. Was that a special audit outside of</p> <p>19 an annual audit?</p> <p>20 <b>A No, it was late that year. It was a</b></p> <p>21 <b>June 30th deadline and if it was filed in July,</b></p> <p>22 <b>Sentinel would have had to request an extension</b></p> <p>23 <b>from CIMA.</b></p> <p>24 Q Do you know why CIMA was -- well, did CIMA</p> <p>25 ask you to provide a timeline of the policy?</p>

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<p style="text-align: right;">317</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 <b>A I don't recall.</b></p> <p>3 <b>BY MS. TOMKOWIAK:</b></p> <p>4 Q Do you know why this information was</p> <p>5 important to convey to CIMA?</p> <p>6 <b>A Possibly they may have asked for it. I'm</b></p> <p>7 <b>not sure. We could have been proactive in</b></p> <p>8 <b>preparing this deck, thinking it useful for them</b></p> <p>9 <b>to see it laid out like this.</b></p> <p>10 Q So to the best of your recollection, CIMA</p> <p>11 hadn't asked any questions about the timeline for</p> <p>12 the policy?</p> <p>13 <b>A I don't recall.</b></p> <p>14 Q If you look at the next slide, this slide</p> <p>15 is entitled Business Rationale, The Insureds. Who</p> <p>16 would have provided the information for this</p> <p>17 slide?</p> <p>18 <b>A Probably Mr. Sevilla.</b></p> <p>19 Q Okay. So is it your understanding that</p> <p>20 Mr. Sevilla negotiated the policy on behalf of the</p> <p>21 insureds?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A No.</b></p> <p>24 <b>BY MS. TOMKOWIAK:</b></p> <p>25 Q Okay. And you don't know who did?</p>	<p style="text-align: right;">319</p> <p>1 <b>insureds?</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Yes.</p> <p>4 <b>A Sorry, the insureds' ability to satisfy a</b></p> <p>5 <b>judgment? I only considered this in the lens</b></p> <p>6 <b>of -- through the lens of the policy, so the</b></p> <p>7 <b>insureds could satisfy up to the limits of the</b></p> <p>8 <b>policy.</b></p> <p>9 Q Were you told -- was there any reason that</p> <p>10 Sentinel was better at liquidating the assets than</p> <p>11 the funds?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 <b>A I don't think that's what this is saying.</b></p> <p>14 <b>BY MS. TOMKOWIAK:</b></p> <p>15 Q I'm just asking.</p> <p>16 <b>A I don't know that.</b></p> <p>17 Q Okay. If you look at the next slide, do</p> <p>18 you know who would have provided this information</p> <p>19 regarding the business rationale from Sentinel's</p> <p>20 point of view?</p> <p>21 <b>A This probably would have been myself and</b></p> <p>22 <b>Mr. Sevilla together.</b></p> <p>23 Q Okay. And so Mr. Sevilla provided both</p> <p>24 sides' rationale, for the insureds and Sentinel?</p> <p>25 <b>A In part.</b></p>
<p style="text-align: right;">318</p> <p>1 <b>A I don't.</b></p> <p>2 Q So how would Mr. Sevilla had known what</p> <p>3 the insureds' business rationale was?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 <b>A I don't know.</b></p> <p>6 <b>BY MS. TOMKOWIAK:</b></p> <p>7 Q Did you ask him?</p> <p>8 <b>A I don't remember asking him.</b></p> <p>9 Q Did he prepare this slide or did you?</p> <p>10 <b>A He probably sent me the language and I had</b></p> <p>11 <b>the pen on the deck, I guess.</b></p> <p>12 Q In the third bullet point here it says:</p> <p>13 Essentially turned an illiquid portfolio into a</p> <p>14 liquid one. Future cash generation to pay counsel</p> <p>15 and potentially satisfy a judgment was, prior to</p> <p>16 the ATE policy, questionable at best. Avoided a</p> <p>17 fire sale of assets.</p> <p>18 Do you see that?</p> <p>19 <b>A I do.</b></p> <p>20 Q And after the portfolio was transferred to</p> <p>21 Sentinel, did you believe that the potential to</p> <p>22 satisfy a judgment was no longer questionable?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 <b>A Did I believe the potential to satisfy a</b></p> <p>25 <b>judgment in court, like in -- on behalf of the</b></p>	<p style="text-align: right;">320</p> <p>1 Q And how did you get the information</p> <p>2 regarding the business rationale?</p> <p>3 <b>A How did I receive the information?</b></p> <p>4 Q How did you get it? You weren't there</p> <p>5 when the policy was entered into, you didn't</p> <p>6 negotiate it. You told me earlier today that you</p> <p>7 didn't know who did. So who would you have</p> <p>8 reached out to to understand Sentinel's business</p> <p>9 rationale for entering into the policy?</p> <p>10 <b>A Well, I would have discussed that most</b></p> <p>11 <b>likely with Mr. Sevilla.</b></p> <p>12 Q What about the independent directors?</p> <p>13 Would you have discussed that with them?</p> <p>14 <b>A The business rationale?</b></p> <p>15 Q Yes.</p> <p>16 <b>A With the current directors?</b></p> <p>17 Q Yeah.</p> <p>18 <b>A No, probably not.</b></p> <p>19 Q In that last bullet it says that the board</p> <p>20 and advisory committee were satisfied that this</p> <p>21 was an economically feasible transaction even if</p> <p>22 the policy limits were ultimately reached.</p> <p>23 Did you understand that even if Sentinel</p> <p>24 had to pay out the full policy limit, it would</p> <p>25 still be solvent? Is that what that means?</p>



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<p style="text-align: right;">321</p> <p><b>1 A That's what that's saying, that Sentinel</b></p> <p><b>2 could pay the policy and survive.</b></p> <p>3 Q Okay. And then if you look at the last</p> <p>4 slide; do you know who prepared this slide?</p> <p><b>5 A This probably -- again, I prepared all the</b></p> <p><b>6 slides, but this information probably would have</b></p> <p><b>7 come from Katie.</b></p> <p>8 Q And when it says, CIMA approved Sentinel</p> <p>9 structure, we looked at an e-mail earlier today</p> <p>10 from April 2019 where you were discussing the fact</p> <p>11 that CIMA had asked for the structure to be</p> <p>12 simplified?</p> <p><b>13 A That's right.</b></p> <p>14 Q By this point in time, had the structure</p> <p>15 actually been simplified or was this aspirational</p> <p>16 this is what it was going to look like?</p> <p><b>17 A I don't know. This is -- I know this is</b></p> <p><b>18 what it was -- what CIMA asked for. I don't know</b></p> <p><b>19 if the work had been done yet.</b></p> <p>20 Q How long did this presentation last?</p> <p><b>21 A Probably an hour or so.</b></p> <p>22 Q And what actions, if any, did CIMA take</p> <p>23 after this presentation?</p> <p><b>24 A Actions, I'm not entirely sure.</b></p> <p>25 Q Well, why were you making this</p>	<p style="text-align: right;">323</p> <p>1 We are back on the record.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Okay. Mr. DiOrio, while you were employed</p> <p>4 at Highland, did you ever come to know that</p> <p>5 Mr. Dondero had an ownership interest in Sentinel?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Yes or no?</p> <p><b>9 A Did I ever come to know that he had an</b></p> <p><b>10 ownership interest? Yes.</b></p> <p>11 Q While you were employed at Highland, did</p> <p>12 you ever come to know that Mr. Ellington had an</p> <p>13 ownership interest in Sentinel?</p> <p>14 MS. SMITH: Objection to form.</p> <p><b>15 A Yes.</b></p> <p><b>16 BY MS. TOMKOWIAK:</b></p> <p>17 Q Okay. I am handing the court reporter an</p> <p>18 exhibit to mark as -- document to mark as</p> <p>19 Exhibit 85.</p> <p>20 (Deposition Exhibit 85 marked for</p> <p>21 identification.)</p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q Take a look at that and let me know when</p> <p>24 you're ready.</p> <p>25 (Witness reviews document.)</p>
<p style="text-align: right;">322</p> <p>1 presentation to them?</p> <p><b>2 A To -- again, as part of the inspection</b></p> <p><b>3 process.</b></p> <p>4 Q So did they complete their inspection</p> <p>5 after this?</p> <p><b>6 A At some point in 2019 they did. I believe</b></p> <p><b>7 it was after this.</b></p> <p>8 Q Would you have received a copy of that</p> <p>9 inspection?</p> <p><b>10 A Probably.</b></p> <p>11 Q Do you recall CIMA asking any questions</p> <p>12 during either of those presentations? Well, let's</p> <p>13 stick with this one. Do you recall CIMA asking</p> <p>14 you any questions during that presentation?</p> <p><b>15 A Not specific questions, but I know they</b></p> <p><b>16 did. There was a conversation.</b></p> <p>17 Q And who responded to those questions?</p> <p><b>18 A Myself or Mr. Sevilla.</b></p> <p>19 MS. TOMKOWIAK: Let's go off the record</p> <p>20 very shortly.</p> <p>21 THE VIDEOGRAPHER: We are off the record</p> <p>22 at 6:29 p.m.</p> <p>23 (Recess taken from 6:29 p.m. CDT to</p> <p>24 6:48 p.m. CDT)</p> <p>25 THE VIDEOGRAPHER: The time is 6:48 p.m.</p>	<p style="text-align: right;">324</p> <p><b>1 A Okay.</b></p> <p><b>2 BY MS. TOMKOWIAK:</b></p> <p>3 Q Okay. Do you recall working with --</p> <p>4 working with folks at Highland and attorneys at</p> <p>5 the Pachulski firm in January 2021 to track down</p> <p>6 the physical certificates of the Greenbriar shares</p> <p>7 that we were talking about earlier today?</p> <p><b>8 A Yes.</b></p> <p>9 Q Okay. And at the time that -- at the time</p> <p>10 of this e-mail, were you aware that the original</p> <p>11 certificates had been lost?</p> <p>12 MS. SMITH: Objection to form.</p> <p><b>13 A Which e-mail? There seems to be a lot on</b></p> <p><b>14 here.</b></p> <p><b>15 BY MS. TOMKOWIAK:</b></p> <p>16 Q On January 21st, were you aware that the</p> <p>17 original certificates had been lost and were never</p> <p>18 transferred to Sentinel?</p> <p><b>19 A Is that back --</b></p> <p>20 Q I'm just asking whether on -- I believe</p> <p>21 earlier today that we talked about this issue</p> <p>22 where the physical certificates got lost somehow,</p> <p>23 right?</p> <p><b>24 A Yeah.</b></p> <p>25 Q Okay. And did you know that prior to</p>

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<p style="text-align: right;">325</p> <p>1 January 21st, 2021?</p> <p>2 <b>A Yes. Probably -- yes.</b></p> <p>3 Q Okay. And if you look at the Bates number</p> <p>4 ending 4482, at the very bottom of the page,</p> <p>5 Mr. Demo writes to you: The time sensitivity is</p> <p>6 more on figuring out what happened to the original</p> <p>7 certificate.</p> <p>8 Do you see that?</p> <p>9 <b>A I do.</b></p> <p>10 Q Okay. And so do you understand that</p> <p>11 Mr. Demo was trying to understand what happened to</p> <p>12 the original Greenbriar certificates?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 <b>A That's what he's saying.</b></p> <p>15 <b>BY MS. TOMKOWIAK:</b></p> <p>16 Q Okay. Do you understand that to be his</p> <p>17 ask at the time?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A I believe his original -- are you</b></p> <p>20 <b>referring to the e-mail about I must have</b></p> <p>21 <b>understood the original ask or --</b></p> <p>22 <b>BY MS. TOMKOWIAK:</b></p> <p>23 Q Well, what did you think Mr. Demo was</p> <p>24 asking you to do in the first place?</p> <p>25 <b>A Initially, I don't see it on here, but I</b></p>	<p style="text-align: right;">327</p> <p>1 <b>since obviously the shares never made it to</b></p> <p>2 <b>Sentinel, that they were still actually in CDO</b></p> <p>3 <b>Fund's name.</b></p> <p>4 Q Okay. And in your capacity as a director</p> <p>5 of Sentinel, did you think that that was okay to</p> <p>6 try to get physical certificates reissued in the</p> <p>7 name of CDO Fund even though Sentinel was supposed</p> <p>8 to be the owner of that asset?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A Not something I really considered.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q Were you planning to tell Sentinel that</p> <p>13 you were planning to get these certificates</p> <p>14 reissued in CDO Fund's instead of Sentinel's name?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 <b>A I didn't have a plan for informing</b></p> <p>17 <b>Sentinel.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Meaning you didn't plan to inform Sentinel</p> <p>20 or you don't know if you were going to inform</p> <p>21 Sentinel or not?</p> <p>22 <b>A I don't remember considering what to do</b></p> <p>23 <b>with respect to Sentinel.</b></p> <p>24 Q Did you think that this is kind of a</p> <p>25 conflict here because you're being asked to</p>
<p style="text-align: right;">326</p> <p>1 <b>believe he reached out to ask something about a</b></p> <p>2 <b>custody account with regards to Greenbriar.</b></p> <p>3 Q Okay. Well, you write here, as you point</p> <p>4 out: I must have misunderstood the original ask.</p> <p>5 I thought we were just trying to determine whether</p> <p>6 or not green -- I'm sorry -- whether or not CDO</p> <p>7 Fund was still the owner of these shares and then</p> <p>8 to have new certs issued once we determined they</p> <p>9 weren't held at BONY but that they were still</p> <p>10 receiving cash on behalf of CDO Fund.</p> <p>11 Is that what you thought Demo was asking</p> <p>12 you?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 <b>A Yes. I think if that's what I wrote,</b></p> <p>15 <b>that's probably what I meant.</b></p> <p>16 <b>BY MS. TOMKOWIAK:</b></p> <p>17 Q Okay. And did you tell Mr. Demo at the</p> <p>18 time, that CDO Fund had tried to transfer those</p> <p>19 certificates to Sentinel but that they had gotten</p> <p>20 lost?</p> <p>21 <b>A I don't believe I did.</b></p> <p>22 Q Okay. Why not?</p> <p>23 <b>A Because my task, as I understood it, was</b></p> <p>24 <b>to assist in issue -- helping issue, getting new</b></p> <p>25 <b>paper certificate shares issued and I believe</b></p>	<p style="text-align: right;">328</p> <p>1 reissue these certificates in the name of CDO Fund</p> <p>2 but Sentinel is supposed to be the owner of them?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 <b>A A conflict between who?</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q An inner conflict, a conflict between the</p> <p>7 two hats that you wear.</p> <p>8 <b>A Again, I didn't --</b></p> <p>9 MS. SMITH: Objection, form.</p> <p>10 <b>A I was trying to do this job and did not</b></p> <p>11 <b>consider other things that might impact it at the</b></p> <p>12 <b>time.</b></p> <p>13 <b>BY MS. TOMKOWIAK:</b></p> <p>14 Q Okay. And with respect to this job,</p> <p>15 again, you didn't think it was relevant to say CDO</p> <p>16 Fund actually tried to transfer those shares to</p> <p>17 Sentinel in August 2017 so CDO Fund is not --</p> <p>18 should not be the owner of those shares?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 <b>A No.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q Why not?</p> <p>23 <b>A It's, again, not what I was asked to do.</b></p> <p>24 Q So did you tell Mr. Demo that CDO Fund was</p> <p>25 still the owner of these shares?</p>

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<p style="text-align: right;">329</p> <p>1 MS. SMITH: Objection to form.                  2 <b>A I don't know.</b>                  3 <b>BY MS. TOMKOWIAK:</b>                  4 Q Did you think that reissuing these shares                  5 in the name of CDO Fund would be acting in the                  6 best interest of Sentinel?                  7 MS. SMITH: Objection to form.                  8 <b>A Again, I did not consider it.</b>                  9 <b>BY MS. TOMKOWIAK:</b>                  10 Q Okay. So when you were responding to                  11 Mr. Demo's e-mails, you just weren't acting at all                  12 in your capacity as Sentinel's director?                  13 MS. SMITH: Objection to form.                  14 <b>A I was trying to answer the questions</b>                  15 <b>Mr. Demo was asking.</b>                  16 <b>BY MS. TOMKOWIAK:</b>                  17 Q And he didn't ask you if CDO Fund had                  18 tried to transfer the Greenbriar shares to                  19 Sentinel, so you didn't feel like you had to                  20 answer that question?                  21 MS. SMITH: Objection to form. Ms. --                  22 MS. TOMKOWIAK: Tomkowiak.                  23 MS. SMITH: -- Tomkowiak, there's                  24 extensive e-mails on this exhibit, and if you --                  25 if he looks at the whole thing, he can answer your</p>	<p style="text-align: right;">331</p> <p>1 Q Okay. And you write: Hi Guys. I am                  2 working with State Street to reissue physical                  3 certificates and will keep everyone in the loop on                  4 timing.                  5 How did -- prior to this, had you already                  6 tried working with State Street to reissue                  7 physical certificates?                  8 <b>A I don't remember the exact timing, but at</b>                  9 <b>some point I would have reached out to State</b>                  10 <b>Street.</b>                  11 Q Okay. But was that in connection with                  12 trying to reissue the physical certificates to                  13 Sentinel?                  14 <b>A No.</b>                  15 Q No. Okay. So prior to this e-mail, you                  16 had not reached out to State Street to try to                  17 reissue the physical certificates to Sentinel                  18 because they had been lost?                  19 <b>A I may had years -- several years prior,</b>                  20 <b>but I don't have a specific recollection of that.</b>                  21 Q Then later in your e-mail you say: The                  22 certificates were transferred in error in 2017 by                  23 Carter Chism, who no longer works at HCM, and the                  24 recipients never took delivery.                  25 Do you see that?</p>
<p style="text-align: right;">330</p> <p>1 question without focusing on the one paragraph on                  2 the page that you are talking about.                  3 MS. TOMKOWIAK: Okay. I noted your                  4 objection. I have limited time left on the                  5 record, so if we could limit the speaking                  6 objections so we can get through this and we can                  7 just get through the document.                  8 <b>BY MS. TOMKOWIAK:</b>                  9 Q You have the whole document in front of                  10 you. I have told you that you can always look at                  11 another part of the document if you need to to                  12 answer my question.                  13 <b>A Okay.</b>                  14 Q Okay. So my question is, and he didn't                  15 ask you if CDO Fund had tried to transfer the                  16 Greenbriar shares to Sentinel so you didn't feel                  17 like you had to answer that question, right?                  18 MS. SMITH: Objection to form.                  19 <b>A I think that's right.</b>                  20 <b>BY MS. TOMKOWIAK:</b>                  21 Q Okay. And if you look at your e-mail on                  22 Wednesday, January 27th, that's at the Bates                  23 number ended 4478. It's at 2:10 p.m. on                  24 Wednesday, January 27th.                  25 <b>A Okay.</b></p>	<p style="text-align: right;">332</p> <p>1 <b>A I do.</b>                  2 Q Okay. What did you mean by transferred in                  3 error?                  4 <b>A Well, if they never arrived where they</b>                  5 <b>were supposed to and were lost, I call that an</b>                  6 <b>error.</b>                  7 Q Okay. So you don't mean that Mr. Chism                  8 wasn't supposed to transfer them, you just mean he                  9 didn't do it right?                  10 MS. SMITH: Objection to form.                  11 <b>A I can't really speculate on what Carter</b>                  12 <b>Chism did or did not do. I just know that</b>                  13 <b>certificates ended up lost.</b>                  14 <b>BY MS. TOMKOWIAK:</b>                  15 Q Right. These are -- but these are your                  16 words and I just want to make sure I understand                  17 the error. The error was that he didn't execute                  18 the transfers properly?                  19 <b>A I believe so.</b>                  20 Q Not that he transferred them by mistake or                  21 tried to transfer them by mistake?                  22 <b>A I believe so.</b>                  23 Q And the recipient never took delivery. By                  24 recipient, you mean Sentinel, right?                  25 <b>A That's right.</b></p>

<p style="text-align: right;">333</p> <p>1 Q Is there a reason you didn't say Sentinel?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 <b>A I believe if you follow the e-mail chain</b></p> <p>4 <b>when I was asked, I offered that up.</b></p> <p>5 <b>BY MS. TOMKOWIAK:</b></p> <p>6 Q And you didn't think it was misleading not</p> <p>7 to just mention right here who the recipient was?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 <b>A No. My task was to find and help reissue</b></p> <p>10 <b>the certificates. If they were lost, they were</b></p> <p>11 <b>lost. And when I was directly asked, I answered.</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q And you don't think it -- so did you make</p> <p>14 a conscious decision here not to say Sentinel and</p> <p>15 instead say recipient?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A I don't recall.</b></p> <p>18 <b>BY MS. TOMKOWIAK:</b></p> <p>19 Q Did you think it was relevant who the</p> <p>20 recipient was?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 <b>A When asked, I answered.</b></p> <p>23 <b>BY MS. TOMKOWIAK:</b></p> <p>24 Q I understand, but is there a reason that</p> <p>25 you didn't just offer that information in the</p>	<p style="text-align: right;">335</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q But my question is you knew that they were</p> <p>3 transferred to Maples as custodian for Sentinel,</p> <p>4 right?</p> <p>5 <b>A Which is what I said.</b></p> <p>6 Q Okay. So you -- my understanding is</p> <p>7 synonymous with I know they were transferred to</p> <p>8 Maples?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A It's my understanding.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q And then Mr. Demo asked you: Do you -- do</p> <p>13 we have any visibility into who Sentinel</p> <p>14 Reinsurance is, who owns them, what do they do,</p> <p>15 et cetera.</p> <p>16 Do you see that on Bates ending 4476?</p> <p>17 <b>A I do.</b></p> <p>18 Q Okay. And then your response is: It is a</p> <p>19 nondebtor, nonaffiliate reinsurance company and I</p> <p>20 do not know who or how it's owned.</p> <p>21 Was that true, Mr. DiOrio?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A Yeah. I don't generally -- my</b></p> <p>24 <b>understanding of the high-level ownership does not</b></p> <p>25 <b>mean I know how it's owned, meaning what structure</b></p>
<p style="text-align: right;">334</p> <p>1 first place?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 <b>A Not that I recall.</b></p> <p>4 <b>BY MS. TOMKOWIAK:</b></p> <p>5 Q Okay. So then Mr. Romey -- is it Romey or</p> <p>6 Romey?</p> <p>7 <b>A I think it's Romey.</b></p> <p>8 Q Okay. So then Mr. Romey asked Matt: Who</p> <p>9 was the intended recipient of the transfer</p> <p>10 initiated by Carter?</p> <p>11 And you respond: My understanding is that</p> <p>12 they were transferred to Maples FS in Cayman as</p> <p>13 custodian for Sentinel Reinsurance.</p> <p>14 Do you see that?</p> <p>15 <b>A I do.</b></p> <p>16 Q Is there a reason that you qualified that</p> <p>17 with my understanding?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A Just like -- I think if you look back at</b></p> <p>20 <b>the power of attorney with CIBC with those other</b></p> <p>21 <b>shares, you don't transfer directly to the</b></p> <p>22 <b>company; you transfer the certificates to a</b></p> <p>23 <b>custodian. So that was a meaningful -- you should</b></p> <p>24 <b>call it a qualification, but that's a meaningful</b></p> <p>25 <b>fact.</b></p>	<p style="text-align: right;">336</p> <p>1 <b>it sits in and all that stuff.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Well, you knew that it was owned in part</p> <p>4 by Mr. Dondero?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 <b>A Yes.</b></p> <p>7 <b>BY MS. TOMKOWIAK:</b></p> <p>8 Q You knew that it was owned at least in</p> <p>9 part by Mr. Ellington?</p> <p>10 <b>A That's right.</b></p> <p>11 Q So did you expect Mr. Demo to ask you</p> <p>12 those specific questions before you offered that</p> <p>13 information?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 <b>A He did ask those -- I'm sorry, I'm not</b></p> <p>16 <b>following. He did ask those questions.</b></p> <p>17 <b>BY MS. TOMKOWIAK:</b></p> <p>18 Q Well, he asked who owns Sentinel</p> <p>19 Reinsurance, right?</p> <p>20 <b>A Yeah.</b></p> <p>21 Q Okay. And you didn't tell him Mr. Dondero</p> <p>22 and Mr. Ellington owned part of it, right?</p> <p>23 <b>A Right.</b></p> <p>24 Q Why not?</p> <p>25 <b>A They don't, as I understand it, personally</b></p>

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<p style="text-align: right;">337</p> <p>1 own it directly, you know, like one layer up, I                  2 guess. So I can't honestly -- I can't honestly                  3 tell him I know how or who it's ultimately owned                  4 through an entity through something else. I don't                  5 know.                  6 Q You have those structure charts, you have                  7 the whole structure of Sentinel's ownership.                  8 MS. SMITH: Objection to form.                  9 A I've seen the structure charts.                  10 BY MS. TOMKOWIAK:                  11 Q You presented the structure to CIMA in                  12 2019?                  13 A That's right. This is 2021.                  14 Q Right. So you -- in 2021, you didn't know                  15 if that was the structure of Sentinel?                  16 A I don't remember the structure. I                  17 couldn't draw it out for you, for example. So if                  18 I don't know anything 100 percent, that's why I                  19 didn't offer it.                  20 Q Why didn't you just explain that to                  21 Mr. Demo, hey, I -- why didn't you just explain                  22 that to Mr. Demo?                  23 MS. SMITH: Objection to form.                  24 A I wanted as little to do with Pachulski as                  25 possible, so I answered the questions and waited</p>	<p style="text-align: right;">339</p> <p>1 A I don't think that would have been                  2 helpful.                  3 BY MS. TOMKOWIAK:                  4 Q Why not?                  5 A He didn't ask.                  6 Q Well, he asked what do they do and did you                  7 respond to that?                  8 A I think by saying it is a nondebtor                  9 nonaffiliate reinsurance company. It's a                  10 reinsurance company, so that's what they do. I                  11 think that's an answer.                  12 Q And you don't think there's any other                  13 details that you could have provided that would                  14 have been helpful to Mr. Demo?                  15 MS. SMITH: Objection to form.                  16 A Again, I was answering the questions I was                  17 asked.                  18 BY MS. TOMKOWIAK:                  19 Q You agree that you had more information                  20 about Sentinel and you just chose not to disclose                  21 it to Mr. Demo at this time?                  22 A I wasn't asked.                  23 Q So if Mr. Demo had asked you are you a                  24 director of Sentinel, you would have said what?                  25 A I would have said yes.</p>
<p style="text-align: right;">338</p> <p>1 for the next one.                  2 BY MS. TOMKOWIAK:                  3 Q So you wanted as little to do as possible                  4 with counsel for the independent board of the                  5 entity that you were still employed with?                  6 MS. SMITH: Objection to form.                  7 A Are they counsel to the debtor or the                  8 board?                  9 BY MS. TOMKOWIAK:                  10 Q At some point in time, the independent                  11 board had control of the debtor and Mr. Seery                  12 became the CEO.                  13 A Okay.                  14 MS. SMITH: Objection to form.                  15 A Again, I was trying to be helpful doing                  16 what I was asked. I don't report to Mr. Demo, I                  17 never did. I think here I'm being as helpful as I                  18 can be.                  19 BY MS. TOMKOWIAK:                  20 Q Did you tell Mr. Demo that you were a                  21 director of Sentinel?                  22 A No. I don't think so.                  23 Q Don't you think that would have been more                  24 helpful than your response?                  25 MS. SMITH: Objection to form.</p>	<p style="text-align: right;">340</p> <p>1 Q And by providing this answer, you don't                  2 think you were conveying, this is all I know about                  3 Sentinel Reinsurance?                  4 MS. SMITH: Objection to form.                  5 A No, because I was asked follow-up                  6 questions that I answered.                  7 BY MS. TOMKOWIAK:                  8 Q Mr. Romey then responds to you: They are                  9 part of the MSCF redemption group, correct?                  10 A Yes, he asked that.                  11 Q You see that? And you respond: Yes, I                  12 believe that's correct.                  13 Do you see that?                  14 A I do.                  15 Q And then Mr. Demo writes: Matt, Two                  16 follow ups.                  17 And then the second follow-up is: Can you                  18 please send us Sentinel's subscription documents                  19 in MSCF and their redemption request?                  20 Do you see that?                  21 A I do.                  22 Q And you respond: 2, I do not have any of                  23 those documents.                  24 Do you see that?                  25 MS. SMITH: Objection to form.</p>

<p style="text-align: right;">341</p> <p>1 <b>A I see that.</b></p> <p>2 <b>BY MS. TOMKOWIAK:</b></p> <p>3 Q Was that true?</p> <p>4 <b>A I believe so.</b></p> <p>5 Q Why?</p> <p>6 <b>A Any record I would have had of</b></p> <p>7 <b>subscription or redemption most likely would have</b></p> <p>8 <b>been in my SAS e-mail or on my old tablet that was</b></p> <p>9 <b>stolen out of my car.</b></p> <p>10 Q Did you not have access to your SAS e-mail</p> <p>11 at this time?</p> <p>12 <b>A I don't believe I did.</b></p> <p>13 Q And you don't think that your answer</p> <p>14 suggested that you never had any of those</p> <p>15 documents?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 <b>A He said can you please send us the</b></p> <p>18 <b>documents, and I said I don't have them.</b></p> <p>19 <b>BY MS. TOMKOWIAK:</b></p> <p>20 Q And you didn't think it was relevant to</p> <p>21 say I can get them for you?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 <b>A No. I assumed they were on -- whoever</b></p> <p>24 <b>does the shareholder registration would have had</b></p> <p>25 <b>them, whoever at Highland does that.</b></p>	<p style="text-align: right;">343</p> <p>1 Highland funds liability to UBS?</p> <p>2 <b>A I did not.</b></p> <p>3 Q You signed a confidentiality -- I'm sorry.</p> <p>4 Have you seen the confidentiality agreement in</p> <p>5 connection with this matter?</p> <p>6 <b>A I believe so.</b></p> <p>7 Q I am handing you what's been previously</p> <p>8 marked as Exhibit 65. This is a Confidentiality</p> <p>9 Agreement. Have you seen this document before?</p> <p>10 (Witness reviews document.)</p> <p>11 <b>A I believe so.</b></p> <p>12 <b>BY MS. TOMKOWIAK:</b></p> <p>13 Q Did you authorize your counsel to enter</p> <p>14 into this agreement on your behalf?</p> <p>15 <b>A I believe so, yes.</b></p> <p>16 Q And have you -- do you understand what</p> <p>17 your obligations are under this confidentiality</p> <p>18 agreement?</p> <p>19 <b>A I think so.</b></p> <p>20 Q Have you abided by them?</p> <p>21 <b>A I believe I have.</b></p> <p>22 Q Have you discussed the materials that were</p> <p>23 provided to you with anybody other than your</p> <p>24 counsel?</p> <p>25 <b>A No.</b></p>
<p style="text-align: right;">342</p> <p>1 <b>BY MS. TOMKOWIAK:</b></p> <p>2 Q Whoever at Highland does the shareholder</p> <p>3 registration for who?</p> <p>4 <b>A Or the subscriptions and redemptions,</b></p> <p>5 <b>excuse me, for Multi Strat.</b></p> <p>6 Q And you didn't think it was relevant to</p> <p>7 tell Mr. Demo that you had filled out a redemption</p> <p>8 request on Sentinel's behalf?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 <b>A I didn't.</b></p> <p>11 <b>BY MS. TOMKOWIAK:</b></p> <p>12 Q Is that because he didn't ask you?</p> <p>13 <b>A Yes.</b></p> <p>14 Q At any point in time prior to your</p> <p>15 termination from Highland, did you tell anybody on</p> <p>16 the independent board that you were a director of</p> <p>17 Sentinel?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 <b>A No. I had very little interaction with</b></p> <p>20 <b>the independent board.</b></p> <p>21 <b>BY MS. TOMKOWIAK:</b></p> <p>22 Q At any point in time prior to your</p> <p>23 termination from Highland, did you tell anybody on</p> <p>24 the independent board that Sentinel Reinsurance</p> <p>25 had issued a \$100 million ATE policy to cover the</p>	<p style="text-align: right;">344</p> <p>1 MS. TOMKOWIAK: I have no further</p> <p>2 questions. I would like to just make sure that</p> <p>3 this transcript is marked and the materials are</p> <p>4 marked highly confidentiality pursuant to the</p> <p>5 confidentiality agreement.</p> <p>6 MS. DANDENEAU: I don't know how much time</p> <p>7 you have left. Does Mr. Feinstein want to ask any</p> <p>8 questions?</p> <p>9 MS. TOMKOWIAK: Mr. Feinstein, do you want</p> <p>10 to ask any questions?</p> <p>11 MR. FEINSTEIN: No. As indicated</p> <p>12 yesterday, we have plenty of questions, but we're</p> <p>13 not going to address them today. We'll address</p> <p>14 them in some other proceeding or forum, so we do</p> <p>15 not have any questions for the witness today.</p> <p>16 MS. TOMKOWIAK: Okay.</p> <p>17 THE VIDEOGRAPHER: Is that it?</p> <p>18 MS. TOMKOWIAK: That's it.</p> <p>19 THE VIDEOGRAPHER: This ends the</p> <p>20 videotaped deposition of Matthew DiOrio. The time</p> <p>21 is 7:15 p.m. We are off the record.</p> <p>22 (Deposition concluded at 7:15 p.m. CDT)</p> <p>23</p> <p>24</p> <p>25</p>

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ACKNOWLEDGMENT OF DEPONENT

I, MATTHEW T. DiORIO, do hereby acknowledge that I have read and examined the foregoing testimony, and the same is a true, correct and complete transcription of the testimony given by me and any corrections appear on the attached Errata sheet signed by me.

(DATE) (SIGNATURE)

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REPORTER'S CERTIFICATION

I, Micheal A. Johnson, the officer before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that reading and signing was requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of July, 2021.

*Micheal A. Johnson*  
MICHEAL A. JOHNSON, RDR, CRR  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS



**Planet Depos**<sup>®</sup>  
We Make It *Happen*<sup>™</sup>

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**HIGHLY CONFIDENTIAL  
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INFORMATION REDACTED**

# Transcript of Scott Ellington

**Date:** July 29, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Scott Ellington  
Conducted on July 29, 2021

<p style="text-align: center;">1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE NORTHERN DISTRICT OF TEXAS 3 DALLAS DIVISION 4 In re § 5 HIGHLAND CAPITAL § 6 MANAGEMENT, L.P., § Chapter 11 7 § Case No. 19-34054-SGJ11 8 Debtor. § 9 UBS SECURITIES LLC AND § 10 UBS AG LONDON BRANCH, § 11 Plaintiffs, § 12 vs. Adversary Proceeding § 13 HIGHLAND CAPITAL § 14 MANAGEMENT, L.P., § No. 21-03020-sgj 15 Defendant. § 16 17 HIGHLY CONFIDENTIAL 18 SUBJECT TO PROTECTIVE ORDER 19 INFORMATION REDACTED 20 Videotaped Deposition of 21 SCOTT BYRON ELLINGTON 22 Conducted Virtually 23 Thursday, July 29, 2021 24 10:39 a.m. EST 25 26 Job No.: 386794 27 Pages: 1 - 407 28 Reported by: Lisa M. Barrett, RPR, CRR, CRC, CSR 29 30</p>	<p style="text-align: center;">3</p> <p>1 APPEARANCES 2 ON BEHALF OF PLAINTIFFS UBS SECURITIES LLC 3 AND UBS AG LONDON BRANCH: 4 Andrew B. Clubok (Via Zoom) 5 LATHAM &amp; WATKINS LLP 6 555 Eleventh Street, N.W., Suite 1000 7 Washington, D.C. 20004 8 (202) 637-2200 9 Andrew.clubok@lw.com 10 11 Shannon E. McLaughlin 12 Robert Allen 13 LATHAM &amp; WATKINS LLP 14 1271 Avenue of the Americas 15 New York, NY 10020 16 (212) 906-4612 17 Shannon.mclaughlin@lw.com 18 19 20 21 22 23 24 25</p>
<p style="text-align: center;">2</p> <p>1 Videotaped virtual deposition of SCOTT BYRON 2 ELLINGTON, pursuant to notice, before Lisa M. 3 Barrett, a Certified Shorthand Reporter, 4 Registered Professional Reporter, Certified 5 Realtime Reporter, and a Notary Public in and for 6 the State of Maryland. 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: center;">4</p> <p>1 APPEARANCES CONTINUED 2 ON BEHALF OF DEFENDANT HIGHLAND CAPITAL 3 MANAGEMENT, L.P.: 4 Robert J. Feinstein (Via Zoom) 5 Greg Demo 6 PACHULSKI STANG ZIEHL &amp; JONES LLP 7 780 Third Avenue, 34th Floor 8 New York, New York 10017-2024 9 (212) 561-7700 10 Rfeinstein@pszjlaw.com 11 12 13 ON BEHALF OF THE WITNESS: 14 Frances A. Smith 15 Eric Soderlund 16 ROSS &amp; SMITH, PC 17 700 N. Pearl Street, Suite 1610 18 Dallas, Texas 75201 19 (214) 377-7879 20 Frances.smith@judithwross.com 21 22 23 24 25</p>

Transcript of Scott Ellington  
Conducted on July 29, 2021

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<p>1 APPEARANCES CONTINUED</p> <p>2</p> <p>3 ON BEHALF OF THE WITNESS:</p> <p>4 Debra A. Dandeneau</p> <p>5 Michelle Hartmann</p> <p>6 BAKER &amp; MCKENZIE, LLP</p> <p>7 452 Fifth Avenue</p> <p>8 New York, New York 10018</p> <p>9 (212) 626-4875</p> <p>10 Debra.dandeneau@bakermckenzie.com</p> <p>11 Michelle.hartmann@bakermckenzie.com</p> <p>12</p> <p>13 Videographer: Robert Leonard</p> <p>14 Remote Technician: Nate Riveness</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION EXHIBITS</p> <p>2 SCOTT B. ELLINGTON</p> <p>3 July 29, 2021</p> <p>4 (Retained by counsel)</p> <p>5 NUMBER DESCRIPTION MARKED</p> <p>6 Exhibit 86 Notice of Transfer of Claim 41</p> <p>7 Other Than for Security</p> <p>8 Case. No. 19-34054-sgj11</p> <p>9 Two pages</p> <p>10 Exhibit 87 Email from Isaac Leventon to 265</p> <p>11 Scott Ellington, September</p> <p>12 9, 2019, Bates Nos.</p> <p>13 UBSPROD2502008 to -2009</p> <p>14 with attachment, NREF Timeline</p> <p>15 Exhibit 88 Email from Stephanie Vitiello 313</p> <p>16 to Isaac Leventon, dated April</p> <p>17 11, 2017 showing attachment</p> <p>18 UBS_Settlement Structure (SV)</p> <p>19 UBSPROD4837429</p> <p>20 Exhibit 89 Email from JP Sevilla to Scott 315</p> <p>21 Ellington dated 11 August 2017</p> <p>22 with forwarded email</p> <p>23 Bates Nos. USBPROD2632632-33</p> <p>24</p> <p>25</p>
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<p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2</p> <p>3 NUMBER DESCRIPTION PAGE</p> <p>4</p> <p>5 Exhibit 50 ..... 140</p> <p>6 Exhibit 26 ..... 152</p> <p>7 Exhibit 77 ..... 156</p> <p>8 Exhibit 39 ..... 190</p> <p>9 Exhibit 26 ..... 197</p> <p>10 Exhibit 28 ..... 199</p> <p>11 Exhibit 61 ..... 255</p> <p>12 Exhibit 47 ..... 284</p> <p>13 Exhibit 2 ..... 310</p> <p>14 Exhibit 82 ..... 329</p> <p>15 Exhibit 38 ..... 333</p> <p>16 Exhibit 55 ..... 339</p> <p>17 Exhibit 69 ..... 354</p> <p>18 Exhibit 70 ..... 365</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 states Bankruptcy Court for the Northern District</p> <p>2 of Texas, Dallas Division. Case number</p> <p>3 1934054FGJ11.</p> <p>4 Today's date is July 29th, 2021.</p> <p>5 The time on my video monitor is</p> <p>6 10:40 a.m., eastern time.</p> <p>7 My name is Robert Leonard. I'm the</p> <p>8 Video Specialist. I represent Planet Depos.</p> <p>9 This deposition is being taken via Zoom</p> <p>10 online.</p> <p>11 Will counsel please identify themselves</p> <p>12 verbally and state who they represent.</p> <p>13 MR. CLUBOK: Good morning. This is</p> <p>14 Andrew Clubok and Shannon McLaughlin from Latham &amp;</p> <p>15 Watkins LLP on behalf of UBS.</p> <p>16 MR. FEINSTEIN: Good morning. This is</p> <p>17 Robert Feinstein, Pachulski Stang Ziehl &amp; Jones.</p> <p>18 We are counsel for the defendant in the adversary</p> <p>19 proceeding, Highland Capital Management LP.</p> <p>20 My colleague Greg Demo is also on the</p> <p>21 Zoom.</p> <p>22 MS. SMITH: Good morning. Frances</p> <p>23 Smith with Ross and Smith on behalf of the</p> <p>24 non-party witness, Scott Ellington.</p> <p>25 MR. CLUBOK: Okay. Can you swear the</p>
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<p>1 HIGHLY CONFIDENTIAL</p> <p>2 Videotaped Deposition of Scott Ellington</p> <p>3 Conducted Virtually</p> <p>4 Thursday, July 29, 2021</p> <p>5 --- Commencing at 10:30 a.m. (EST)</p> <p>6 REMOTE TECHNICIAN: Thank you to</p> <p>7 everyone for attending this proceeding remotely,</p> <p>8 which we anticipate will run smoothly.</p> <p>9 Please remember to speak slowly and do</p> <p>10 your best not to talk over one another. Please be</p> <p>11 aware that we are recording the proceeding for</p> <p>12 backup purposes. Any off-the-record discussion</p> <p>13 should be had away from the computer. Please</p> <p>14 remember to mute your mic for those conversations.</p> <p>15 Have your video enabled to help the</p> <p>16 reporter identify who is speaking. If you are</p> <p>17 unable to connect with the video and are</p> <p>18 connecting via phone, please identify yourself</p> <p>19 each time.</p> <p>20 And apologies in advance for any</p> <p>21 technical-related interruptions. Thank you.</p> <p>22 THE VIDEOGRAPHER: Here begins video</p> <p>23 file number 1 in the video deposition of Scott</p> <p>24 Ellington in the matter of UBC (sic) Securities</p> <p>25 versus Highland Capital Management in the United</p>	<p>1 witness in, please.</p> <p>2 THE VIDEOGRAPHER: The court reporter</p> <p>3 today is Lisa Barrett. She also represents Planet</p> <p>4 Depos.</p> <p>5 Will the court reporter please swear in</p> <p>6 the witness.</p> <p>7 (OATH STIPULATION)</p> <p>8 SCOTT BYRON ELLINGTON, called as a witness,</p> <p>9 having been duly sworn was examined</p> <p>10 and testified as follows:</p> <p>11 EXAMINATION</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Okay. Good morning, Mr. Ellington.</p> <p>14 A <b>Good morning, Mr. Clubok.</b></p> <p>15 Q Can you state your full name, please?</p> <p>16 A <b>Scott Byron Ellington.</b></p> <p>17 Q What is your home address?</p> <p>18 A <b>I currently don't have a home address.</b></p> <p>19 <b>I recently sold the place I was living.</b></p> <p>20 Q Where are you living right now?</p> <p>21 A <b>I'm staying between my father's house</b></p> <p>22 <b>and my girlfriend's house.</b></p> <p>23 Q And today, you are taking the</p> <p>24 deposition at your girlfriend's house.</p> <p>25 A <b>Correct.</b></p>

<p>13</p> <p>1 Q And that is Stephanie Archer.</p> <p>2 A That is.</p> <p>3 &lt;-- HIGHLY CONFIDENTIAL</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 --&gt;</p> <p>9 Q So you currently have no principal</p> <p>10 residence at all.</p> <p>11 A Not right now, no.</p> <p>12 Q You recently purchased a property to</p> <p>13 build a home on?</p> <p>14 A Not to build a home on, no. I recently</p> <p>15 purchased a property to move into, but it's not</p> <p>16 available to move into yet.</p> <p>17 &lt;-- HIGHLY CONFIDENTIAL</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 --&gt;</p>	<p>15</p> <p>1 person today?</p> <p>2 A No, I do not.</p> <p>3 Q Where is it?</p> <p>4 A I believe it's at my dad's house.</p> <p>5 Because I recently moved, I have stuff in several</p> <p>6 locations.</p> <p>7 Q Did you have that phone with you when</p> <p>8 you were in Africa on a recent trip?</p> <p>9 A I did.</p> <p>10 Q And did you get that phone -- you</p> <p>11 mentioned Skyview.</p> <p>12 What's Skyview?</p> <p>13 A Skyview is an entity that I am</p> <p>14 currently employed by.</p> <p>15 Q Did -- when did you get that phone</p> <p>16 associated with Skyview?</p> <p>17 A I don't know the exact date. They set</p> <p>18 it up for me. I don't know the date, I'd have to</p> <p>19 look, a couple of months ago.</p> <p>20 Q Since you left the employment of</p> <p>21 Highland Capital Management?</p> <p>22 A Yes.</p> <p>23 Q And do you have any other phone numbers</p> <p>24 currently?</p> <p>25 A No.</p>
<p>14</p> <p>1 number that I've had for many years. I don't</p> <p>2 really use that anymore. It's a legacy number</p> <p>3 that I'm -- have people that still correspond to</p> <p>4 me on that, so I left it open to see -- tell</p> <p>5 people the new numbers I use.</p> <p>6 Q Any other phones that you currently</p> <p>7 have?</p> <p>8 A I do. I have one in front of me, if I</p> <p>9 could look, Mr. Clubok. I actually don't know the</p> <p>10 number on it because it is only for my family and</p> <p>11 close friends.</p> <p>12 Do you mind if I look?</p> <p>13 Q Sure.</p> <p>14 A Okay. It is -- sorry, it's opening, I</p> <p>15 &lt;-- HIGHLY CONFIDENTIAL --&gt;</p> <p>16 Q And you say that number you only use</p> <p>17 for family and close friends, not for work, I take</p> <p>18 it?</p> <p>19 A Not for work at all, no.</p> <p>20 Q Any other phone number that you</p> <p>21 currently have?</p> <p>22 A There is a phone that's owned by</p> <p>23 Skyview that I don't know the phone number. I can</p> <p>24 get that to you at a later date.</p> <p>25 Q Do you have that phone with you on your</p>	<p>16</p> <p>1 Q Have you had any other phone numbers --</p> <p>2 strike that.</p> <p>3 Have you had any other phone numbers</p> <p>4 that you have used for any purpose in the last two</p> <p>5 years --</p> <p>6 A No.</p> <p>7 Q -- aside from the ones you've</p> <p>8 identified?</p> <p>9 A No. Other than my desk phone number at</p> <p>10 Highland, no.</p> <p>11 Q Have you ever had -- have you ever</p> <p>12 referred to a burner phone?</p> <p>13 A Never. I don't really even understand</p> <p>14 what that is.</p> <p>15 Q Okay. What's your current -- who's</p> <p>16 your current employer?</p> <p>17 A Skyview.</p> <p>18 Q What's the business address of Skyview?</p> <p>19 A I don't know the business address of</p> <p>20 Skyview. I don't know what they've registered it</p> <p>21 as.</p> <p>22 Q Where do you -- do you have an office</p> <p>23 for Skyview --</p> <p>24 A There is not office space yet, no.</p> <p>25 Q Do you have any business office</p>

<p style="text-align: right;">17</p> <p>1 anywhere right now?</p> <p>2 <b>A No, I do not.</b></p> <p>3 Q Does anybody who works for -- how many</p> <p>4 employees does Skyview have?</p> <p>5 <b>A I believe there is right around 40. I</b></p> <p>6 <b>don't know the exact headcount.</b></p> <p>7 Q Do any of them work in an office?</p> <p>8 <b>A They all work remotely, as far as</b></p> <p>9 <b>I know.</b></p> <p>10 Q When was the last -- as far as you</p> <p>11 know, every other employee for Skyview works</p> <p>12 remotely?</p> <p>13 <b>A I believe they work remotely, yes. I</b></p> <p>14 <b>don't know where they work from on a daily basis.</b></p> <p>15 Q Who owns Skyview?</p> <p>16 <b>A I do.</b></p> <p>17 Q You are the sole owner of Skyview?</p> <p>18 <b>A Yes.</b></p> <p>19 Q Does anyone else have any economic</p> <p>20 stake in Skyview?</p> <p>21 <b>A No.</b></p> <p>22 Q Does any employee of Skyview use office</p> <p>23 space at the same building where NexBank is</p> <p>24 located?</p> <p>25 <b>A I believe that some people come in</b></p>	<p style="text-align: right;">19</p> <p>1 Q Well, who made the agreement?</p> <p>2 <b>A The agreement was negotiated by several</b></p> <p>3 <b>parties and representatives of Skyview, and I</b></p> <p>4 <b>personally was not involved in those negotiations.</b></p> <p>5 Q Who was? Who negotiated your comp for</p> <p>6 Skyview?</p> <p>7 <b>A I think it wasn't my comp; it was an</b></p> <p>8 <b>overall consulting fee and then the comp was set</b></p> <p>9 <b>by senior people at Skyview, Frank Waterhouse and</b></p> <p>10 <b>Brian Collins.</b></p> <p>11 Q As best you know, what is your</p> <p>12 compensation for this year going to --</p> <p>13 <b>A Commensurate --</b></p> <p>14 Q Strike that. What do you expect your</p> <p>15 compensation to be for the work you do associated</p> <p>16 with Skyview for the year 2021?</p> <p>17 <b>A Commensurate --</b></p> <p>18 MS. SMITH: Objection, form. Objection</p> <p>19 also as to relevance, as I objected on all of the</p> <p>20 previous depositions. This is beyond the scope of</p> <p>21 the deposition which is due to the facts and</p> <p>22 circumstances to prove or defend the temporary</p> <p>23 and -- motion for temporary injunction and motion</p> <p>24 for protective order and having to do with</p> <p>25 Sentinel.</p>
<p style="text-align: right;">18</p> <p>1 <b>there to use those facilities on a -- on an ad hoc</b></p> <p>2 <b>basis, yes.</b></p> <p>3 Q But you don't believe that anyone has a</p> <p>4 permanent office associated with Skyview in</p> <p>5 that -- in that office?</p> <p>6 <b>A Not that I'm aware of it being</b></p> <p>7 <b>permanent, no.</b></p> <p>8 Q Do you have any connection whatsoever</p> <p>9 with NexBank?</p> <p>10 <b>A I am a very --</b></p> <p>11 <b>-- (overspeaking) --</b></p> <p>12 MS. SMITH: Objection, form.</p> <p>13 THE WITNESS: I hold shares or entities</p> <p>14 affiliated with me hold a very, very tiny amount</p> <p>15 of shares in NexBank.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Do you have any connection with SSB?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 THE WITNESS: I don't know what SSB is.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Do you have any other employers, other</p> <p>22 than Skyview?</p> <p>23 <b>A No.</b></p> <p>24 Q What is your compensation from Skyview?</p> <p>25 <b>A I would have to look at the agreement.</b></p>	<p style="text-align: right;">20</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q What do you expect your compensation to</p> <p>3 be for the work you do associated with Skyview for</p> <p>4 the year 2021?</p> <p>5 <b>A It would be commiserate to what it</b></p> <p>6 <b>should have been in the calendar year 2020 at</b></p> <p>7 <b>Highland Capital Management Company. (inaudible)</b></p> <p>8 Q So, your compensation was intended to</p> <p>9 reflect what you believed you were entitled to get</p> <p>10 in the last year working for Highland Capital</p> <p>11 Management; correct?</p> <p>12 <b>A I don't know if it was what I believed,</b></p> <p>13 <b>but I was, again, set by Mr. Collins and</b></p> <p>14 <b>Mr. Waterhouse.</b></p> <p>15 Q And what was your compensation for</p> <p>16 Capital -- Highland Capital Management in 2020?</p> <p>17 <b>A I believe it was around \$3 million,</b></p> <p>18 <b>according to Highland Capital.</b></p> <p>19 Q Is that all in, bonus, deferred comp,</p> <p>20 equity, any other source of compensation?</p> <p>21 <b>A It would be every source --</b></p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: Sorry Frances, my</p> <p>24 apologies.</p> <p>25 It would be every form of compensation</p>

<p style="text-align: right;">21</p> <p>1 as reflected in their award letters from all in of</p> <p>2 everything that you could put as compensation,</p> <p>3 including free lunches and cell phone</p> <p>4 reimbursement and parking and that kind of thing.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q And did you actually receive that</p> <p>7 \$3 million?</p> <p>8 <b>A I did not.</b></p> <p>9 Q How much of it did you receive,</p> <p>10 roughly?</p> <p>11 <b>A I received just my base salary in 2020.</b></p> <p>12 Q Which was roughly?</p> <p>13 <b>A \$450,000.</b></p> <p>14 Q And are you contesting the fact that</p> <p>15 you did not receive roughly \$2.5 million that you</p> <p>16 believe you are entitled to?</p> <p>17 <b>A Yes.</b></p> <p>18 MS. SMITH: Objection. I'm going to</p> <p>19 object to the extent that it requires you to</p> <p>20 divulge any privileged conversations with your</p> <p>21 attorneys.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Yeah, all -- all of my questions are</p> <p>24 intended to -- are not intended to seek privileged</p> <p>25 communications with your attorneys.</p>	<p style="text-align: right;">23</p> <p>1 member of the bar?</p> <p>2 <b>A Yes.</b></p> <p>3 Q Which bar or bars?</p> <p>4 <b>A The Texas bar.</b></p> <p>5 Q Do you have any other bar memberships,</p> <p>6 other than Texas, state court or Supreme Court?</p> <p>7 <b>A I do not.</b></p> <p>8 Q Any federal court bar memberships?</p> <p>9 <b>A No.</b></p> <p>10 Q Where did you go to law school?</p> <p>11 <b>A Pepperdine University.</b></p> <p>12 Q What year did you graduate?</p> <p>13 <b>A Sorry?</b></p> <p>14 Q Sorry. What year did you graduate?</p> <p>15 <b>A 2000.</b></p> <p>16 Q Have you ever had any disciplinary</p> <p>17 actions taken against you since you became a</p> <p>18 lawyer?</p> <p>19 <b>A No.</b></p> <p>20 MS. SMITH: Objection to form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Have you ever had any complaints to the</p> <p>23 bar, as far as you know?</p> <p>24 <b>A As far as I know, no.</b></p> <p>25 Q Do you have any other professional</p>
<p style="text-align: right;">22</p> <p>1 So when I say contesting, I mean to</p> <p>2 Highland Capital Management in some form or</p> <p>3 another, not what you might be personally saying</p> <p>4 to your attorney in a privilege setting.</p> <p>5 <b>A Without divulging any privileged</b></p> <p>6 <b>communications, the general answer is yes.</b></p> <p>7 Q In what form are you contesting that or</p> <p>8 have you -- have you made that -- have you -- in</p> <p>9 what form have you expressed that disagreement?</p> <p>10 Do you have a claim? Have you given notice?</p> <p>11 <b>A I follow the advice of counsel.</b></p> <p>12 Q Right. But how have you communicated,</p> <p>13 if you have communicated, your challenge to your</p> <p>14 compensation for 2020 to Highland Capital</p> <p>15 Management?</p> <p>16 <b>A Again, without divulging privileged</b></p> <p>17 <b>communication with counsel, I believe a proof of</b></p> <p>18 <b>claim has been filed.</b></p> <p>19 <b>Pardon me?</b></p> <p>20 Q The question or the answer?</p> <p>21 <b>A I said a proof of claim has been filed.</b></p> <p>22 Q You're an attorney authorized to</p> <p>23 practice law?</p> <p>24 <b>A Yes.</b></p> <p>25 Q Are you -- are you currently an active</p>	<p style="text-align: right;">24</p> <p>1 licenses, other than law degree?</p> <p>2 <b>A I do not.</b></p> <p>3 Q What does Skyview Group do?</p> <p>4 <b>A Skyview Group advises and consults with</b></p> <p>5 <b>its clients.</b></p> <p>6 Q On what matters?</p> <p>7 <b>A Anything that we're contracted to</b></p> <p>8 <b>consult and advise upon.</b></p> <p>9 Q What do you -- what -- what area</p> <p>10 generally do you advise and consult on?</p> <p>11 <b>A Middle and back office functions to</b></p> <p>12 <b>money managers and family offices and related</b></p> <p>13 <b>parties.</b></p> <p>14 Q Anything else?</p> <p>15 <b>A No.</b></p> <p>16 Q And how many clients do you have?</p> <p>17 <b>A I'd have to think of the number of</b></p> <p>18 <b>entities.</b></p> <p>19 <b>I'm not certain, but I would say around</b></p> <p>20 <b>probably -- let me think. I'd have to look at the</b></p> <p>21 <b>agreements to give you an exact number, but I'd</b></p> <p>22 <b>say less than a dozen.</b></p> <p>23 Q And of those, are any completely</p> <p>24 unaffiliated with Jim Dondero, yourself or other</p> <p>25 current or former employees of Highland Capital</p>

<p style="text-align: right;">25</p> <p>1 Management?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q How many?</p> <p>6 <b>A Three.</b></p> <p>7 Q Who are they?</p> <p>8 <b>A There is confidentiality agreements</b></p> <p>9 <b>with who the clients are. I believe I would</b></p> <p>10 <b>violate those contracts if I disclose.</b></p> <p>11 Q We -- we can designate this part of the</p> <p>12 transcript as confidential.</p> <p>13 CONFIDENTIAL</p> <p>14 THE WITNESS: I'd have to look at the</p> <p>15 agreements to tell you the entity names.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Okay, well, we'll ask you to do that,</p> <p>18 then, at the (inaudible)</p> <p>19 You believe there's a confidentiality</p> <p>20 agreement that prohibits you, in response to this</p> <p>21 subpoenaed deposition that was court ordered, from</p> <p>22 disclosing those names, even under the protective</p> <p>23 order in this case?</p> <p>24 MS. SMITH: Objection to form. He's</p> <p>25 already -- he's already answered the question</p>	<p style="text-align: right;">27</p> <p>1 THE WITNESS: I will -- I will take</p> <p>2 advice from counsel, and, like you said, they can</p> <p>3 be provided under some kind of a confidentiality</p> <p>4 agreement under this deposition. I'm not saying</p> <p>5 that I -- that I don't have to disclose them.</p> <p>6 I'll just take the advice of counsel.</p> <p>7 MR. CLUBOK: Okay. Why don't we go off</p> <p>8 the record.</p> <p>9 -- Off-record discussion --</p> <p>10 THE VIDEOGRAPHER: We're going off the</p> <p>11 record at 10:56 a.m.</p> <p>12 (Recess taken 10:56 a.m. to 11:05 a.m.)</p> <p>13 THE VIDEOGRAPHER: We're going back on</p> <p>14 the record at 11:05 a.m., eastern time.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Okay. Sir, to the -- my understanding</p> <p>17 that Ms. Smith, on your behalf, is going to</p> <p>18 designate this next answer highly confidential and</p> <p>19 myself, the other lawyers reasoning UBS and</p> <p>20 debtor's counsel will all abide by the orders in</p> <p>21 this case with respect to confidentiality. So</p> <p>22 with that said --</p> <p>23 MR. FEINSTEIN: That's agreed.</p> <p>24 MR. CLUBOK: Thank you, Mr. Feinstein.</p> <p>25 BY MR. CLUBOK:</p>
<p style="text-align: right;">26</p> <p>1 saying --</p> <p>2 MR. CLUBOK: Yeah.</p> <p>3 MS. SMITH: -- he thinks it's</p> <p>4 confidential.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Well, no, let me just be clear. You</p> <p>7 understand you are here testifying under a</p> <p>8 subpoena; correct?</p> <p>9 <b>A Yes.</b></p> <p>10 Q And you understand that you contested</p> <p>11 that subpoena and litigated in court to try to</p> <p>12 quash this deposition; correct?</p> <p>13 <b>A Correct.</b></p> <p>14 Q You understand you've been court</p> <p>15 ordered to sit for this deposition; right?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And you are a lawyer; correct?</p> <p>18 <b>A Yes.</b></p> <p>19 Q Okay. And you believe that you have a</p> <p>20 binding, private contract with your clients that</p> <p>21 protects you from disclosing them even in this</p> <p>22 deposition setting? As you sit here today, that's</p> <p>23 your legal belief?</p> <p>24 MS. SMITH: Objection, calls for legal</p> <p>25 conclusion.</p>	<p style="text-align: right;">28</p> <p>1 Q Let's just ask you again. To the bet</p> <p>2 of your ability, can you identify any clients of</p> <p>3 Skyview Group that are not affiliated with</p> <p>4 Mr. Dondero or some other current or former</p> <p>5 employee of Highland Capital Management?</p> <p>6 <b>A Yes.</b></p> <p>7 MS. SMITH: Objection as to --</p> <p>8 objection as to form, and this is to be marked</p> <p>9 highly confidential.</p> <p>10 You can answer to the extent you know.</p> <p>11 HIGHLY CONFIDENTIAL</p> <p>12 THE WITNESS: The first one I'm aware</p> <p>13 of is a real estate developer in Austin. I do not</p> <p>14 know the entity name. I know generally that they</p> <p>15 have a distressed situation that involves</p> <p>16 litigation. And they do not have any resources</p> <p>17 in-house, so they wanted to retain Skyview and</p> <p>18 have retained Skyview to generally manage</p> <p>19 litigation in a distress workout situation on a</p> <p>20 project -- real estate project in Austin, Texas.</p> <p>21 MR. CLUBOK: Who is the human being</p> <p>22 that you deal with there?</p> <p>23 THE WITNESS: I have never dealt with</p> <p>24 anyone. I was informed by JP Sevilla that they</p> <p>25 had signed an agreement and agreed to a fee</p>

<p style="text-align: right;">29</p> <p>1 structure with generally what I just told you.                  2 I have zero involvement.                  3 BY MR. CLUBOK:                  4 Q Okay. Do you know how Skyview got that                  5 business? Through some --                  6 <b>A I do not. I know that someone at</b>                  7 <b>Skyview was contacted that had a personal</b>                  8 <b>relationship with this person, and said "Do you</b>                  9 <b>guys have these resources."</b>                  10 Q Okay. And the other two clients -- and                  11 by the way, you don't know who that person was at                  12 Skyview who was in contact --                  13 <b>A I really don't.</b>                  14 Q Who are the other two clients that                  15 Skyview has that are not affiliated in some way                  16 with Mr. Dondero or another Highland current or                  17 former employee?                  18 MS. SMITH: Objection as to form.                  19 Again, this needs to be marked highly                  20 confidential.                  21 THE WITNESS: A group of retired                  22 executives in Dallas have a relationship with Lucy                  23 Bannon at Skyview, and they are forming a small VC                  24 firm and have zero resources, other than their                  25 contacts. And they asked us to structure from a</p>	<p style="text-align: right;">31</p> <p>1 BY MR. CLUBOK:                  2 Q What are your duties and                  3 responsibilities at Skyview Group?                  4 <b>A To manage the employee base, originates</b>                  5 <b>new business, and consult, advise clients.</b>                  6 Q Do you -- does Skyview pay any rent or                  7 any compensation for the use of offices at the                  8 NexBank?                  9 MS. SMITH: Objection as to form.                  10 THE WITNESS: I don't know.                  11 BY MR. CLUBOK:                  12 Q Who worked out an agreement, such that                  13 you were given office space at NexBank?                  14 <b>A I don't know.</b>                  15 MS. SMITH: Objection as to form.                  16 BY MR. CLUBOK:                  17 Q How many people routinely work at those                  18 offices?                  19 MS. SMITH: Objection, calls for                  20 speculation.                  21 THE WITNESS: I don't know.                  22 BY MR. CLUBOK:                  23 Q Have you ever been to those offices?                  24 <b>A Yes.</b>                  25 Q When was the last time you were there?</p>
<p style="text-align: right;">30</p> <p>1 tax standpoint and consult on docs for their                  2 outside counsel on structuring this VC fund                  3 they're trying to put together.                  4 BY MR. CLUBOK:                  5 Q And they are retired from what company?                  6 <b>A I really don't know.</b>                  7 Q And what's the third one?                  8 <b>A The third one is a Swiss-based</b>                  9 <b>commodities broker that was looking for fund</b>                  10 <b>accounting work -- fund accounting help and</b>                  11 <b>compliance help in opening a U.S. operation.</b>                  12 <b>From what I understand, that's under an</b>                  13 <b>LOI, and there is not agreement to fees.</b>                  14 Q What's the name of that Swiss Bank?                  15 <b>A I do not know.</b>                  16 Q What's your job title at Skyview?                  17 <b>A I believe they -- they have given me</b>                  18 <b>the title of president.</b>                  19 Q Well, you own the company; right?                  20 <b>A Correct.</b>                  21 Q So ultimately you make any final                  22 decisions about the company?                  23 <b>A Correct.</b>                  24 MS. SMITH: Objection as to form.                  25</p>	<p style="text-align: right;">32</p> <p>1 <b>A Early June.</b>                  2 Q And how often have you gone there since                  3 forming Skyview Group?                  4 <b>A I think I've been there three times.</b>                  5 Q Do you -- is there an office designated                  6 for you there?                  7 <b>A No.</b>                  8 Q Do you plan to remain the sole owner of                  9 Skyview Group?                  10 <b>A The plan is to distribute equity to</b>                  11 <b>senior and employees in general.</b>                  12 Q How many employees are slated to get                  13 equity under your current planning?                  14 MS. SMITH: Objection to form.                  15 THE WITNESS: We did not have a -- we                  16 do not have a final determination that's being                  17 evaluated.                  18 BY MR. CLUBOK:                  19 Q But it would include Mr. Sevilla;                  20 correct?                  21 <b>A I would highly assume so.</b>                  22 Q And Mr. DiOrio?                  23 <b>A I would highly assume so.</b>                  24 Q And what about Ms. Irving?                  25 <b>A I don't know about Ms. Irving, because</b></p>



33	<p><b>1 I don't know what Ms. Irving's ability to work</b></p> <p><b>2 looks like in the future.</b></p> <p>3 Q And what about Mr. Leventon?</p> <p><b>4 A I would highly assume so.</b></p> <p>5 Q Highly assume that he would be slated</p> <p>6 to get equity when you figure out a plan for</p> <p>7 distributing equity to employees; correct?</p> <p><b>8 A I agree.</b></p> <p>9 Q When did you get the idea to form</p> <p>10 Skyview?</p> <p><b>11 A Five years ago.</b></p> <p>12 Q And did you make efforts to make</p> <p>13 Skyview a reality prior to leaving Highland</p> <p>14 Capital Management?</p> <p>15 MS. SMITH: Objection as to form.</p> <p>16 THE WITNESS: Yes. Yes, several times.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q And so you'd been planning to form</p> <p>19 Skyview during the last year of working at</p> <p>20 Highland Capital Management, at least; correct?</p> <p><b>21 A Yes, for many years before that.</b></p> <p>22 Q In fact, you incorporated just two days</p> <p>23 after you were fired from Highland Capital</p> <p>24 Management?</p> <p>25 MS. SMITH: Objection as to form.</p>	35
34	<p>1 THE WITNESS: I don't know when the</p> <p>2 entity was incorporated.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Fair to say it was very shortly after</p> <p>5 you were terminated from Highland Capital</p> <p>6 Management?</p> <p><b>7 A That would be my assumption, yes.</b></p> <p>8 Q Does Jim Dondero have any sort of</p> <p>9 economic stake in Skyview, in -- directly or</p> <p>10 indirectly?</p> <p><b>11 A No.</b></p> <p>12 Q What is Mr. Dondero's relationship to</p> <p>13 Skyview, if any?</p> <p>14 MS. SMITH: Objection as to form.</p> <p>15 THE WITNESS: Mr. Dondero's entity is</p> <p>16 related to Helm (inaudible) or some of the</p> <p>17 contractual clients.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q And Skyview is currently operating out</p> <p>20 of NexBank's offices; correct?</p> <p>21 MS. SMITH: Objection as to form. He's</p> <p>22 already explained that multiple times.</p> <p>23 THE WITNESS: Skyview employees on an</p> <p>24 ad hoc basis work in the NexBank offices.</p> <p>25 I don't know how many, but I certainly</p>	36

<p style="text-align: right;">37</p> <p>1 <b>A Skyview Group does not manage anything.</b></p> <p>2 Q All right. Are these REITs that are</p> <p>3 clients of Skyview Group?</p> <p>4 <b>A NexPoint Advisors --</b></p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 THE WITNESS: Sorry, Frances, I keep</p> <p>7 stepping on you, I apologize.</p> <p>8 NexPoint Advisors is the investment</p> <p>9 manager that manages the REIT on our part.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And is NexPoint Advisors a part of</p> <p>12 Skyview Group?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And you are allocated shares in the</p> <p>15 REITs that NexPoint Advisors manages; correct?</p> <p>16 <b>A Yes. And -- by the independent board</b></p> <p>17 <b>members, as they see fit.</b></p> <p>18 Q Do you have any other source of income?</p> <p>19 <b>A No.</b></p> <p>20 Q As a rough percentage, what do you</p> <p>21 expect your Skyview Group income to be in terms of</p> <p>22 your total income as vis-a-vis the REITs?</p> <p>23 MS. SMITH: Objection as to form.</p> <p>24 Again, none of this is relevant to the topics of</p> <p>25 the deposition.</p>	<p style="text-align: right;">39</p> <p>1 <b>A I believe it's an entity that holds</b></p> <p>2 <b>claims that the former Highland employees</b></p> <p>3 <b>potentially have against the debtor.</b></p> <p>4 Q Did you assign your claim to CPCM?</p> <p>5 <b>A I believe I did.</b></p> <p>6 Q For what consideration?</p> <p>7 <b>A My employment.</b></p> <p>8 Q Your employment with whom?</p> <p>9 <b>A My employment with Skyview.</b></p> <p>10 Q You own Skyview; correct?</p> <p>11 <b>A Correct.</b></p> <p>12 Q And you had to assign your claim to</p> <p>13 CPCM as -- in order to get a job with a company</p> <p>14 you fully owned?</p> <p>15 <b>A No.</b></p> <p>16 Q Okay. So was there any consideration</p> <p>17 at all for the assignment of your claim to CPCM?</p> <p>18 MS. SMITH: Objection to form. He's</p> <p>19 already answered that.</p> <p>20 (No response)</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Was there any consideration at all for</p> <p>23 the assignment of your claim to CPCM?</p> <p>24 <b>A I believe it was my employment with</b></p> <p>25 <b>Skyview.</b></p>
<p style="text-align: right;">38</p> <p>1 THE WITNESS: I wouldn't know how to</p> <p>2 calculate that because they could give me zero or</p> <p>3 they could give me ad infinitum shares. But in</p> <p>4 looking historically, it would be less than</p> <p>5 probably -- I don't know, I'd have to do the math,</p> <p>6 but about 10 or 15 percent. But, again, it's not</p> <p>7 necessarily income.</p> <p>8 Q Are there any subsidiaries of Skyview</p> <p>9 Group?</p> <p>10 <b>A I would -- I would have to have</b></p> <p>11 <b>somebody update the org chart. I know that that's</b></p> <p>12 <b>been considered, but I don't know what's been</b></p> <p>13 <b>implemented.</b></p> <p>14 Q Have you ever heard of an entity called</p> <p>15 Skyview Legal PC?</p> <p>16 <b>A I know that something was being</b></p> <p>17 <b>discussed about a legal PC. I don't know what the</b></p> <p>18 <b>gentlemen working on it decided to name it or if</b></p> <p>19 <b>it's been implemented.</b></p> <p>20 Q Who's the gentlemen working on it?</p> <p>21 <b>A I believe JP Seery and Isaac Leventon</b></p> <p>22 <b>were the people in charge of that.</b></p> <p>23 Q Do you know what CPCM LLC is?</p> <p>24 <b>A I do.</b></p> <p>25 Q What is it?</p>	<p style="text-align: right;">40</p> <p>1 Q But that employment you had the right</p> <p>2 to give yourself, regardless of whether or not you</p> <p>3 assigned your claim to CPCM as a hundred percent</p> <p>4 owner of Skyview; correct?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Theoretically, yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Not just theoretically, actually, as</p> <p>9 far as you know.</p> <p>10 As far as you understand, owning a</p> <p>11 company a hundred percent, you certainly had the</p> <p>12 right to employ yourself in any capacity you</p> <p>13 chose; correct?</p> <p>14 <b>A Yeah, I would agree with that.</b></p> <p>15 Q And is there any other consideration</p> <p>16 at all that you could identify, even a peppercorn,</p> <p>17 for the transfer or assignment of your claims to</p> <p>18 CPCM?</p> <p>19 <b>A I don't remember the agreements in</b></p> <p>20 <b>detail. I'd have to look at the agreements</b></p> <p>21 relating to (inaudible) to see what (inaudible)</p> <p>22 was considered.</p> <p>23 Q But as you sit here today, you are not</p> <p>24 aware of any; correct?</p> <p>25 <b>A Not that I can recall, but there may be</b></p>

<p style="text-align: right;">41</p> <p>1 <b>some.</b></p> <p>2 Q Well, we're going to put up Exhibit 1.</p> <p>3 By the way, do you have exhibits in front of you?</p> <p>4 <b>A I have a folder of (inaudible) yes,</b></p> <p>5 <b>sir, I do.</b></p> <p>6 Q Okay. Take a look at Exhibit 1.</p> <p>7 <b>A Give me a second to find it.</b></p> <p>8 Q Sorry. It's -- I said Exhibit 1.</p> <p>9 It is Tab actually 1, and it is going</p> <p>10 to be Exhibit 86. I apologize.</p> <p>11 (Deposition Exhibit 86 was marked for</p> <p>12 identification.)</p> <p>13 THE WITNESS: Exhibit 86. Okay.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q You may or may not have that one in</p> <p>16 your --</p> <p>17 <b>A I believe that they end at 84.</b></p> <p>18 Q Okay. So we'll put up tab -- or</p> <p>19 Exhibit 86 on the screen.</p> <p>20 Exhibit 86 is a Notice of Transfer of</p> <p>21 Claim Other Than for Security by Scott Ellington</p> <p>22 to CPCM.</p> <p>23 <b>A Okay.</b></p> <p>24 MS. SMITH: Andy, since we are not</p> <p>25 copied on the exhibits, could someone please load</p>	<p style="text-align: right;">42</p> <p>1 them into the chat?</p> <p>2 MR. CLUBOK: Yes. We'll start to make</p> <p>3 them --</p> <p>4 Shannon, maybe you can circulate them</p> <p>5 at the same time that we put them up on the</p> <p>6 screen.</p> <p>7 MS. McLAUGHLIN: Certainly.</p> <p>8 MR. CLUBOK: Thank you.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And Mr. Ellington, can you --</p> <p>11 MR. CLUBOK: Let's see.</p> <p>12 Nate, we got it up there?</p> <p>13 REMOTE TECHNICIAN: Yes, I will -- I</p> <p>14 will circulate the document in chat. Or actually,</p> <p>15 Shannon has already done --</p> <p>16 MR. CLUBOK: Can you put the document</p> <p>17 on the screen, or maybe it's up there and I just</p> <p>18 don't see it.</p> <p>19 REMOTE TECHNICIAN: Yes. Thank you,</p> <p>20 one moment.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q So this is the -- do you recognize</p> <p>23 Exhibit 86 as the Notice of Transfer of Claim</p> <p>24 Other Than for Security with respect to yourself,</p> <p>25 as the transferor and CPCM as the transferee?</p>	<p style="text-align: right;">43</p> <p>1 <b>A I see that written on the document,</b></p> <p>2 <b>yes.</b></p> <p>3 Q And on page 2, it says, "For value</p> <p>4 received, the adequacy and sufficiency of which</p> <p>5 are hereby acknowledged, Scott Ellington has</p> <p>6 unconditionally and irrevocably sold, transferred,</p> <p>7 assigned to CPCM," et cetera, et cetera.</p> <p>8 Do you see that?</p> <p>9 <b>A I do.</b></p> <p>10 Q And as far as you sit here today, the</p> <p>11 only consideration you can think of is the</p> <p>12 employment you gave yourself at Skyview Group;</p> <p>13 correct?</p> <p>14 <b>A And, again, I'd have to see the --</b></p> <p>15 MS. SMITH: Objection, form.</p> <p>16 THE WITNESS: I'd have to see all</p> <p>17 the -- the related documents. But that's --</p> <p>18 that's what I consider the consideration without</p> <p>19 looking at the documents.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q What documents would you have to look</p> <p>22 at?</p> <p>23 <b>A I don't know what's out there related</b></p> <p>24 <b>to this. I'm being shown two pages. I wasn't</b></p> <p>25 <b>involved in negotiation or drafting of these. I</b></p>	<p style="text-align: right;">44</p> <p>1 <b>don't know what else is relatable.</b></p> <p>2 Q Were you involved in any negotiation of</p> <p>3 the transfer of claims to CPCM by any -- any</p> <p>4 individual?</p> <p>5 <b>A No.</b></p> <p>6 Q Were you involved at all in the</p> <p>7 approval of those transfers?</p> <p>8 <b>A No.</b></p> <p>9 Q Did you have any involvement at all?</p> <p>10 <b>A None.</b></p> <p>11 Q You just -- who told you about it?</p> <p>12 <b>A I believe counsel.</b></p> <p>13 Q You learned about the transfers through</p> <p>14 counsel and no other -- no other source?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: Yeah. Yes, at the time I</p> <p>17 was under a restraining order, so I had very</p> <p>18 limited communication with anyone, but counsel.</p> <p>19 Q Do you know whose idea it was to</p> <p>20 transfer the claims to the CPCM?</p> <p>21 MS. SMITH: Objection.</p> <p>22 THE WITNESS: No, I don't.</p> <p>23 MS. SMITH: Do not answer to the extent</p> <p>24 it calls for privileged information.</p> <p>25 THE WITNESS: I do not know.</p>
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<p style="text-align: right;">45</p> <p>1 BY MR. CLUBOK:                  2 Q Did you ever discuss it with anyone                  3 other than your counsel?                  4 A <b>No.</b>                  5 Q CPCM is wholly owned by Skyview Group?                  6 A <b>I'd have to look at an org chart or                  7 related documents. I'm not certain, but that's my                  8 understanding.</b>                  9 Q So you have all the economic interest                  10 in CPCM; correct?                  11 A <b>Again, I'd have to look at how it was                  12 structured.</b>                  13 <b>I don't -- I just know anecdotally what                  14 I was told.</b>                  15 Q As far as you know sitting here today,                  16 can you -- are you aware of anyone else who has                  17 any other economic interest in CPCM other than                  18 you?                  19 A <b>No, I think it's a wholly-owned sub of                  20 Skyview, but, again, I'd have to look at the                  21 documents to be certain.</b>                  22 Q CPCM is represented by Ross and Smith                  23 and Baker MacKenzie.                  24 A <b>That's my understanding, yes.</b>                  25 Q And these are the attorneys who are</p>	<p style="text-align: right;">46</p> <p>1 sitting here today with you during this                  2 deposition?                  3 A <b>Yes.</b>                  4 Q And Mr. Sevilla, Mr. Leventon,                  5 Mr. DiOrio and Ms. Lucas/Irving also shared that                  6 same set of counsel; correct?                  7 A <b>That's my understanding, yes.</b>                  8 Q Who is paying the legal fees for Ross                  9 and Smith?                  10 A <b>I'm not certain.</b>                  11 MS. SMITH: Objection to form.                  12 BY MR. CLUBOK:                  13 Q You have -- Ross and Smith, Ms. Smith                  14 has been here object -- making these objections.                  15 She has got a colleague of hers also sitting on                  16 this deposition, and you have no idea who's paying                  17 their bills?                  18 A <b>No, I don't.</b>                  19 Q Who else do they represent, other than                  20 you, CPCM, Mr. Sevilla, Mr. Leventon and Mr.                  21 DiOrio and Ms. Irving?                  22 A <b>No, I don't.</b>                  23 MS. SMITH: Objection -- objection,                  24 calls for speculation and potentially privileged                  25 communications.</p>
<p style="text-align: right;">47</p> <p>1 BY MR. CLUBOK:                  2 Q Are you aware of anyone else they                  3 represent?                  4 A <b>I believe they represent Mr. Waterhouse                  5 and potentially Mr. Collins. I believe them or a                  6 subset of them represents Skyview as an entity,                  7 but I don't know that for a fact as I haven't seen                  8 those engagement letters with my own eyes.</b>                  9 Q Who hired them?                  10 A <b>Who hired whom?</b>                  11 Q Who hired Ross and Smith to represent                  12 you and your colleagues?                  13 A <b>Well, I personally hired them to                  14 represent me. I would assume each individual                  15 hired them on their own behalf.</b>                  16 Q And when you hired them, did you -- you                  17 worked out no payment arrangements with them; you                  18 just hired them and didn't have any compensation                  19 worked out?                  20 MS. SMITH: Objection to form.                  21 THE WITNESS: The payor of the bills,                  22 as far as I understand, are through various                  23 indemnities and insurance policies with entities                  24 and insurers. But, again, that's not -- I'm not                  25 the person that processes or pays the bills, so I</p>	<p style="text-align: right;">48</p> <p>1 don't know how they're being paid.                  2 BY MR. CLUBOK:                  3 Q When you -- when you said you were                  4 going to work with Ms. Smith, did you discuss                  5 compensation in any way of who would pay for it?                  6 MS. SMITH: Objection, privileged.                  7 THE WITNESS: Yeah, I think that's                  8 getting into privileged communications.                  9 BY MR. CLUBOK:                  10 Q Do you have any idea who is paying                  11 Ms. Smith's bills to represent you and your                  12 colleagues?                  13 A <b>Currently, no.</b>                  14 Q Did you ever have any idea as to who                  15 was going to be paying Ms. Smith's bills to                  16 represent you, your colleagues and the company you                  17 100 percent own?                  18 A <b>Yes.</b>                  19 MS. SMITH: Objection to form.                  20 BY MR. CLUBOK:                  21 Q And who -- and what was your                  22 understanding?                  23 A <b>At the inception, I believe it was an                  24 entity called Gov Re.</b>                  25 Q So when you first hired Ms. Smith, you</p>

<p style="text-align: right;">49</p> <p>1 believe that Gov Re would pay all of her legal                  2 fees for representing you and your colleagues and                  3 Skyview Group?                  4 <b>A That's my understanding, but I don't</b>                  5 <b>have any transparency in the operations of Gov Re.</b>                  6 Q Who runs Gov Re?                  7 <b>A I don't know.</b>                  8 Q What connection --                  9 -- (overspeaking) --                  10 <b>A Bermuda Directors (?) would be my</b>                  11 <b>assumption.</b>                  12 Q What connection do you have with Gov                  13 Re?                  14 <b>A None.</b>                  15 Q What made you think that Gov Re would                  16 pay the bills for you and all your colleagues and                  17 your company?                  18 MS. SMITH: Objection to form.                  19 THE WITNESS: Because they had an                  20 insurance policy that covered us.                  21 BY MR. CLUBOK:                  22 Q Through what entity?                  23 <b>A I don't know.</b>                  24 Q Who is Mr. Collins, I think you                  25 mentioned?</p>	<p style="text-align: right;">51</p> <p>1 <b>A No.</b>                  2 Q All the -- who hired Baker MacKenzie,                  3 as far as you know?                  4 <b>A For whom as a client?</b>                  5 Q For you.                  6 <b>A Me.</b>                  7 Q Who hired Baker MacKenzie for all the                  8 other employees?                  9 MS. SMITH: Objection as to form.                  10 THE WITNESS: I assume them as                  11 individuals?                  12 BY MR. CLUBOK:                  13 Q Yeah, who hired Baker MacKenzie for                  14 your other -- well, strike that.                  15 Is it fair to say that Baker MacKenzie                  16 represents all the same entities and individuals                  17 that we identified as being represented by Ross                  18 Smith, as far as you know?                  19 <b>A Oh, I don't -- I don't know how that's</b>                  20 <b>broken down.</b>                  21 Q Well, does Baker MacKenzie represent                  22 Skyview Group and CPCM?                  23 <b>A I believe so.</b>                  24 Q Does Baker MacKenzie represent Mr.                  25 Sevilla, Mr. Leventon, Mr. DiOrio and Ms. Irving?</p>
<p style="text-align: right;">50</p> <p>1 <b>A Brian Collins, he's the chief</b>                  2 <b>administrative officer of Skyview.</b>                  3 Q Was he a former Highland Capital                  4 Management employee?                  5 <b>A He was.</b>                  6 Q Was he also terminated on or about the                  7 same time you were?                  8 MS. SMITH: Objection to form.                  9 THE WITNESS: I believe he was                  10 terminated with the rest of the employees about a                  11 month later.                  12 BY MR. CLUBOK:                  13 Q When you were terminated, were you told                  14 why you were being terminated from HCM?                  15 <b>A Yes.</b>                  16 Q What is -- were you told?                  17 <b>A I was told by Mr. Seery that I had</b>                  18 <b>worked against the estate.</b>                  19 Q Anything else?                  20 <b>A Not that I recall.</b>                  21 Q What did you say in response?                  22 <b>A "I don't know what you're talking</b>                  23 <b>about. Can you please tell me -- give me an</b>                  24 <b>example"? And he said "No."</b>                  25 Q Anything else?</p>	<p style="text-align: right;">52</p> <p>1 <b>A That's my understanding, but I have not</b>                  2 <b>seen those engagement letters.</b>                  3 Q And who arranged for them to represent                  4 all of those individuals other than --                  5 MS. SMITH: Objection -- objection                  6 speculation.                  7 THE WITNESS: I would assume them as                  8 individuals.                  9 BY MR. CLUBOK:                  10 Q And -- and is was paying Baker                  11 MacKenzie's bills?                  12 <b>A I don't know at this point.</b>                  13 Q Was it originally your anticipation                  14 that Gov Re would pay Baker MacKenzie's bills as                  15 well?                  16 <b>A That was my understanding.</b>                  17 Q Has anyone from Gov Re ever                  18 communicated to you in words or substance that                  19 they would not be paying the legal fees incurred                  20 by hiring Baker MacKenzie or Ross Smith?                  21 <b>A No.</b>                  22 Q Who handles making sure that those                  23 firms get paid?                  24 <b>A It's --</b>                  25 MS. SMITH: Objection.</p>

<p style="text-align: right;">53</p> <p>1 THE WITNESS: It's an assumption,                  2 Mr. Waterhouse.                  3 BY MR. CLUBOK:                  4 Q Did you discuss with any individual                  5 other than your -- the lawyers assigning any                  6 claims to Skyview Group?                  7 -- (overspeaking) --                  8 <b>A Assigning --</b>                  9 Q Excuse me -- (overspeaking) --                  10 assigning things with CPCPM?                  11 <b>A No, only discussed with counsel.</b>                  12 Q When were you first employed by                  13 Highland Capital Management?                  14 <b>A May of 2007.</b>                  15 Q How did you start working for Highland                  16 Capital Management?                  17 <b>A I was in the syndications group, the</b>                  18 <b>real estate group of Wells Fargo. Highland bought</b>                  19 <b>into those syndicated levels, and they asked me to</b>                  20 <b>come interview to work in-house with them.</b>                  21 Q Prior to Wells Fargo, where did you                  22 work?                  23 <b>A Countrywide Home Loans.</b>                  24 Q Doing what?                  25 <b>A In the syndications group, and in the</b></p>	<p style="text-align: right;">55</p> <p>1 Countrywide?                  2 <b>A It would have been about 2002, I</b>                  3 <b>believe.</b>                  4 Q Okay. Going back to your employment                  5 with HCM, when you first started there, what was                  6 your job title?                  7 <b>A In-house counsel.</b>                  8 Q And eventually you became the general                  9 counsel?                  10 <b>A Yes.</b>                  11 Q When was that?                  12 <b>A I'd have to go back and look. I don't</b>                  13 <b>recall. But I believe it was around 2010.</b>                  14 Q So, after the -- you remember that UBS                  15 filed a lawsuit against Highland in roughly                  16 2000 -- in early 2009?                  17 <b>A Yes.</b>                  18 MS. SMITH: Objection -- objection.                  19 Before you start this line of questioning, I want                  20 to caution you, Mr. Ellington, not to disclose any                  21 privileged communications with counsel that you                  22 might have gotten in your role as Highland Capital                  23 GC, unless the debtor -- or I will rely on the                  24 debtor to assert privilege, if needed.                  25 MR. FEINSTEIN: Well, yes. It is Rob</p>
<p style="text-align: right;">54</p> <p>1 -- ultimately in the bankruptcy group.                  2 Q Doing legal work?                  3 <b>A Yes.</b>                  4 Q Prior to -- sorry, Countrywide, you                  5 said?                  6 <b>A Yeah, Countrywide Home Loans.</b>                  7 Q What did you do prior to working at                  8 Countrywide?                  9 <b>A I worked at a talent agency in Los</b>                  10 <b>Angeles.</b>                  11 Q In what capacity?                  12 <b>A It was an assistant.</b>                  13 Q What year?                  14 <b>A The year would have been starting in</b>                  15 <b>2000.</b>                  16 Q So when did you graduate law school?                  17 <b>A 2000.</b>                  18 Q And your first job was as an assistant                  19 at a talent agency.                  20 <b>A Yes.</b>                  21 Q Why did you do that?                  22 <b>A Because to get into the top talent</b>                  23 <b>agencies, you had to have a law degree with an</b>                  24 <b>MBA, and I wanted to work in the film industry.</b>                  25 Q Okay. And when did you move to</p>	<p style="text-align: right;">56</p> <p>1 Feinstein. So that privilege does belong to the                  2 debtor and the extent to which we assert the                  3 privilege, you will know on a question-by-question                  4 basis.                  5 If you don't hear an objection from us,                  6 it's because we determined either the privilege                  7 doesn't apply or one of the recognized exceptions                  8 apply, like the crime fraud exception, or that                  9 we're waiving it. But in all events, we'll assert                  10 the privilege as and if we see fit; otherwise,                  11 counsel should feel free to answer the question --                  12 excuse me, the witness should feel free to answer                  13 the questions.                  14 THE WITNESS: Mr. Feinstein, thank you.                  15 BY MR. CLUBOK:                  16 Q Do you understand?                  17 <b>A Yes.</b>                  18 Q Do you understand the consent?                  19 <b>A Yes.</b>                  20 Q So you became general counsel after UBS                  21 filed its lawsuit against Highland in New York?                  22 <b>A Yes.</b>                  23 Q And in addition to being general                  24 counsel, were you a partner in Highland Capital                  25 Management?</p>

57	<p>1 A <b>Ultimately, yes.</b></p> <p>2 Q When was that?</p> <p>3 A <b>I don't remember the date.</b></p> <p>4 Q Roughly?</p> <p>5 A <b>I want to say around '13, maybe '12 --</b></p> <p>6 <b>2012 or 2013.</b></p> <p>7 Q Okay. And you remained a partner until</p> <p>8 the bankruptcy?</p> <p>9 A <b>Until my termination, yes.</b></p> <p>10 Q Until your termination.</p> <p>11 And did you remain general counsel</p> <p>12 until your termination?</p> <p>13 A <b>Yes.</b></p> <p>14 Q Who did you report to at Highland?</p> <p>15 A <b>Jim Dondero.</b></p> <p>16 Q Where did you work?</p> <p>17 A <b>In the offices at the Crescent.</b></p> <p>18 Q Were you physically near Jim Dondero,</p> <p>19 your office?</p> <p>20 A <b>No, I was not physically near Dondero.</b></p> <p>21 Q Same floor?</p> <p>22 A <b>Same floor, yes. There was only one</b></p> <p>23 <b>floor.</b></p> <p>24 Q And you had your own private office?</p> <p>25 A <b>I did.</b></p>	59	<p>1 A <b>Reported to Mr. Surgent.</b></p> <p>2 Q When he was the chief compliance</p> <p>3 officer?</p> <p>4 A <b>Yeah, they -- they were in</b></p> <p>5 <b>compliance-based roles at the end of my tenure.</b></p> <p>6 Q When Mr. Surgent was the chief</p> <p>7 compliance officer, who did he report to?</p> <p>8 A <b>Jim Dondero.</b></p> <p>9 Q Was there anyone else in the Highland</p> <p>10 Capital Management legal department, other than</p> <p>11 the names you've identified?</p> <p>12 A <b>Sarah Bell, my executive assistant,</b></p> <p>13 <b>reported to me. I believe she may have reported</b></p> <p>14 <b>to Mr. Collins. I believe she reported to</b></p> <p>15 <b>Mr. Collins, technically.</b></p> <p>16 Q Anyone else in the Highland Capital</p> <p>17 Management legal department?</p> <p>18 A <b>Not that I can recall.</b></p> <p>19 Q Prior to becoming general counsel, were</p> <p>20 you the assistant general counsel?</p> <p>21 A <b>I was.</b></p> <p>22 Q And did you ever hold a title of</p> <p>23 portfolio manager?</p> <p>24 A <b>I did.</b></p> <p>25 Q When?</p>
58	<p>1 Q And you spoke with Mr. Dondero on an</p> <p>2 average of a daily basis?</p> <p>3 A <b>Yes.</b></p> <p>4 MS. SMITH: Objection as to form.</p> <p>5 THE WITNESS: I'm sorry, Frances.</p> <p>6 Yes.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did anyone report to you directly at</p> <p>9 Highland Capital Management?</p> <p>10 A <b>Yes.</b></p> <p>11 Q Who?</p> <p>12 A <b>I'll try my best to give an exhaustive</b></p> <p>13 <b>list.</b></p> <p>14 <b>Thomas certainly reported to me in his</b></p> <p>15 <b>deputy general counsel role, but not in his chief</b></p> <p>16 <b>compliance officer role.</b></p> <p>17 <b>JP Sevilla, Ms. Irving, Mr. DiOrio,</b></p> <p>18 <b>Ms. Vitiello, Ms. Leventon -- I mean, Mr.</b></p> <p>19 <b>Leventon, sorry. I think that was the direct</b></p> <p>20 <b>reports upon determination, but at different</b></p> <p>21 <b>times, it's been various other people.</b></p> <p>22 Q What about Lauren Thedford?</p> <p>23 A <b>She did not report to me. She reported</b></p> <p>24 <b>to Mr. Surgent.</b></p> <p>25 Q And what about Jason Post?</p>	60	<p>1 A <b>I'd have to go back and think about</b></p> <p>2 <b>that, Mr. Clubok. I apologize. But it was, I</b></p> <p>3 <b>want to say, '08 and '09, maybe in '10.</b></p> <p>4 Q When you communicated with Mr. Dondero,</p> <p>5 is it fair to say you -- you communicated</p> <p>6 verbally, like in-person?</p> <p>7 A <b>I communicated verbally in-person as</b></p> <p>8 <b>well as telephonically.</b></p> <p>9 Q How about by text message?</p> <p>10 A <b>Very limited.</b></p> <p>11 Q When you would text message with</p> <p>12 Mr. Dondero, which phone would you use?</p> <p>13 A <b>214-649-5475.</b></p> <p>14 Q Did you use any other messenger systems</p> <p>15 to communicate with Mr. Dondero, like --</p> <p>16 A <b>No.</b></p> <p>17 Q Did you ever use signal or What's App</p> <p>18 or any other text messaging?</p> <p>19 A <b>No, I exclusively communicated with</b></p> <p>20 <b>Mr. Dondero on iMessage.</b></p> <p>21 Q iMessage on your iPhone?</p> <p>22 A <b>Yes.</b></p> <p>23 Q Did he have an iPhone?</p> <p>24 A <b>Yes.</b></p> <p>25 MS. SMITH: Objection, form.</p>

<p style="text-align: right;">61</p> <p>1 BY MR. CLUBOK:                  2 Q Did you ever email with him?                  3 A <b>Yeah, there was -- there was emails</b>                  4 <b>with Mr. Dondero.</b>                  5 Q Who set your compensation at HCM?                  6 A <b>I believe there was a compensation</b>                  7 <b>committee, but the ultimate arbiter was</b>                  8 <b>Mr. Dondero.</b>                  9 Q Did you have responsibilities for any                  10 other HCM-affiliated or managed entities while you                  11 were the general counsel at Highland Capital                  12 Management?                  13 A <b>I believe that I was a managing member</b>                  14 <b>or officers of various entities at different</b>                  15 <b>times.</b>                  16 Q Did any of those entities separately                  17 compensate you for the work you did?                  18 A <b>No.</b>                  19 Q So all of the compensation you received                  20 came -- even if you did it on behalf of some of                  21 these other entities came directly from Highland                  22 Capital Management LP?                  23 A <b>Yes.</b>                  24 Q Was there ever a time when one of                  25 Highland's affiliated or managed funds paid you</p>	<p style="text-align: right;">63</p> <p>1 Q So I can get it clean for the record.                  2 And when you say -- it's like if I said                  3 it's not raining range outside and you said "No,"                  4 you're meaning yes, it's not raining, but it says                  5 no. So, anyway, I'm just going to ask you that                  6 again just not to make you repeat, but just so you                  7 can answer. Whatever your answer is I don't care.                  8 I just want to --                  9 A <b>Yes, I understand that.</b>                  10 Q Okay. So is it true that other than                  11 the NexPoint advisor-managed REITs in which you                  12 were granted shares, there was never a Highland                  13 Capital Management affiliate or managed fund that                  14 paid you directly while you were working at HCM;                  15 correct?                  16 MS. SMITH: Objection to form.                  17 THE WITNESS: That is my understanding,                  18 yes.                  19 BY MR. CLUBOK:                  20 Q When you were at Highland, you used                  21 email addresses that ended in "hcmlp.com" and                  22 "highlandcapital.com?"                  23 A <b>Yes.</b>                  24 Q Did you ever use any other email to                  25 conduct any business for Highland or any of its</p>
<p style="text-align: right;">62</p> <p>1 directly?                  2 A <b>Again, only with --</b>                  3 MS. SMITH: Objection to form.                  4 THE WITNESS: Again, only with the                  5 exception of the NexPoint Advisor-managed REITs                  6 when I was granted shares.                  7 BY MR. CLUBOK:                  8 Q So other than NexPoint Advisor-managed                  9 REITs in which you were granted shares, there was                  10 never a Highland Capital Management affiliate or                  11 managed fund that paid you directly; is that                  12 correct?                  13 A <b>That paid me directly, no.</b>                  14 Q Is that correct?                  15 A <b>That's what -- that's my belief, yes.</b>                  16 Q And by the way, that was an example of,                  17 I think, a double negative.                  18 The only reason I reiterated that                  19 question is if I say -- if you say -- I said was                  20 there -- I said was there never.                  21 I put in a negative. And you said                  22 "No," and so it became a little confusing. So                  23 I am just going to ask that question again without                  24 the negative.                  25 A <b>Please.</b></p>	<p style="text-align: right;">64</p> <p>1 affiliates?                  2 MS. SMITH: Objection to form.                  3 THE WITNESS: For Highland or its                  4 affiliates, no.                  5 MR. CLUBOK: I'm sorry. What was the                  6 form objection to that, Ms. Smith?                  7 MS. SMITH: That was a -- that was a                  8 compound question.                  9 MR. CLUBOK: Okay. I'm trying to --                  10 one second here. My wife just nicely brought me a                  11 cup of coffee.                  12 MS. SMITH: I wish I had someone                  13 bringing me coffee.                  14 MR. CLUBOK: It's very nice. You guys                  15 may regret that I have coffee. I don't know.                  16 Sorry, let me back to it.                  17 BY MR. CLUBOK:                  18 Q When you conducted business for                  19 Highland Capital Management, did you ever use any                  20 other email, other than the HCMLP.com or the                  21 HighlandCapital.com?                  22 A <b>No, not for business related to</b>                  23 <b>Highland Capital Management.</b>                  24 Q While you were employed at Highland                  25 Capital Management, did you ever use any email for</p>



<p style="text-align: right;">65</p> <p>1 any other business-related purpose?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And what emails -- what email or emails</p> <p>4 were that?</p> <p>5 <b>A WWWSA -- or my name, sorry,</b></p> <p>6 <b>"sasgmt.com."</b></p> <p>7 Q Under what circumstances would you use</p> <p>8 the sasmanagement.com email?</p> <p>9 <b>A In things related to SAS or Sentinel or</b></p> <p>10 <b>its related entities.</b></p> <p>11 Q Why?</p> <p>12 <b>A Because we were instructed by</b></p> <p>13 <b>compliance that all aspects of those businesses</b></p> <p>14 <b>should be conducted on their own servers and</b></p> <p>15 <b>completely separate from Highland Capital</b></p> <p>16 <b>Management LP.</b></p> <p>17 Q Okay, other than that email address and</p> <p>18 the Highland-related email addresses that you've</p> <p>19 already mentioned, was there ever any other email</p> <p>20 that you used for any business purposes while you</p> <p>21 were employed at Highland Capital Management?</p> <p>22 <b>A Not that I recall.</b></p> <p>23 Q Did you ever -- what is Blackland</p> <p>24 Associates?</p> <p>25 <b>A Consulting firm.</b></p>	<p style="text-align: right;">66</p> <p>1 Q When was that -- what -- does that have</p> <p>2 any connection with Highland Capital Management?</p> <p>3 <b>A None.</b></p> <p>4 Q Did you ever use emails with the</p> <p>5 blacklandassociates.com?</p> <p>6 <b>A No.</b></p> <p>7 Q Did you ever -- what's your sister's</p> <p>8 name.</p> <p>9 <b>A I have two sisters.</b></p> <p>10 Q What are their names?</p> <p>11 <b>A Sharon Ellington and Marcia Maslow.</b></p> <p>12 Q Have either of those individuals ever</p> <p>13 done any work in connection with Highland Capital</p> <p>14 Management?</p> <p>15 <b>A My sister Marcia assisted on some IT</b></p> <p>16 <b>projects.</b></p> <p>17 Q Any other work that either of them ever</p> <p>18 did in connection with your work at Highland</p> <p>19 Capital Management?</p> <p>20 <b>A My -- my other sister is an estate</b></p> <p>21 <b>planning attorney, and she's helping me with my</b></p> <p>22 <b>personal finances.</b></p> <p>23 Q Anything else?</p> <p>24 <b>A Not that I -- not that I recall.</b></p> <p>25 Q Have you ever heard of OG Ventures?</p>
<p style="text-align: right;">67</p> <p>1 <b>A OG Ventures? No.</b></p> <p>2 Q Were you surprised when you were hired</p> <p>3 from Highland Capital Management?</p> <p>4 <b>A Yes.</b></p> <p>5 MS. SMITH: Objection as to form.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Did you have a chance to clean out your</p> <p>8 office?</p> <p>9 <b>A No.</b></p> <p>10 Q Have you performed any services for any</p> <p>11 HCM-related entities since your termination?</p> <p>12 <b>A Other than in my employment with</b></p> <p>13 <b>Skyview, but I don't know that it's considered</b></p> <p>14 <b>related anymore due to the bankruptcy.</b></p> <p>15 Q When was the last time you spoke with</p> <p>16 Jim Dondero?</p> <p>17 <b>A About 32 days ago.</b></p> <p>18 Q And prior to that, how frequently were</p> <p>19 you speaking to him?</p> <p>20 <b>A Once every couple to three days.</b></p> <p>21 Q When's the last time you spoke with</p> <p>22 Isaac Leventon?</p> <p>23 <b>A About 35 days ago.</b></p> <p>24 Q And prior to that, how often did you</p> <p>25 speak with Mr. Leventon?</p>	<p style="text-align: right;">68</p> <p>1 <b>A Maybe a couple of times a week.</b></p> <p>2 Q When's the last time you spoke with</p> <p>3 JP Sevilla?</p> <p>4 <b>A Close to 40 days ago, I believe.</b></p> <p>5 Q And how often did you speak to him</p> <p>6 prior to that?</p> <p>7 <b>A A couple of times a week.</b></p> <p>8 Q When was the last time you spoke with</p> <p>9 Matt DiOrio?</p> <p>10 <b>A I would say about 30 days ago.</b></p> <p>11 Q How often did you speak with him prior</p> <p>12 to that?</p> <p>13 <b>A Two or three times a week.</b></p> <p>14 Q When was the last time you spoke with</p> <p>15 Ms. Irving?</p> <p>16 <b>A Two plus months ago.</b></p> <p>17 Q What did Ms. Irving do for</p> <p>18 Skyview Group?</p> <p>19 <b>A Ms. Irving has never worked for</b></p> <p>20 <b>Skyview Group because she is on medical leave.</b></p> <p>21 Q Is Skyview Group paying her any</p> <p>22 compensation at all for 20 -- for -- strike that.</p> <p>23 Has Skyview Group agreed to pay her any</p> <p>24 compensation at all for 2021?</p> <p>25 <b>A I have no idea.</b></p>

<p style="text-align: right;">69</p> <p>1 Q So Ms. Irving is currently not employed 2 by Skyview Group; is that correct? 3 MS. SMITH: Objection. Objection to 4 form. That misstates what he said. 5 THE WITNESS: I don't know the 6 arrangement. I don't know how that FMLA works. I 7 just -- I just don't know enough about it. 8 That's handled by Mr. Collins. 9 BY MR. CLUBOK: 10 Q Did you speak with -- so you've been in 11 Africa? You were on an extended trip to Africa 12 for about a month or so? 13 A <b>Yeah, 26 days.</b> 14 Q And when did you return? 15 A <b>I returned about 30 hours ago, 36 hours</b> 16 <b>ago, something like that.</b> 17 Q During the time -- who were you in 18 Africa with? 19 A <b>My father.</b> 20 Q Just you and your father, that's it? 21 A <b>Some of my family --</b> 22 MS. SMITH: Objection to form. 23 THE WITNESS: A subset of my family 24 members joined us for the -- for about ten days on 25 the beginning.</p>	<p style="text-align: right;">71</p> <p>1 Q When did you find out that you were 2 going to be deposed today? 3 A <b>I found out I was going to be deposed</b> 4 <b>today, I believe, before I left.</b> 5 <b>My dad had a -- about a</b> 6 <b>ten-generational iPad that I would try to get</b> 7 <b>emails on, and I think I received some calendar</b> 8 <b>notices when I had Wi-Fi.</b> 9 Q I'm sorry, you say that you found out 10 about today's deposition before you left for your 11 Africa trip? 12 A <b>No. I said I knew I was going to be</b> 13 <b>deposed. I didn't know the date.</b> 14 <b>I was able to get some calendar invites</b> 15 <b>through a personal email account off my dad's</b> 16 <b>iPad, but it was incredibly difficult.</b> 17 Q So you got a calendar invite for 18 today's deposition and no other information at all 19 about today's deposition before you got back to 20 the US? 21 A <b>Literally none.</b> 22 Q Did you -- how did you spend yesterday? 23 A <b>How did I spend yesterday?</b> 24 MS. SMITH: Objection to form. 25 THE WITNESS: I went to AT&amp;T to try to</p>
<p style="text-align: right;">70</p> <p>1 BY MR. CLUBOK: 2 Q And during that time, other than your 3 attorney, did you communicate with anyone in the 4 U.S.? 5 A <b>I don't believe so. And I didn't</b> 6 <b>communicate with my attorneys either, that I</b> 7 <b>recall.</b> 8 Q You didn't communicate with your 9 attorneys at all -- I don't want to get into the 10 substance, but you didn't communicate with your 11 attorneys at all during the time you were in 12 Africa; is that true? 13 A <b>No, someone decided to politely -- I --</b> 14 <b>when I signed up for the international phone plan,</b> 15 <b>what I was told by AT&amp;T is that the email went to</b> 16 <b>my former executive admin at Highland and someone</b> 17 at (inaudible) someone informed them they're to 18 turn off my phones. 19 Q So, you had absolutely no communication 20 with your attorneys during the time you were in 21 Africa; is that true? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't believe I had any 24 at all. 25 BY MR. CLUBOK:</p>	<p style="text-align: right;">72</p> <p>1 get my phones turned on, and then I had a 2 discussion with counsel yesterday afternoon. 3 BY MR. CLUBOK: 4 Q Did you do anything else related to 5 this case yesterday? 6 A <b>Nothing.</b> 7 Q Do you have -- you have files of 8 documents that you took from Highland Capital? 9 A <b>No, I didn't.</b> 10 MS. SMITH: Objection to form. 11 BY MR. CLUBOK: 12 Q Strike that. You -- you have documents 13 in your possession that are Highland Capital or 14 related documents; correct? 15 A <b>That is --</b> 16 MS. SMITH: Objection to form. 17 THE WITNESS: That is incorrect. 18 BY MR. CLUBOK: 19 Q Do you have any boxes that you 20 needed -- strike that. 21 Do you have any boxes in your 22 possession that potentially contain information 23 responsive to the document subpoena we issued in 24 this case? 25 MS. SMITH: Objection.</p>

<p style="text-align: right;">73</p> <p>1 THE WITNESS: No, I have moving boxes                  2 where my former partner was packed up, and I had                  3 personal notebooks that I searched through to see                  4 if there is anything relevant to this case. And I                  5 don't have any documents that are Highland Capital                  6 Managements or otherwise else.                  7 BY MR. CLUBOK:                  8 Q But you didn't search those notebooks                  9 prior to leaving for Africa; correct?                  10 <b>A No, I did not.</b>                  11 Q And you have not searched them since                  12 you got back; correct?                  13 <b>A That is wrong.</b>                  14 Q When did you search them?                  15 <b>A The day I got back, I searched through</b>                  16 <b>the boxes until 3:00 o'clock in the morning until</b>                  17 <b>I found them.</b>                  18 Q And you found the notebooks, and they                  19 had absolutely nothing to do with anything                  20 requested in the subpoena; is that correct?                  21 <b>A No, there was absolutely nothing.</b>                  22 <b>The notebooks were only a few months</b>                  23 <b>old. I mean, they mostly went back to December.</b>                  24 Q Do you currently sit on the board of                  25 any companies?</p>	<p style="text-align: right;">75</p> <p>1 Q Have you ever served as a direct -- as                  2 a director of any other entity related in any way                  3 to Highland Capital Management or Jim Dondero?                  4 <b>A Not that I can recall.</b>                  5 Q And so other than this one instance                  6 that you've described as a short stint, you've                  7 never actively engaged in the duties of a                  8 director, as far as you know?                  9 <b>A Yes.</b>                  10 Q Have you formed any other entities,                  11 other than Skyview and its subsidiaries?                  12 MS. SMITH: Objection to form.                  13 MR. CLUBOK: Sorry, what's the                  14 objection to that question?                  15 MS. SMITH: And what is the time period                  16 and the relation to this matter.                  17 MR. CLUBOK: Okay.                  18 BY MR. CLUBOK:                  19 Q Have you formed any other entities                  20 other than Skyview and its subsidiaries?                  21 <b>A I-- I don't understand how I can</b>                  22 <b>answer that, Mr. Clubok, because in my role as</b>                  23 <b>Highland, I was involved in forming numerous</b>                  24 <b>entities. I've formed entities for my own estate</b>                  25 <b>and tax planning on advice of counsel, so --</b></p>
<p style="text-align: right;">74</p> <p>1 <b>A Sit on the board of any companies?</b>                  2 <b>I believe I still may be on a real estate</b>                  3 <b>transaction that was relative to the NexPoint</b>                  4 <b>Advise funds called "GEN," but I don't know if</b>                  5 <b>I'm still on the board there or not.</b>                  6 Q Anything else?                  7 <b>A No.</b>                  8 Q Have you ever served as a director for                  9 any company affiliated with Highland Capital                  10 Management or Jim Dondero?                  11 <b>A That's --</b>                  12 MS. SMITH: Objection to form.                  13 THE WITNESS: That's a difficult                  14 question to answer, as very often there are                  15 entities formed and they'll put my name or other                  16 senior employees' name as an officer or director                  17 of an LLC like an SPV without my knowledge, but an                  18 actual board, no.                  19 BY MR. CLUBOK:                  20 Q So other than being just listed in some                  21 document without your knowledge, you've never                  22 served as a director for any --                  23 <b>A No, I think I was on -- I can't</b>                  24 <b>remember, but I-- I serve a short stint when Tray</b>                  25 <b>Parker resigned on a motion, I believe.</b></p>	<p style="text-align: right;">76</p> <p>1 <b>I'm -- I'm trying my best to answer that.</b>                  2 <b>Maybe you if you could give me a</b>                  3 <b>timeframe or a limitation.</b>                  4 Q How about -- since you became general                  5 counsel of Highland, are there any other entities,                  6 other than Skyview and its subsidiaries, that                  7 you've formed where you are the sole owner?                  8 <b>A Again, other than relative to estate or</b>                  9 <b>tax planning on advice of counsel, no, or</b>                  10 <b>investment in these.</b>                  11 <b>I was involved in private investing</b>                  12 <b>with my own firms.</b>                  13 Q What about Sentinel?                  14 <b>A I did not form Sentinel.</b>                  15 Q Who formed Sentinel?                  16 <b>A Maples and Calder.</b>                  17 Q Okay, you were an original equity owner                  18 of Sentinel; correct?                  19 <b>A I would have to look at the original</b>                  20 <b>documentations. I don't know how that was held or</b>                  21 <b>structured.</b>                  22 Q Well, you had an equity stake in                  23 Sentinel; correct?                  24 <b>A Maybe ultimately. Again, I don't</b>                  25 <b>remember how it was structured.</b></p>

<p style="text-align: right;">77</p> <p>1 Q Yeah, ultimately. You have an economic 2 interest in Sentinel -- maybe through some other 3 entities, but you have an ultimate economic 4 interest in Sentinel; correct? 5 <b>A Potentially. I would have to look how 6 that's held.</b> 7 Q And what about an entity called SAS? 8 <b>A Same. That was formed by Maples and 9 Calder.</b> 10 Q Formed by Maples and Calder. 11 But -- and that one you have all of the 12 equity interest; correct? 13 <b>A Not true.</b> 14 MS. SMITH: Object to the form. 15 BY MR. CLUBOK: 16 Q Roughly, how much of the equity 17 interest in SAS do you have? 18 <b>A Again, it considers how it's held. I 19 don't know that I hold any as an individual. But 20 what could be argued that I was the ultimate 21 beneficial or a beneficiary in some way, it would 22 be 30 percent.</b> 23 Q And who has the other 70 percent of 24 SAS? 25 <b>A Entities --</b></p>	<p style="text-align: right;">79</p> <p>1 BY MR. CLUBOK: 2 Q But you personally believe that you 3 have -- whether it's directly or indirectly a 4 roughly 30 percent economic interest in Sentinel; 5 correct? 6 <b>A That's related to me somehow, yes.</b> 7 Q And you personally, whether directly or 8 indirectly, have a roughly 30 percent economic 9 interest in SAS; correct? 10 <b>A Again, in some way related to me, yes.</b> 11 Q Are there any other entities that have 12 been formed since you became general counsel of 13 Highland in which you have a economic interest 14 that you've not identified? 15 <b>A No, not that I'm aware of, except for 16 entities related to those two global monikers of 17 SAS and Sentinel.</b> 18 Q What is Millennium Risk Management? 19 <b>A I have no idea.</b> 20 Q What is TT3 Partners? 21 <b>A Never heard of it.</b> 22 Q What is BSN Ventures LLC? 23 <b>A I don't know.</b> 24 Q Did you ever form any entity with 25 Mr. Leventon?</p>
<p style="text-align: right;">78</p> <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: Entities related to 3 Mr. Dondero. 4 BY MR. CLUBOK: 5 Q Okay. And is that same 30/70 6 proportion apply to Sentinel, as far as you know? 7 <b>A As far as I know. Again, I don't know 8 how Mr. Dondero holds that. He may not hold any 9 as an individual. And the structure has changed 10 so many times for -- at the -- at the request of 11 the Cayman International Monetary authorities, I 12 don't even know what it looks like.</b> 13 Q But without getting into the 14 complicated structures -- and the court in this 15 case has asked at some point about those -- you 16 understand that the ultimate economic interest in 17 both Sentinel and SAS is split roughly 70/30 18 respectively between Mr. Dondero and you; correct? 19 MS. SMITH: Objection to form. 20 THE WITNESS: Or entities related to 21 us. 22 I have no transparency, and Mr. Dondero 23 holds it. And to be quite honest with you, 24 without looking at the docs, I don't know how it 25 even is related to me.</p>	<p style="text-align: right;">80</p> <p>1 MS. SMITH: Objection to form. 2 BY MR. CLUBOK: 3 Q Strike that. 4 Was an entity ever formed that had you 5 and Mr. Leventon as the chief economic 6 beneficiaries, either directly or indirectly? 7 <b>A Not that I recall, no.</b> 8 Q How about same question with respect to 9 Mr. DiOrio. 10 <b>A No, not that I recall.</b> 11 Q Same question with respect to William 12 T. Reid of Reid Collins. 13 <b>A No. No, that's not true. I'm involved 14 in an entity with Mr. Reid and one of his partners 15 on a deer lease outside of Austin, Texas. I 16 believe that's the BSN Ventures that you just 17 mentioned. They formed it, I didn't.</b> 18 Q Sorry. What is a deer lease? 19 <b>A You pay money to a rancher to lease 20 property to hunt upon.</b> 21 Q Is it for commercial purposes or is it 22 just a payment like you'd join a hunting club or a 23 golf club? 24 <b>A Exactly the same --</b> 25 MS. SMITH: Objection to form. And</p>

<p style="text-align: right;">81</p> <p>1 this is way off the track of the purpose of the 2 deposition. 3 THE WITNESS: Exactly the same as a 4 country club membership or a hunting club or a 5 tennis club or a golf membership, but it is paid 6 to an individual rancher. 7 BY MR. CLUBOK: 8 Q And you did enter into that arrangement 9 with Mr. Collins; right? 10 A No, Mr. Reid. 11 Q I'm sorry, Mr. Reid. 12 A And -- yeah, Mr. Reid and a partner of 13 his named Nate Palmer. And, again, they formed 14 the entity. I just paid my pro rata share to the 15 LLC. They run it, they manage it. 16 It is literally a friendship thing 17 that's centered around deer hunting. 18 Q And that firm for a while represented 19 Highland Capital Management in the litigation 20 against UBS; correct? 21 A Correct. 22 MS. SMITH: Objection to form. 23 BY MR. CLUBOK: 24 Q They did so until they sought to 25 withdraw earlier this year; correct?</p>	<p style="text-align: right;">82</p> <p>1 A Correct. 2 Q Did you discuss withdrawal with them? 3 A I did not. 4 Q Did you discuss the UBS litigation with 5 them during -- during 2020, the last year of your 6 employment with Highland Capital Management? 7 A Yeah, I'm sure I did at some point. 8 Q Did you ever discuss with them what to 9 do about the judgment that UBS obtained? 10 A No. 11 Q Did you discuss with anybody -- strike 12 that. 13 Post bankruptcy and prior to 14 termination, did you discuss with anybody in the 15 world what to do about the judgment that UBS 16 obtained in New York? 17 A Yes. 18 Q Who did you discuss that with? 19 A Again, what time period? I'm sorry. 20 Q From the time of the bankruptcy until 21 the time you were terminated. 22 A You, Mr. Dondero, Mr. Seery, former 23 Judge Nelms, Mr. Dubel. I think that's pretty 24 much it. 25 Q So that's the entire list of</p>
<p style="text-align: right;">83</p> <p>1 individuals that you can recall ever discussing 2 what to do about the judgment that UBS obtained in 3 New York since Highland's bankruptcy and prior to 4 you being terminated from Highland Capital 5 Management; correct? 6 A I'm sure I hypothecated with -- I'm 7 certain that I did with Mr. Leventon just about, 8 you know, what we thought the outcome would be for 9 Mr. Sevilla. And I'm sure that I talked to 10 Mr. Reid about it several times, you know, because 11 I -- I interact with him socially, so you know how 12 those kind of conversions go. 13 Q Anybody else at all? 14 A Not that I can think of. 15 Q Did you ever tell me that there was an 16 insurance policy issued by Sentinel that 17 potentially could satisfy that judgment? 18 MS. SMITH: Objection to form. 19 THE WITNESS: No. 20 BY MR. CLUBOK: 21 Q Did you ever tell Mr. Dondero that 22 there was an insurance policy issued by Sentinel 23 that could potentially satisfy that judgment? 24 A I didn't need to tell Mr. Dondero. He 25 was aware of it since inception.</p>	<p style="text-align: right;">84</p> <p>1 Q Did you ever tell Mr. Seery that there 2 was an insurance policy issued by Sentinel that 3 could potentially satisfy at least part of the 4 judgment that UBS obtained in New York? 5 MS. SMITH: Objection to form. 6 THE WITNESS: No. 7 BY MR. CLUBOK: 8 MR. CLUBOK: What was the form 9 objection? 10 MS. SMITH: Well, it calls for a legal 11 conclusion on what the insurance policy can do and 12 who it can pay out on. 13 MR. CLUBOK: Okay. 14 BY MR. CLUBOK: 15 Q Did you ever tell Mr. Seery anything 16 at all about the insurance policy that was issued 17 by Sentinel with respect to the UBS litigation in 18 New York? 19 A No. 20 Q Did you ever tell Mr. Nelms, Judge 21 Nelms anything at all about the insurance policy 22 that was issued by Sentinel with respect to the 23 UBS litigation in New York? 24 A No. 25 Q Did you ever tell Mr. Dubel anything</p>

<p style="text-align: right;">85</p> <p>1 at all about the insurance policy that had been                  2 issued by Sentinel with respect to the UBS                  3 litigation in New York?                  4 <b>A No.</b>                  5 Q Did you ever tell Mr. Leventon anything                  6 at all about the insurance policy that had been                  7 issued by Sentinel with respect to the UBS                  8 litigation in New York?                  9 <b>A Mr. Leventon knew about it since</b>                  10 <b>inception.</b>                  11 Q Mr. Leventon, since inception, knew                  12 that there was an insurance policy issued by                  13 Sentinel with respect to the UBS litigation                  14 pending in New York?                  15 <b>A Yes.</b>                  16 Q How did he know about that?                  17 MS. SMITH: Objection.                  18 THE WITNESS: He was part of the                  19 overall group of a dozen, if not 20, people inside                  20 of Highland that went through the process of                  21 approving the transaction, so he was around for                  22 the genesis, then quickly became not part of that                  23 process.                  24 BY MR. CLUBOK:                  25 Q What do you mean quickly became not</p>	<p style="text-align: right;">87</p> <p>1 <b>Mr. Leventon because it was my idea.</b>                  2 Q It was your idea to have Sentinel issue                  3 an insurance policy with respect to the UBS                  4 litigation that was then pending in New York;                  5 correct?                  6 <b>A Yes.</b>                  7 Q And when you initially had that idea,                  8 you discussed it fully with Mr. Leventon?                  9 <b>A Well, I discussed with Mr. Leventon</b>                  10 <b>because the idea came from a matter called</b>                  11 <b>Cornerstone that Highland Capital Management, its</b>                  12 <b>funds brought against Nautic, a private equity</b>                  13 <b>advisor. And I had never heard of an ATE policy</b>                  14 <b>before. And we discovered in that litigation that</b>                  15 <b>they had made a payment out of their funds for a</b>                  16 <b>premium. And they had bought an ATE policy, and</b>                  17 <b>it produced a large settlement that the debtor and</b>                  18 <b>Highland Capital Management funds benefited from.</b>                  19 Q And as a result of that, you discussed                  20 with Mr. Leventon the idea of purchasing an ATE                  21 policy from Sentinel with respect to the UBS                  22 litigation that was then pending in New York?                  23 <b>A Mr. Leventon, Mr. Sevilla, Mr. Surgent</b>                  24 <b>were the initial people that I had the</b>                  25 <b>conversation with.</b></p>
<p style="text-align: right;">86</p> <p>1 part of that process?                  2 <b>A It went to a process that was solely</b>                  3 <b>compliance and finance and some individuals from</b>                  4 <b>tax, if I remember correctly, and a couple of guys</b>                  5 <b>in accounting and training.</b>                  6 Q When did it go to that?                  7 <b>A After about the second and third week</b>                  8 <b>of discussing it as a possibility.</b>                  9 Q And Mr. Leventon never had anything                  10 whatsoever to do with it after that?                  11 <b>A Not that I recall.</b>                  12 MS. SMITH: Objection to form.                  13 THE WITNESS: I mean, there were --                  14 there were literally two dozen people involved, if                  15 not more, so I don't -- I didn't really keep a                  16 leash on Mr. Leventon and his involvement, but I                  17 don't remember him being intimately involved.                  18 BY MR. CLUBOK:                  19 Q Did you ever mention that -- strike                  20 that.                  21 So you are saying Mr. Leventon -- the                  22 idea first came to have a insurance policy issued                  23 by Sentinel, Mr. Leventon was involved in that                  24 initial conversation; correct?                  25 <b>A I had that initial conversation with</b></p>	<p style="text-align: right;">88</p> <p>1 Q All three of those equally in terms of                  2 being involved?                  3 <b>A They were all sitting --</b>                  4 MS. SMITH: Objection to form.                  5 THE WITNESS: They were all sitting in                  6 Mr. Surgent's office when I walked in and said is                  7 it possible to do an ATE like Nautic did?                  8 BY MR. CLUBOK:                  9 Q And this was the very first time that                  10 you ever mentioned this idea to get an ATE policy                  11 with respect to the UBS litigation to anyone?                  12 <b>A Yes.</b>                  13 Q And you mentioned that in Mr. Surgent's                  14 office to a group that included Mr. Leventon,                  15 Mr. Sevilla and Mr. Surgent?                  16 <b>A That's my memory, yes.</b>                  17 Q How long did you discuss it in the                  18 initial meeting?                  19 <b>A Less than five minutes.</b>                  20 Q Okay. And then after that, did you                  21 ever talk to Mr. Leventon again about the idea?                  22 <b>A I'm sure I did, yes. Or in a larger</b>                  23 <b>group, because then it went through an approval</b>                  24 <b>process and that became run by compliance.</b>                  25 Q And was Mr. Leventon aware that the</p>

89	<p>1 insurance policy was actually issued, as far as 2 you know? 3 MS. SMITH: Objection to form. 4 THE WITNESS: As far as I know. 5 BY MR. CLUBOK: 6 Q And was that because you discussed it 7 with Mr. Leventon since that policy has been 8 issued? 9 <b>A I'm sure that I have. I don't recall</b> 10 <b>it specifically, but, you know, it's like every</b> 11 <b>person in the firm knew.</b> 12 Q Every person in what firm knew? 13 <b>A In Highland Capital Management, I'd be</b> 14 <b>surprised if anyone didn't know especially above a</b> 15 <b>certain level because they were involved or their</b> 16 <b>team members were involved.</b> 17 Q Sorry, what specifically did every 18 person at Highland Capital Management above a 19 certain level know that you are referring to? 20 <b>A That the ATE policy was being</b> 21 <b>considered because it went through its normal</b> 22 <b>process that involved almost every group in the</b> 23 <b>firm.</b> 24 Q So, every single person who did an ATE 25 policy was being considered.</p>	91	<p>1 <b>A I did not.</b> 2 Q And you never told Judge Nelms about 3 it; correct? 4 <b>A I did not.</b> 5 Q You never told John Dubel about it; 6 correct? 7 <b>A I did not.</b> 8 Q You never took any action to make sure 9 that the court -- the bankruptcy court was aware 10 about the ATE policy; correct? 11 MS. SMITH: Objection to form. 12 THE WITNESS: No, I did not. 13 BY MR. CLUBOK: 14 Q That's like one of those double 15 negatives, so let me just ask it again: It's true 16 that you never took any action to ensure that the 17 bankruptcy court became aware of the ATE policy 18 that had been taken out with respect to the UBS 19 litigation in New York; correct? 20 <b>A Correct.</b> 21 Q Did you ever make any effort to collect 22 on that policy? 23 <b>A I--</b> 24 MS. SMITH: Objection to form. 25 THE WITNESS: No.</p>
90	<p>1 And roughly when was that? 2 <b>A Several months before it was put in</b> 3 <b>place.</b> 4 Q And how many people knew it was 5 actually put in place? 6 <b>A I would say the entire group that was</b> 7 <b>part of the process.</b> 8 Q So virtually every single senior person 9 at Highland Capital Management knew that the ATE 10 policy had been put in place? 11 <b>A That's my understanding. I'd be</b> 12 <b>shocked if they didn't. Because, again, we're</b> 13 <b>talking two dozen people involved in the process.</b> 14 Q Right. But, as far as you -- 15 You have no knowledge that Mr. Seery was 16 ever made aware of this; correct? 17 <b>A I-- I don't --</b> 18 MS. SMITH: Objection to form. 19 THE WITNESS: I don't know if Mr. Seery 20 was made aware of it or not. 21 BY MR. CLUBOK: 22 Q You -- you certainly never told 23 Mr. Seery about the ATE policy during your 24 employment at Highland Capital Management; 25 correct?</p>	92	<p>1 MR. CLUBOK: Okay. I think this is a 2 good time for a break. 3 THE WITNESS: Okay. 4 THE VIDEOGRAPHER: We're going off the 5 record at 12:05 p.m. Eastern time. 6 (Recess taken 12:05 p.m. to 12:15 p.m.) 7 THE VIDEOGRAPHER: We're going back on 8 the record at 12:21 p.m. Eastern Time. 9 BY MR. CLUBOK: 10 Q Okay, Mr. Ellington, we've been talking 11 about an entity that I referred to as Sentinel, 12 and I believe there's some different entities with 13 Sentinel in their name, but when we've been 14 talking about Sentinel, have you understood me to 15 be referring to Sentinel Reinsurance Limited? 16 <b>A Yes, I believe that is the main entity,</b> 17 <b>but I'd have to see an org chart. I don't know</b> 18 <b>what it looks like now.</b> 19 Q And you recall it is a fairly 20 complicated structure with lots of different 21 entities and subs and pass-through entities and so 22 forth? 23 MS. SMITH: Objection to form. 24 THE WITNESS: That's my understanding. 25 BY MR. CLUBOK:</p>

<p style="text-align: right;">93</p> <p>1 Q And -- and if I talk about it -- if I</p> <p>2 generally refer to it as Sentinel, will you</p> <p>3 understand it to be the collective organization,</p> <p>4 unless it's necessary to identify a specific sub</p> <p>5 or a specific entity; is that okay?</p> <p>6 <b>A Yeah, yeah, that's fine with me. And</b></p> <p>7 <b>if I get into any specificity, I may need to see</b></p> <p>8 <b>an org chart.</b></p> <p>9 Q When was Sentinel formed, roughly?</p> <p>10 <b>A My best recollection is 2012.</b></p> <p>11 Q What was the purpose of forming</p> <p>12 Sentinel, as far as you understood?</p> <p>13 <b>A To create a reinsurer.</b></p> <p>14 Q For whom?</p> <p>15 <b>A It was -- the instruction of</b></p> <p>16 <b>Mr. Dondero was to make every attempt to originate</b></p> <p>17 <b>and structure a Cayman-based reinsurer.</b></p> <p>18 Q So the idea for forming Sentinel, as</p> <p>19 far as you know, was Jim Dondero's.</p> <p>20 <b>A Yes.</b></p> <p>21 Q And is he -- did he -- is he the one</p> <p>22 who explained to you the purpose behind forming</p> <p>23 Sentinel?</p> <p>24 <b>A Yes.</b></p> <p>25 Q Was there anyone else in that</p>	<p style="text-align: right;">94</p> <p>1 conversation when he initially told you about it?</p> <p>2 <b>A I don't recall. I think it was just me</b></p> <p>3 <b>and him.</b></p> <p>4 Q And what -- what else did he tell you</p> <p>5 about the kind of business that he expected</p> <p>6 Sentinel to engage in?</p> <p>7 <b>A He wanted Sentinel to be a</b></p> <p>8 <b>full-serviced reinsurer, not just a captive.</b></p> <p>9 Q Why?</p> <p>10 <b>A Because he had attempted to do that</b></p> <p>11 <b>with Gov Re, and due to regulatory issues, again,</b></p> <p>12 <b>beyond my knowledge, he thought that Cayman was a</b></p> <p>13 <b>better place to domicile a new reinsurer.</b></p> <p>14 Q Was the idea that -- when you say --</p> <p>15 when you say a full-service reinsurer, not just a</p> <p>16 captive, what's the distinction that you</p> <p>17 understood him to be making?</p> <p>18 <b>A That captive reinsurers serve a limited</b></p> <p>19 <b>set of counter-parties and ensure a limited set</b></p> <p>20 <b>where a full service, it serves any and all</b></p> <p>21 <b>potential parties.</b></p> <p>22 Q And did he talk to you about the</p> <p>23 economics during this initial conversation?</p> <p>24 <b>A Meaning what?</b></p> <p>25 Q Meaning who would have the economic</p>
<p style="text-align: right;">95</p> <p>1 interest in Sentinel if it was established.</p> <p>2 <b>A No.</b></p> <p>3 Q When did he -- did he ever speak to you</p> <p>4 about the economics of Sentinel?</p> <p>5 <b>A When you mean the economics, who would</b></p> <p>6 <b>ultimately the potential beneficial owners?</b></p> <p>7 Q Yes.</p> <p>8 <b>A At a much later date after it was</b></p> <p>9 <b>established?</b></p> <p>10 Q Roughly when?</p> <p>11 <b>A I would say probably six to nine</b></p> <p>12 <b>months, if not a year, after it was established.</b></p> <p>13 <b>I really can't remember.</b></p> <p>14 Q And what was the nature of that</p> <p>15 conversation, as best you can remember?</p> <p>16 <b>A That because me and my team had been</b></p> <p>17 <b>able to pull it off, that I would have some</b></p> <p>18 <b>beneficial ownership.</b></p> <p>19 Q Because you were able to pull off</p> <p>20 establishing this full-service reinsurer?</p> <p>21 <b>A Yes.</b></p> <p>22 Q And when you say "some beneficial</p> <p>23 ownership" ultimately you obtained about</p> <p>24 30 percent; correct?</p> <p>25 <b>A Again, or entities somehow related to</b></p>	<p style="text-align: right;">96</p> <p>1 <b>me.</b></p> <p>2 Q At what point did he tell you that</p> <p>3 that's the percentage you would get?</p> <p>4 <b>A I don't recall.</b></p> <p>5 Q Well, roughly, how long after it was</p> <p>6 formed before --</p> <p>7 <b>A I don't know. I'm sorry, I didn't let</b></p> <p>8 <b>you finish your question.</b></p> <p>9 Q Sure. Was it, you know, within the</p> <p>10 first year that it was formed? Was it five years</p> <p>11 later? Just your best estimate.</p> <p>12 <b>A Oh, within the first year. That's a</b></p> <p>13 <b>very long due diligence period from the regulator.</b></p> <p>14 Q So within the first year of Sentinel</p> <p>15 being formed, it was established that you would,</p> <p>16 at least indirectly, if not directly, have a</p> <p>17 roughly 30 percent economic interest in Sentinel;</p> <p>18 correct?</p> <p>19 <b>A Correct.</b></p> <p>20 Q And Mr. Dondero would retain the other</p> <p>21 roughly 70 percent economic interest, as far as</p> <p>22 you understood; correct?</p> <p>23 <b>A As far as --</b></p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: As far as I understood,</p>



97	<p>1 again, or entities related to me or entities                  2 related to him. I don't know how he holds it, if                  3 he does hold it.                  4 BY MR. CLUBOK:                  5 Q Did Sentinel ever have a shared                  6 services agreement with Highland Capital                  7 Management?                  8 <b>A Not that I'm aware of.</b>                  9 Q Did Sentinel ever have an office?                  10 <b>A Did it have an office? Yes.</b>                  11 Q Where was its office?                  12 <b>A Grand Pavilion in the Cayman Islands.</b>                  13 Q Is that a mailbox or is it an actual                  14 physical office?                  15 <b>A It is an actual physical office.</b>                  16 Q Was it dedicated just to Sentinel?                  17 <b>A Part of the office space was dedicated</b>                  18 <b>to Sentinel. Part of the office space was</b>                  19 <b>dedicated to SAS Management and its related</b>                  20 <b>entities.</b>                  21 Q And so SAS is another entity that you                  22 had, directly or indirectly, roughly 30 percent                  23 economic interest in; correct?                  24 <b>A Or entities related to me and entities</b>                  25 <b>related to SAS Management subs.</b></p>	99	<p>1 <b>which I don't know if you'd call them employees, I</b>                  2 <b>don't know that it ever had employees, but I would</b>                  3 <b>have to see how the independent directors employed</b>                  4 <b>people, whether it is vendors or employees. I'm</b>                  5 <b>not certain.</b>                  6 Q Okay. But other than the independent                  7 directors, you are not aware of any employees of                  8 Sentinel Reinsurance; correct?                  9 <b>A Not to my knowledge, no.</b>                  10 Q So it's correct that you are unaware of                  11 any employees of Sentinel Reinsurance other than                  12 the independent directors?                  13 MS. SMITH: Object to form.                  14 THE WITNESS: To my knowledge, yes.                  15 BY MR. CLUBOK:                  16 Q Did SAS have any employees?                  17 <b>A Other than the independent directors,</b>                  18 <b>again, unless they hired people as employees or</b>                  19 <b>vendors, that's -- that's their decision. And to</b>                  20 <b>my knowledge, I don't think they did.</b>                  21 Q Who was responsible for -- for example,                  22 let's say if Sentinel issued an insurance policy,                  23 who was responsible for negotiating that?                  24 <b>A The independent directors and Beecher</b>                  25 <b>Carlson.</b></p>
98	<p>1 Q And you established an office in the                  2 Caymans for both -- both of these entities to                  3 share?                  4 MS. SMITH: Objection to form.                  5 BY MR. CLUBOK:                  6 Q Strike that.                  7 You understood an office was                  8 established in the Caymans for Sentinel and SAS to                  9 share?                  10 <b>A No, an office was established for SAS,</b>                  11 <b>and then in the inception of Sentinel, they leased</b>                  12 <b>part of the space.</b>                  13 Q When was SAS established?                  14 <b>A I want to say 2009.</b>                  15 Q Got it. So SAS was already in                  16 existence when you got the idea or when you --                  17 when you achieved the formation of Sentinel, it                  18 was arranged that SAS would share some of its                  19 office space with Sentinel?                  20 MS. SMITH: Objection to form.                  21 THE WITNESS: Correct.                  22 BY MR. CLUBOK:                  23 Q And how many employees did Sentinel                  24 have, if any?                  25 <b>A Other than the independent directors,</b></p>	100	<p>1 Q What's Beecher Carlson?                  2 <b>A They are a service provider that is the</b>                  3 <b>originator of the policies.</b>                  4 Q Where are they based out of?                  5 <b>A I believe they're based globally. I'm</b>                  6 <b>not really certain.</b>                  7 Q Was there a person at Beecher Carlson                  8 that you are familiar with who was responsible for                  9 negotiating the terms of any insurance policy that                  10 Sentinel issued?                  11 <b>A I never dealt with them, so I don't</b>                  12 <b>know their names.</b>                  13 Q Who did deal with them?                  14 <b>A The independent directors.</b>                  15 Q Anybody else other than independent                  16 directors ever deal with them?                  17 <b>A I'm sure other vendors, auditors,</b>                  18 <b>counsel.</b>                  19 Q Is there anyone employed by Highland                  20 Capital Management, to your knowledge, who ever                  21 dealt with Beecher Carlson other than the                  22 independent directors?                  23 <b>A Not to my knowledge.</b>                  24 Q Was there anyone at Highland -- strike                  25 that.</p>

<p style="text-align: right;">101</p> <p>1 Was there any Highland Capital 2 Management employee who ever performed any 3 services on behalf of Sentinel Reinsurance? 4 MS. SMITH: Objection to form. 5 THE WITNESS: Not to my knowledge. 6 BY MR. CLUBOK: 7 Q What about JP Sevilla? 8 MS. SMITH: Objection to form. 9 THE WITNESS: My understanding, he did 10 not provide services to Sentinel. 11 BY MR. CLUBOK: 12 Q Did he ever -- was there anybody at 13 Highland who was a director for Sentinel? 14 <b>A I believe for a period of time,</b> 15 <b>Mr. DiOrio was.</b> 16 Q When he was a director of Sentinel -- 17 strike that. 18 He was a director of Sentinel during 19 his employment with Highland Capital Management? 20 MS. SMITH: Objection to form. 21 THE WITNESS: That's what I understand. 22 BY MR. CLUBOK: 23 Q And that continued until sometime after 24 his employment with Highland Capital Management, 25 till he resigned?</p>	<p style="text-align: right;">103</p> <p>1 Highland -- with Highland Capital, when was the 2 last time you discussed the insurance policy with 3 anyone in the world? 4 <b>A Anyone in the world?</b> 5 Q Yes. 6 <b>A Other than counsel?</b> 7 Q No. Now I'm talking about while you 8 were still -- and you've got Mr. Feinstein here 9 who will object or tell you not to answer. But 10 I'm including now -- 11 <b>A Okay.</b> 12 Q -- Pachulski, other in-house counsel, 13 anyone in the world, while you were still at 14 Highland Capital Management. And so let me ask 15 the question again: What was the last time you 16 spoke to anyone about the ATE policy that was 17 taken out in connection with the UBS litigation in 18 New York while you were still employed at Highland 19 Capital Management? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I believe that's 22 discussed last fall with Mr. Leventon. 23 BY MR. CLUBOK: 24 Q So you discussed the ATE policy last 25 fall with Mr. Leventon?</p>
<p style="text-align: right;">102</p> <p>1 <b>A I don't know -- I don't know when that</b> 2 <b>ended.</b> 3 Q You are aware that he's -- well, he was 4 still a director of Sentinel Reinsurance at the 5 time that you and he were terminated from Highland 6 Capital Management; correct? 7 MS. SMITH: Objection to form. 8 THE WITNESS: I don't know. 9 BY MR. CLUBOK: 10 Q Was there any person at Highland who 11 had responsibility for day-to-day -- any -- any 12 duties with respect to Sentinel, whether as 13 monitoring them or dealing with them or anything 14 like that? 15 <b>A That ran the day-to-day, no one in</b> 16 <b>particular, no.</b> 17 Q Did you -- when was the last time you 18 discussed the insurance policy with anyone prior 19 to today, other than with your counsel? 20 <b>A I'd say months.</b> 21 Q Is that after you were terminated from 22 Highland Capital Management? 23 <b>A I don't -- I don't recall discussing it</b> 24 <b>after I was terminated, no.</b> 25 Q So prior to your termination with</p>	<p style="text-align: right;">104</p> <p>1 <b>A Yes.</b> 2 Q And in great a detail as you can, 3 describe that conversation. 4 <b>A I don't remember much about the</b> 5 <b>conversation. I just remember discussing the</b> 6 <b>existence of the policy with Mr. Leventon.</b> 7 Q What did -- what did you say to him? 8 <b>A I was discussing what the independent</b> 9 <b>directors may or may not do.</b> 10 Q What do you mean -- with as much detail 11 as possible, describe exactly what you said to him 12 and what he said to you. 13 <b>A I said, "What do you think the</b> 14 <b>independent directors are going to do relative to</b> 15 <b>the policy"?</b> 16 Q What did he say? 17 <b>A "Your guess is as good as mine."</b> 18 Q And that's the only thing that you said 19 to each other about the policy, nothing else in 20 that conversation that you can remember? 21 <b>A Not in -- not in -- not generally.</b> 22 <b>That was -- that was pretty much the limitation.</b> 23 Q What -- what sparked that conversation? 24 Did you start that conversation or did 25 he start that conversation?</p>

<p style="text-align: right;">105</p> <p><b>1 A I did.</b></p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q And why did you start a conversation</p> <p>5 with Mr. Leventon about the ATE policy?</p> <p><b>6 A Because Mr. Leventon handled the matter</b></p> <p><b>7 for UBS for years, and I wanted to get his</b></p> <p><b>8 thoughts on it.</b></p> <p>9 Q And so you just said to him -- what --</p> <p>10 how did you start the conversation, as best you</p> <p>11 can remember?</p> <p><b>12 A I said, "Hey, what do you think the</b></p> <p><b>13 independent directors do relative to the ATE</b></p> <p><b>14 policy?"</b></p> <p>15 Q And he said, "Your guess is as good as</p> <p>16 mine," and that was the extent of your</p> <p>17 conversation, the best you can recall?</p> <p><b>18 A Pretty much.</b></p> <p>19 Q Did you discuss in any way in words or</p> <p>20 substance the question of whether or not the</p> <p>21 directors even knew about the policy?</p> <p><b>22 A The directors of Sentinel knew about</b></p> <p><b>23 the policy? No, I wouldn't, because it's obvious</b></p> <p><b>24 they know about a policy they issued.</b></p> <p>25 Q Oh, I'm sorry. Your -- I apologize. I</p>	<p style="text-align: right;">107</p> <p>1 light of the judgment?</p> <p><b>2 A No.</b></p> <p>3 Q Did you ever discuss the policy ever</p> <p>4 with any of the independent directors?</p> <p><b>5 A Never.</b></p> <p>6 Q Do you know if anyone did on behalf of</p> <p>7 Highland?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: No, I don't.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Do you know if anybody who worked at</p> <p>12 Highland Capital Management ever discussed the ATE</p> <p>13 policy with any of the independent directors of</p> <p>14 Sentinel?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: I have no knowledge of</p> <p>17 that.</p> <p>18 MR. CLUBOK: And what was the form</p> <p>19 objection for that question, Ms. Smith?</p> <p>20 MS. SMITH: Mr. Clubok, that calls for</p> <p>21 speculation. And I have been helping you out with</p> <p>22 your questions, and it is not my job to help you</p> <p>23 rephrase your questions.</p> <p>24 MR. CLUBOK: Yeah. My question was: Do</p> <p>25 you know? So it doesn't call for speculation. It</p>
<p style="text-align: right;">106</p> <p>1 misunderstood your answer.</p> <p>2 You asked Mr. Leventon what he thought</p> <p>3 the independent directors at Sentinel would do</p> <p>4 relative to the policy?</p> <p><b>5 A Yes.</b></p> <p>6 Q You -- I thought you meant the</p> <p>7 directors who had been put in place at Highland.</p> <p>8 But that's --</p> <p><b>9 A No.</b></p> <p>10 Q Okay. So let me -- let me just make</p> <p>11 sure the record's clear so -- and I apologize if</p> <p>12 I -- if it was clear from your mind, but I didn't</p> <p>13 understand.</p> <p>14 When you had this conversation with Mr.</p> <p>15 Leventon, you asked him what he thought the</p> <p>16 independent directors of Sentinel would do with</p> <p>17 respect to the ATE policy in light of the judgment</p> <p>18 that had been entered into UBS's favor; correct?</p> <p><b>19 A Correct.</b></p> <p>20 Q And he said in words or substance "Your</p> <p>21 guess is as good as mine"?</p> <p><b>22 A Yes.</b></p> <p>23 Q Did you ask him whether or not he had</p> <p>24 communicated anything with the independent</p> <p>25 directors about what to do with the policy in</p>	<p style="text-align: right;">108</p> <p>1 very clearly does not. I'm just going to -- you</p> <p>2 know, I sometimes ask you for your form objections</p> <p>3 when I really don't understand them.</p> <p>4 Sometimes your answers have helped me</p> <p>5 and I understand. Other times like that, I remain</p> <p>6 perplexed how you could say it calls for</p> <p>7 speculation. Maybe I -- maybe you didn't hear me</p> <p>8 ask him -- starting that question with, "Do you</p> <p>9 know". But I'm going to ask you, please -- if</p> <p>10 it's a question like that going forward, please</p> <p>11 don't make an objection if it's not warranted.</p> <p>12 MS. SMITH: I'll make my objections</p> <p>13 when needed.</p> <p>14 THE VIDEOGRAPHER: Counsel, this is the</p> <p>15 videographer.</p> <p>16 I think the witness is frozen.</p> <p>17 MR. CLUBOK: Oh, dear. Well, I guess</p> <p>18 it was a good time for Ms. Smith and I to have</p> <p>19 that little colloquy.</p> <p>20 THE VIDEOGRAPHER: Should we go off the</p> <p>21 record?</p> <p>22 MR. CLUBOK: Yeah.</p> <p>23 THE VIDEOGRAPHER: We are going off the</p> <p>24 record at 12:37 p.m.</p> <p>25 (Recess taken from 12:37 p.m. to 1:11</p>

<p style="text-align: right;">109</p> <p>1 p.m.)</p> <p>2 THE VIDEOGRAPHER: We are going back on</p> <p>3 the record at 1:11 p.m. eastern time.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q So, Mr. Ellington, we were talking</p> <p>6 about the independent directors of Sentinel who</p> <p>7 you were discussing what they might do or not do</p> <p>8 with respect to the ATE policy last fall with Mr.</p> <p>9 Leventon; do you remember that before the break?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And who were the independent directors</p> <p>12 of Sentinel at the time?</p> <p>13 <b>A I don't know. I know one of them's</b></p> <p>14 <b>name was Jan. I don't know their names.</b></p> <p>15 Q When was the last time you spoke to any</p> <p>16 independent director at Sentinel?</p> <p>17 <b>A I believe it was August of '19.</b></p> <p>18 Q And why did you speak to them in August</p> <p>19 of 2019?</p> <p>20 <b>A A required meeting with Cayman's --</b></p> <p>21 <b>Cayman Islands Monetary Authority.</b></p> <p>22 Q Did you discuss the UBS litigation at</p> <p>23 all during that conversation?</p> <p>24 <b>A Not with the independent directors, but</b></p> <p>25 <b>with CIMA.</b></p>	<p style="text-align: right;">111</p> <p>1 <b>A No, I was not.</b></p> <p>2 Q So why were you the one having that</p> <p>3 meeting?</p> <p>4 <b>A As a representative of the</b></p> <p>5 <b>shareholders. I wasn't having the meeting; it was</b></p> <p>6 <b>requested by CIMA.</b></p> <p>7 Q And, sorry, you represented the</p> <p>8 shareholders of Sentinel?</p> <p>9 MS. SMITH: Objection --</p> <p>10 THE WITNESS: No, as a shareholder of</p> <p>11 Sentinel or an entity relative to me as a</p> <p>12 shareholder.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q So you were -- you were there as a</p> <p>15 shareholder in Sentinel?</p> <p>16 <b>A Correct.</b></p> <p>17 Q And in that -- so you did have some</p> <p>18 direct economic interest in Sentinel at the time?</p> <p>19 <b>A No, not true.</b></p> <p>20 Q Okay. You had indirect interest in the</p> <p>21 equity value of Sentinel.</p> <p>22 <b>A Like I said, or entities related to me.</b></p> <p>23 Q Were you the only person who was there</p> <p>24 before CIMA representing the interest of the</p> <p>25 shareholders?</p>
<p style="text-align: right;">110</p> <p>1 Q What's CIMA?</p> <p>2 <b>A Cayman Islands Monetary Authority.</b></p> <p>3 Q And this is after the trial in the UBS</p> <p>4 litigation?</p> <p>5 <b>A No, previous to the trial.</b></p> <p>6 Q You said it was August of 2019.</p> <p>7 <b>A Oh, yeah, sorry. I'm sorry, Andy, I</b></p> <p>8 <b>was -- I thought you meant the verdict. Sorry,</b></p> <p>9 <b>yes, after the trial.</b></p> <p>10 Q Okay. So after the trial, but prior to</p> <p>11 the verdict, you spoke with Cayman Islands</p> <p>12 Monetary Authority about the UBS litigation?</p> <p>13 <b>A Correct.</b></p> <p>14 Q And what was the nature of that</p> <p>15 investigation?</p> <p>16 <b>A They wanted an update as to the status</b></p> <p>17 <b>of the litigation.</b></p> <p>18 Q Why?</p> <p>19 <b>A Because they have minimum annual</b></p> <p>20 <b>meetings with the, at least, a director and other</b></p> <p>21 <b>functions of the reinsurer to get a status on the</b></p> <p>22 <b>portfolio.</b></p> <p>23 <b>It is just an annual review that is</b></p> <p>24 <b>required by CIMA.</b></p> <p>25 Q Well, were you a director of CIMA?</p>	<p style="text-align: right;">112</p> <p>1 <b>A Yes.</b></p> <p>2 Q Was anyone else involved in that</p> <p>3 meeting?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Who?</p> <p>6 <b>A Mr. Sevilla was there. Mr. DiOrion was</b></p> <p>7 <b>there. The director's first name is Jan -- I</b></p> <p>8 <b>don't know his last name -- independent director</b></p> <p>9 <b>of Sentinel, and Sentinel's counsel.</b></p> <p>10 Q Who was Sentinel's counsel?</p> <p>11 <b>A Her first name was Simone. I don't</b></p> <p>12 <b>remember her last name.</b></p> <p>13 Q From what firm?</p> <p>14 <b>A I believe she was from Soloman Harris,</b></p> <p>15 <b>but I don't know that for a fact.</b></p> <p>16 Q Was she a Cayman attorney?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And was this meeting in the Cayman</p> <p>19 Islands?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And about how long did it last?</p> <p>22 <b>A The portion I was involved in lasted</b></p> <p>23 <b>about half an hour.</b></p> <p>24 Q Now, Katie Irving was also at that</p> <p>25 meeting; correct.</p>

<p style="text-align: right;">113</p> <p>1 <b>A I believe so, but I'm not certain.</b></p> <p>2 <b>I cant remember, but I believe se may have been.</b></p> <p>3 Q And why was she there?</p> <p>4 <b>A She was along on the trip to do other</b></p> <p>5 <b>business with us, and she attended the meeting.</b></p> <p>6 Q What business was Ms. Irving doing that</p> <p>7 was unrelated to Sentinel?</p> <p>8 <b>A Relative to SAS Management.</b></p> <p>9 Q So Ms. Irving was in the Caymans on</p> <p>10 that trip only with respect to business on behalf</p> <p>11 of SAS?</p> <p>12 <b>A Yes.</b></p> <p>13 Q But you brought her along to this</p> <p>14 meeting with CIMA that was specifically focused on</p> <p>15 Sentinel?</p> <p>16 <b>A Yes.</b></p> <p>17 Q Why?</p> <p>18 <b>A Because she asked if she should come</b></p> <p>19 <b>and listen, and I said sure.</b></p> <p>20 Q Why?</p> <p>21 <b>A I guess she had a curiosity. I don't</b></p> <p>22 <b>know.</b></p> <p>23 Q Did you report to anyone about this</p> <p>24 meeting who was not at the meeting?</p> <p>25 <b>A No.</b></p>	<p style="text-align: right;">114</p> <p>1 Q So, no one other than you, Mr. Sevilla,</p> <p>2 Mr. DiOrio, Jan, Sentinel's counsel and Ms. Irving</p> <p>3 were informed about this meeting to the best of</p> <p>4 your knowledge?</p> <p>5 <b>A To my knowledge, that's the only people</b></p> <p>6 <b>that were informed, yes.</b></p> <p>7 Q And at this meeting, did you talk about</p> <p>8 the prospects -- this is after the trial had</p> <p>9 already occurred; right?</p> <p>10 <b>A I believe so, yeah.</b></p> <p>11 Q And so for example, at the trial, the</p> <p>12 court ruled from the bench that -- in a way that</p> <p>13 disallowed one of the defendant's arguments</p> <p>14 specifically with respect to offset for hedging.</p> <p>15 Do you remember that?</p> <p>16 <b>A I do.</b></p> <p>17 Q What's that?</p> <p>18 <b>A Yes, I do.</b></p> <p>19 Q Did you tell CIMA about that</p> <p>20 development at trial?</p> <p>21 <b>A I did not tell CIMA anything about the</b></p> <p>22 <b>developments at trial.</b></p> <p>23 Q Did they ask?</p> <p>24 <b>A No, they did not.</b></p> <p>25 Q Who spoke at the meeting, other than</p>
<p style="text-align: right;">115</p> <p>1 you?</p> <p>2 <b>A I did not speak at the meeting.</b></p> <p>3 Q Who did?</p> <p>4 <b>A Mostly Cayman counsel. I remember Jan</b></p> <p>5 <b>discussing the portfolio, and potentially</b></p> <p>6 <b>Mr. DiOrio. I don't recall if he spoke or not.</b></p> <p>7 Q Did anyone give any details about what</p> <p>8 had happened at the trial?</p> <p>9 <b>A No.</b></p> <p>10 Q Did anyone talk about the merits of the</p> <p>11 UBS litigation in any way?</p> <p>12 <b>A No.</b></p> <p>13 Q At the time -- now, you previously said</p> <p>14 a number of times that you believed that the</p> <p>15 defendants were going to lose that litigation even</p> <p>16 before the verdict came out; right?</p> <p>17 <b>A Yes, I did.</b></p> <p>18 Q And in fact, you believed there was a</p> <p>19 decent chance that the defendants would get hit</p> <p>20 with substantial portion, if not all, of the</p> <p>21 billion dollars that was being sought; correct?</p> <p>22 <b>A I didn't have an -- idea as to damages,</b></p> <p>23 <b>but I thought the -- there was a likelihood that</b></p> <p>24 <b>the defendants would lose.</b></p> <p>25 Q And you thought there was a likelihood</p>	<p style="text-align: right;">116</p> <p>1 that the damages would be substantial, at least in</p> <p>2 the several hundred million dollar range; correct?</p> <p>3 <b>A Again, I had no insight into what</b></p> <p>4 <b>damages or how they would be calculated, but I</b></p> <p>5 <b>thought the defendants would lose.</b></p> <p>6 Q And you said a number of times that it</p> <p>7 didn't surprise you at all about the size or the</p> <p>8 magnitude of the damages verdict; correct?</p> <p>9 <b>A Correct.</b></p> <p>10 Q And you had warned Mr. Dondero, in</p> <p>11 words or substance, that this was likely to occur</p> <p>12 before the verdict came; correct?</p> <p>13 <b>A Yes.</b></p> <p>14 Q Did you ever communicate those beliefs</p> <p>15 about the likelihood of a large judgment being</p> <p>16 issued against the defendants to anybody</p> <p>17 affiliated with Sentinel?</p> <p>18 <b>A Myself, no.</b></p> <p>19 Q Did you -- are you aware of those</p> <p>20 beliefs about the likelihood of a large judgment</p> <p>21 being issued against the defendants in the UBS</p> <p>22 litigation being communicated to anyone affiliated</p> <p>23 with Sentinel?</p> <p>24 <b>A Am I personally aware of it? No.</b></p> <p>25 Q Were you made -- did you get any --</p>

<p style="text-align: right;">117</p> <p>1 strike that.</p> <p>2 Did you ever come to believe that</p> <p>3 anyone at Sentinel was being advised as to the</p> <p>4 likelihood of a significant judgment coming out of</p> <p>5 the trial?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Describe the nature of that belief and</p> <p>8 the circumstances.</p> <p>9 <b>A I believe, and I was told anecdotally,</b></p> <p>10 <b>that Cayman counsel was following the matter very</b></p> <p>11 <b>closely and updating the directors in their</b></p> <p>12 <b>capacity.</b></p> <p>13 Q And Cayman counsel being Simone?</p> <p>14 <b>A Yes. And I believe there may have been</b></p> <p>15 <b>other Cayman counsel that Sentinel directors</b></p> <p>16 <b>retained, but I don't know that.</b></p> <p>17 Q Who told you that Cayman counsel was</p> <p>18 following it very closely?</p> <p>19 <b>A Simone.</b></p> <p>20 Q And -- but you never saw her</p> <p>21 communicate -- strike that.</p> <p>22 You never were copied on any</p> <p>23 communication she had with the Sentinel directors</p> <p>24 about the merits of the litigation?</p> <p>25 <b>A Never.</b></p>	<p style="text-align: right;">119</p> <p>1 objection for that question?</p> <p>2 MS. SMITH: I'm not going to explain</p> <p>3 all of my objections.</p> <p>4 MR. CLUBOK: All right. Okay. I have</p> <p>5 a right to ask, and if you don't have a -- okay.</p> <p>6 I have a right to correct the form objection. So</p> <p>7 if there is a form objection, I have the right to</p> <p>8 ask you what the basis is, so I can correct it if</p> <p>9 it's -- if it's necessary.</p> <p>10 Are you going to tell me anything more</p> <p>11 than just objection to form?</p> <p>12 MS. SMITH: Okay. Well, any other</p> <p>13 human in the world is fake.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Mr. Ellington, when I say any</p> <p>16 other human in the world, are you confused that I</p> <p>17 might be talking about animals or something;</p> <p>18 nonhuman -- nonhumans?</p> <p>19 <b>A Not confused. But it's certainly very</b></p> <p>20 <b>difficult to remember what I said to every human</b></p> <p>21 <b>in the world, well over a period of five years.</b></p> <p>22 Q Sure. But between August of 2019, when</p> <p>23 you met in the Caymans with CIMA and the</p> <p>24 discussions you had with Mr. Leventon that you've</p> <p>25 described in the fall of 2020, did you discuss the</p>
<p style="text-align: right;">118</p> <p>1 Q And you don't know anything more than</p> <p>2 she assured you that the Sentinel directors were</p> <p>3 being closely informed?</p> <p>4 <b>A A general statement as we were walking</b></p> <p>5 <b>from the car into CIMA.</b></p> <p>6 Q So she told you on the way in words to</p> <p>7 the effect that the directors know all about the</p> <p>8 events of the litigation and that prospects?</p> <p>9 <b>A Yes.</b></p> <p>10 MS. SMITH: Objection, form.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Other than that, were you ever made</p> <p>14 aware in any way of what extent to which the</p> <p>15 directors at Sentinel were being kept apprized of</p> <p>16 the prospects for the New York litigation against</p> <p>17 UBS?</p> <p>18 <b>A No.</b></p> <p>19 Q And in between that meeting in August</p> <p>20 of '19 and the meeting in the fall with Isaac</p> <p>21 Leventon where you described, did you ever discuss</p> <p>22 the ATE policy with any other human in the world?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: Not that I recall.</p> <p>25 MR. CLUBOK: And what's the form</p>	<p style="text-align: right;">120</p> <p>1 ATE policy with anybody else at all that you can</p> <p>2 think of, sitting here today?</p> <p>3 <b>A Not that I recall.</b></p> <p>4 Q Did Mr. Leventon ever seek out your</p> <p>5 advice as to whether or not to disclose the</p> <p>6 existence of the policy to the independent</p> <p>7 directors that were appointed to manage Highland's</p> <p>8 affairs in the bankruptcy?</p> <p>9 <b>A Not that I specifically recall.</b></p> <p>10 Q Did Mr. Leventon ever seek out your</p> <p>11 advice as to whether or not to disclose the</p> <p>12 existence of the ATE policy to the Pachulski firm</p> <p>13 or any lawyer that was representing Highland in</p> <p>14 connection with the bankruptcy?</p> <p>15 <b>A Not that I recall.</b></p> <p>16 Q Do you recall ever discussing with</p> <p>17 Mr. Leventon whether or not the ATE policy should</p> <p>18 be disclosed in connection with the bankruptcy?</p> <p>19 <b>A No, not Mr. Leventon.</b></p> <p>20 Q With anyone?</p> <p>21 <b>A Maybe I didn't understand your</b></p> <p>22 <b>question. I'm sorry.</b></p> <p>23 <b>Could you ask -- could you please ask</b></p> <p>24 <b>it again?</b></p> <p>25 Q Did you ever recall discussing with</p>

<p style="text-align: right;">121</p> <p>1 anybody whether or not the ATE policy should be                  2 disclosed to anybody in connection with the                  3 bankruptcy?                  4 <b>A I remember having a conversation with                  5 Cayman counsel in regards to that.</b>                  6 Q Who at Cayman counsel?                  7 <b>A Sam Dawson.</b>                  8 Q And when was that discussion?                  9 <b>A Sometime post the filing. I don't                  10 remember when. Post the debtor filing bankruptcy.</b>                  11 Q So at that time you were the general                  12 counsel for Highland; correct?                  13 <b>A Yes.</b>                  14 Q And Highland was in bankruptcy?                  15 <b>A Yes.</b>                  16 Q And the Pachulski firm was representing                  17 Highland in the bankruptcy?                  18 <b>A The Pachulski firm notified us in                  19 writing that they weren't representing Highland,                  20 they were representing the independent board.</b>                  21 Q Okay. Pachulski was representing the                  22 independent board.                  23 So the board had already been named in                  24 the bankruptcy; correct?                  25 <b>A Yes.</b></p>	<p style="text-align: right;">122</p> <p>1 Q In the discussion with Mr. Dawson?                  2 <b>A Yes, that's my recollection.</b>                  3 Q And his name is Dawson, D-A-W-S-O-N?                  4 <b>A Yes.</b>                  5 Q And you were -- you say that at the                  6 time, Pachulski was not representing the debtor.                  7 <b>A Very -- very soon after the independent                  8 award was put in place, Mr. Pomerantz maybe                  9 others, wrote correspondence to a subset of us,                  10 I believe a legal group -- maybe -- I don't                  11 remember who all was included -- that said that                  12 they did not represent Highland and certainly                  13 didn't represent the employees and could not                  14 provide us with legal advice. There was no                  15 privilege that they -- they represented the                  16 independent board, which needless to say we were a                  17 little shocked by since they are called debtor's                  18 counsel.</b>                  19 Q And you understood them to say that                  20 there would be no privity with any discussions that                  21 you had with the Pachulski firm from that point                  22 forward?                  23 <b>A That's my recollection of the                  24 correspondence.</b>                  25 Q So let's get back to this conversation</p>
<p style="text-align: right;">123</p> <p>1 with Mr. Dawson.                  2 Did you initiate that conversation?                  3 MS. SMITH: Objection -- objection.                  4 I'm going to object to the extent that any of                  5 these answers require you to divulge privileged                  6 information.                  7 BY MR. CLUBOK:                  8 Q Did you -- let's go back to this                  9 conversation with Mr. Dawson.                  10 Did you initiate that conversation?                  11 <b>A I did not.</b>                  12 Q He called you.                  13 MS. SMITH: Objection, privileged.                  14 THE WITNESS: I was speaking to                  15 Mr. Dawson on an unrelated matter.                  16 BY MR. CLUBOK:                  17 Q Okay. And who brought up the issue of                  18 the ATE policy?                  19 <b>A I don't recall if it was me or him.</b>                  20 Q And describe what was said about it.                  21 MS. SMITH: Objection to the extent it                  22 requires you to disclose privileged information.                  23 THE WITNESS: I think I'm clearly                  24 describing privileged information.                  25 BY MR. CLUBOK:</p>	<p style="text-align: right;">124</p> <p>1 Q Sorry, who was Mr. Dawson representing                  2 at that point in the -- in connection with that                  3 discussion?                  4 <b>A I believe he was Sentinel's counsel at                  5 that point.</b>                  6 Q And you believed when you had this                  7 discussion you were acting with your Sentinel hat                  8 on exclusively?                  9 <b>A I believe this discussion I was having                  10 a conversation on an unrelated matter and the                  11 issue arose.</b>                  12 Q Right. But I'm -- in this particular                  13 issue of whether or not to disclose the ATE policy                  14 to the independent board, is it your testimony                  15 that when you spoke -- I want to understand. What                  16 capacity were you speaking with Mr. Dawson about                  17 when you had the -- just that portion of the                  18 discussion. I haven't asked you about the rest of                  19 your discussion, but I'm asking about the question                  20 about whether to disclose the ATE policy to the                  21 independent board was -- and -- and actually let                  22 me take a step back.                  23 At that time, did you understand that                  24 you reported to the independent board?                  25 <b>A No, I didn't report to the independent</b></p>

<p style="text-align: right;">125</p> <p><b>1 board. I believe I reported to Jim Seery at that</b></p> <p><b>2 point.</b></p> <p>3 Q At that point, you reported to Mr.</p> <p>4 Seery?</p> <p><b>5 A I believe so, yes.</b></p> <p>6 Q And did you discuss with Mr. Dawson</p> <p>7 whether to disclose the ATE policy to Mr. Seery?</p> <p><b>8 A Matter of fact, I may have just been</b></p> <p><b>9 reporting to Mr. Dondero at this time. I just</b></p> <p><b>10 don't remember the timeframe.</b></p> <p>11 Q Okay.</p> <p><b>12 A Because it's kind of fuzzy of when</b></p> <p><b>13 Mr. Seery became the CEO and when Mr. Dondero was</b></p> <p><b>14 the CEO.</b></p> <p>15 Q What did Mr. -- what did Mr. Dawson</p> <p>16 tell you what to do in terms of whether or not to</p> <p>17 disclose the ATE policy to Mr. Seery?</p> <p><b>18 A He was not --</b></p> <p>19 MS. SMITH: Objection.</p> <p>20 THE WITNESS: -- not disclosing it to</p> <p>21 the board, he was discussing ATE policies in</p> <p>22 general.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q In my opinion, he was just talking</p> <p>25 about ATE policies in general, not this specific</p>	<p style="text-align: right;">127</p> <p>1 general counsel of Highland's hat on or some</p> <p>2 different hat on?</p> <p><b>3 A It was no hat. It was a social call.</b></p> <p><b>4 His wife had recently passed away from cancer, and</b></p> <p><b>5 I was calling to give him my condolences.</b></p> <p>6 Q So you are saying this is privileged</p> <p>7 advice.</p> <p>8 Whose privilege is it?</p> <p><b>9 A Well, the other matters we talked about</b></p> <p><b>10 was an SAS matter.</b></p> <p>11 Q I'm not asking about any other matter.</p> <p>12 I'm asking what's the portion of that conversation</p> <p>13 about whether or not to disclose the ATE policy</p> <p>14 that was taken out in connection with the UBS New</p> <p>15 York litigation to the directors that were</p> <p>16 appointed on the restructuring. That's the only</p> <p>17 part of this conversation I'm asking about.</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Okay. With respect to the part of the</p> <p>21 conversation where Mr. Dawson gave you advice as</p> <p>22 to whether or not to disclose the ATE policy to</p> <p>23 the ORG members who had been appointed in the</p> <p>24 restructuring case, whose privilege are you</p> <p>25 asserting for not disclosing what he said? Who</p>
<p style="text-align: right;">126</p> <p>1 ATE policy?</p> <p><b>2 A Correct.</b></p> <p>3 Q And -- okay. This kind of -- this line</p> <p>4 of questioning began when I asked you if you</p> <p>5 recall discussing with anybody whether or not the</p> <p>6 ATE policy should be disclosed to anybody in</p> <p>7 connection with the bankruptcy, and you said you</p> <p>8 had a conversation with Sam Dawson in regards to</p> <p>9 that.</p> <p><b>10 A About generally in a matter of practice</b></p> <p><b>11 under Cayman law if the ATE policy should be</b></p> <p><b>12 disclosed and when.</b></p> <p>13 Q What did he tell you?</p> <p>14 MS. SMITH: Objection, privileged.</p> <p>15 THE WITNESS: Yeah, I think I'm clearly</p> <p>16 into privileged conversation.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Sorry, and you -- because you were at</p> <p>19 the time not getting advice -- were you -- were</p> <p>20 you at the time seeking advice on behalf -- well,</p> <p>21 at the time you were general counsel still of</p> <p>22 Highland; right?</p> <p><b>23 A Correct.</b></p> <p>24 Q And are you saying that -- when you</p> <p>25 asked that question, were you asking with your</p>	<p style="text-align: right;">128</p> <p>1 was the entity that had the privilege there?</p> <p><b>2 A It was going to be Sentinel's privilege</b></p> <p><b>3 since he was, I believe, Sentinel's counsel at the</b></p> <p><b>4 time.</b></p> <p>5 Q So you were speaking to him in that --</p> <p>6 with that -- respect to that part of the</p> <p>7 conversation, just on behalf of Sentinel and not</p> <p>8 on behalf of Highland Capital Management; is that</p> <p>9 what you're saying?</p> <p><b>10 A I didn't sit there -- I didn't sit</b></p> <p><b>11 there and parse through an extemporaneous</b></p> <p><b>12 conversation of what hat I was wearing. But since</b></p> <p><b>13 he's Sentinel counsel, I think it's their</b></p> <p><b>14 privilege because since he was having legal</b></p> <p><b>15 advice.</b></p> <p>16 Q Right. But at the time you were</p> <p>17 general counsel of Highland Capital Management.</p> <p>18 And I'm going to ask again -- and I believe</p> <p>19 Mr. Feinstein clearly by his silence is not</p> <p>20 asserting any privilege that you obtained while</p> <p>21 you were still being paid by Highland Capital</p> <p>22 Management -- what was the advice Mr. Dawson gave</p> <p>23 you as to whether or not you should disclose that</p> <p>24 ATE policy to the directors who were appointed in</p> <p>25 the bankruptcy?</p>



<p style="text-align: right;">129</p> <p>1 MS. SMITH: Objection, privileged. I'm 2 going to instruct you not to answer. 3 MR. CLUBOK: And the -- and I want you 4 to lay out exactly the basis of your instruction, 5 Ms. Smith. 6 You are asserting purely on behalf of 7 Sentinel; is that correct? 8 MS. SMITH: I'm instructing 9 Mr. Ellington not to answer to the extent it 10 discloses privileged information of Sentinel. 11 BY MR. CLUBOK: 12 Q Are you -- are you instructing him 13 specifically not to -- so -- so the fact that 14 Mr. Ellington was general counsel of Highland at 15 the time, you are saying that in this 16 conversation, though, you did not -- you're 17 parsing the information in your head so that 18 Highland doesn't -- didn't gain access to it? 19 MS. SMITH: No, I'm listening to his 20 testimony where he testified that it was a social 21 call. He did not call him as general counsel of 22 Highland Capital Management LP. 23 He called as a social call, and he 24 asked a question generally -- I don't have the 25 realtime up, but he asked a question generally</p>	<p style="text-align: right;">131</p> <p>1 wonder if I have a fiduciary obligation to 2 disclose the existence of ATE policy to Mr. Seery? 3 MS. SMITH: Objection. 4 BY MR. CLUBOK: 5 Q Did you consider that question in words 6 or substance? 7 MS. SMITH: Objection, calls for a 8 legal conclusion. 9 THE WITNESS: I generally considered 10 it, yes. 11 BY MR. CLUBOK: 12 Q And did you consult anyone for advice, 13 other than this -- whatever general discussion you 14 had with Mr. Dawson in the context of the social 15 call? 16 A No. 17 MS. SMITH: Objection to the extent it 18 calls for privileged information. 19 BY MR. CLUBOK: 20 Q And did you independently conclude 21 whether or not as the general counsel of Highland 22 Capital Management you had a duty to disclose the 23 existence of the ATE policy to Mr. Seery or the 24 Pachulski firm? 25 MS. SMITH: Objection, legal</p>
<p style="text-align: right;">130</p> <p>1 about ATE's policies and Sentinel. 2 BY MR. CLUBOK: 3 Q And did you ask him -- did you ever ask 4 anybody, in your capacity as general counsel of 5 Highland, for any advice as to whether or not you 6 should disclose the existence of the ATE policy to 7 the board that was appointed in the restructuring 8 case? 9 A No. 10 Q Did you ever ask anybody, in your 11 capacity as general counsel for Highland, for any 12 advice as to whether or not you should disclose 13 the existence of the ATE policy to Jim Seery? 14 A No. 15 Q Did you ever consider the question of 16 whether or not you should disclose the existence 17 of the ATE policy to Jim Seery in the perspective 18 of your role as general counsel of Highland 19 Capital Management? 20 MS. SMITH: Objection to form. 21 THE WITNESS: What do you mean by 22 consider? 23 BY MR. CLUBOK: 24 Q Did you ever think with your general 25 counsel of Highland Capital Management hat on, I</p>	<p style="text-align: right;">132</p> <p>1 conclusion. 2 THE WITNESS: Yes, I have generally 3 concluded. 4 BY MR. CLUBOK: 5 Q What was your conclusion? 6 A That I was under no obligation to 7 disclose it. 8 Q What was that based on? 9 A As I previously said, Pachulski had 10 said they had no representation of any Highland 11 employee, only an independent board. They didn't 12 represent the debtor. There was no privilege. 13 I -- as you know, you had even asked to 14 speak to me because you and I had always had a 15 good rapport of trying to solve things and had 16 made numerous attempts to solve things. And I was 17 affirmatively told by Pachulski and the 18 independent board not to be a part of any 19 settlement discussions in any way and not to speak 20 to you in any way. 21 Q Is there -- you knew that Mr. Seery and 22 the Pachulski firm was at some point making an 23 effort to identify all of the assets of CDO Fund, 24 SOHC and HFP; correct? 25 MS. SMITH: Objection to form.</p>

<p style="text-align: right;">133</p> <p>1 THE WITNESS: I generally knew that</p> <p>2 they were -- they were looking at the assets of</p> <p>3 those entities, yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q And you knew that the trigger for the</p> <p>6 ATE policy had already occurred as of the date of</p> <p>7 the judgment?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Correct?</p> <p>11 <b>A I disagree.</b></p> <p>12 Q Why do you disagree with that?</p> <p>13 <b>A It was intimated to me that the trigger</b></p> <p>14 <b>would be a perfection of a judgment from New York</b></p> <p>15 <b>to the Cayman Islands.</b></p> <p>16 Q Who intimated that to you?</p> <p>17 <b>A CIMA.</b></p> <p>18 MS. SMITH: Objection.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q CIMA did?</p> <p>21 <b>A Yes.</b></p> <p>22 Q When?</p> <p>23 <b>A In the meeting aforementioned in August</b></p> <p>24 <b>of '19.</b></p> <p>25 Q So it was intimated to you that until</p>	<p style="text-align: right;">135</p> <p>1 would also trigger the policy; correct?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I don't have the</p> <p>4 expertise to say whether that triggers a policy or</p> <p>5 not. That's not a determination I could make.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Isn't it true that Mr. Leventon at some</p> <p>8 point consulted with you about whether or not he</p> <p>9 should disclose the policy to either Mr. Seery or</p> <p>10 the lawyers at the Pachulski firm?</p> <p>11 <b>A I don't know.</b></p> <p>12 MS. SMITH: Objection to form.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Sorry, can you answer the -- I think</p> <p>15 your answer came in over Ms. Smith's objection, so</p> <p>16 I'll ask the question again.</p> <p>17 Is it true that Mr. Leventon at some</p> <p>18 point consulted with you about whether or not he</p> <p>19 should disclose the ATE policy to either Mr. Seery</p> <p>20 or the lawyers at the Pachulski firm?</p> <p>21 <b>A I don't recall.</b></p> <p>22 Q Between -- other than this meeting with</p> <p>23 CIMA and the discussion you had with Mr. Leventon,</p> <p>24 did you ever discuss the ATE policy with anyone</p> <p>25 else in the world since the bankruptcy that you</p>
<p style="text-align: right;">134</p> <p>1 the judgment was perfected in the Cayman Islands,</p> <p>2 there was no trigger for paying ATE?</p> <p>3 <b>A Yes.</b></p> <p>4 Q Who specifically intimated that to you?</p> <p>5 <b>A CIMA.</b></p> <p>6 Q Who, name of a human being.</p> <p>7 <b>A I don't know the human being's name.</b></p> <p>8 <b>There was five people from CIMA in the room. It</b></p> <p>9 <b>was three years ago.</b></p> <p>10 Q When you say it was intimated, what do</p> <p>11 you mean?</p> <p>12 <b>A They said there is not a claim on the</b></p> <p>13 <b>policy to perfect the judgment here.</b></p> <p>14 Q Was it a man or a woman who said that?</p> <p>15 <b>A It was a man.</b></p> <p>16 Q Was it the man who was the -- was there</p> <p>17 one person who was the principal spokesperson for</p> <p>18 CIMA at this meeting?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And you just don't remember his name?</p> <p>21 <b>A No.</b></p> <p>22 Q Did you have any documents, records of</p> <p>23 this meeting?</p> <p>24 <b>A No.</b></p> <p>25 Q And now if there is a settlement, that</p>	<p style="text-align: right;">136</p> <p>1 can recall other than --</p> <p>2 <b>A Not that I recall.</b></p> <p>3 Q -- other than Ms. Smith?</p> <p>4 <b>A Not that I recall.</b></p> <p>5 Q Did you ever discuss -- when was the</p> <p>6 last time you spoke to Mr. Dondero about the ATE</p> <p>7 policy?</p> <p>8 <b>A I would say at least two years.</b></p> <p>9 Q And what was the nature of that</p> <p>10 conversation?</p> <p>11 <b>A I believe that Mr. Dondero asked me if</b></p> <p>12 <b>it was still in place.</b></p> <p>13 Q Roughly when was that?</p> <p>14 <b>A I would say sometime in 2018.</b></p> <p>15 <b>That's -- that's my best guess.</b></p> <p>16 Q Was it before or after the trial?</p> <p>17 <b>A Before.</b></p> <p>18 Q So before the trial, he asked you if</p> <p>19 the ATE policy was still in place?</p> <p>20 <b>A Yes.</b></p> <p>21 Q And what did you say?</p> <p>22 <b>A I said as far as I know, yes.</b></p> <p>23 Q And after the trial, but before the</p> <p>24 judgment, did you ever speak with Mr. Dondero</p> <p>25 again about the ATE policy?</p>

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1 **A Not that I recall.**  
 2 Q And after the judgment, did you ever  
 3 talk to Mr. Dondero about how the ATE policy could  
 4 somehow be used to satisfy the judgment or settle  
 5 the case?  
 6 **A No.**  
 7 MS. SMITH: Objection to form.  
 8 THE WITNESS: Not that I recall.  
 9 BY MR. CLUBOK:  
 10 Q Right before the bankruptcy, you tried  
 11 to settle the claims against CDO Fund, SOHC and  
 12 HFP; correct?  
 13 **A Yes, I approached you to try to**  
 14 **structure a settlement.**  
 15 Q And you claimed at the time that those  
 16 funds were ghost funds, in your words; correct?  
 17 **A Yes.**  
 18 Q And you -- basically, you said, in  
 19 substance, though, they had no assets left, but if  
 20 there was a settlement, that Mr. Dondero could  
 21 come up with funds from some other source to  
 22 satisfy a relatively small settlement on behalf of  
 23 those funds; is that true?  
 24 **A On behalf of all defendants, yes.**  
 25 Q Well, you specifically talked about --

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1 you specifically talked about settling the  
 2 non-HCM-related claims for a relatively small  
 3 amount and then separately agreeing to an allowed  
 4 claim for HCM; isn't that true?  
 5 **A That was one of the options you and I**  
 6 **discussed. We discussed many options.**  
 7 Q And you never disclosed the fact that  
 8 there was an ATE policy that could satisfy a  
 9 potential settlement of the claims against CDO  
 10 Fund, SOHC and HFP; correct?  
 11 **A Correct.**  
 12 -- (overspeaking) --  
 13 MS. SMITH: Objection, form.  
 14 BY MR. CLUBOK:  
 15 Q I want to make sure the court reporter  
 16 got the -- okay. There was simultaneous speakers,  
 17 so I don't think she heard your answer even though  
 18 the audio will capture it.  
 19 And do me a favor, Mr. Ellington.  
 20 Since Ms. Smith is objecting sometimes, if you  
 21 could -- I really appreciate you giving answers  
 22 quickly on the one hand. On the other hand, if  
 23 you could just take one more beat so that you are  
 24 not talking over her as she's making her  
 25 objections, that will be helpful.

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1 **A Absolutely. It is my fault, and there**  
 2 **is some slight delay on my end, so I think that's**  
 3 **part of the problem. I apologize.**  
 4 Q That's okay. I appreciate -- again,  
 5 like I said, I appreciate your effort to just  
 6 answer these questions clearly, but you overshot  
 7 that by a scooch.  
 8 **A I apologize to both you and Ms. Smith**  
 9 **and the court reporter. I'm not trying to do that**  
 10 **at all.**  
 11 Q No, no, I understand. I understand.  
 12 **A Yeah.**  
 13 Q So let me just ask it one more time.  
 14 You never disclosed in the course of  
 15 any settlement discussions with UBS's counsel that  
 16 there was an ATE policy that could satisfy a  
 17 potential settlement of the claims against CDO  
 18 Fund, SOHC and HFP; correct?  
 19 **A The only person I discussed it with was**  
 20 **you, and, no, I did not disclose that.**  
 21 Q I apologize if I've asked this earlier:  
 22 Did Sentinel ever have a shared services agreement  
 23 with Highland Capital Management?  
 24 **A Not that I'm aware of.**  
 25 Q Does it have one today with Skyview?

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1 **A Not that I'm aware of.**  
 2 Q Does it have a client relationship with  
 3 Skyview?  
 4 THE WITNESS: Not that I'm --  
 5 MS. SMITH: Object to the form.  
 6 THE WITNESS: Sorry, not that I'm aware  
 7 of.  
 8 BY MR. CLUBOK:  
 9 Q Let's turn to what's behind tab 2,  
 10 Exhibit 50.  
 11 I think we do have here -- we've asked  
 12 you before about the ownership interest, and you  
 13 said you had seen some documents. Hopefully this  
 14 will help refresh your recollection.  
 15 **A You want me to go ahead and open the**  
 16 **envelope, Mr. Clubok?**  
 17 Q Yeah, open Exhibit 50. Exhibit 50 --  
 18 while you're opening it, I'll just describe -- is  
 19 an email exchange that starts with an email from  
 20 Mr. Sevilla to SEI-IS-Highland and that appears to  
 21 be to someone named Daniel Bowen, and there is  
 22 some back and forth that continues through the  
 23 email chain between these two individuals.  
 24 Do you have Exhibit 50 in front of you?  
 25 **A I do.**

<p style="text-align: right;">141</p> <p>1 Q Do you know who Mr. Bowen is?</p> <p>2 A <b>I do not.</b></p> <p>3 Q Do you know what SEIC is?</p> <p>4 A <b>Say that again. I'm sorry.</b></p> <p>5 Q Do you know what SEIC is?</p> <p>6 A <b>I do not.</b></p> <p>7 Q Or SEI-IS?</p> <p>8 A <b>I do not.</b></p> <p>9 Q Okay. So, in this email Mr. Sevilla --</p> <p>10 this is August 28th, 2017 and the subject is</p> <p>11 "Highland Multi-track Transfer."</p> <p>12 Do you see that?</p> <p>13 A <b>Yes.</b></p> <p>14 Q And it says, "SEI. Please see transfer</p> <p>15 documents attached from Multi Strat firm. Please</p> <p>16 let me know if you have any questions."</p> <p>17 Do you see that?</p> <p>18 A <b>I do.</b></p> <p>19 Q And you don't know who SEI is in that</p> <p>20 context?</p> <p>21 A <b>I do not.</b></p> <p>22 Q And you see Mr. Bowman responds and</p> <p>23 says, "We are in the process of reviewing the</p> <p>24 attached and still require additional</p> <p>25 documentation. Can you please provide" and there</p>	<p style="text-align: right;">143</p> <p>1 to look at the whole exhibit.</p> <p>2 THE WITNESS: No, I have not.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q I have a very specific question.</p> <p>5 MR. CLUBOK: And I'd appreciate no</p> <p>6 speaking objections or instructions like that when</p> <p>7 they're not necessary.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Sometimes, Mr. Ellington, if it's</p> <p>10 necessary to read a whole document, that's fine,</p> <p>11 obviously. But I'm going to just ask -- and I'll</p> <p>12 ask my question more clearly: Just with respect to</p> <p>13 this particular statement that Sentinel Re</p> <p>14 Holdings is a limited partner in the fund and</p> <p>15 Sentinel Reinsurance Limited is 100 percent owned</p> <p>16 by Sentinel Re Holdings, do you have any basis to</p> <p>17 disagree with those statements?</p> <p>18 A <b>I don't have any basis to agree or</b></p> <p>19 <b>disagree. I don't have enough information to...</b></p> <p>20 Q Is this the kind of -- yeah, is this</p> <p>21 the kind of information you would trust JP Sevilla</p> <p>22 to report on accurately during this time period?</p> <p>23 A <b>I don't have any reason to believe that</b></p> <p>24 <b>Mr. Sevilla would be inaccurate.</b></p> <p>25 Q Why -- was Mr. Sevilla tasked with</p>
<p style="text-align: right;">142</p> <p>1 are a number of things that they list.</p> <p>2 Do you see that?</p> <p>3 A <b>Yes, I do.</b></p> <p>4 Q And one of them that's shaded out</p> <p>5 that's maybe hard for you to read. And it says,</p> <p>6 "List of beneficial owners with 25 percent or more</p> <p>7 interest. Additional AML required."</p> <p>8 Do you see that?</p> <p>9 A <b>I do.</b></p> <p>10 Q And Mr. Sevilla says, "Please note that</p> <p>11 you already have the items I've highlighted in</p> <p>12 yellow. Sentinel Re Holdings is a limited partner</p> <p>13 in the fund already and Sentinel Reinsurance</p> <p>14 Limited is 100 percent owned by Sentinel Re</p> <p>15 Holdings."</p> <p>16 Do you see that?</p> <p>17 A <b>I do.</b></p> <p>18 Q And do you have any reason to disagree</p> <p>19 with what Mr. Sevilla says here?</p> <p>20 A <b>I don't have --</b></p> <p>21 MS. SMITH: Objection, form.</p> <p>22 And, Mr. Ellington, please review the</p> <p>23 whole exhibit before you answer specific</p> <p>24 questions.</p> <p>25 I don't think he's had an opportunity</p>	<p style="text-align: right;">144</p> <p>1 dealing with the Highland Multi Strat transfer?</p> <p>2 A <b>I don't know.</b></p> <p>3 Q August 28, 2017 is around the time</p> <p>4 shortly there -- shortly after the time that the</p> <p>5 ATE policy was purchased; correct?</p> <p>6 A <b>I don't know.</b></p> <p>7 Q Well, there was a highly Multi Strat</p> <p>8 transfer in connection with the purchase of the</p> <p>9 ATE policy; correct?</p> <p>10 A <b>I really don't know.</b></p> <p>11 Q You do know that the intent of</p> <p>12 purchasing the policy was to transfer all or</p> <p>13 substantially all of the assets of CDO Fund, SOHC</p> <p>14 and HFP; correct?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: The purpose of purchasing</p> <p>17 the policy was to transfer?</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q No, no, sorry, let me -- let me ask</p> <p>20 again.</p> <p>21 You know, sir, that in the -- the part</p> <p>22 of the -- strike that.</p> <p>23 As part of the purchase of the ATE</p> <p>24 policy, you understood that it was the intent of</p> <p>25 the purchasers of that policy to transfer all or</p>

<p style="text-align: right;">145</p> <p>1 substantially all of the assets of CDO Fund, SOHC 2 and HFP to Sentinel as payment for that policy; 3 correct? 4 <b>A I knew that --</b> 5 MS. SMITH: Objection to form. 6 THE WITNESS: I knew that there was a 7 premium that was required and regulated by CIMA, 8 and I know that that had been contemplated as a 9 way to pay that premium. 10 BY MR. CLUBOK: 11 Q And how was that premium set? 12 <b>A I wasn't involved in those</b> 13 <b>conversations.</b> 14 Q Who set that premium? 15 <b>A From my understanding, the -- the level</b> 16 <b>of the premium was ultimately set by CIMA.</b> 17 Q How was it initially set? 18 <b>A I was not involved in any of those</b> 19 <b>conversations, so I don't know.</b> 20 Q You have no idea how the premium to pay 21 for this ATE policy that was your idea was 22 initially set? 23 <b>A No.</b> 24 Q You do know that before the actual 25 dollar amount was settled on for what the premium</p>	<p style="text-align: right;">147</p> <p>1 to be; correct? 2 <b>A I was involved --</b> 3 MS. SMITH: Objection to form. 4 THE WITNESS: I was involved in 5 discussions at the genesis of the idea, and then 6 it went through a formal process involving 7 numerous areas of the debtor. 8 BY MR. CLUBOK: 9 Q Right. But before that process ever 10 got to discussing it with CIMA, there was a 11 communication that you were included on that 12 talked about using all of the assets of SOHC, CDO 13 Fund and HFP to purchase the ATE policy; correct? 14 <b>A I don't know. I'd have to see that</b> 15 <b>communication. Your question was: Was I involved</b> 16 <b>in discussions. Being copied on a communication</b> 17 <b>to me is not discussions.</b> 18 Q Okay. You were aware that the intent, 19 prior to ever talking with CIMA, was to use all 20 the assets of SOHC, CDO Fund and SOHC (sic) to 21 purchase the ATE policy; correct? 22 <b>A No.</b> 23 MS. SMITH: Objection to form. 24 THE WITNESS: No, that's not true. I 25 didn't -- I believe that was in response to CIMA</p>
<p style="text-align: right;">146</p> <p>1 would be, there was discussion involving -- 2 including you, that the premium would equal 3 substantially all, if not all of the assets of CDO 4 Fund, SOHC and HFP; correct? 5 MS. SMITH: Object to the form. 6 THE WITNESS: I knew that was the -- I 7 knew that was the idea and requirement to reach 8 the premium required by CIMA. 9 BY MR. CLUBOK: 10 Q So -- but before talking to CIMA, 11 before there was ever a discussion with CIMA about 12 what the premium would be, there was an idea to 13 calculate the total value of all the assets of CDO 14 Fund, SOHC and HFP and make that be the amount 15 that that would satisfy the premium that was going 16 to be set thereafter; fair? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I don't know. I wasn't 19 involved at that level. 20 BY MR. CLUBOK: 21 Q Well, you were involved in discussions 22 that occurred prior to ever talking to CIMA about 23 what the premium would actually be in which it was 24 discussed using all the assets of CDO Fund, SOHC 25 and HFP to satisfy whatever the premium turned out</p>	<p style="text-align: right;">148</p> <p>1 saying what the premium had to be. But I, again, 2 was not involved in that level of discussion and 3 was not part of the process. 4 <b>A From the very beginning -- strike that.</b> 5 <b>Well, let's be clear. You had the</b> 6 <b>initial idea of the ATE policy; correct?</b> 7 THE WITNESS: As a concept, yes. 8 BY MR. CLUBOK: 9 Q And there were initial discussions that 10 ultimately stretched over weeks, if not months, 11 before the policy was executed; correct? 12 <b>A That's my understanding. I was</b> 13 <b>involved at the beginning, and then it went</b> 14 <b>through a formal process I was not involved in.</b> 15 Q But at some point, it came to your 16 attention that the idea was for the policy to be 17 paid for with all of the assets of SOHC, CDO Fund 18 and HFP; correct? 19 <b>A Yes. But it's my understanding that</b> 20 <b>was in response to the premium set by CIMA.</b> 21 Q You -- you -- 22 <b>A I was not intimately involved in any of</b> 23 <b>those discussions with CIMA or otherwise.</b> 24 Q You are saying as you sit here today, 25 that it is your understanding that CIMA first set</p>

<p style="text-align: right;">149</p> <p>1 the premium, and after that, it just so happened                  2 that that premium exactly equalled all of the                  3 assets in HFP, CDO Fund and SOHC?                  4 <b>A No, I'm telling you, you're asking if I</b>                  5 <b>was aware of how it happened. My understanding is</b>                  6 <b>that was the amount required for the premium. I</b>                  7 <b>wasn't involved in any of the discussions, none of</b>                  8 <b>the mechanics of setting how much, none of the</b>                  9 <b>mechanics of valuation, none of the aspects of</b>                  10 <b>transfer.</b>                  11 <b>That's all a formal process that was</b>                  12 <b>directed by compliance, and it went through all</b>                  13 <b>the proper channels.</b>                  14 Q Okay. Then break down -- and please                  15 answer my questions I'm asking you.                  16 <b>A I'm trying.</b>                  17 Q And we'll do it in little pieces.                  18 Don't jump ahead, please.                  19 <b>A Okay.</b>                  20 Q True that at some point, it came to                  21 your attention that the idea --                  22 <b>A Sorry.</b>                  23 Q Let me strike that. I'll start over.                  24 <b>A Okay. Sorry.</b>                  25 Q At some point, it came to your</p>	<p style="text-align: right;">151</p> <p>1 <b>A I have no idea.</b>                  2 MS. SMITH: Objection to form.                  3 BY MR. CLUBOK:                  4 Q What's that?                  5 <b>A I have no --</b>                  6 MS. SMITH: Objection, form.                  7 THE WITNESS: I'm sorry, I have no idea                  8 as to the order. I just simply wasn't involved.                  9 BY MR. CLUBOK:                  10 Q And -- and -- but you were the owner at                  11 the time -- 30 percent beneficial owner of                  12 Sentinel; correct?                  13 <b>A No, entities related to me were. I was</b>                  14 <b>not.</b>                  15 Q Okay. But you -- right, entities                  16 related to you had the 30 percent beneficial                  17 ownership of Sentinel at the time the ATE policy                  18 was issued; correct?                  19 <b>A Correct.</b>                  20 Q And going back to this Exhibit 50,                  21 Mr. Bowman on the first page of Exhibit 50 at the                  22 bottom asked if Mr. Sevilla could confirm if he                  23 would like to pass along the beneficial ownership                  24 information they had on file for Sentinel Re                  25 Holders.</p>
<p style="text-align: right;">150</p> <p>1 attention that the idea was for the policy to be                  2 paid for with all of the assets that remained at                  3 SOHC, CDO Fund and HFP; correct?                  4 <b>A Anecdotally --</b>                  5 MS. SMITH: Objection, asked and                  6 answered.                  7 THE WITNESS: Anecdotally, yes.                  8 BY MR. CLUBOK:                  9 Q And you learned of that intention prior                  10 to the premium price being approved by CIMA;                  11 correct?                  12 <b>A I have no idea because I don't know</b>                  13 <b>when the premium price was set by CIMA because I</b>                  14 <b>wasn't involved.</b>                  15 Q Okay. So when you said earlier that it                  16 was your understanding that the amount paid for                  17 the premium was -- okay. You don't -- so let me                  18 ask it this way: You are saying, as you sit here                  19 today, you have no idea whether or not -- first,                  20 it was determined that all of the assets from HFP,                  21 CDO Fund and SOHC would be used or first it was                  22 determined here's the premium price and now let's                  23 see what we need to satisfy that premium price.                  24 As you sit here today, you don't know                  25 the order of those two events?</p>	<p style="text-align: right;">152</p> <p>1 Do you see that?                  2 MS. SMITH: Objection to form. That                  3 misread that quote.                  4 THE WITNESS: Yeah. And what I see is                  5 "Hi, Big JP. Can you please confirm if you would                  6 like us to pass along the beneficial owner                  7 information that we have on file for Sentinel Re                  8 Limited for all the AO that we have on file for                  9 that investor."                  10 BY MR. CLUBOK:                  11 Q Right. And Mr. Sevilla then tells him                  12 "Just the beneficial owner, please." Correct?                  13 <b>A And he says, "Thanks. Yes, correct."</b>                  14 Q And then Mr. Bowen has an email at the                  15 top, with an attachment that says, "Hi, JP.                  16 Please see the attached beneficial ownership                  17 information for Sentinel Re Holdings Limited."                  18 Do you see that?                  19 <b>A I do.</b>                  20 Q And I'm going to ask you to turn and                  21 look at Exhibit 26 --                  22 <b>A Okay.</b>                  23 Q -- which I will tell you is the                  24 attachment --                  25 <b>A Okay. I don't have 26, I don't</b></p>

<p style="text-align: right;">153</p> <p><b>1 believe. Let me see.</b></p> <p>2 Q You should.</p> <p><b>3 A I think I do. Sorry. Yes, I have it.</b></p> <p><b>4 May I open it now?</b></p> <p>5 Q Yeah, if you could open it, please.</p> <p>6 And while you're opening it, I will represent that</p> <p>7 Exhibit 26 was attached to Exhibit 50 in the</p> <p>8 original email.</p> <p>9 And Exhibit 26 shows at the top,"The</p> <p>10 fund, Multi Strat Credit Fund, with an investor</p> <p>11 Sentinel Reinsurance."</p> <p>12 Do you see that?</p> <p><b>13 A Investor Sentinel Reinsurance Limited,</b></p> <p><b>14 yes.</b></p> <p>15 Q And it talks about the beneficial</p> <p>16 owners of Sentinel Reinsurance being 70 percent</p> <p>17 Patton Limited and 30 percent Minutes Limited;</p> <p>18 correct?</p> <p><b>19 A Yes.</b></p> <p>20 Q And, in turn, under Patton, it has the</p> <p>21 breakdown of various beneficial ownerships. But</p> <p>22 the only individual identified is James Dondero.</p> <p>23 Do you see that?</p> <p><b>24 A I do.</b></p> <p>25 Q And then with respect to the Mimic</p>	<p style="text-align: right;">155</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 Answered.</p> <p>3 THE WITNESS: I can't say whether it is</p> <p>4 or isn't without the documents.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q My question is -- my simple question is</p> <p>7 whether you can say it isn't.</p> <p>8 Do you -- as you sit here today,</p> <p>9 looking at this, do you -- do you know any reason</p> <p>10 why this would be inaccurate?</p> <p><b>11 A Without the documents, I cannot say</b></p> <p><b>12 it's inaccurate.</b></p> <p>13 Q What further documents would you need</p> <p>14 to know whether or not this is accurate?</p> <p><b>15 A Well, I would have to see the documents</b></p> <p><b>16 of all these entities.</b></p> <p>17 Q Okay. Did you ever contribute capital</p> <p>18 to Sentinel?</p> <p><b>19 A Excuse me?</b></p> <p>20 Q Did you ever contribute any capital to</p> <p>21 Sentinel?</p> <p><b>22 A Did I ever contribute any capital to</b></p> <p><b>23 Sentinel? No, I do not believe so.</b></p> <p>24 Q Did you ever -- unless -- and when I</p> <p>25 say Sentinel, I mean Sentinel Reinsurance Limited.</p>
<p style="text-align: right;">154</p> <p>1 Holdings it says, 100 beneficial ownership,</p> <p>2 Montage Holding Limited which, in turn,</p> <p>3 100 percent beneficial ownership AHL Holdings LP,</p> <p>4 which, in turn, has 99 percent beneficial</p> <p>5 ownership, Elderflower Limited, which, in turn, is</p> <p>6 100 percent beneficial ownership, Scott Ellington,</p> <p>7 you. Correct?</p> <p><b>8 A I see that, yes.</b></p> <p>9 Q And does that -- seeing this, does that</p> <p>10 confirm that at the time of the ATE policy, you</p> <p>11 had close to or approximately 30 percent</p> <p>12 beneficial ownership ultimately in Sentinel?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: That's what this document</p> <p>15 seems to suggest. But I don't know where this</p> <p>16 information came from to SEI. I don't know.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Do you have any reason to believe that</p> <p>19 it's inaccurate?</p> <p><b>20 A I'd have to see the org chart at the</b></p> <p><b>21 time that this was generated. I just don't</b></p> <p><b>22 remember.</b></p> <p>23 Q Do you -- as you sit here today, do you</p> <p>24 have any reason to believe that this would be</p> <p>25 inaccurate information?</p>	<p style="text-align: right;">156</p> <p>1 Did you ever put any investment or</p> <p>2 funds into Sentinel Reinsurance Limited?</p> <p><b>3 A I don't know.</b></p> <p>4 Q You don't know?</p> <p><b>5 A I don't know. It could have been</b></p> <p><b>6 capitalized in a way that I -- I personally did</b></p> <p><b>7 not, no.</b></p> <p>8 Q Let's look at what's been marked as</p> <p>9 Exhibit 77.</p> <p>10 MR. CLUBOK: And Nate, when I call</p> <p>11 these out, I know Mr. Ellington's got a hard copy,</p> <p>12 but can you also put it up on the screen to make</p> <p>13 it easy. We'll see it both ways.</p> <p>14 REMOTE TECHNICIAN: Yes, sir. That was</p> <p>15 77?</p> <p>16 MR. CLUBOK: Yes, tab four.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q This is a document that says, "Scott</p> <p>19 Ellington Schedule of Certain Cash and Investments</p> <p>20 and Accountant's Compilation Report, October 31st,</p> <p>21 2018." Do you see that?</p> <p><b>22 A I do.</b></p> <p><b>23 BY MR. CLUBOK:</b></p> <p>24 Q And the second page references an</p> <p>25 entity called Seville Dodge and Company; do you</p>

<p style="text-align: right;">157</p> <p>1 see that?</p> <p>2 <b>A I do.</b></p> <p>3 Q Who are they?</p> <p>4 <b>A An accounting firm.</b></p> <p>5 Q And they're your accounting firm.</p> <p>6 <b>A They assist along with outside counsel</b></p> <p>7 <b>in tax preparation.</b></p> <p>8 Q Okay. And in the end of 2018, they</p> <p>9 compiled a schedule of certain cash and</p> <p>10 investments of you as of October 31st, 2018;</p> <p>11 correct?</p> <p>12 <b>A That seems to be what 7359 is.</b></p> <p>13 Q Why did they do that?</p> <p>14 <b>A I was applying for a Cayman banking</b></p> <p>15 <b>license, and this was requested by CIMA.</b></p> <p>16 Q Okay. And so you had to make sure you</p> <p>17 provided accurate information to CIMA?</p> <p>18 <b>A Yes.</b></p> <p>19 Q And did Sevilla -- do you trust that</p> <p>20 Sevilla accurately reported your cash and</p> <p>21 investments as of October 31st, 2018?</p> <p>22 <b>A I trust that they --</b></p> <p>23 MS. SMITH: Object to form.</p> <p>24 THE WITNESS: -- did their best to</p> <p>25 accurately report, yes.</p>	<p style="text-align: right;">159</p> <p>1 <b>other professionals did the valuation.</b></p> <p>2 Q Well, you caused this to be prepared so</p> <p>3 that you could submit it to CIMA to get a banking</p> <p>4 license; right?</p> <p>5 <b>A At the request of CIMA, yes.</b></p> <p>6 Q Understood. And did you -- are you</p> <p>7 reasonably certain that it was accurate?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I -- I don't have</p> <p>10 enough -- I don't have enough expertise to</p> <p>11 understand these type of valuations. That's why I</p> <p>12 hire professionals to do it.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Yeah, but do you -- did you take care</p> <p>15 to ensure that you hired a professional that you</p> <p>16 can rely on and that you provided that</p> <p>17 professional with all the information reasonably</p> <p>18 necessary to be accurate to the best of your</p> <p>19 ability?</p> <p>20 <b>A Myself or other -- those are other</b></p> <p>21 <b>entities because I couldn't provide information on</b></p> <p>22 <b>Sentinel. The independent directors would have to</b></p> <p>23 <b>do that.</b></p> <p>24 Q Did you take any affirmative obligation</p> <p>25 to do everything reasonably possible to ensure</p>
<p style="text-align: right;">158</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q And on the second page it says,</p> <p>3 "Investment in Sentinel Reinsurance Limited</p> <p>4 11.8 million."</p> <p>5 Do you see that?</p> <p>6 <b>A Yes, I do. And Sentinel Reinsurance</b></p> <p>7 <b>Limited, yes.</b></p> <p>8 Q Right. And does that refresh your</p> <p>9 recollection that you invested 11.8 million in</p> <p>10 Sentinel Reinsurance Limited?</p> <p>11 <b>A No, it does not. I don't -- I don't</b></p> <p>12 <b>know what that's referencing.</b></p> <p>13 <b>I never invested personally \$11 million</b></p> <p>14 <b>in anything?</b></p> <p>15 Q Was that -- was that a valuation of</p> <p>16 your investment in Sentinel Reinsurance at the</p> <p>17 time?</p> <p>18 <b>A That's what my belief is, yes.</b></p> <p>19 Q And what was -- where -- did you -- did</p> <p>20 you ensure that Sevilla Dodge and Company had</p> <p>21 accurate information so they could make an</p> <p>22 accurate representation of the value of your</p> <p>23 investment in Sentinel Reinsurance at the time?</p> <p>24 <b>A Yes. But, I mean, I didn't provide any</b></p> <p>25 <b>valuation to them. They -- I presume them or</b></p>	<p style="text-align: right;">160</p> <p>1 that the information that's set forth in Exhibit</p> <p>2 77 is as accurate as possible?</p> <p>3 <b>A Yes, I provided any information I had</b></p> <p>4 <b>access to and requested that other entities that</b></p> <p>5 <b>were controlled by directors or others would</b></p> <p>6 <b>provide the information to Sevilla Dodge.</b></p> <p>7 Q And to the best of your -- do you feel</p> <p>8 comfortable relying upon the work of Sevilla Dodge</p> <p>9 and Company as of the date of Exhibit 77 as</p> <p>10 reflected here?</p> <p>11 <b>A They are a reputable accounting firm</b></p> <p>12 <b>with highly trained professionals, so I relied on</b></p> <p>13 <b>their expertise.</b></p> <p>14 Q And why would Matt DiOrio have a copy</p> <p>15 of this?</p> <p>16 <b>A I don't know.</b></p> <p>17 MS. SMITH: Objection to form.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Did you share this information</p> <p>20 intentionally with Matt DiOrio?</p> <p>21 <b>A Not that I recall, no.</b></p> <p>22 Q Does -- as far as you know is Matt --</p> <p>23 when Matt DiOrio was at Highland, did he have any</p> <p>24 need, as far as you know, to have access to this</p> <p>25 document based on what you understood his job to</p>



<p style="text-align: right;">161</p> <p>1 be?</p> <p>2 <b>A It may have been a function, but I</b></p> <p>3 <b>don't know, I don't know why he would have it.</b></p> <p>4 Q Matt DiOrio at the time was reporting</p> <p>5 to you before you were terminated?</p> <p>6 <b>A Yes.</b></p> <p>7 Q And you have no idea why this would</p> <p>8 have been found at his desk after he was</p> <p>9 terminated?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 THE WITNESS: No, I don't. I mean,</p> <p>12 this was generated four years ago, so any number</p> <p>13 of things could have happened over that period of</p> <p>14 time that I wasn't aware of.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Did you ever suggest any business to</p> <p>17 Sentinel -- strike that.</p> <p>18 Did you ever suggest to Sentinel that</p> <p>19 they engage in any particular business or issue</p> <p>20 any particular policy?</p> <p>21 <b>A No.</b></p> <p>22 Q Did you give -- did you have anything</p> <p>23 whatsoever to do with Sentinel's decision-making</p> <p>24 on whether to or circumstances surrounding the</p> <p>25 issuance of any policy?</p>	<p style="text-align: right;">163</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Is it roughly half? Is it roughly a</p> <p>4 third?</p> <p>5 <b>A I don't know.</b></p> <p>6 Q Yes, so Scott, let's take just one more</p> <p>7 beat before you --</p> <p>8 <b>A It's okay. Sorry.</b></p> <p>9 Q I think you can assume that Ms. Smith</p> <p>10 will say "objection to form" to many questions.</p> <p>11 <b>A Okay.</b></p> <p>12 Q So let her go ahead and say that if you</p> <p>13 can before you jump in, though I do appreciate</p> <p>14 that you are just trying to answer the questions,</p> <p>15 and I appreciate that.</p> <p>16 <b>A Thank you. Sorry again to everyone.</b></p> <p>17 Q It's okay. Let's try one more time.</p> <p>18 As of 2018, you think it's reasonable</p> <p>19 to conclude that your net worth was approximately</p> <p>20 two-thirds -- strike that.</p> <p>21 As of November 2018, it's true that</p> <p>22 approximately two-thirds of your total net worth</p> <p>23 was your investment in Sentinel Reinsurance;</p> <p>24 correct?</p> <p>25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">162</p> <p>1 <b>A No.</b></p> <p>2 Q Did Sentinel issue any other ATE</p> <p>3 policies ever, other than the one that was -- that</p> <p>4 was issued in connection with the UBS litigation?</p> <p>5 <b>A Not that I'm aware of.</b></p> <p>6 Q How much does Sentinel have in --</p> <p>7 strike that.</p> <p>8 What's the value of your investment in</p> <p>9 Sentinel today, roughly?</p> <p>10 <b>A I have no idea.</b></p> <p>11 Q Do you have any idea if it's 1 million</p> <p>12 or 100 million?</p> <p>13 <b>A I certainly don't think it's</b></p> <p>14 <b>100 million, but I don't know.</b></p> <p>15 Q Well, in 2018, your investment in</p> <p>16 Sentinel was roughly two-thirds of your cash and</p> <p>17 investments total; correct?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: According to this</p> <p>20 accounts, roll up of assets, yes.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q And today is your investment in</p> <p>23 Sentinel roughly two-thirds of your total net</p> <p>24 worth?</p> <p>25 <b>A I don't know.</b></p>	<p style="text-align: right;">164</p> <p>1 THE WITNESS: According to this</p> <p>2 schedule of cash and investments, which I find it</p> <p>3 interesting there is no liabilities reflected here</p> <p>4 and then I don't know the valuation methodology</p> <p>5 used, but that's what this looks like.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q And this is the document that you</p> <p>8 trusted Sevilla Dodge and Company to do an</p> <p>9 accurate job of reporting to the CIMA authority;</p> <p>10 correct?</p> <p>11 <b>A Yeah.</b></p> <p>12 Q Okay.</p> <p>13 <b>A But, again, it's just -- its just a</b></p> <p>14 <b>schedule of certain cash investments, and it</b></p> <p>15 <b>doesn't reflect any liabilities.</b></p> <p>16 Q Yeah, it doesn't reflect liabilities.</p> <p>17 <b>A I take net worth, I think the term</b></p> <p>18 <b>"net" nets out liabilities.</b></p> <p>19 Q Ah, okay, fair enough. So as of</p> <p>20 November 2018, approximately two-thirds of your</p> <p>21 total assets were your investment in Sentinel</p> <p>22 Reinsurance; correct?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: According to this</p> <p>25 document, yes.</p>

<p style="text-align: right;">165</p> <p>1 BY MR. CLUBOK:                  2 Q Which you have no reason to dispute;                  3 correct?                  4 THE WITNESS: I have no reason to                  5 dispute.                  6 MR. CLUBOK: Objection to form.                  7 THE WITNESS: I have no reason to                  8 dispute, but I don't know the methodology used.                  9 BY MR. CLUBOK:                  10 Q And as of today, do you have any idea                  11 whatsoever what the percentage of your total                  12 assets your investment of Sentinel Reinsurance                  13 constitutes?                  14 A <b>No idea whatsoever.</b>                  15 Q And when you say you have no idea                  16 whatsoever, you mean you don't know if it's one                  17 percent or 70 percent?                  18 A <b>I don't, because this is the only time</b>                  19 <b>I've ever seen a reflection of valuation as to,</b>                  20 <b>quote, my portion of Sentinel.</b>                  21 Q Have you ever received any dividends                  22 from Sentinel?                  23 A <b>No.</b>                  24 Q Do you know if Sentinel still has the                  25 assets that were transferred to it in August of</p>	<p style="text-align: right;">166</p> <p>1 2017 with respect to the ATE policy?                  2 A <b>To my knowledge, they still have</b>                  3 <b>everything that was transferred to them.</b>                  4 Q Do you believe that Sentinel could make                  5 good on the -- on at least -- strike that.                  6 Do you -- do you know whether -- do you                  7 know how much of the policy limit remains                  8 available on the ATE policy?                  9 A <b>No.</b>                  10 Q If something like 91 million remains                  11 available, do you know whether or not Sentinel has                  12 the financial ability to satisfy that?                  13 A <b>No.</b>                  14 Q Do you know whether or not Sentinel has                  15 the financial ability to satisfy \$50 million?                  16 A <b>No.</b>                  17 Q Do you know whether Sentinel has the                  18 financial ability to satisfy \$10 million?                  19 A <b>No.</b>                  20 Q Do you know anything whatsoever about                  21 whether or not Sentinel has the financial ability                  22 to satisfy any amount of liability it may have                  23 with respect to the ATE policy?                  24 A <b>No, I don't have any transparency into</b>                  25 <b>Sentinel's balance sheet.</b></p>
<p style="text-align: right;">167</p> <p>1 Q When you had the idea to buy the ATE                  2 policy, did you ever discuss that purchase with                  3 any insurer other than Sentinel?                  4 A <b>Did I? No.</b>                  5 Q Are you aware of anyone at Highland                  6 ever trying to obtain an ATE policy with respect                  7 to the UBS litigation from any entity other than                  8 Sentinel?                  9 A <b>No one at Highland that I'm aware of,</b>                  10 <b>no.</b>                  11 Q Are you aware of anybody, a broker, a                  12 third party, anybody at all ever --                  13 A <b>I recall -- I recall Beecher Carlson</b>                  14 <b>going to the market to see if an ATE policy could</b>                  15 <b>be achieved before it went to Sentinel.</b>                  16 Q Who at Beecher Carlson did that?                  17 A <b>I don't know their names. I've never</b>                  18 <b>spoken to them.</b>                  19 Q And how did you learn about that?                  20 A <b>Someone at the time told me. I don't</b>                  21 <b>remember who. Someone internally at Highland.</b>                  22 Q And what did they tell you about those                  23 efforts?                  24 A <b>That Beecher Carlson had put out, for</b>                  25 <b>lack of a better term, bids to other known</b></p>	<p style="text-align: right;">168</p> <p>1 <b>reinsurers about an ATE policy.</b>                  2 Q And...                  3 A <b>That there were no takers or that the</b>                  4 <b>premium they wanted was even higher than what was</b>                  5 <b>being requested by CIMA.</b>                  6 Q What was the ultimate premium requested                  7 by CIMA for the ATE policy?                  8 A <b>I don't recall.</b>                  9 Q Roughly.                  10 A <b>I really don't recall.</b>                  11 Q You do recall, though, that it                  12 ultimately matched exactly all of the assets that                  13 were then remaining at CDO Fund, SOHC, HFP;                  14 correct?                  15 A <b>No.</b>                  16 MS. SMITH: Objection to form.                  17 THE WITNESS: No. As I stated many                  18 times before, I was not involved in the process at                  19 that point. I didn't know what the final outcome                  20 was.                  21 BY MR. CLUBOK:                  22 Q Okay. But you understood that the                  23 ultimate premium was roughly equivalent to all of                  24 the then remaining assets of HFP, CDO Fund and                  25 SOHC; correct?</p>

<p style="text-align: right;">169</p> <p>1 <b>A No. I was --</b></p> <p>2 MS. SMITH: Object to form.</p> <p>3 THE WITNESS: I was aware it was a</p> <p>4 substantial portion, but I didn't know the final</p> <p>5 outcome.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Okay. You -- you came to be aware at</p> <p>8 some point that the ultimate premium for the ATE</p> <p>9 policy equalled a substantial portion of all of</p> <p>10 the remaining assets SOHC, HFP and CDO Fund;</p> <p>11 correct?</p> <p>12 <b>A That was my general awareness, yes.</b></p> <p>13 Q And when you say "substantial portion"</p> <p>14 you mean more than 90 percent; correct?</p> <p>15 <b>A I didn't know if it was 90 percent, but</b></p> <p>16 <b>I knew it was more than, say, 70 percent.</b></p> <p>17 Q In fact, you were specifically -- it</p> <p>18 was specifically communicated to you at some point</p> <p>19 that it would be all of the assets; isn't that</p> <p>20 true?</p> <p>21 <b>A I don't know --</b></p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: I don't know if I</p> <p>24 specifically was communicated that to, no.</p> <p>25 BY MR. CLUBOK:</p>	<p style="text-align: right;">171</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you have any role in deciding who</p> <p>3 the directors of Sentinel would be?</p> <p>4 <b>A None.</b></p> <p>5 Q Are you talking about -- well, let's</p> <p>6 start with the independent directors.</p> <p>7 You say you had absolutely no role in</p> <p>8 the identifying any independent directors; is that</p> <p>9 correct?</p> <p>10 <b>A That's correct.</b></p> <p>11 Q Who made the decision about who would</p> <p>12 be the independent directors?</p> <p>13 <b>A I don't know.</b></p> <p>14 Q Okay. But you did tell Matt DiOrio</p> <p>15 that he would be a nonindependent director for</p> <p>16 Sentinel; correct?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Why was he -- why did you make -- why</p> <p>19 did you cause Matt DiOrio to be a director?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Strike that. Why did you tell</p> <p>23 Mr. DiOrio he had to be a director of Sentinel?</p> <p>24 <b>A I didn't tell him he had to be</b></p> <p>25 <b>anything.</b></p>
<p style="text-align: right;">170</p> <p>1 Q And do you know if -- well -- and do</p> <p>2 you know if Beecher Carlson ever made an effort to</p> <p>3 offer those same assets to another insurer to see</p> <p>4 what kind of ATE policy it could get?</p> <p>5 <b>A I don't know what --</b></p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I don't know what Beecher</p> <p>8 Carlson did.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q You said that Beecher Carlson put out</p> <p>11 bids and got no takers. And that was all before</p> <p>12 you turned to Sentinel Reinsurance; is that</p> <p>13 correct?</p> <p>14 <b>A That's my understanding. But again, I</b></p> <p>15 <b>wasn't involved in the process at that point.</b></p> <p>16 Q And who set the price with Sentinel</p> <p>17 Reinsurance, as far as you know, for the policy?</p> <p>18 <b>A What do you mean set the price?</b></p> <p>19 Q Fair enough. Who -- so -- well, we'll</p> <p>20 come back to that.</p> <p>21 MS. SMITH: Andy, it's about 1:15.</p> <p>22 Are you close to break time?</p> <p>23 MR. CLUBOK: Yeah, give me another ten</p> <p>24 minutes and we'll take a break.</p> <p>25</p>	<p style="text-align: right;">172</p> <p>1 Q Why did you tell him that you wanted</p> <p>2 him to be a director of Sentinel?</p> <p>3 <b>A It was an opportunity that I thought</b></p> <p>4 <b>fit his skill set. It was something that he had</b></p> <p>5 <b>expressed an interest in learning. And my</b></p> <p>6 <b>recollection is that CIMA said we needed to add</b></p> <p>7 <b>more members to the board.</b></p> <p>8 Q Was Mr. DiOrio compensated for his role</p> <p>9 as director?</p> <p>10 <b>A No.</b></p> <p>11 Q When did you learn that Matt DiOrio had</p> <p>12 resigned from the Sentinel board?</p> <p>13 <b>A I don't know that I had learned he had</b></p> <p>14 <b>resigned from the Sentinel board.</b></p> <p>15 Q Oh, did you know he resigned on</p> <p>16 June 25th, this year?</p> <p>17 <b>A No.</b></p> <p>18 MS. SMITH: Objection to form.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So as far as you knew until I just said</p> <p>21 that, did you think he was still on the board?</p> <p>22 <b>A I didn't know if he was on the board or</b></p> <p>23 <b>not.</b></p> <p>24 Q Do you know Andrew Dean?</p> <p>25 <b>A No.</b></p>

<p style="text-align: right;">173</p> <p>1 Q Do you know Christopher Watler?</p> <p>2 A <b>No.</b></p> <p>3 Q Do you know Lesley Thompson?</p> <p>4 A <b>No.</b></p> <p>5 Q Do you know Dilip Masand?</p> <p>6 A <b>Yes.</b></p> <p>7 Q Who is Dilip Masand?</p> <p>8 A <b>He was a consultant that was retained</b></p> <p>9 <b>by, I believe, Highland Capital Management LP.</b></p> <p>10 Q To do what in connection with the</p> <p>11 Sentinel?</p> <p>12 A <b>I don't know that he was retained by</b></p> <p>13 <b>Highland Capital Management to do anything with</b></p> <p>14 <b>Sentinel.</b></p> <p>15 Q He was, though, named as a director for</p> <p>16 Sentinel; correct?</p> <p>17 A <b>I believe so, yes.</b></p> <p>18 Q And that was your decision; correct?</p> <p>19 A <b>I do not think that was my decision,</b></p> <p>20 <b>no.</b></p> <p>21 Q You suggested him as a director.</p> <p>22 A <b>I suggested him as a potential</b></p> <p>23 <b>director, yes.</b></p> <p>24 Q To whom?</p> <p>25 A <b>To Mr. DiOrio and I believe to</b></p>	<p style="text-align: right;">175</p> <p>1 A <b>You broke --</b></p> <p>2 MS. SMITH: Objection, form.</p> <p>3 THE WITNESS: You broke up, Andy. I'm</p> <p>4 sorry.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Do you know who Jan Neveril is?</p> <p>7 A <b>No, I do not.</b></p> <p>8 Q I don't know if Jan is a man or woman,</p> <p>9 but -- or is that Jan?</p> <p>10 A <b>That could possibly be Jan.</b></p> <p>11 Q Oh, someone named J-A-N Neveril, you</p> <p>12 believe that may be Jan?</p> <p>13 A <b>Potentially. I never knew his surname</b></p> <p>14 <b>or her surname.</b></p> <p>15 Q Was it -- was Jan a man or a woman?</p> <p>16 A <b>Jan was a man?</b></p> <p>17 Q So -- and Jan -- was Jan Neveril still</p> <p>18 a director during that bankruptcy matter?</p> <p>19 A <b>As far as I know, yes.</b></p> <p>20 Q Do you know if Jan is still on the</p> <p>21 board?</p> <p>22 A <b>I do not.</b></p> <p>23 Q Did you know that Matt DiOrio</p> <p>24 recommended Jan?</p> <p>25 A <b>No, I have -- I have no idea who</b></p>
<p style="text-align: right;">174</p> <p>1 <b>Mr. Dondero, but I don't recall doing that.</b></p> <p>2 Q You told --</p> <p>3 A <b>But I could have, possibly.</b></p> <p>4 Q You told Mr. Dondero about your</p> <p>5 recommendations to make Mr. Masand and Mr. DiOrio</p> <p>6 directors of Sentinel; correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q And he -- he could have said no if he</p> <p>10 had wanted to; right?</p> <p>11 A <b>Yeah, he could have said no if he</b></p> <p>12 <b>wanted to, but it's not his decision of who became</b></p> <p>13 <b>the directors; it's the other -- it's the</b></p> <p>14 <b>independent directors that approved. And CIMA has</b></p> <p>15 <b>to approve each individual director. So</b></p> <p>16 <b>Mr. Dondero's vote of "yes" or "no" is not the</b></p> <p>17 <b>ultimate arbiter.</b></p> <p>18 Q You -- you asked DiOrio and Sevilla to</p> <p>19 identify new board members; is that correct?</p> <p>20 A <b>At what time period?</b></p> <p>21 Q Some point prior to the bankruptcy.</p> <p>22 A <b>No.</b></p> <p>23 Q Well, then, you asked DiOrio and</p> <p>24 Sevilla to work together to identify directors</p> <p>25 like Mr. Neveril?</p>	<p style="text-align: right;">176</p> <p>1 <b>recommended Jan.</b></p> <p>2 Q What about Damien Austin?</p> <p>3 A <b>I don't know who that is.</b></p> <p>4 Q Casey McDonald?</p> <p>5 A <b>Don't know who that is?</b></p> <p>6 Q Wade Kenny?</p> <p>7 A <b>Don't know who that is.</b></p> <p>8 Q Okay.</p> <p>9 MR. CLUBOK: Why don't we take a break.</p> <p>10 THE VIDEOGRAPHER: We're going -- we're</p> <p>11 going off the record at 2:18 -- 2:19 p.m. eastern</p> <p>12 time.</p> <p>13 MR. CLUBOK: Okay.</p> <p>14 (Lunch Recess taken 2:19 p.m. to 3:16</p> <p>15 p.m.)</p> <p>16 THE VIDEOGRAPHER: Am I going on the</p> <p>17 record, counsel, or waiting...</p> <p>18 MR. CLUBOK: We don't need it</p> <p>19 videotaped. We'll just -- the court reporter, you</p> <p>20 can take this following thing down and we are not</p> <p>21 going to count it on the videotape so go ahead --</p> <p>22 and court reporter, if you don't mind, you can go</p> <p>23 on the record. Ms. Smith will make her statement</p> <p>24 and I will respond, and then we'll resume the</p> <p>25 deposition.</p>

<p>1 Is that okay, Lisa? Tell us when 2 you're ready. 3 Go ahead, Ms. Smith. Make your 4 statement. 5 MS. SMITH: I understand that -- I 6 learned on the break that during the course of 7 this deposition, which is supposed to be a highly 8 confidential deposition, I learned on the break 9 that information that Mr. Ellington had disclosed 10 during his deposition in response to direct 11 questions from Mr. Clubok has been leaked to a 12 third party, who is not subject to a 13 confidentiality order or confidentiality 14 agreement. 15 And I want -- I want to go on the 16 record that his -- it appears that his 17 girlfriend's address or his father's address was 18 leaked to a third party when it is supposed to be 19 highly confidential. 20 MR. CLUBOK: All right. And Ms. Smith, 21 you know that that so-called recitation of the 22 facts leaves out some very important information 23 and paints a very distorted picture because you've 24 left out material information. Specifically -- 25 MS. SMITH: Well, I'm not being deposed</p>	<p>177</p>	<p>1 are claiming is supposedly highly confidential, 2 which by the way had never been designated highly 3 confidential at all, so that's also false, there 4 was a portion -- a very small portion of this 5 deposition that was designated highly 6 confidential, that was, as you know, in connection 7 with information that was supposedly subject to 8 some confidentiality agreement. 9 MS. SMITH: Are you saying, Mr. Clubok, 10 that the depositions that have been held in this 11 case are not confidential? 12 MR. CLUBOK: I asked you not to 13 interrupt me anymore than I refrained from 14 interrupting you, because the court reporter can 15 only get us one at a time. 16 So this deposition is going forward. 17 There is a protective order that governs the 18 treatment. There is certain aspects that can be 19 designated as "highly confidential." You made a 20 point of designating a particular portion as 21 highly confidential. 22 The address where Mr. Ellington lives 23 or currently is living is certainly not something 24 that we are not permitted to use if we need to 25 serve him in this matter or if we need to serve</p>	<p>179</p>
<p>1 here, Mr. Clubok. 2 MR. CLUBOK: Right. So specifically in 3 response to that, the issue here that we're 4 talking about is that over a month ago, we talked 5 about -- we are trying to serve Mr. Ellington, as 6 you know, in connection with proceedings that are 7 going on in New York. 8 Over a month ago, I asked you to tell 9 us -- to communicate with us whether or not 10 Mr. Ellington would accept service or not. 11 You promised -- you promised to get 12 that information for me. We asked you repeatedly 13 since then, you never did. Mr. Ellington came 14 back to the States. 15 You apparently, as of the time of this 16 deposition, you still had not asked him. 17 I asked again for you to tell me about 18 this. You -- you continued to refuse until just 19 moments ago, you finally told me, even though I'd 20 asked, frankly, that you tell me at the beginning 21 of the lunch break rather than waiting till 15 22 minutes past the lunch break, that you are not 23 going to accept service and you are going to make 24 us try to serve Mr. Ellington with process. 25 Now, the specific information that you</p>	<p>178</p>	<p>1 him in connection with other matters. You moved 2 the court to limit the use of this deposition to 3 just this matter, and that was denied. 4 So we can -- you know, we have no 5 interest in doing what we had to do before. As 6 you know, Mr. Ellington dodged service for a long 7 period of time right up until the point where it 8 finally was accepted in connection with this 9 matter. That seems to be a pattern or practice 10 that Mr. Ellington apparently -- he's sitting 11 right here. 12 We asked for you all to voluntarily 13 accept service. You just disclosed to me after a 14 month of me asking that he apparently will not. 15 And so if knowing the address where he lives 16 allows us to serve him potentially -- I don't how 17 many efforts it will take or how much he'll dodge 18 it. I hope he does not. I hope you'll advise him 19 of his obligation. 20 By the way, Baker MacKenzie is on this 21 call, too. I hope everyone has advised their 22 clients about the obligations to not intentionally 23 dodge service. And, you know, but we are going to 24 have to, we have no choice that, and I told you 25 this a month ago, if he didn't voluntarily agree</p>	<p>180</p>

<p style="text-align: right;">181</p> <p>1 to accept service, we have no choice but to try to                  2 affect service through proper means. And then we                  3 will certainly pursue our rights for the cost and                  4 expense of repeated efforts to dodge service, if                  5 that's what happens again in this case or in any                  6 matter like it happened in this case.                  7       Anyway, we've made our comments. You                  8 are welcome to make as many comments as you want                  9 to or I told you you could use this deposition or                  10 this court reporter's time, if you need to make                  11 it. But I also, by the way, said I couldn't stop                  12 you, but I think this is wholly inappropriate to                  13 be using a court reporter to try to make some                  14 record, particularly given the recitation that you                  15 made at the beginning to try to paint an -- I                  16 think, misleadingly incomplete light.                  17       Go ahead, Ms. Smith.                  18       MS. SMITH: Well, in response,                  19 Mr. Ellington has testified in unrelated to this                  20 matter but in today's deposition, that he had no                  21 email service while he was in Africa and that he                  22 has been back in the country approximately 36 --                  23 30 to 36 hours.                  24       So as for repeatedly dodging service,                  25 he has not done that.</p>	<p style="text-align: right;">183</p> <p>1       MR. CLUBOK: Well, in any event, I                  2 think we have sufficiently covered the waterfront                  3 on this issue. And let's conclude this portion of                  4 the transcript. And we'll take a -- we'll take a                  5 one-minute break and I'll resume.                  6       ---(Off-record discussion)                  7       (Recess taken 3:23 p.m. to 3:25 p.m.)                  8       THE VIDEOGRAPHER: Going back on the                  9 record at 3:25 p.m.                  10 BY MR. CLUBOK:                  11       Q Mr. Ellington, what was -- so, I want                  12 to talk about another entity that we briefly                  13 mentioned, that's SAS. That's another entity that                  14 I believe that you directly or indirectly have the                  15 ultimate beneficial economic interest of roughly                  16 30 percent in; correct?                  17       <b>A As long as we're talking about your</b>                  18 <b>characterization of SAS and related entities,</b>                  19 <b>subs, affiliates as the SAS umbrella, directly --</b>                  20 <b>or actually indirectly with entities associated</b>                  21 <b>with SAS.</b>                  22       Q And ultimately all the economics of                  23 those SAS entities flow up to some -- either you                  24 directly or some trust or other entity that you've                  25 set up for your family's benefit; is that correct?</p>
<p style="text-align: right;">182</p> <p>1       This is a New York State matter. I am                  2 not his counsel of record in New York, like I told                  3 you at very beginning when you served me by snail                  4 mail on this.                  5       So I am fine with continuing with the                  6 deposition.                  7       MR. CLUBOK: Okay. And by the way,                  8 when I did serve you and you had not opened your                  9 mail, I told you at the time, of course I                  10 understood, we were very professional and                  11 courteous because you didn't -- and I understand                  12 it's Covid and so you may not have seen your mail,                  13 which we bent over backwards. You said you hadn't                  14 opened your mail. I said, okay, professional                  15 courtesy, so we will accept that representation                  16 and just pick up from here. And I never got a                  17 word back from you on this. We've asked you                  18 multiple times and you kept refusing to tell us                  19 about it until literally 15 minutes past our lunch                  20 break even at the very end here. And so those are                  21 the --                  22       MS. SMITH: I did not refuse,                  23 Mr. Clubok, and you know that.                  24       I had not had an opportunity to confer                  25 with my client.</p>	<p style="text-align: right;">184</p> <p>1       <b>A I don't really know how they flow, but</b>                  2 <b>it would be something similar to that or generally</b>                  3 <b>like that, yes.</b>                  4       Q Okay. And SAS, what does that stand                  5 for?                  6       <b>A It stands for sword and shield.</b>                  7       Q And who came up with that name?                  8       <b>A Me.</b>                  9       Q What does SAS do?                  10       <b>A It provided litigation, financing</b>                  11 <b>and/or claim purchasing.</b>                  12       Q And whose -- and by the way, it's also                  13 the case that Mr. Dondero, through entities that                  14 he controls, has a 70 percent beneficial economic                  15 interest in SAS; correct?                  16       <b>A I don't know how Mr. Dondero holds any</b>                  17 <b>of those equitable positions.</b>                  18       Q Right. But Mr. Dondero had the right                  19 to control 70 percent of the beneficial interest                  20 in SAS in however he decided to allocate it or                  21 hold it, etcetera; correct?                  22       <b>A Yes, he could have done with those</b>                  23 <b>shares as he chose. I don't know if he donated</b>                  24 <b>them or what. I just don't know.</b>                  25       Q And how are you involved in SAS?</p>

<p style="text-align: right;">185</p> <p>1 <b>A I was one of the -- other than being an</b>                  2 <b>indirect owner, for lack of a better term, with</b>                  3 <b>more affiliated entities related to me, I was the</b>                  4 <b>person that came up with the idea to form it and</b>                  5 <b>provided services through related entities to it.</b>                  6 Q Well, you were the CEO of SAS; right?                  7 <b>A I don't know that that was ever a</b>                  8 <b>title. I just -- I don't know.</b>                  9 Q If somebody called SAS, that call would                  10 be routed to Highland Capital Management's phone                  11 system and it would go to you, isn't that true?                  12 <b>A Not that I'm aware of, no. It may have</b>                  13 <b>been that at some point, but certainly not in</b>                  14 <b>years.</b>                  15 Q Well, isn't it true that in the past,                  16 that somebody called SAS, it would be routed to                  17 HCM's office, and they could would press 1 and                  18 speak directly to you?                  19 <b>A Potentially. I just don't remember</b>                  20 <b>that being the case.</b>                  21 Q And SAS used to share a phone number                  22 with HCM?                  23 <b>A No.</b>                  24 Q Did SAS have its own bank accounts?                  25 <b>A Yes.</b></p>	<p style="text-align: right;">187</p> <p>1 <b>A Yes, I know Summit Management.</b>                  2 Q What's Summit Management?                  3 <b>A I believe they are a Cayman-based</b>                  4 <b>fiduciary services company.</b>                  5 Q And they provide directors for the                  6 entities through which you own SAS or portions of                  7 SAS and Sentinel; is that right?                  8 <b>A I know they had in the past. I don't</b>                  9 <b>know if they are still the directors or not.</b>                  10 Q Is SAS a client of Skyview?                  11 <b>A No, not to my knowledge.</b>                  12 Q Why would HCM employees ever work for                  13 SAS?                  14 <b>A There was --</b>                  15 MS. SMITH: Objection to form.                  16 THE WITNESS: There was a culture that                  17 existed before my tenure with Highland where                  18 business ideas would be incubated and/or services                  19 provided by Highland employees, and if those                  20 various businesses ever got to a point of                  21 substance and/or stability to stand on other own,                  22 they would be spun out and the employees of                  23 Highland would usually go and work for that new                  24 entity, and there are several examples of that.                  25 BY MR. CLUBOK:</p>
<p style="text-align: right;">186</p> <p>1 Q And your sister Marcia Maslow worked                  2 for SAS?                  3 <b>A No.</b>                  4 Q Isn't it true she provided project                  5 management consulting services?                  6 <b>A Yes. She provided some IT setup of --</b>                  7 <b>of case management tracking devices.</b>                  8 Q So she was paid by SAS for that work?                  9 <b>A Yes.</b>                  10 MS. SMITH: Objection, form.                  11 THE WITNESS: The consulting firm she                  12 works for was paid, yes.                  13 BY MR. CLUBOK:                  14 Q You still have access to your SAS                  15 management.com email?                  16 <b>A No.</b>                  17 Q If we emailed to sellington at                  18 sasgmt.com today, would it go through?                  19 <b>A I have no idea.</b>                  20 Q Do you know the directors of SAS?                  21 <b>A No, I don't.</b>                  22 Q Do you know who David Eggleshaw is or                  23 John Collier (?)                  24 <b>A No.</b>                  25 Q Do you know Summit Management Limited?</p>	<p style="text-align: right;">188</p> <p>1 Q Did you ever get any distribution from                  2 SAS?                  3 <b>A No.</b>                  4 Q Have you ever gotten any payments from                  5 SAS at all?                  6 <b>A No, other than expense reimbursement,</b>                  7 <b>no.</b>                  8 Q Expense reimbursement?                  9 <b>A Yes.</b>                  10 Q For what?                  11 <b>A Where there would be marketing costs</b>                  12 <b>and otherwise. I mean, somebody has to be an</b>                  13 <b>individual that pays, and very often that would be</b>                  14 <b>me.</b>                  15 Q What's the rough magnitude of that                  16 expense or reimbursement?                  17 <b>A I have no idea. You're talking about</b>                  18 <b>12 -- 12 plus years.</b>                  19 Q You're saying you haven't gotten any                  20 expense reimbursement for SAS in 12 plus years?                  21 <b>A You're asking for --</b>                  22 MS. SMITH: Objection to form.                  23 THE WITNESS: Sorry, Frances. My                  24 apologies.                  25 MS. SMITH: Object to form.</p>

<p style="text-align: right;">189</p> <p>1 THE WITNESS: You are asking me the</p> <p>2 magnitude of that. I wouldn't know how to gauge</p> <p>3 that over an aggregate of 12 plus years.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q How about in the last three years?</p> <p>6 <b>A No idea.</b></p> <p>7 Q Is it tens of thousands, ones of</p> <p>8 thousands, hundreds of thousands, millions?</p> <p>9 <b>A I would say you are probably in tens of</b></p> <p>10 <b>thousands to low hundreds of thousands.</b></p> <p>11 Q For what?</p> <p>12 <b>A Travel. Hotel rooms. I would pay for</b></p> <p>13 <b>any and every one professional and otherwise that</b></p> <p>14 <b>were conducting business on behalf of SAS.</b></p> <p>15 Q What's the relationship between SAS</p> <p>16 management and SAS asset recovery.</p> <p>17 <b>A I'd have to look at an org chart.</b></p> <p>18 Q What's the relationship between SAS and</p> <p>19 Sentinel?</p> <p>20 <b>A There is no direct relationship.</b></p> <p>21 Q But they have a common owner; correct?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 THE WITNESS: Again, I don't know how</p> <p>24 Mr. Dondero owns them, either one of those</p> <p>25 businesses, so I don't know about the commonality.</p>	<p style="text-align: right;">191</p> <p>1 <b>A Do I see where it says what? I'm</b></p> <p>2 <b>sorry.</b></p> <p>3 Q See there is a circle at the top on the</p> <p>4 left that says USP1, and a circle on the top on</p> <p>5 the right that says USP2.</p> <p>6 <b>A Yeah.</b></p> <p>7 MS. SMITH: Can we have the exhibit on</p> <p>8 the screen, please?</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Yeah, we do have the exhibit.</p> <p>11 Let's turn to -- oh, I'm sorry.</p> <p>12 It's --</p> <p>13 MR. CLUBOK: Do I have control here,</p> <p>14 Nate?</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q There is a org chart that I have up</p> <p>17 now. The Bates label ends in 85.</p> <p>18 On the top left, you can see USP1 and</p> <p>19 at the top right, you see USP2 in circles?</p> <p>20 <b>A Yes.</b></p> <p>21 Q You recall that USP1 refers to you and</p> <p>22 USP2 refers to Mr. Dondero?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: I don't know -- I don't</p> <p>25 know what they refer to.</p>
<p style="text-align: right;">190</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q I'm going to hand you what's been</p> <p>3 marked as --</p> <p>4 Hold on a second.</p> <p>5 What's Sebastian Clarke?</p> <p>6 <b>A I'd have to look at a org chart. I</b></p> <p>7 <b>don't know.</b></p> <p>8 Q You have no idea what Sebastian Clarke</p> <p>9 is as you sit here today?</p> <p>10 <b>A No, I know -- I remember the entity</b></p> <p>11 <b>name, but I don't know what it's relative to.</b></p> <p>12 Q You owned Sebastian Clarke, didn't you?</p> <p>13 <b>A I have no idea.</b></p> <p>14 Q Let's take a look at Exhibit 39, which</p> <p>15 is tab 8. You should have it in front of you.</p> <p>16 <b>A I do. Can I go ahead and open it,</b></p> <p>17 <b>Mr. Clubok?</b></p> <p>18 Q Please do.</p> <p>19 And I'm going to ask you to turn to</p> <p>20 page 3 of Exhibit 39, which is the offshore fund</p> <p>21 structure of SAS as of December 31st, 2017.</p> <p>22 Do you see that?</p> <p>23 <b>A I see an org chart. I do.</b></p> <p>24 Q And do you see where it talks about USP</p> <p>25 (inaudible)?</p>	<p style="text-align: right;">192</p> <p>1 There is also a circle with four USPs,</p> <p>2 so I don't know what refers to each.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Do you see where it says Sebastian</p> <p>5 Clarke at the bottom right?</p> <p>6 <b>A Bottom right? Yes, I do.</b></p> <p>7 Q Does that ring a bell for you what</p> <p>8 Sebastian Clarke is?</p> <p>9 <b>A No idea what it is.</b></p> <p>10 Q There's a -- if you turn to the next</p> <p>11 page, there's some notes. Those are the -- do you</p> <p>12 see where it says on the -- on the page that ends</p> <p>13 in 85, AD1, AD2, AD3, AD4, 5?</p> <p>14 And then the next page, those are the,</p> <p>15 you know, footnotes basically that correspond to</p> <p>16 those; do you see that?</p> <p>17 <b>A I do.</b></p> <p>18 <b>It says it corresponds to slide 1, but</b></p> <p>19 <b>I don't see what's labeled as slide 1.</b></p> <p>20 <b>BY MR. CLUBOK:</b></p> <p>21 Q So if you look back at the slide that</p> <p>22 ends with 85, for example, you see where it says</p> <p>23 AD4 at the bottom left, next to Gray Royal</p> <p>24 Limited?</p> <p>25 <b>A Yes.</b></p>



<p>1 Q And if you go to the next page, you see                  2 84, it says, "Sold from Sentinel structure in '17.                  3 Details needed."                  4 These notes appear to refer to this first                  5 slide?                  6 <b>A Yes.</b>                  7 Q Okay?                  8 <b>A That seems to be -- that's the</b>                  9 <b>assumption, yes.</b>                  10 Q Yep. So then I'm going to turn to the                  11 next page, the next slide, slide 2. And this is                  12 the -- CF -- it's entitled "CFC Restructure." And                  13 it says, "Sentinel structure as of December 31st,                  14 2017."                  15 Do you see that?                  16 <b>A I do.</b>                  17 Q And it -- and it, again, has a                  18 reference to USP1, and USP2.                  19 Do you see that?                  20 <b>A On the CFC restructure?</b>                  21 Q Yes.                  22 <b>A Yes.</b>                  23 Q When you see how USP1 goes down to an                  24 entity called Nimitz?                  25 <b>A Yes, I do.</b></p>	<p>193</p>
<p>1 Q At a 30 percent value?                  2 <b>A Yes.</b>                  3 Q And USP goes down ultimately to an                  4 entity called Patton, which has a 70 percent                  5 value?                  6 <b>A I do.</b>                  7 Q Although a 91 --                  8 MS. SMITH: Excuse me, Mr. Clubok. I                  9 don't want to interrupt you. But can you hold                  10 this up so that the whole thing shows. It looks                  11 like some of its cut off.                  12 MR. CLUBOK: No, it's not really cut                  13 off except the Bates number.                  14 <b>A I can see -- I can see the whole thing</b>                  15 <b>on the hard copy.</b>                  16 <b>BY MR. CLUBOK:</b>                  17 Q Yeah, you have a hard copy. And,                  18 Ms. Smith, you should have a hard copy, too, or                  19 you certainly have these exhibits. We've used                  20 them in past depositions.                  21 So with respect to getting back to this                  22 exhibit, which, again, is Exhibit 39. And we are                  23 on the page that ends in Bates number 37. There                  24 is a chart that says, "CFC restructure, Sentinel                  25 structure as of 12/31/17." It is marked "Draft</p>	<p>194</p>
<p>1 for preliminary discussion purposes only."                  2 And it references Nimitz with a                  3 30 percent value and with 9 percent vote, and                  4 Patton with 70 percent value, 91 percent vote                  5 above Sentinel Holdings Limited.                  6 Do you see that?                  7 <b>A I see that line.</b>                  8 Q And we showed you earlier the document                  9 that showed that Nimitz referred to your                  10 beneficial owner of about 30 percent, whereas                  11 Patton referred to Mr. Dondero's ownership of                  12 about 70 percent?                  13 <b>A I don't remember the document that you</b>                  14 <b>are referring to. But if you go further in the</b>                  15 <b>chart, it shows that there is foreign individuals</b>                  16 <b>who have specific values. And like I said, this</b>                  17 <b>is for a draft for preliminary discussions only.</b>                  18 <b>This looks to be a proposed restructuring. And</b>                  19 <b>furthermore, it's Mr. Dondero's international tax</b>                  20 <b>questions from Deloitte, so I don't know that this</b>                  21 <b>is relevant to me at all. And I don't know if</b>                  22 <b>this was something that was put together for</b>                  23 <b>discussion or actually got put in place. I have</b>                  24 <b>no idea.</b>                  25 Q Okay. So listen to my question.</p>	<p>195</p>
<p>1 <b>A Okay.</b>                  2 Q Earlier today, I showed you a document                  3 that was passed around that showed you -- it                  4 showed Sentinel being held roughly 30 percent by                  5 Nimitz and 70 percent by Patton with the                  6 beneficial owners of each of those being                  7 respectively you and Mr. Dondero.                  8 Do you remember --                  9 <b>A Can you refer to me what document that</b>                  10 <b>was, Mr. Clubok, because we've looked at, as far</b>                  11 <b>as I know, three exhibits.</b>                  12 <b>If you are referring to the chart</b>                  13 <b>prepared by SCI IC, again, I don't know where they</b>                  14 <b>got that information. And it may be a general</b>                  15 <b>summary, but it's not further reflected in this</b>                  16 <b>chart. Because if you get behind Nimitz, it is</b>                  17 <b>not 30 percent because there is a value that goes</b>                  18 <b>to each individual on both sides of the chart.</b>                  19 <b>And again, this is a proposed restructure, so I</b>                  20 <b>don't know if this was put in place or how it was</b>                  21 <b>handled because it is a conversation with Deloitte</b>                  22 <b>about Mr. Dondero, Dondero TY17 international</b>                  23 <b>questions.</b>                  24 Q Yeah, you -- you are the hundred                  25 percent beneficial owner of Nimitz, which has a</p>	<p>196</p>

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1 roughly 30 percent value in Sentinel Holdings;  
 2 isn't that true.  
 3 **A I have no idea what the structure**  
 4 **looked like as of 12/31/17 or now.**  
 5 Q Yeah. You -- you say you have no idea  
 6 under a -- and I showed you previously Exhibit 26.  
 7 **A Which again, is a summary from an**  
 8 **outside third party of what their records are.**  
 9 **It doesn't tell me that I'm the**  
 10 **30 percent owner of that.**  
 11 Q Okay. And so you are claiming, as you  
 12 sit here today, you have no idea -- you have no  
 13 idea whether or not you're a 30 percent owner of  
 14 Sentinel through an entity called Nimitz?  
 15 **A I have no idea as of the structure of**  
 16 **today, no.**  
 17 Q In any event -- but you do know that  
 18 you're roughly a 30 percent beneficial owner of  
 19 Nimitz through whatever organizations have been  
 20 set up of -- in the Sentinel chain and in whatever  
 21 organizations, tax planning or otherwise, have  
 22 been set up in your personal life; correct?  
 23 **A I think normally, that's my**  
 24 **understanding, yes.**  
 25 Q And when you look at this chart, you

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1 say that you don't know whether or not the owners  
 2 of Sentinel that are reflectively identified as  
 3 30 percent and 70 percent refer ultimately to you  
 4 and Mr. Dondero. You have no idea?  
 5 **A I don't know what -- I don't know what**  
 6 **this is other than a preliminary discussion**  
 7 **purposes, and I just happened to glance at the**  
 8 **parties involved in it, Paul Broadest and the rest**  
 9 **seem to all be Deloitte employees, and it's about**  
 10 **Mr. Dondero. I am not included in this**  
 11 **discussion, not CC'd on this discussion. Until**  
 12 **you showed this to me, I had never seen this, as**  
 13 **far as I know, in my life.**  
 14 Q Yeah. And you've never seen in your  
 15 life anything that says that you ultimately own  
 16 30 percent of Sentinel through an entity called  
 17 Nimitz?  
 18 **A Not that I recall.**  
 19 MS. SMITH: Objection. Objection to  
 20 form.  
 21 THE WITNESS: Not that I recall.  
 22 BY MR. CLUBOK:  
 23 Q Did you know that you had roughly a  
 24 9 percent vote, even though you have a roughly  
 25 30 percent economic interest in Sentinel?

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1 **A No, I did not. Again, I don't know**  
 2 **this was ever implemented. This, again, seems to**  
 3 **be something they're contemplating, especially**  
 4 **with the Sentinel slide 2, as you refer to it,**  
 5 **that's called restructure, meaning I think they're**  
 6 **proposing this as a structure. I have no idea if**  
 7 **it was put in place or not.**  
 8 Q Did -- did Katie Irving ever work on  
 9 SAS matters?  
 10 **A Yes.**  
 11 Q Did Katie Irving ever work on Sentinel  
 12 matters?  
 13 **A I don't think she worked on Sentinel**  
 14 **matters at all.**  
 15 Q I'm going to ask you to look at Exhibit  
 16 28.  
 17 MR. CLUBOK: Which is tab 9, Nate.  
 18 BY MR. CLUBOK:  
 19 Q Exhibit 28 is an email with an  
 20 attachment that's entitled "SAS and Sentinel Final  
 21 Structure as of 9 April 2019".  
 22 And the email --  
 23 **A Can I open it, Mr. Clubok?**  
 24 Q Yeah, please. When I call it out, if I  
 25 don't say it, that --

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1 **A Okay. Okay. Sorry I just wanted to**  
 2 **make sure.**  
 3 Q That's okay. I appreciate it.  
 4 So we will put up Exhibit 28, the first  
 5 page, please.  
 6 **A Okay.**  
 7 MR. CLUBOK: Which is behind tab 9,  
 8 Nate.  
 9 BY MR. CLUBOK:  
 10 Q And Exhibit 28 on the first page has an  
 11 email from Katie Irving to Stephen Beck, JP  
 12 Sevilla and Matt DiOrio, with subject "AB  
 13 Restructure Sentinel."  
 14 Do you see that?  
 15 **A Invested do.**  
 16 Q And Katie Irving writes to Steve Beck.  
 17 Do you know who Steve Beck is?  
 18 **A I do know who Steve Beck is.**  
 19 Q Who is he?  
 20 **A Steve Beck is a tax attorney.**  
 21 Q Who worked at Highland at the time?  
 22 **A No, he's outside counsel.**  
 23 Q Okay. In what firm?  
 24 **A Nettles Collier. (?)**  
 25 Q And Ms. Irving was writing to him about

<p style="text-align: right;">201</p> <p>1 the entity restructure and just saying that,                  2 further to any liquidation discussion, the                  3 Sentinel Reinsurance Limited regulator CIMA was                  4 asking that the Sentinel structure be simplified.                  5 And they specifically called out                  6 various entities, including Nimitz and Patton.                  7 Do you see that?                  8 <b>A Let's let me read. Yes, I see that,</b>                  9 <b>along with other entities.</b>                  10 Q Yeah. And she says, "I believe we                  11 discussed some of these liquidations last year."                  12 <b>A Yes. And from the two charts there's a</b>                  13 <b>mixture of SAS-related entities and</b>                  14 <b>Sentinel-related entities, too.</b>                  15 Q Right. From the charts, it's clear                  16 that Sentinel and SAS are connected in some way;                  17 correct?                  18 <b>A No, I think Ms. Irving is talking about</b>                  19 <b>overall what has CIMA's asked for and her primary</b>                  20 <b>responsibilities on the SAS platform.</b>                  21 Q Okay. She specifically talks about                  22 responding to requests by the Sentinel Reinsurance                  23 Limited regular in her email to Stephen Beck;                  24 correct?                  25 <b>A Yes, I see that. But again, I don't</b></p>	<p style="text-align: right;">203</p> <p>1 BY MR. CLUBOK:                  2 Q Yeah. My question is much simpler.                  3 <b>A Okay.</b>                  4 Q He is -- said that she had discussed                  5 liquidations that CIMA specifically called out                  6 with respect to Sentinel Reinsurance; isn't that                  7 true?                  8 "Hi Steve. Further to entity liquidation                  9 discussions last year, the Sentinel Reinsurance                  10 Limited regulator Cayman Islands Monetary                  11 Authority, so they regulate that entity because it                  12 is a regulated entity, which SAS is not, is asking                  13 that the Sentinel structure be simplified. CIMA                  14 specifically called out ..." [As read.] And then                  15 she lists the specific entities.                  16 Q Right. And that's all --                  17 <b>A "Upon further discussion with Montage</b>                  18 <b>Anthem Management."</b>                  19 Q Sorry, Mr. Ellington. I'm asking you                  20 about the second paragraph.                  21 And as you noted, CIMA regulates                  22 Sentinel and not SAS; right?                  23 <b>A Correct.</b>                  24 Q And so this email is in furtherance of                  25 responding to Sentinel's regulator about the</p>
<p style="text-align: right;">202</p> <p>1 <b>know what that org chart looked like. There's --</b>                  2 <b>doesn't seem to be anything attached, other than</b>                  3 <b>another attachment that says, "For Preliminary</b>                  4 <b>Discussion Purposes Only," draft.</b>                  5 Q Right. And then she -- she towards --                  6 try to follow my questions, just answer my                  7 question.                  8 <b>A Sure.</b>                  9 Q You said before that Ms. Irving had not                  10 -- did not do work on Sentinel, as far as you                  11 know?                  12 <b>A As far as I know, I don't know that she</b>                  13 <b>did work on Sentinel.</b>                  14 Q And yet here is writing to Stephen Beck                  15 specifically about Sentinel Reinsurance Limited in                  16 the bottom email on page 28; correct?                  17 MS. SMITH: Objection to form.                  18 THE WITNESS: I think she's discussing                  19 all of CIMA's instructions with Steve Beck. And                  20 then talks; about Montage Anthem and Mainstream                  21 used to be CFC's Elderflower and Brave Holdings                  22 which -- give me a second -- seemed to be related                  23 to the SAS side, possibly describing to Steve Beck                  24 part of the CFC restructuring, again, at CIMA's                  25 request.</p>	<p style="text-align: right;">204</p> <p>1 Sentinel Reinsurance restructuring; correct?                  2 <b>A It is also in regards to Montage,</b>                  3 <b>Elderflower, Brave --</b>                  4 Q Yep.                  5 <b>A Anthem and Main Spring, which are on</b>                  6 <b>the SAS structure, so it looks like CIMA had --</b>                  7 <b>had instructions to those.</b>                  8 Q I'm going to ask you, Mr. Ellington,                  9 going forward, not to volunteer things like that                  10 if I ask you a specific question. I may do                  11 follow-up. And your lawyer may ask you about what                  12 else this email covers. But my specific question                  13 to you is this email is specifically begins with a                  14 furtherance of liquidation discussions about                  15 Sentinel that were apparently initiated by                  16 Sentinel's regulator in the Caymans; isn't that                  17 true.                  18 <b>A That's true. Maybe I'm mistaken. I</b>                  19 <b>thought your question was the email's in regards</b>                  20 <b>to, and that's not all it's in regards to.</b>                  21 Q I didn't say that's all it's in regards                  22 to. I said --                  23 -- (overspeaking) --                  24 <b>A Okay. Maybe I made a mistake.</b>                  25 Q And then Katie passes this e-mail on to</p>

<p style="text-align: right;">205</p> <p>1 Sam Dawson. Sam Dawson was the person that you                  2 previously said was the lawyer who gave advice on                  3 Sentinel?                  4 <b>A He gave advice on ATE policies on</b>                  5 <b>Sentinel, yes.</b>                  6 Q And did he also give legal advice on                  7 SAS?                  8 <b>A Yes, he did.</b>                  9 Q So -- and who is Dylan? Someone who                  10 works with him?                  11 <b>A Yeah, I don't know who Dylan is, but it</b>                  12 <b>seems from the e-mail address he works with Sam.</b>                  13 Q Right. And Katie is asking to discuss,                  14 according to the attachments, SAS and Sentinel                  15 final structure as of 9 April 2019. Do you see                  16 that?                  17 <b>A Discussion from legal perspective,</b>                  18 <b>I believe the impact of the GP structure, the</b>                  19 <b>(indiscernible) previously. I don't know what her</b>                  20 <b>nomenclature is there. "Understand option to move</b>                  21 <b>away from existing trust structure." Again, I</b>                  22 <b>don't know what that is, so I don't know what</b>                  23 <b>she's really asking here.</b>                  24 Q Right. But her attachment that she                  25 sends is entitled "SAS and Sentinel Final</p>	<p style="text-align: right;">207</p> <p>1 30 percent for Nimitz above Sentinel Re and                  2 70 percent for Patton above Sentinel Re; correct?                  3 <b>A Yes, it says 30 percent value, it says.</b>                  4 <b>I don't know if that means shares or something</b>                  5 <b>else.</b>                  6 Q Right. And does this refresh -- and by                  7 -- who tasked Katie to do this work on behalf of                  8 Sentinel and SAS?                  9 <b>A Again, I don't know whether she was t;</b>                  10 <b>tasked to do anything on behalf of Sentinel. But</b>                  11 <b>my assumption would be that the directors asked</b>                  12 <b>her to do this.</b>                  13 Q The directors of what?                  14 <b>A Probably the directors of both since,</b>                  15 <b>at least according to Katie, CIMA called out</b>                  16 <b>entities that are related to both.</b>                  17 Q You think the independent directors                  18 asked Katie to do this for Sentinel and SAS?                  19 MS. SMITH: Objection to form.                  20 THE WITNESS: I said I don't know. I                  21 don't have any idea.                  22 BY MR. CLUBOK:                  23 Q Did you expect Katie to respond to                  24 requests related to Sentinel?                  25 <b>A No.</b></p>
<p style="text-align: right;">206</p> <p>1 Structure as of 9 April, 2019 PowerPoint;"                  2 correct?                  3 <b>A Yeah, that's what that title says, yes.</b>                  4 <b>But it's not just -- this isn't Sentinel, it's</b>                  5 <b>also SAS structure as of 9th April, 2019. And I</b>                  6 <b>find it interesting that if it's a final</b>                  7 <b>structure, both are marked "draft."</b>                  8 Q Yeah. As I said, she sends on two                  9 slides now with what looks to be compared to what                  10 we previously saw simplified structures for SAS                  11 and Sentinel.                  12 MS. SMITH: Objection --                  13 BY MR. CLUBOK:                  14 Q And it says as of 9 April, 2019, at the                  15 bottom, it still says, "Draft for preliminary                  16 discussion purposes only;" correct?                  17 <b>A On both slide 1 and 2 as you referred</b>                  18 <b>to them as, and they do seem in terms of a number</b>                  19 <b>of boxes more simplified.</b>                  20 Q Right. And on slide 2, which says the                  21 Sentinel structure as at 9 April 2019, we now have                  22 USP1 having 99 percent of value, 9 percent of                  23 votes down through Nimitz simplified, these                  24 foreigners and other US partners are all out.                  25 We've now got a simplified structure that shows</p>	<p style="text-align: right;">208</p> <p>1 Q Was that -- she worked for you at the                  2 time; right?                  3 <b>A Yes.</b>                  4 Q Was she acting outside of her                  5 authority?                  6 THE WITNESS: No.                  7 MS. SMITH: Objection to form.                  8 BY MR. CLUBOK:                  9 Q Was she authorized to do work on behalf                  10 of Sentinel while she worked for you at Highland                  11 Capital Management?                  12 MS. SMITH: Objection to form.                  13 THE WITNESS: I wouldn't authorize her                  14 to do work for Sentinel or not. That would be up                  15 to the directors.                  16 BY MR. CLUBOK:                  17 Q That's up to Sentinel -- but she -- her                  18 pay cheque at the time was coming from Highland                  19 Capital Management; right?                  20 <b>A As far as I know, yes.</b>                  21 Q And you were her supervisor; correct?                  22 <b>A Correct.</b>                  23 Q Did you authorize her during -- and                  24 this is during the work hour -- this is during the                  25 work day, 2:59 p.m. on a Wednesday, that she's</p>

<p style="text-align: right;">209</p> <p>1 doing this work on restructuring Sentinel and SAS.                  2 Do you see that?                  3 <b>A I do see that.</b>                  4 Q Is that something she was authorized to                  5 do during her employment with HCM?                  6 <b>A To work on SAS, absolutely. To work on</b>                  7 <b>Sentinel, I don't know that she is, because she</b>                  8 <b>asked Sam and Dylan here about the GP structure</b>                  9 <b>for these top coast previously.</b>                  10 Q Okay.                  11 <b>A It doesn't say Sentinel, it doesn't say</b>                  12 <b>SAS. You need to also understand the accounts</b>                  13 <b>structure. I don't know what she's referring to.</b>                  14 Q My question -- my question is: Was she                  15 authorized to do work on company time for Sentinel                  16 during April of 2019 while she was getting a pay                  17 cheque from HCM and under your supervision?                  18 <b>A I didn't --</b>                  19 MS. SMITH: Objection to form.                  20 THE WITNESS: I didn't structure Ms.                  21 Irving on what she worked on.                  22 BY MR. CLUBOK:                  23 Q If you go down to the -- to SAS, to the                  24 SAS slide on the page that has the Bates number                  25 125, you see in the bottom right, Sebastian Clarke</p>	<p style="text-align: right;">211</p> <p>1 <b>A I don't remember working -- oh, yes, I</b>                  2 <b>did -- I did work on some matters relative to that</b>                  3 <b>entity.</b>                  4 Q What do you mean?                  5 <b>A Pardon me?</b>                  6 Q What do you mean you worked on some                  7 matters relative to that entity?                  8 <b>A Meaning that I worked on matters</b>                  9 <b>relative to that entity.</b>                  10 Q Were you paid for that work?                  11 <b>A No, I was not paid for that work.</b>                  12 Q Why would you do work for SAS Loan                  13 Service Limited for no compensation?                  14 <b>A Because Mr. Dondero instructed me as</b>                  15 <b>the person paying my pay check to continue</b>                  16 <b>incubating this business and see if I could get it</b>                  17 <b>to a specific gravity and robust enough that it</b>                  18 <b>could stand on its own.</b>                  19 Q So Mr. Dondero specifically directed                  20 your work on SAS Loan Services Limited?                  21 <b>A No, on SAS structure --</b>                  22 MS. SMITH: Objection to form.                  23 THE WITNESS: Sorry. On SAS structure                  24 in general.                  25 BY MR. CLUBOK:</p>
<p style="text-align: right;">210</p> <p>1 Limited is still there?                  2 <b>A Yes. Actually, it doesn't have a line</b>                  3 <b>to it. So it's on the chart, there is no line</b>                  4 <b>connecting it to Flagstone Management Limited.</b>                  5 Q Right. And that it just shows up there                  6 in the bottom right in its own little box; right?                  7 <b>A Yes, it's in its own little box.</b>                  8 Q Do you have any idea what Sebastian                  9 Clarke is based on this chart?                  10 <b>A No idea, no idea.</b>                  11 Q Do you know SAS R -- SAS AR Limited in                  12 the left-most box or --                  13 <b>A No.</b>                  14 Q -- central box?                  15 <b>A No, I don't.</b>                  16 Q Do you know SAS Loan Services limited,                  17 what that is?                  18 <b>A I recall that that, I believe, was used</b>                  19 <b>as a loan servicing entity for an engagement that</b>                  20 <b>SAS had.</b>                  21 Q Is that something you established?                  22 <b>A I don't believe I established it. That</b>                  23 <b>would have been done by Maples and Collier or</b>                  24 <b>whoever counsel was at the time.</b>                  25 Q Did you have any role with that entity?</p>	<p style="text-align: right;">212</p> <p>1 Q Oh, I see. Mr. Dondero specifically                  2 told you to work on the SAS structure to get it to                  3 be profitable or in the money?                  4 <b>A See if it could be a standalone</b>                  5 <b>business.</b>                  6 Q Did you achieve that?                  7 <b>A For a period of time, yes.</b>                  8 Q And what was that period of time?                  9 <b>A I would say from inception for about</b>                  10 <b>the first four to five years.</b>                  11 Q Until when?                  12 <b>A Call it '14, '15.</b>                  13 Q And since then, it has not been a                  14 successful standalone business?                  15 MS. SMITH: Objection to form.                  16 THE WITNESS: Since then, there has                  17 been very little, if any, effort put onto this                  18 platform, but-for managing legacy matters, which                  19 I believe now there is only one.                  20 BY MR. CLUBOK:                  21 Q Did you ever recover any value from                  22 SAS?                  23 <b>A I don't understand your question.</b>                  24 Q Did you ever make any money on SAS?                  25 <b>A Me personally?</b></p>

<p style="text-align: right;">213</p> <p>1 Q Yeah.</p> <p>2 A <b>No.</b></p> <p>3 Q Did you lose any money on SAS?</p> <p>4 A <b>Me personally?</b></p> <p>5 Q Yeah.</p> <p>6 A <b>No.</b></p> <p>7 Q Did Mr. Dondero make any money on SAS?</p> <p>8 A <b>Not that I'm aware of.</b></p> <p>9 Q Did anybody make any money from SAS, as</p> <p>10 far as you're aware?</p> <p>11 A <b>Outside counsel on a bunch of matters.</b></p> <p>12 Q Anybody else?</p> <p>13 A <b>Not that I'm aware of, no.</b></p> <p>14 Q Do you know if Patton and Nimitz still</p> <p>15 exist today?</p> <p>16 A <b>I don't know.</b></p> <p>17 Q Is Sentinel -- would Sentinel be</p> <p>18 considered an affiliate of Highland Capital</p> <p>19 Management?</p> <p>20 A <b>No. An affiliate or non-affiliate is</b></p> <p>21 <b>the sole decision of the Chief Compliance Officer</b></p> <p>22 <b>Thomas Surgent, who, through date of inception of</b></p> <p>23 <b>Sentinel, through my date of termination, formally</b></p> <p>24 <b>declared is not an affiliate.</b></p> <p>25 Q What is the -- sorry, when was --</p>	<p style="text-align: right;">215</p> <p>1 Q Did you ever -- were you ever involved,</p> <p>2 ever, in any discussion about whether an entity</p> <p>3 was or was not properly characterized as an</p> <p>4 affiliate in connection with any Highland entity?</p> <p>5 A <b>Compliance, Mr. Surgent and his staff</b></p> <p>6 <b>and Mr. Surgent's predecessors would have asked</b></p> <p>7 <b>questions when having ownership and other relevant</b></p> <p>8 <b>information that they demanded and asked for.</b></p> <p>9 <b>They may ask questions. Sometimes they didn't.</b></p> <p>10 <b>And the determination was made.</b></p> <p>11 Q Other than compliance asking you</p> <p>12 questions, did you ever have any role whatsoever</p> <p>13 in assessing whether any entity was or was not an</p> <p>14 affiliate of another entity?</p> <p>15 A <b>No and, again, my understanding is SEC</b></p> <p>16 <b>regs and the RAA, I have no right to do so.</b></p> <p>17 MR. CLUBOK: I'm sorry, Nate, could we</p> <p>18 take this down? I'm not sure how to do that</p> <p>19 easily. Ah, thank you.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q So did you ever take a position during</p> <p>22 your tenure as general counsel of Highland as to</p> <p>23 whether or not any entity was or was not an</p> <p>24 affiliate of any other entity?</p> <p>25 A <b>No, other than repeating what</b></p>
<p style="text-align: right;">214</p> <p>1 Sentinel was created in 2012; right?</p> <p>2 A <b>Correct.</b></p> <p>3 Q And who was in charge of making a</p> <p>4 decision at that point as to whether or not</p> <p>5 Sentinel was an affiliate or not an affiliate?</p> <p>6 A <b>I don't remember if it was Mr. Surgent</b></p> <p>7 <b>as chief compliance officer yet or not. It may</b></p> <p>8 <b>have been his predecessor, but I'm not certain on</b></p> <p>9 <b>the date.</b></p> <p>10 Q And you're saying that the decision to</p> <p>11 identify -- well, let's start with Sentinel.</p> <p>12 As an affiliate or not an affiliate was</p> <p>13 solely the decision of the head of compliance?</p> <p>14 A <b>Yes, that's the only person that makes</b></p> <p>15 <b>that determination, and they don't have to answer</b></p> <p>16 <b>to anyone in that determination, other than</b></p> <p>17 <b>themselves.</b></p> <p>18 Q And does the general counsel have any</p> <p>19 role whatsoever in assessing whether an entity</p> <p>20 would be considered an affiliate for any purpose?</p> <p>21 A <b>Zero.</b></p> <p>22 Q Did you ever weigh in in any way on</p> <p>23 whether any entity was or was not an affiliate</p> <p>24 with Highland?</p> <p>25 A <b>No, and I had no right to.</b></p>	<p style="text-align: right;">216</p> <p>1 <b>compliance's determination had been made when we</b></p> <p>2 <b>inquired upon.</b></p> <p>3 Q Did you -- and sorry, your</p> <p>4 understanding of the relationship between Sentinel</p> <p>5 and HCM is that it's not an affiliate?</p> <p>6 MS. SMITH: I'm sorry, Andy. I'm</p> <p>7 sorry, you went out. I missed like three words of</p> <p>8 that when you turned your head. I'm sorry, I</p> <p>9 didn't hear the question.</p> <p>10 MR. CLUBOK: That's okay.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Mr. Ellington, did you have any</p> <p>13 understanding as to whether or not Sentinel could</p> <p>14 be considered an affiliate of either HCM or Jim</p> <p>15 Dondero?</p> <p>16 A <b>Yes.</b></p> <p>17 Q And what was your understanding?</p> <p>18 A <b>My understanding is it was not an</b></p> <p>19 <b>affiliate of HCM.</b></p> <p>20 <b>I don't know if a determination was</b></p> <p>21 <b>made it was affiliate of Jim Dondero. And that</b></p> <p>22 <b>determination was made by the chief compliance</b></p> <p>23 <b>officer and continued to be the same determination</b></p> <p>24 <b>through my entire tenure.</b></p> <p>25 Q And was there a determination as to</p>

<p style="text-align: right;">217</p> <p>1 whether or not Sentinel would be considered an                  2 affiliate of you ever made?  <b>3 A I don't know. I don't know if that</b>  <b>4 announcement was done or if it was required to be</b>  <b>5 done or not.</b>                  6 Q As general counsel, did you ever weigh                  7 in on whether or not a transaction should be                  8 considered a related party transaction?  <b>9 A No, that's solely a compliance</b>  <b>10 function.</b>                  11 Q As general counsel, did you ever                  12 analyze for any transaction whether it constituted                  13 a fraudulent transfer?                  14 MS. SMITH: Objection.                  15 THE WITNESS: For any transaction in                  16 what context?                  17 BY MR. CLUBOK:                  18 Q In the context of a transaction. Prior                  19 to -- let's say, prior to it being made, did you                  20 ever do an analysis to determine or try to                  21 determine whether or not a proposed transaction                  22 would constitute a fraudulent transfer?  <b>23 A No. Again, that would be a compliance</b>  <b>24 function.</b>                  25 Q Okay. So in the entire history of the</p>	<p style="text-align: right;">219</p> <p>1 the assessment, and then we can talk about what                  2 you did or didn't do when you made your                  3 assessment. And I'm not asking you whether it was                  4 relevant right just now. So please answer the                  5 question that I ask.                  6 So in the entire history of the time                  7 you worked at Highland Capital, was there ever a                  8 transaction that prior to its occurrence, you, as                  9 general counsel, made an assessment as to whether                  10 or not that transaction could constitute a                  11 fraudulent transfer?  <b>12 A Yes.</b>                  13 Q And did you make such an assessment in                  14 connection with the purchase of the ATE policy?  <b>15 A No.</b>                  16 Q Did you endeavor to analyze the                  17 transaction that resulted in the purchase of the                  18 ATE policy under a -- sorry, strike. Let me start                  19 again.                  20 Did you ever endeavor to analyze in any                  21 way the transaction that resulted in the purchase                  22 of the ATE policy that we've been discussing to                  23 determine whether or not that transaction could be                  24 characterized as a fraudulent transfer?                  25 MS. SMITH: I'm going to caution you</p>
<p style="text-align: right;">218</p> <p>1 time that you worked at Highland Capital did you                  2 ever, prior to a -- any transaction occurring,                  3 make an assessment as to whether or not that                  4 transaction could be characterized as a fraudulent                  5 transfer?  <b>6 A Yeah. But my assessment is irrelevant</b>  <b>7 because it is compliance's role and compliance's</b>  <b>8 sole purvey to make that determination, not mine.</b>                  9 Q Okay. So let's break that down.                  10 You are saying you did make an                  11 assessment during the time that you were at                  12 Highland as to whether or not a particular                  13 transaction was or was not a fraudulent transfer                  14 prior to it being executed?  <b>15 A Then I misunderstood your question. I</b>  <b>16 thought you said did I ever consider if something</b>  <b>17 was a fraudulent transfer. Again, if I was to</b>  <b>18 make a determination, my determination is not</b>  <b>19 relevant.</b>                  20 Q Right. So let's -- let me -- let me                  21 say my question. I'll say it more slowly.  <b>22 A Okay.</b>                  23 Q And let's break it down in different                  24 pieces.                  25 First, I'm going to ask you if you made</p>	<p style="text-align: right;">220</p> <p>1 not to respond to the extent it requires you to                  2 disclose privileged information.                  3 THE WITNESS: Thank you.                  4 No, I did not, as it was a compliance                  5 function in regards to this transaction with a                  6 fulsome process that is run and overseen by                  7 compliance. And ultimately the sole                  8 decision-maker on that aspect and many others of                  9 this transaction was Thomas Surgent, the chief                  10 compliance officer.                  11 BY MR. CLUBOK:                  12 Q Okay. Did you specifically ask Mr.                  13 Surgent to analyze whether the transaction that                  14 resulted in the purchase of the ATE policy could                  15 be considered a fraudulent transfer, given all the                  16 facts and circumstances?  <b>17 A I didn't feel the need to because Mr.</b>  <b>18 Surgent is more than capable of identifying that</b>  <b>19 issue and analyzing.</b>                  20 Q Did you specifically ask anyone at                  21 Highland to analyze whether or not the transaction                  22 that could -- strike that.                  23 Did you ask anyone at Highland to                  24 analyze whether the transaction that results in                  25 the purchase of an ATE policy could be considered</p>

<p style="text-align: right;">221</p> <p>1 a fraudulent transfer given the facts and 2 circumstances? 3 <b>A No, because there is a process put in 4 place from SEC guidance and all codified in other 5 laws that it is a process that is run by 6 compliance.</b> 7 Q Did you ask any outside counsel to make 8 any analysis as to whether the transaction that 9 results in the purchase of the ATE policy could be 10 considered a fraudulent transfer given the facts 11 and circumstances at the time? 12 MS. SMITH: I'm going to caution you 13 not to respond, to the extent it requires 14 disclosure of privileged information. 15 THE WITNESS: Thank you. No, because 16 that is, again, the process run by compliance who 17 chooses to go to outside counsel or not for that 18 analysis and other analyses. 19 BY MR. CLUBOK: 20 Q And I appreciate that answer. 21 MR. CLUBOK: By the way, I will say, 22 Ms. Smith, that the privilege that Highland had 23 for this which Mr. Ellington was -- may have had 24 while he was GC is now controlled by the current 25 board, represented by Mr. Feinstein is my -- my</p>	<p style="text-align: right;">223</p> <p>1 BY MR. CLUBOK: 2 Q You never asked -- when you were 3 general counsel for Highland, you never asked 4 anybody inside the organization or outside the 5 organization to conduct a analysis of whether or 6 not the ATE transaction could be considered a 7 fraudulent transfer on behalf of Highland Capital 8 Management; correct? 9 <b>A That is correct. Due to the process 10 put in place, that was not my right or place to do 11 so.</b> 12 Q So let's talk about the process that 13 was put in place, because earlier you said that it 14 was a very fulsome process. 15 <b>A Yes.</b> 16 Q And there was a very fulsome process 17 specifically with respect to the purchase of the 18 ATE moi? 19 <b>A Yes, that's correct.</b> 20 Q And you understood that that what you 21 call a fulsome process involved a compliance 22 review and a review of whether or not that 23 transaction could constitute a fraudulent 24 transfer? 25 <b>A I'm not saying I knew that for a fact.</b></p>
<p style="text-align: right;">222</p> <p>1 understanding. And your cautioning Mr. Ellington 2 on privilege related to Highland Capital 3 Management's privilege I think is inappropriate. 4 Mr. Feinstein, if I'm wrong about that, 5 you can correct me. 6 MR. FEINSTEIN: Well, I was actually 7 going to jump in and say the same thing. 8 To the extent that the instruction is 9 don't reveal privileges of Sentinel's, that would 10 be one matter. But to the extent that it is a 11 privilege of Highland, that is another. And that 12 is our bailiwick and I have asserted privilege, so 13 maybe the question was just ambiguous. 14 MR. CLUBOK: Okay. 15 MS. SMITH: Well, I believe the 16 question, Mr. Clubok, referred to outside counsel 17 without specifying if it was Highland's outside 18 counsel or Sentinel's. 19 That was the purpose of my privilege 20 objection, if it was Sentinel's outside counsel. 21 MR. CLUBOK: I appreciate that. Well, 22 Mr. -- I believe Mr. Ellington answered no anyway. 23 But just to clear up the record, I'm going to just 24 ask it to be crystal clear. 25</p>	<p style="text-align: right;">224</p> <p>1 <b>I'm saying I did not need to tell Mr. Surgent to 2 review that because he obviously, in my opinion, 3 would have spotted that issue and done a review as 4 part of his overall review of approving the 5 transaction.</b> 6 Q Well, did you spot -- did you believe 7 that the transaction was a fraudulent transfer or 8 did you think about it? 9 <b>A Yes, I thought about it.</b> 10 <b>I -- I didn't know.</b> 11 Q Did you ask anybody for their advice? 12 <b>A No, because again, I'm not supposed to 13 by design stick my nose into a compliance process.</b> 14 Q And you are prohibited from asking the 15 chief of compliance to specifically look into 16 whether a proposed transaction could be considered 17 fraudulent transfer if you have questions about 18 that? 19 <b>A Oh, I'm not prohibited from asking him. 20 It's just I'm not supposed to be involved in the 21 process and providing influence or input unless he 22 approaches me.</b> 23 <b>I could certainly go up and ask his 24 opinion. But there were numerous people involved 25 and it went through the full process, to my</b></p>



<p style="text-align: right;">225</p> <p><b>1 understanding of how these things are analyzed by</b></p> <p><b>2 compliance.</b></p> <p>3 Q Yeah. But you had questions in your</p> <p>4 mind at the time as to whether or not the ATE</p> <p>5 transaction could be considered a fraudulent</p> <p>6 transfer; correct?</p> <p>7 <b>A I considered it might be, yes.</b></p> <p>8 Q And you never specifically asked Anyone</p> <p>9 like Mr. Surgent to specifically look into that</p> <p>10 issue; correct?</p> <p><b>11 A No, Mr. Surgent had plenty of his plate</b></p> <p><b>12 to handle running through this process. He didn't</b></p> <p><b>13 need me.</b></p> <p>14 Q Did you ever -- did you ever discuss</p> <p>15 with Mr. Dondero, in any way, shape or form, your</p> <p>16 concerns that perhaps this transaction could be</p> <p>17 considered a fraudulent transfer?</p> <p><b>18 A Not that I recall. Again, that's Mr.</b></p> <p><b>19 Surgent's role in this set of circumstances.</b></p> <p>20 Q So you never raised any kind of yellow</p> <p>21 flag or red flag or, hey, just FYI we should</p> <p>22 wonder whether this transaction could be</p> <p>23 considered fraudulent transfer with Mr. Dondero?</p> <p><b>24 A No. Again, that's Mr. Surgent's role</b></p> <p><b>25 in this set of circumstances.</b></p>	<p style="text-align: right;">227</p> <p><b>1 is one guy in an organization, like an RAA, that</b></p> <p><b>2 makes that determination, and his word is final.</b></p> <p>3 <b>If Mr. Surgent at any point says we are</b></p> <p><b>4 not doing this, the idea is dead.</b></p> <p>5 <b>The machinations of that are a</b></p> <p><b>6 compliance function. And I don't necessarily know</b></p> <p><b>7 every little twist and turn, but to my</b></p> <p><b>8 understanding, this is went on for weeks if not</b></p> <p><b>9 months.</b></p> <p>10 Q Okay. So let's talk very specifically</p> <p>11 not what you understand is supposed to happen or</p> <p>12 could happen with the transaction, but what you</p> <p>13 know happened with this transaction.</p> <p>14 First, you said there were numerous</p> <p>15 meetings with a large group. And you said</p> <p>16 something like as we've discussed before. But I</p> <p>17 think the only -- I don't know if you've talked</p> <p>18 about any meeting before other than the</p> <p>19 five-minute discussion you had and maybe one other</p> <p>20 meeting.</p> <p>21 But when you say that you --</p> <p><b>22 A Let me -- let me stop there, Mr.</b></p> <p><b>23 Clubok, because you asked me how many meetings</b></p> <p><b>24 of -- with the whole large group did Isaac</b></p> <p><b>25 Leventon attend, and I said after the first one or</b></p>
<p style="text-align: right;">226</p> <p>1 Q Describe -- you've testified there was</p> <p>2 a fulsome process that Mr. Surgent specifically</p> <p>3 went through with respect to the ATE policy.</p> <p>4 <b>A That's my understanding and my</b></p> <p><b>5 recollection, yes.</b></p> <p>6 Q And I'd like the basis for that</p> <p>7 understanding or recollection by you describing in</p> <p>8 as much detail as you can remember what you claim</p> <p>9 was the, quote, Fulsome process with respect to</p> <p>10 the ATE policy transaction.</p> <p><b>11 A The -- there was numerous meetings, as</b></p> <p><b>12 we've discussed before, with a large group</b></p> <p><b>13 consisting of people from finance, tax, fund</b></p> <p><b>14 accounting, compliance, legal, trading and</b></p> <p><b>15 settlement.</b></p> <p><b>16 There were concerns raised by different</b></p> <p><b>17 factions within those various groups.</b></p> <p><b>18 Then compliance, Mr. Surgent and his</b></p> <p><b>19 staff go through a process that, as far as I</b></p> <p><b>20 understand is reviewed by a conflicts committee;</b></p> <p><b>21 is reviewed generally for the kind of issues</b></p> <p><b>22 you've discussed, is this a fraudulent transfer,</b></p> <p><b>23 is this in some way within violation of the</b></p> <p><b>24 codified law, is this in some way provide a risk.</b></p> <p><b>25 And when it comes down to the determination, there</b></p>	<p style="text-align: right;">228</p> <p><b>1 two, he never attended again and was not part of</b></p> <p><b>2 the process, to my knowledge. So, you asked me</b></p> <p><b>3 about meetings that either you knew existed or you</b></p> <p><b>4 extrapolated from me, and that's what I thought.</b></p> <p>5 Q So let's talk about what you say are</p> <p>6 there were numerous meetings with a large group.</p> <p>7 How many?</p> <p><b>8 A I would say that I was personally</b></p> <p><b>9 involved in? Six. And then I dropped out of the</b></p> <p><b>10 process when it started going down the compliance</b></p> <p><b>11 route, and the machinations of how this would take</b></p> <p><b>12 place if it was approved by compliance.</b></p> <p>13 Q So let's start with, first, there were</p> <p>14 six large group meetings that you were involved in</p> <p>15 about the purchase of the ATE policy, or roughly</p> <p>16 six; correct?</p> <p><b>17 A I'd say a minimum of four that I</b></p> <p><b>18 personally attended at the genesis of the idea</b></p> <p><b>19 until it started this compliance analysis.</b></p> <p>20 Q There was a minimum of four large group</p> <p>21 meetings that you were personally involved with</p> <p>22 about the purchase of the ATE policy?</p> <p><b>23 A Over a period of weeks, I would say</b></p> <p><b>24 four is my recollection. It could have been as</b></p> <p><b>25 many as six, but more like four.</b></p>

<p style="text-align: right;">229</p> <p>1 Q And who specifically were in these four 2 to six meetings? 3 A <b>I may not remember every --</b> 4 Q Excuse me. Name every human being that 5 you can remember who were in these national 6 compliance meetings. 7 A <b>I honestly cannot remember everyone</b> 8 <b>because we're talking about five years ago and</b> 9 <b>there were a lot of people on it, in my opinion.</b> 10 <b>Mr. Waterhouse, Mr. Stoops, representatives from</b> 11 <b>training -- I mean, from settlement, which would</b> 12 <b>have been Carter Chism, potentially other people</b> 13 <b>from his group. I remember Hunter cavities being</b> 14 <b>in some, Mark Patrick, Mr. Surgent, Mr. Post,</b> 15 <b>maybe --</b> 16 Q Wait, wait, wait. Hold on. Slow down. 17 A <b>Sorry.</b> 18 Q Mr. Patrick? 19 A <b>Mr. Patrick.</b> 20 Q Yep. Mr. Surgent? 21 A <b>Mr. Surgent. Mr. Post.</b> 22 Q Yep. 23 A <b>And I'm talking about the initial</b> 24 <b>meetings I attended. After that, I don't know who</b> 25 <b>attended.</b></p>	<p style="text-align: right;">231</p> <p>1 <b>here -- at least a majority, if not all the ones</b> 2 <b>that I attended.</b> 3 Q Was Carter Chism in one meeting or a 4 majority of the meetings? 5 A <b>I don't recall. I just remember either</b> 6 <b>him or other members of his team having a role</b> 7 <b>because they were would be, you know, mechanically</b> 8 <b>moving assets if they were inside of my compliance</b> 9 <b>where they were (inaudible).</b> 10 Q And you remember him or his team being 11 in four to six meetings? 12 A <b>I'm telling you I was in four to six.</b> 13 <b>You are asking me that -- sorry,</b> 14 <b>Mr. Clubok, I just can't recall all the members of</b> 15 <b>the meetings five years ago.</b> 16 Q Well, that's why I don't want you to 17 make up things. I asked you -- 18 A <b>So you asked who attended any or all</b> 19 <b>the meetings. And you said every human being that</b> 20 <b>I could possibly recall which I tried to do that</b> 21 <b>for you. I'm just telling you, I can't remember</b> 22 <b>if we had a 15-minute meeting and an update if</b> 23 <b>everyone showed up. I don't -- I just don't know.</b> 24 Q How many total of these four to six 25 meetings -- you talked about Mr. Surgent being at</p>
<p style="text-align: right;">230</p> <p>1 Q I understand. You are talking about 2 the -- 3 A <b>Mr. Surgent, Mr. Post, potentially</b> 4 <b>Ms. Thedford, Mr. Sevilla, myself. That's all I</b> 5 <b>can recall with a decent degree of specificity.</b> 6 Q And Mr. Waterhouse was in all four or 7 six of those meetings with you? 8 A <b>I don't know if he was at all of them.</b> 9 <b>I remember him being in those initial meetings,</b> 10 <b>but there were members of his team that were --</b> 11 <b>that were there.</b> 12 Q Was Mr. Waterhouse in all those 13 meetings? 14 A <b>I don't -- I can't tell you if he was</b> 15 <b>in all of them.</b> 16 Q Was he in more than one? 17 A <b>Again, you are asking me to recall</b> 18 <b>something from five years ago. I would assume he</b> 19 <b>would have been in more than one.</b> 20 Q But you don't remember him being in -- 21 A <b>I do not remember.</b> 22 Q Do you remember Mr. Stoops being in 23 more than one such meeting? 24 A <b>I think I remember Mr. Stoops being</b> 25 <b>in -- again, you are really testing my memory</b></p>	<p style="text-align: right;">232</p> <p>1 a five-minute meeting when you first came up with 2 the idea and you threw the idea out there. After 3 that, how many meetings was Mr. Surgent in out of 4 these four to six that you -- that you 5 participated in? 6 A <b>I don't remember Mr. Surgent being in</b> 7 <b>any that I -- not being in every one that I -- in</b> 8 <b>other words, if I was in there, he was in there,</b> 9 <b>is my memory.</b> 10 Q So you remember Mr. Surgent also being 11 in four to six large group meetings during the 12 initial phases of this project after that 13 five-minute initial discussion; right? 14 A <b>The five-minute initial discussion was</b> 15 <b>an idea. It was literally throwing out an idea</b> 16 <b>and there was very little banter about it at all.</b> 17 Q And then you remember Mr. Surgent being 18 at four to six of the large group meetings that 19 then discussed this idea? 20 A <b>If there was four to six, it included</b> 21 <b>the entire group. There may have been meetings</b> 22 <b>that were a subset. I was personally in my skill</b> 23 <b>set.</b> 24 Q Right. But in the four to six that you 25 were in, you remember Mr. Surgent being in every</p>

<p style="text-align: right;">233</p> <p>1 one?</p> <p>2 <b>A That's to the best of my recollection.</b></p> <p>3 <b>It could have been a subset meeting that I was in</b></p> <p>4 <b>and he wasn't, but since it was a compliance</b></p> <p>5 issue, I would (inaudible) he was there.</p> <p>6 Q And then you said -- and then how many</p> <p>7 other additional meetings were there after that</p> <p>8 you know about? Not that you speculate or</p> <p>9 guessing, but that you know occurred after that?</p> <p>10 <b>A I don't know. Unless I was there, I</b></p> <p>11 <b>wouldn't know they occurred.</b></p> <p>12 Q So you don't know if there were any</p> <p>13 other large group meetings after the four to six</p> <p>14 that you attended; correct?</p> <p>15 <b>A No, I don't, because I didn't attend</b></p> <p>16 <b>them. Therefore I don't know for a fact that</b></p> <p>17 <b>(inaudible).</b></p> <p>18 Q Okay, so then you said, the next step</p> <p>19 was concerns raised by -- and I'm having a hard</p> <p>20 time reading my handwriting, so maybe you can help</p> <p>21 me.</p> <p>22 Do you know what the next step was in</p> <p>23 these so-called fulsome project after these</p> <p>24 initial four to six meetings?</p> <p>25 <b>A I believe the next step -- and I'm not</b></p>	<p style="text-align: right;">235</p> <p>1 When this transaction was being -- by</p> <p>2 the way, let me take a step back, at what point --</p> <p>3 was it -- at some point during these four to six</p> <p>4 meetings that it was decided that the seller of</p> <p>5 the policy would be Sentinel?</p> <p>6 <b>A No, this was the -- the meetings I was</b></p> <p>7 <b>involved in were based around could this be done,</b></p> <p>8 <b>period, as an idea.</b></p> <p>9 Q Oh, okay, so during all the four to six</p> <p>10 meetings you were on, it was never mentioned that</p> <p>11 Sentinel would be the counter-party to sell the</p> <p>12 ATE policy; is that correct?</p> <p>13 <b>A Oh, I don't know if it was never</b></p> <p>14 <b>mentioned.</b></p> <p>15 MS. SMITH: Object.</p> <p>16 THE WITNESS: It's just that wasn't the</p> <p>17 crux of the meetings. The meetings were can this</p> <p>18 be done as a concept, and people airing their</p> <p>19 various concerns, issues, positives, negatives.</p> <p>20 It was general discussion of can this</p> <p>21 idea come to fruition, period.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q And in this time, in those big group</p> <p>24 meetings, was it -- was the concept being</p> <p>25 discussed that Sentinel would sell the policy or</p>
<p style="text-align: right;">234</p> <p>1 <b>certain of this -- would have been running it</b></p> <p>2 <b>through conflicts committee.</b></p> <p>3 Q And what is a conflict committee?</p> <p>4 <b>A A committee of people that review</b></p> <p>5 <b>potential conflicts and make a decision based on</b></p> <p>6 <b>vote if they believe there's a conflict or not.</b></p> <p>7 Q And here, because you and Mr. Dondero</p> <p>8 owned Sentinel, and you were taking assets that</p> <p>9 were owned by other funds that Highland was</p> <p>10 responsible for, there is an obvious potential</p> <p>11 conflict; correct?</p> <p>12 <b>A It's not my --</b></p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: It's not my job to</p> <p>15 analyze the conflicts. That's compliance. I</p> <p>16 don't know what conflicts they saw and I don't</p> <p>17 know what the conflicts committee -- fell on the</p> <p>18 conflicts committee.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Well, as general counsel, did you</p> <p>21 believe that you -- people all the time make a</p> <p>22 decision where they recuse themselves from full</p> <p>23 conversations because they see there's a conflict.</p> <p>24 Lawyers make that determination all the time for</p> <p>25 themselves and for clients.</p>	<p style="text-align: right;">236</p> <p>1 were you still waiting to hear from Beecher</p> <p>2 Carlson as to whether or not they could get some</p> <p>3 other insurer?</p> <p>4 <b>A At the time I was involved, I don't</b></p> <p>5 <b>even think anyone had discussed anything with</b></p> <p>6 <b>Beecher Carlson.</b></p> <p>7 Q So, if that's the case, because what I</p> <p>8 think you testified earlier that Beecher</p> <p>9 Carlson -- first Beecher Carlson tried to find a</p> <p>10 true independent third-party insurer. Only after</p> <p>11 they couldn't, that's when you moved on to</p> <p>12 Sentinel. Isn't that what your testimony was?</p> <p>13 <b>A That's --</b></p> <p>14 MS. SMITH: Objection, form.</p> <p>15 THE WITNESS: That's my recollection.</p> <p>16 But it doesn't mean that this process wasn't</p> <p>17 occurring before that.</p> <p>18 You were asking me more specifically,</p> <p>19 did somebody go out and try to get another</p> <p>20 reinsurer or insurer to (inaudible) policy.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q No. So during the --</p> <p>23 <b>A You didn't ask me about this process</b></p> <p>24 <b>at all.</b></p> <p>25 Q I understand. But you are saying</p>

<p style="text-align: right;">237</p> <p>1 during these -- the four to six meetings that you                  2 were on, the big group meetings when this was                  3 first being discussed, at that point no one had                  4 even talked to Beecher Carlson about trying to                  5 identify a seller of the ATE policy; correct?  <b>6 A I don't know because I'm not everybody                  7 else. I never talked to Beecher Carlson about it.</b>                  8 Q Right.  <b>9 A Do I know if every Highland employee                  10 asked Beecher Carlson a question at what point? I                  11 don't see how I could possibly opine on that.</b>                  12 Q As far as you're aware -- so you never                  13 heard -- during the four to six meetings -- at                  14 some point you were told that Beecher Carlson                  15 was -- had tried but it failed to find a true                  16 independent third-party insurer to sell this ATE                  17 policy; correct?                  18 MS. SMITH: Objection to form.                  19 THE WITNESS: At some point, I was                  20 informed of that generally, yes.                  21 BY MR. CLUBOK:                  22 Q And were you informed of that before,                  23 during or after these four to six large group                  24 meetings that you've described?  <b>25 A I don't recall. But I would -- my</b></p>	<p style="text-align: right;">239</p> <p>1 Carlson, I don't know the answer to that.                  2 As far as I know -- from what --                  3 BY MR. CLUBOK:                  4 Q No, no, no, that's not what I asked                  5 you. That's not what I asked you at all.                  6 MR. CLUBOK: I will move to strike.                  7 THE WITNESS: Okay.                  8 BY MR. CLUBOK:                  9 Q That's definitely not what I asked you                  10 about everybody in the firm did. So listen to my                  11 question --  <b>12 A You said did anyone talk to Beecher                  13 Carlson.</b>                  14 -- (overspeaking) --                  15 Q I didn't. I didn't. I did not. Okay.                  16 Just listen to my question. And I'm going to                  17 repeat it again. I -- specifically, I want a                  18 straight answer on this.                  19 During the four to six large group                  20 meetings that you claim Mr. Surgent was with you,                  21 in any of those meetings, was it discussed that                  22 Sentinel would be the one issuing the policy or                  23 did all of these meetings take place before you                  24 were informed that Beecher Carlson could not find                  25 an outside third party to sell the insurance?</p>
<p style="text-align: right;">238</p> <p><b>1 recollection is it was after this because I was                  2 already out of the process is my memory. But you                  3 are asking me to remember week by week, day by day                  4 five years ago.</b>                  5 Q No, I'm asking very specifically                  6 because the real issue here is whether there was a                  7 problem with Sentinel selling its policy. And                  8 what I want a straight answer from you is there                  9 were these four to six large group meetings you                  10 say where you claim that Mr. Surgent was with you                  11 in all them. And my simple question is: During                  12 any of those meetings, was it discussed that                  13 Sentinel would be the one issuing the policy, or                  14 did these all take place before Beecher Carlson                  15 informed you in words or substance that you                  16 couldn't get an outside third-party insurance                  17 seller?  <b>18 A I don't know --</b>                  19 MS. SMITH: Objection to form.                  20 THE WITNESS: I don't know, because I                  21 can't remember if -- when raised, can Sentinel do                  22 this. But certainly, the meetings that I was                  23 involved with had concluded as far as I know, what                  24 you are asking me to now, you know, represent                  25 everyone in the firm could have talked to Beecher</p>	<p style="text-align: right;">240</p> <p>1 MS. SMITH: Objection to form.                  2 THE WITNESS: Those are two questions.                  3 Do you want me to answer both of them                  4 or...?                  5 BY MR. CLUBOK:                  6 Q You said -- okay. I'll break it into                  7 two questions.                  8 Number one: During the four to six                  9 large group meetings that you claim Mr. Surgent                  10 was with you, do you specifically remember it ever                  11 being discussed that Sentinel would be the one                  12 issuing the policy?  <b>13 A No, I do not recall anyone raising                  14 that.</b>                  15 Q Okay. And is it the case that it was                  16 only after these four to six meetings that you                  17 learned that Beecher Carlson had been unable to                  18 identify a third-party insurer to sell the policy?  <b>19 A That is my recollection, yes.</b>                  20 Q So, were you ever in any meeting with                  21 Thomas Surgent in which it was specifically asked                  22 whether there would be an issue if it was Sentinel                  23 issuing the policy as opposed to just any                  24 third-party insurer?  <b>25 A No, because I was not a part of those</b></p>

<p style="text-align: right;">241</p> <p><b>1 meetings by design.</b></p> <p>2 Q And are you aware -- can you testify</p> <p>3 here under oath, that a meeting took place in</p> <p>4 which Mr. Surgent was specifically asked whether</p> <p>5 or not there was a problem with Sentinel being the</p> <p>6 one to issue the ATE policy?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 THE WITNESS: Whether a meeting took</p> <p>9 place -- whether a meeting took place or not, Mr.</p> <p>10 Surgent made the decision knowing that Sentinel</p> <p>11 was the -- was the issuer of the policy. So</p> <p>12 whether it was a meeting, that he decided by</p> <p>13 himself in the shower, he got a message from God,</p> <p>14 I don't know what, but he decided it.</p> <p>15 He's the only person that could decide.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Again, I'd like you to answer my</p> <p>18 questions and not statements that you want to</p> <p>19 make.</p> <p>20 I'm doing this in pieces, okay?</p> <p><b>21 A Okay.</b></p> <p>22 Q And you objected to compound questions</p> <p>23 and made me break it into pieces, so I'm going to</p> <p>24 ask you to answer my pieces going forward and not</p> <p>25 give me other answers to other things that I</p>	<p style="text-align: right;">243</p> <p><b>1 process.</b></p> <p>2 Q So you have no idea if Mr. Surgent even</p> <p>3 got one document related to this transaction;</p> <p>4 correct?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Me personally?</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q You personally.</p> <p><b>9 A Me personally, no.</b></p> <p>10 Q So just again, just as the double</p> <p>11 negative thing, so let's just be clear.</p> <p>12 As you sit here today, you have no</p> <p>13 personal knowledge of Mr. Surgent receiving even</p> <p>14 one document relating to the ATE transaction;</p> <p>15 correct?</p> <p><b>16 A No, I do not have any personal</b></p> <p><b>17 knowledge of what Mr. Surgent received, document</b></p> <p><b>18 or otherwise, in his analysis.</b></p> <p>19 Q And I appreciate it.</p> <p>20 The only problem is you started that</p> <p>21 with a "No". And I think the way I answered the</p> <p>22 question, I think you meant yes with that no.</p> <p><b>23 A I'll try my best.</b></p> <p>24 Q It's okay. If you mean no -- I'm not</p> <p>25 trying to get you to change my answer. I just</p>
<p style="text-align: right;">242</p> <p>1 haven't asked yet. I will either ask you compound</p> <p>2 questions and you can answer all at once or since</p> <p>3 you objected, I'll ask in pieces. I'm going to --</p> <p><b>4 A No, I have no objection to them. I</b></p> <p><b>5 just want to make sure I answer the question.</b></p> <p>6 Q Answer my piece, please.</p> <p><b>7 A Okay.</b></p> <p>8 Q Are you aware -- strike that.</p> <p>9 Can you testify here under oath that</p> <p>10 any meeting took place that you are aware of, even</p> <p>11 if you weren't there, in which Mr. Surgent was</p> <p>12 specifically asked whether or not there was any</p> <p>13 potential problems given that Sentinel was the one</p> <p>14 who was going to be issuing the ATE policy?</p> <p><b>15 A I don't know if any --</b></p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: I don't know if any</p> <p>18 meeting like that took place.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Are you aware of any written</p> <p>21 documentation about the ATE policy transaction</p> <p>22 that was supplied to Mr. Surgent in connection</p> <p>23 with what you call the fulsome process?</p> <p><b>24 A I do not have an awareness of what was</b></p> <p><b>25 provided to Mr. Surgent as I am not part of the</b></p>	<p style="text-align: right;">244</p> <p>1 want to make sure that -- I think that was one of</p> <p>2 those where you --</p> <p><b>3 A I'll restate my answer. I'll restate</b></p> <p><b>4 my answer to make the record clean.</b></p> <p>5 Q Yeah, let me just ask that question --</p> <p><b>6 A I do not know of anything Mr. Surgent</b></p> <p><b>7 received, document or otherwise, to perform his</b></p> <p><b>8 analysis. I don't know.</b></p> <p>9 Q And the conflicts committee that you</p> <p>10 say that you assume weighed in, who was on the</p> <p>11 conflicts committee at the time or was it an ad</p> <p>12 hoc committee for each transaction?</p> <p><b>13 A No, it was the set group of people that</b></p> <p><b>14 served on it from time to time.</b></p> <p><b>15 I don't know who they were at that</b></p> <p><b>16 time.</b></p> <p>17 Q And so like at anyone time, there would</p> <p>18 be a conflicts committee, and so anything that</p> <p>19 came up that month, it would go to that group. Is</p> <p>20 that how it worked or do they just convene for</p> <p>21 every individual transaction, a different</p> <p>22 committee?</p> <p><b>23 A They convened on for -- as far as</b></p> <p><b>24 I know, on every individual transaction or if</b></p> <p><b>25 there was a set of things that weren't urgent,</b></p>

<p style="text-align: right;">245</p> <p><b>1 they would convene and decide if there was a</b></p> <p><b>2 conflict and then compliance dealt with</b></p> <p><b>3 investigating those conflicts and ultimately the</b></p> <p><b>4 chief compliance officer made a determination.</b></p> <p>5 Q And who was on the conflicts committee</p> <p>6 at the time?</p> <p>7 A I don't know.</p> <p>8 Q How many members were there in the</p> <p>9 conflicts committee?</p> <p>10 A I don't know.</p> <p>11 Q All right. Can you identify a single</p> <p>12 member of the conflicts committee who was apprized</p> <p>13 of the transaction with Sentinel?</p> <p>14 A No. But it would be -- it would be in</p> <p>15 the debtor's records. I mean, it's a set</p> <p>16 committee that they set over a period of time.</p> <p>17 Q But you have no personal knowledge of</p> <p>18 the conflicts committee weighing in on the ATE</p> <p>19 transaction; correct?</p> <p>20 A No, I don't. But it's standard</p> <p>21 practice for them just to be involved.</p> <p>22 Q So it's correct, sir, that you have no</p> <p>23 personal knowledge of the conflict committee</p> <p>24 weighing in on the ATE transaction; right?</p> <p>25 A Correct.</p>	<p style="text-align: right;">247</p> <p>1 to me, I don't know.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q And when you say he approved the</p> <p>4 transaction, the -- you mean a written approval?</p> <p>5 A I don't know what approval process he</p> <p>6 has.</p> <p>7 I would assume it's a written approval.</p> <p>8 Maybe reflected in a compliance memo. I don't</p> <p>9 know what process he has. Again, because of the</p> <p>10 design, it got us to the SEC. I'm not involved in</p> <p>11 compliance.</p> <p>12 Q Well, wait a second. When you say you</p> <p>13 know that he approved the transaction, did he tell</p> <p>14 you personally he was approving the transaction?</p> <p>15 A Yes.</p> <p>16 Q And what were the -- was this a later</p> <p>17 meeting. Because you mentioned the four to six</p> <p>18 meetings. And I -- maybe I should have asked this</p> <p>19 question. After those initial four to six</p> <p>20 meetings, did you ever discuss the transaction</p> <p>21 with Mr. Surgent again?</p> <p>22 A Not that I recall until he said the ATE</p> <p>23 policy is going forward to me in passing in the</p> <p>24 hallway.</p> <p>25 And again, he's the only person that</p>
<p style="text-align: right;">246</p> <p>1 Q Is -- so, let me see if I have this</p> <p>2 right. What you have personal knowledge as you</p> <p>3 can testify to with respect to the ATE transaction</p> <p>4 and the process that was followed is you know that</p> <p>5 you were in four to six meetings with Mr. Surgent,</p> <p>6 but you don't recall the fact that Sentinel would</p> <p>7 be issuing the policy ever coming up; correct?</p> <p>8 A Correct.</p> <p>9 Q And you have no idea if Mr. Surgent</p> <p>10 ever received any documentation about the</p> <p>11 transaction; correct?</p> <p>12 A My personal knowledge, I have no idea</p> <p>13 of what he received.</p> <p>14 Q And you don't know if any member of the</p> <p>15 conflict committee was apprized of the Sentinel</p> <p>16 transaction; correct?</p> <p>17 A Me personally? No.</p> <p>18 Q And you don't know whether Mr. Surgent</p> <p>19 was ever specifically told that Sentinel would be</p> <p>20 the one issuing the policy prior to its issuance;</p> <p>21 correct?</p> <p>22 A I don't know that he --</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: I don't know he</p> <p>25 specifically told me he approved the transaction</p>	<p style="text-align: right;">248</p> <p><b>1 can approve that type of transaction.</b></p> <p>2 Q I'm sorry, he told you it -- so you had</p> <p>3 those initial four to six meetings.</p> <p>4 A Yeah.</p> <p>5 Q You never had another meeting with Mr.</p> <p>6 Surgent about the ATE policy. But he told you in</p> <p>7 passing in the hallway that the transaction was</p> <p>8 going forward?</p> <p>9 A Yes, that's my recollection.</p> <p>10 Q And did -- is that the only other</p> <p>11 communication you had with Mr. Surgent, other than</p> <p>12 what you've described thus far?</p> <p>13 A Yes, because by design compliance runs</p> <p>14 its own process.</p> <p>15 Q And when Mr. Surgent in passing told</p> <p>16 you it was going forward, did he say compliance</p> <p>17 approved the transaction?</p> <p>18 A Yeah, he approved it. Compliance</p> <p>19 doesn't approve it. The chief compliance officer</p> <p>20 approves it.</p> <p>21 Q And he specifically told you -- and how</p> <p>22 long was this conversation that you had in passing</p> <p>23 in the hallway?</p> <p>24 A Ten seconds.</p> <p>25 Q And what specific -- what were the</p>

<p style="text-align: right;">249</p> <p>1 exact words that Mr. Surgent used, to the best of                  2 your recollection?                  3 <b>A To the best of my recollection from                  4 five years ago, he said the ATE thing is going                  5 forward.</b>                  6 Q That's it?                  7 <b>A That's it.</b>                  8 Q And other than that, you have no                  9 personal knowledge of how any approval that Mr.                  10 Surgent may have given would have been                  11 memorialized anywhere at Highland?                  12 <b>A No. But Mr. Surgent is a very careful,                  13 diligent guy, performed his duties at the highest                  14 level. I'm sure he did everything that was                  15 required by law and by his approval.</b>                  16 Q And so it is true that you have no                  17 personal knowledge of how any supposed approval                  18 that Mr. Surgent may have given with respect to                  19 the ATE transaction would have been memorialized                  20 anywhere at Highland; correct?                  21 MS. SMITH: Objection, asked and                  22 answered multiple times.                  23 THE WITNESS: You're correct.                  24 BY MR. CLUBOK:                  25 Q Did anybody else in the firm ever tell</p>	<p style="text-align: right;">251</p> <p>1 <b>he took over the chief compliance role -- officer                  2 role and had to declare over and over what was                  3 affiliates and what wasn't, the ownership of                  4 Sentinel when he declared it a non-affiliate.                  5 So, he was infinitely aware for years                  6 before this transaction, the ownership with                  7 Sentinel. And I'm sure, again, because Mr.                  8 Surgent did his job very well, I'm sure he                  9 confirmed the ownership with Sentinel as part of                  10 his process.</b>                  11 Q No, no, no, my question is slightly                  12 different.                  13 Do you have any specific personal                  14 knowledge of information that was specifically                  15 brought to Mr. Surgent's intent -- attention that                  16 identified the ownership interest in Sentinel?                  17 <b>A Me personally, no, because I was by                  18 design, not part of the process.</b>                  19 Q How did Mr. Surgent supposedly formally                  20 declare Sentinel to be a non-affiliate?                  21 MS. SMITH: Objection to form.                  22 THE WITNESS: You'd have to ask Mr.                  23 Surgent.                  24 BY MR. CLUBOK:                  25 Q When did he do this?</p>
<p style="text-align: right;">250</p> <p>1 you that Mr. Surgent had approved the transaction?                  2 <b>A Umm... I don't recall if anybody else                  3 ever told me. But it took numerous people to                  4 carry out the traction, to my understanding, so                  5 obviously they wouldn't do it without the chief                  6 compliance officer's approval, written or                  7 otherwise.</b>                  8 Q Did the ATE transaction implicate the                  9 Adviser's Act?                  10 <b>A I don't know.</b>                  11 Q Did you -- sorry. You don't know                  12 whether or not -- I believe you said this, and I                  13 apologize. I think this might be the last                  14 question on this subject, but I just want to make                  15 sure I ask it.                  16 So I apologize if I asked it before,                  17 but if you could just answer, bear with me, I                  18 appreciate it.                  19 You don't know whether anyone                  20 specifically brought to Mr. Surgent's attention                  21 the ownership interest in Sentinel prior to the                  22 transaction going forward; correct?                  23 <b>A Untrue.</b>                  24 Q Ah, okay. So then please explain.                  25 <b>A Mr. Surgent knew from inception or when</b></p>	<p style="text-align: right;">252</p> <p>1 <b>A Either at the -- I can't remember if he                  2 was chief compliance officer in 2012 when it was                  3 formed or not. But either he did so as taking                  4 over from his predecessor or he did so when it was                  5 formed. I just don't recall if he was the CCO or                  6 not.</b>                  7 Q You talked -- you talked with                  8 Mr. Leventon about whether or not Sentinel should                  9 be considered a affiliate investor; correct?                  10 <b>A Mr. Leventon?</b>                  11 Q Yeah?                  12 <b>A Not that I recall having Mr. Leventon's                  13 opinion about that. It's not really relevant. It                  14 is solely compliance.</b>                  15 Q Did you ever talk to Mr. DiOrio about                  16 whether Sentinel would be considered an affiliate                  17 of any other entity?                  18 <b>A Not that I recall. Again, that                  19 determination would only be me repeating what is                  20 determined by compliance.</b>                  21 Q Did you ever have any conversation with                  22 Mr. Sevilla about whether or not Sentinel should                  23 be considered an affiliate of any other entity?                  24 <b>A I don't recall.</b>                  25 Q Did you ever consider whether Sentinel</p>

<p style="text-align: right;">253</p> <p>1 was an affiliate of Multi Strat?</p> <p>2 <b>A Did I? No.</b></p> <p>3 Q Did you ever discuss with anybody</p> <p>4 whether Sentinel should be considered an</p> <p>5 affiliated investor with respect to its Multi</p> <p>6 Strat ownership interest?</p> <p>7 <b>A Not that I recall.</b></p> <p>8 MS. SMITH: Objection.</p> <p>9 THE WITNESS: But again, that analysis</p> <p>10 is done by compliance and determined by a chief</p> <p>11 compliance officer.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q If a question came up as to whether or</p> <p>14 not Sentinel should be treated as an affiliate for</p> <p>15 any other entity that Highland was involved with,</p> <p>16 would it have been the appropriate process to</p> <p>17 maybe turn that over to compliance?</p> <p>18 <b>A Yes. They would inquire to compliance</b></p> <p>19 <b>about their determination.</b></p> <p>20 Q And you would never have any role in</p> <p>21 that assessment?</p> <p>22 <b>A No, other than repeating what</b></p> <p>23 <b>compliance had decided, I had no role.</b></p> <p>24 Q Would you -- okay. Do you consider</p> <p>25 Sentinel to be an affiliate of yours?</p>	<p style="text-align: right;">255</p> <p>1 <b>A Yes.</b></p> <p>2 MS. SMITH: Objection.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Would you say your management style was</p> <p>5 to frequently yell at people?</p> <p>6 <b>A In the past, yes.</b></p> <p>7 Q How about in the 2017 timeframe?</p> <p>8 <b>A I wouldn't say frequently. I would say</b></p> <p>9 <b>more infrequently, but yes, I did it.</b></p> <p>10 Q Did you ever yell at Taylor Colbert</p> <p>11 about his use of the phrase "affiliated investor"</p> <p>12 with respect to Sentinel?</p> <p>13 <b>A I don't recall who Taylor Colbert is.</b></p> <p>14 Q Did you ever yell at Trey Parker about</p> <p>15 that?</p> <p>16 <b>A I don't ever remember yelling at Trey</b></p> <p>17 <b>Parker.</b></p> <p>18 Q Did you ever yell at Carter Chisholm or</p> <p>19 Chris Dunn with respect to this subject?</p> <p>20 <b>A I don't think I've ever yelled at</b></p> <p>21 <b>Carter Chism, and I don't know who Chris Dunn is.</b></p> <p>22 Q Let's take a look at Exhibit 61.</p> <p>23 It is an email chain with an</p> <p>24 attachment. And I'm going to just focus you first</p> <p>25 on the email cover before we look at the</p>
<p style="text-align: right;">254</p> <p>1 <b>A I don't --</b></p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I don't know what that</p> <p>4 analysis entails. I would say it's an affiliated</p> <p>5 entity -- to entities that I am involved with, I</p> <p>6 don't know enough about how to analyze something</p> <p>7 that's affiliated by law.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Did you ever ask anybody to talk to you</p> <p>10 specifically about whether or not Sentinel was an</p> <p>11 affiliated investor without going first to</p> <p>12 compliance?</p> <p>13 <b>A Please repeat that. I want to make</b></p> <p>14 <b>sure I understand what you're asking.</b></p> <p>15 Q Did you ever ask anybody at Highland to</p> <p>16 speak with you directly about whether or not</p> <p>17 Sentinel should be labeled an affiliated investor</p> <p>18 without first speaking to compliance?</p> <p>19 <b>A Not to my knowledge. No, again,</b></p> <p>20 <b>compliance is the ultimate arbiter.</b></p> <p>21 Q Did you ever yell at anybody for, in</p> <p>22 your view, improperly labelling Sentinel as an</p> <p>23 affiliated investor?</p> <p>24 <b>A Yell at anyone? Not that I recall.</b></p> <p>25 Q Do you ever yell at work?</p>	<p style="text-align: right;">256</p> <p>1 attachment. And it's an email exchange that at</p> <p>2 the bottom starts with an email from Taylor</p> <p>3 Colbert to a number of folks and eventually works</p> <p>4 up to an email from you to Isaac Leventon and JP</p> <p>5 Sevilla.</p> <p>6 Do you see Exhibit 61?</p> <p>7 <b>A I've got Exhibit 61.</b></p> <p>8 <b>BY MR. CLUBOK:</b></p> <p>9 Q And you can see here that -- if we go</p> <p>10 down to the -- you have to read backwards on the</p> <p>11 email.</p> <p>12 <b>A Okay.</b></p> <p>13 MR. CLUBOK: And Nate, if you can give</p> <p>14 me that. Thank you.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q The email starts with Taylor Colbert</p> <p>17 saying, "Hi, Trey. Please see the attached for</p> <p>18 cash projection, distribution, allocation as</p> <p>19 requested. There are several estimates in the</p> <p>20 file that we will continue to sharpen over the</p> <p>21 next couple of days."</p> <p>22 And the subject is "Multi Strat Cash</p> <p>23 Projection."</p> <p>24 Do you see that?</p> <p>25 <b>A I do.</b></p>



<p style="text-align: right;">257</p> <p>1 Q And then if you work up the chain, you</p> <p>2 will see Taylor then sending another email to Trey</p> <p>3 and this time he copies some additional people,</p> <p>4 including Thomas Surgent. And Taylor says, "Trey,</p> <p>5 as discussed, please see the updated file with</p> <p>6 Sentinel being presented as an affiliated</p> <p>7 investor. Please let me know if you would like to</p> <p>8 see any changes made."</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q And then Mr. Surgent forwards to you</p> <p>12 and says "Let's discuss."</p> <p>13 A Yes.</p> <p>14 Q Did you discuss this with him ever?</p> <p>15 A I'm sure I did. If he asked me to</p> <p>16 discuss something, I almost always discussed it</p> <p>17 with him. I can't think of any instance where I</p> <p>18 didn't.</p> <p>19 Q And that same day, it looks like about</p> <p>20 50 minutes after Thomas Surgent sent you that</p> <p>21 email, you forward it to Isaac Leventon and JP</p> <p>22 Sevilla and said, "See below and attached and call</p> <p>23 me tomorrow on this."</p> <p>24 Do you see that?</p> <p>25 A I do.</p>	<p style="text-align: right;">259</p> <p>1 investor with respect to Multi Strat; isn't that</p> <p>2 true?</p> <p>3 A No, that's not true. I don't know what</p> <p>4 I'm -- I may have received instructions from</p> <p>5 Mr. Surgent. I don't recall anything about this.</p> <p>6 They were my two most senior guys.</p> <p>7 Very often I would have them handle things, so</p> <p>8 very easily Mr. Surgent could have given me</p> <p>9 instructions. But I said okay, I'll have JP and</p> <p>10 Isaac handle it. I just don't recall what</p> <p>11 happened here, but the characterizing is I drug</p> <p>12 them into the determination of what's an</p> <p>13 affiliated investor is, I'm sorry, that's silly</p> <p>14 because that determination is exclusively Mr.</p> <p>15 Surgent's.</p> <p>16 Q What was the discussion you had with</p> <p>17 Mr. Surgent when he forwarded this to you?</p> <p>18 A I have zero recollection of this.</p> <p>19 Q So, Mr. Surgent -- okay. You have zero</p> <p>20 recollection of what you guys discussed; is that</p> <p>21 correct?</p> <p>22 A You are asking me to remember a phone</p> <p>23 conversation from five years ago. No, I don't</p> <p>24 know. Or four years ago, sorry.</p> <p>25 Q If you look at the attachment and the</p>
<p style="text-align: right;">258</p> <p>1 Q Do you remember this exchange?</p> <p>2 A Not at all.</p> <p>3 Q You said before you don't know why</p> <p>4 Isaac Leventon would be involved at all in</p> <p>5 affiliate investor determination.</p> <p>6 Do you remember that?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: And I don't -- from this,</p> <p>9 I don't see that he is.</p> <p>10 Mr. Surgent involved me.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Right. But then you immediately sent</p> <p>13 an email to -- to Leventon and Sevilla and say,</p> <p>14 "Let's" -- you know, "call -- call tomorrow on</p> <p>15 this."</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q You brought Leventon and Sevilla into</p> <p>19 this exchange, didn't you?</p> <p>20 A I didn't bring them in into any</p> <p>21 exchange. I asked them to call to discuss -- to</p> <p>22 call me on this tomorrow.</p> <p>23 Q You brought Mr. Leventon and</p> <p>24 Mr. Sevilla into this subject of whether or not</p> <p>25 Sentinel should be presented as an affiliated</p>	<p style="text-align: right;">260</p> <p>1 first page, you can see that it identifies</p> <p>2 entities in shade if they are non-affiliated and</p> <p>3 not in shade if they are affiliated.</p> <p>4 Do you do see that?</p> <p>5 A I see shaded and non-shaded entities.</p> <p>6 Where do you get the key that the</p> <p>7 shaded are non-affiliates?</p> <p>8 Q Oh, I'm sorry. Well, you can see the</p> <p>9 percent of non-affiliate?</p> <p>10 A Okay.</p> <p>11 Q Right? And you can see where the</p> <p>12 percentage of non-affiliate, for example, Master</p> <p>13 Fund, Highland Credit Opportunities Fund adds up</p> <p>14 to 100 percent with three different entries.</p> <p>15 Do you see that?</p> <p>16 A Okay.</p> <p>17 Q And then for the Highland Credit</p> <p>18 Opportunities Fund, the same thing. You can see</p> <p>19 the one's that are shaded add up to 100 percent</p> <p>20 for -- sorry, add up to -- there's percentages</p> <p>21 associated with non-affiliated entities and there</p> <p>22 is no percentages associated with the others, for</p> <p>23 non-affiliate.</p> <p>24 Do you see that?</p> <p>25 A I do.</p>

<p style="text-align: right;">261</p> <p>1 Q So with -- and this one -- and this is                  2 the attachment that was forwarded by Taylor when                  3 he says, "As discussed, please see the updated                  4 file with Sentinel being presented as an                  5 affiliated investor."                  6 Do you see that in the cover email?                  7 <b>A I do.</b>                  8 Q And so we look here and we see that                  9 fore -- and by the way, Highland credit                  10 Opportunities Fund, that's an entity that we now                  11 call Multi Strat; correct?                  12 <b>A I don't recall that -- I mean, that</b>                  13 <b>could be, I just don't remember.</b>                  14 Q Okay. But does it -- do you recall --                  15 there was -- because we were involved in New York                  16 litigation where we named an entity called Credit                  17 Opportunities.                  18 <b>A Mm-hmm.</b>                  19 Q At some point, it changed its name to                  20 Multi Strat.                  21 Do you -- does that ring a bell?                  22 <b>A It does ring a bell. I just -- I just</b>                  23 <b>don't want to say 100 percent I remember that, but</b>                  24 <b>that sounds right to me.</b>                  25 Q Okay. So with respect to Credit</p>	<p style="text-align: right;">263</p> <p>1 Q Sorry, you don't know why he would                  2 include you on what?                  3 <b>A In other words, this table prepared by</b>                  4 <b>Mr. Colbert to -- I don't know what his goal</b>                  5 <b>was -- oh, a fund analyst. Sorry, I just saw his</b>                  6 <b>signature block. If it was correct, why would Mr.</b>                  7 <b>Surgent say "Let's discuss."</b>                  8 <b>It's Mr. Colbert's determination,</b>                  9 <b>again, who had zero relevance in determining what</b>                  10 <b>was an affiliated investor or not. If that was</b>                  11 <b>correct, why would Mr. Surgent need to discuss</b>                  12 <b>something with me.</b>                  13 Q And you don't remember what you did                  14 discuss after this?                  15 <b>A No, I don't. But I just find it</b>                  16 <b>interesting that, you know, at 6:00 o'clock at</b>                  17 <b>night, he needs to discuss with me on something</b>                  18 <b>that is correct. Usually people don't say, hey,</b>                  19 <b>use this table. It's correct.</b>                  20 Q Do you remember after raising this                  21 issue with Mr. Surgent yelling at somebody about                  22 the fact that you believed they should not list                  23 Sentinel as an affiliated investor?                  24 <b>A No, I don't.</b>                  25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">262</p> <p>1 Opportunities, it shows Sentinel having a what's                  2 called a Highland Nav, and it's being, as                  3 Mr. Colbert mentioned, presented as an affiliated                  4 entity; do you see that?                  5 <b>A He can be put on here anything. It is</b>                  6 <b>not his determination.</b>                  7 Q This whole --                  8 <b>A If Mr. Surgent said let's discuss and</b>                  9 <b>it was right, I have to doubt he would have needed</b>                  10 <b>to discuss anything with me.</b>                  11 Q Do you recall -- do you recall --                  12 sorry. I'm sorry, Nate, can you pull this off the                  13 screen?                  14 There's got to be a way for me to do it                  15 easily, but-for some reason I can't figure it out.                  16 THE WITNESS: Another thing that is                  17 very interesting is Mark O'Connor and the Dugaboy                  18 Investment Trust in the same table, which as far                  19 as I know is a trust that somehow is related to                  20 Mr. Dondero, but it's Mark O'Connor as an                  21 individual is not considered as -- sorry, is                  22 considered an affiliated investor, yeah, but,                  23 again, I don't know why Mr. Surgent would even                  24 include me on something that was just simply                  25 correct.</p>	<p style="text-align: right;">264</p> <p>1 THE WITNESS: And I didn't raise the                  2 issue with Mr. Surgent. He contacted me to talk                  3 to him.                  4 BY MR. CLUBOK:                  5 Q Sorry, after discussing this issue with                  6 Mr. Surgent, do you believe -- do you recall ever                  7 yelling at anyone on this --                  8 <b>A No, no, unless Mr. Surgent told me to</b>                  9 <b>remind people that it -- they don't need to be</b>                  10 <b>making determinations for what affiliated</b>                  11 <b>investors are or not. I just don't remember the</b>                  12 <b>circumstances.</b>                  13 <b>Furthermore, if I yelled at somebody ad</b>                  14 <b>nauseam, it doesn't change Mr. Surgent's</b>                  15 <b>determination.</b>                  16 Q At some point, Sentinel was referred to                  17 as an affiliate; correct?                  18 <b>A Not to my knowledge.</b>                  19 MS. SMITH: Objection to form.                  20 THE WITNESS: Again, from inception to                  21 the end of my tenure, it had always been a                  22 compliance officer as a non-affiliate.                  23 BY MR. CLUBOK:                  24 Q It was brought to your attention that                  25 in emails various people had referred to Sentinel</p>

<p style="text-align: right;">265</p> <p>1 as an affiliate; correct?</p> <p>2 <b>A Were any of those people Mr. Sargent?</b></p> <p>3 Q That's -- that's not my -- I'm the one</p> <p>4 who gets to ask the questions.</p> <p>5 So --</p> <p>6 <b>A When you said people, I was just trying</b></p> <p>7 <b>to understand...</b></p> <p>8 Q -- isn't it true that it was brought to</p> <p>9 your attention that in emails, various people had</p> <p>10 referred to Sentinel as an affiliate?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 THE WITNESS: I don't recall.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Well, that was specifically brought to</p> <p>15 your attention, wasn't it?</p> <p>16 <b>A I don't recall.</b></p> <p>17 Q It was specifically brought to your</p> <p>18 attention by Isaac Leventon, wasn't it?</p> <p>19 <b>A I don't recall.</b></p> <p>20 MS. SMITH: Objection, form.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Let's draw your attention to tab 13,</p> <p>23 and I think we can mark it as Exhibit 87.</p> <p>24 (Deposition Exhibit 87 was marked for</p> <p>25 identification.)</p>	<p style="text-align: right;">267</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay. You can see this email --</p> <p>3 MR. CLUBOK: Nate, you will give me the</p> <p>4 controller? Yeah.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q There originally was an email from</p> <p>7 Isaac Leventon to Scott -- sorry, an email from</p> <p>8 Isaac Leventon to Scott Ellington on September 9,</p> <p>9 2019 re NREF.</p> <p>10 What's NREF?</p> <p>11 <b>A I believe it is a fund managed by</b></p> <p>12 <b>NexPoint Advisors.</b></p> <p>13 Q And what did -- what was Highland's</p> <p>14 connection to it?</p> <p>15 <b>A Connection to it? Highland was a</b></p> <p>16 <b>sub-adviser to NexPoint Advisors and provided</b></p> <p>17 <b>shared services.</b></p> <p>18 Q Okay. And you see how they're talking</p> <p>19 about repurchases in 2019, and it identifies</p> <p>20 Sentinel Reinsurance Ltd.?</p> <p>21 <b>A I do.</b></p> <p>22 Q And then Isaac -- do you remember Isaac</p> <p>23 sending you this information?</p> <p>24 <b>A No, I don't.</b></p> <p>25 Q And why would Isaac Leventon have been</p>
<p style="text-align: right;">266</p> <p>1 THE WITNESS: I'm sorry, which -- which</p> <p>2 exhibit? I'm sorry --</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q We're going to put it up on the screen.</p> <p>5 Exhibit 87.</p> <p>6 MS. SMITH: We haven't seen that, so</p> <p>7 please put that in the chat. Thank you.</p> <p>8 MR. CLUBOK: Will do.</p> <p>9 REMOTE TECHNICIAN: Yes. And you said</p> <p>10 tab 13?</p> <p>11 MR. CLUBOK: Yep, tab 13 should be</p> <p>12 Exhibit 87. So there's an email and attachment.</p> <p>13 Let's just mark it collectively as Exhibit 87. We</p> <p>14 don't need the slip sheet. But let's mark that --</p> <p>15 Exhibit 87 is going to be a four-page document,</p> <p>16 which is a two-page email from Isaac Leventon to</p> <p>17 Scott Ellington, copying Matt DiOrio and JP</p> <p>18 Sevilla.</p> <p>19 And it attaches a two-page document</p> <p>20 that is a -- marked as a timeline and it</p> <p>21 identifies a number of emails, some of which</p> <p>22 mention Sentinel. Do we have Exhibit 87 up, Nate?</p> <p>23 REMOTE TECHNICIAN: Yes. One moment,</p> <p>24 please.</p> <p>25</p>	<p style="text-align: right;">268</p> <p>1 sending you this information and copying Matt</p> <p>2 DiOrio and JP Sevilla?</p> <p>3 <b>A Well, I can't see the whole email chain</b></p> <p>4 <b>so I don't even understand that -- if there is</b></p> <p>5 <b>emails further down that I'm not being shown.</b></p> <p>6 Q Okay. So I'll go all the way down to</p> <p>7 the bottom. You can see the bottom is just Isaac</p> <p>8 sending you an email and it says subject NREF.</p> <p>9 But there is no content that we have.</p> <p>10 <b>A Okay.</b></p> <p>11 Q I don't know if that was deleted or</p> <p>12 not. But the way it was produced to us, that is</p> <p>13 it?</p> <p>14 <b>A It obviously -- that obviously has</b></p> <p>15 <b>context?</b></p> <p>16 Q It may have been a premature sending,</p> <p>17 who knows?</p> <p>18 <b>A Okay.</b></p> <p>19 Q A little bit later, he sends an email</p> <p>20 and he has content in it. And this time he says,</p> <p>21 "Repurchases from June of 2019. We cannot see</p> <p>22 behind the Schwab Omnibus account." And it</p> <p>23 identifies a number of entities, including</p> <p>24 Sentinel Reinsurance Limited 695,000.</p> <p>25 Do you see that?</p>

<p style="text-align: right;">269</p> <p>1 <b>A Yes.</b></p> <p>2 Q And then if you go up, he sends the</p> <p>3 same group an email to you and DiOrio, Sevilla,</p> <p>4 slightly revised timeline with added 7/31 "Form 4"</p> <p>5 emails and with certain key emails highlighted,</p> <p>6 "as I discussed with Dio a few minutes ago."</p> <p>7 Do you see that?</p> <p>8 <b>A I do.</b></p> <p>9 Q Who's Dio?</p> <p>10 <b>A He is referring to Mr. DiOrio. That's</b></p> <p>11 <b>his nickname.</b></p> <p>12 Q Okay. And if we go down and look at</p> <p>13 the timeline, the attachment --</p> <p>14 MR. CLUBOK: And Nate, did you make it</p> <p>15 the other page part of Exhibit 87?</p> <p>16 REMOTE TECHNICIAN: I'll merge the</p> <p>17 documents after the deposition.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q So again, 87 should be the cover email</p> <p>20 and the attachment. And Nate is going to put it</p> <p>21 back up here in a second.</p> <p>22 We are now on the attachment. And the</p> <p>23 attachment --</p> <p>24 MR. CLUBOK: You will give me control</p> <p>25 over here, Nate?</p>	<p style="text-align: right;">271</p> <p>1 Q And Isaac has highlighted that in the</p> <p>2 email he sent you.</p> <p>3 This is not highlighting we put on.</p> <p>4 This is something that Isaac put on to draw your</p> <p>5 attention to it pursuant to is email where he says</p> <p>6 said certain emails are highlighted as I discussed</p> <p>7 with Dio; do you see that?</p> <p>8 <b>A I do.</b></p> <p>9 Q So, he highlights something where</p> <p>10 Fuentes says, "It's my understanding this is an</p> <p>11 affiliate Highland account." And he highlights</p> <p>12 another email that says, "Sentinel tried to get a</p> <p>13 little over 2 million out, and will get less than</p> <p>14 790,000 out," do you see that?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And does this ring a bell that Mr.</p> <p>17 Leventon specifically brought this issue to your</p> <p>18 attention?</p> <p>19 <b>A Yes.</b></p> <p>20 Q And what happened?</p> <p>21 <b>A What do you mean what happened?</b></p> <p>22 Q Okay. Do you remember anything else or</p> <p>23 just that he brought this issue to your attention?</p> <p>24 Was there any resolution?</p> <p>25 <b>A Was there any resolution?</b></p>
<p style="text-align: right;">270</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q It is a two-page document that at the</p> <p>3 top starts; with -- it is a two-page Excel</p> <p>4 spreadsheet. It contains information. The top is</p> <p>5 an entry dated June 6, 2019, from DiOrio Fuentes.</p> <p>6 And then if you scroll down, it</p> <p>7 chronologically goes forward in time until</p> <p>8 ultimately December 6th, 2019, which is the last</p> <p>9 entry.</p> <p>10 Do you see that?</p> <p>11 <b>A I do.</b></p> <p>12 Q So if you look here -- if we go back to</p> <p>13 the first page on June 25th, 2019 at 10:07 a.m.,</p> <p>14 there's an email that says, "Who at the Sentinel</p> <p>15 Reinsurance Limited is the Governance Re, 12</p> <p>16 percent of the fund is 2 million redemption that</p> <p>17 day." Do you see that?</p> <p>18 <b>A I do.</b></p> <p>19 Q And at 6/25/2019 after another -- I'm</p> <p>20 skipping one email. But at 10:11, someone writes</p> <p>21 back -- it's from Fuentes to Norris, copying</p> <p>22 Hakemack, Thedford, Klos and it says, it's my</p> <p>23 understanding that this is an affiliate Highland</p> <p>24 account; do you see that?</p> <p>25 <b>A I do.</b></p>	<p style="text-align: right;">272</p> <p>1 Q Yeah.</p> <p>2 <b>A To what?</b></p> <p>3 Q What was the issue he was raising?</p> <p>4 What was he -- what did he bring here --</p> <p>5 He said, "Look at these emails."</p> <p>6 Presumably he had to have a discussion with him</p> <p>7 about it?</p> <p>8 <b>A No, I instructed Mr. Leventon to</b></p> <p>9 <b>construct this timeline.</b></p> <p>10 Q Oh. Why?</p> <p>11 <b>A Because Mr. McGraner who is the</b></p> <p>12 <b>portfolio manager for the funds managed by</b></p> <p>13 <b>NexPoint Advisors, had asked me to understand why</b></p> <p>14 <b>Sentinel had put in a redemption request. And I</b></p> <p>15 <b>said I wasn't aware that they had.</b></p> <p>16 Q And the reason that that mattered was</p> <p>17 because Sentinel was not an independent investor,</p> <p>18 but was -- it could be considered an insider, and</p> <p>19 that might have consequences for them putting in a</p> <p>20 redemption; correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: Not at all.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Not at all?</p> <p>25 <b>A No, not at all.</b></p>

<p style="text-align: right;">273</p> <p>1 Q That was certainly a concern, wasn't 2 it?</p> <p>3 <b>A No, it was not.</b></p> <p>4 MS. SMITH: Objection to form. 5 BY MR. CLUBOK:</p> <p>6 Q Let's look at the next page, July 24th, 7 2019, an email from Hollister to Goetz, copying 8 Norris, Noel. He says, "Investors are concerned 9 about redemption capacity. 'Do we know how that 10 big internal redemption is going to look to people 11 who look at such reports'."?</p> <p>12 Do you see that?</p> <p>13 <b>A Which one are you referring to?</b></p> <p>14 Q The one right above the yellow 15 highlighting, where Hollister at NexPoint 16 Securities says, "Investors are concerned about 17 redemption capacity. 'Do we know how that big 18 internal redemption is going to look to people who 19 look at such reports'."?</p> <p>20 <b>A Okay.</b></p> <p>21 Q And in response, McGraner writes, "Our 22 reinsurer -- our reinsurer held the position and 23 had to redeem to manage its own cash needs. Not 24 sure if that helps but that's the reason."</p> <p>25 <b>A Okay.</b></p>	<p style="text-align: right;">275</p> <p>1 redeemer;" it doesn't mean they are. Furthermore 2 if you go down to Lauren Thedford, who is the 3 compliance person "Is Sentinel a Form 4 filer for 4 NXRT?" "Nope..." meaning they are not an affiliate 5 and not an insider. So your assumptions are based 6 upon what a bunch of real estate guys think.</p> <p>7 Q Right.</p> <p>8 <b>A For the reason I had Mr. Leventon build 9 this, is when it came to my attention from 10 Mr. McGraner he said what's going on. CIMA is the 11 one that told us to redeem out of this fund. Told 12 Sentinel, when I refer to "us."</b></p> <p>13 <b>Mr. McGraner didn't understand that and 14 he goes, that's not what I understand, so I had 15 Mr. Leventon build this timeline, so I could 16 discuss it with Mr. McGraner. This is the 17 resolution.</b></p> <p>18 <b>BY MR. CLUBOK:</b></p> <p>19 Q CIMA told you --</p> <p>20 <b>A -- (overspeaking) --</b></p> <p>21 Q I'm sorry, CIMA told you to redeem out 22 of this fund on behalf of Sentinel?</p> <p>23 <b>A Yes. In their annual portfolio review 24 they instructed the independent directors to 25 redeem out of this fund.</b></p>
<p style="text-align: right;">274</p> <p>1 Q And then Hollister says, "Reinsurer? 2 Like our health insurance fund or just a 3 well-known third party"?</p> <p>4 McGraner then writes back: "We have an 5 offshore reinsurance company that has several 6 investments in our funds. It writes D&amp;O policies, 7 property, etc."</p> <p>8 To which Hollister responds: "Just 9 know that if a fund maxes out its redemptions, 10 that's seen as a massive red flag unless there is 11 a story to go along with it."</p> <p>12 Then asks if there is an explanation to 13 give outside investors. Okay.</p> <p>14 <b>A So, it was a concern that Sentinel's 15 redemption could be considered as a problem for 16 outside investors, given its status as an insider; 17 correct?</b></p> <p>18 MS. SMITH: Objection to form. 19 THE WITNESS: No. No, you're wrong. 20 This is an email exchange with real estate 21 analysts and a portfolio manager. Their knowledge 22 of what's an affiliate or Form 4 filer, etcetera 23 is utterly irrelevant because they have no 24 training in this. 25 They could have written, "UBS is our</p>	<p style="text-align: right;">276</p> <p>1 Q Yeah and -- (overspeaking) --</p> <p>2 <b>A If you look at the 7/31/2019 email from 3 Lorne Thedford. So, Mr. DiOrio, who's not a 4 compliance professional says "Is Sentinel a Form 4 5 filer for NXRT?" The compliance person says, 6 "Nope, just under 1% and not included in JD's 7 group, so Sentinel is good."</b></p> <p>8 <b>The only email that matters on this 9 whole thing is hers. She's the only person 10 qualified to make that determination.</b></p> <p>11 Q Right. And so there was a 12 determination that with respect to -- there was a 13 determination that Sentinel would not be a Form 4 14 Filer for NXRT, right?</p> <p>15 <b>A Yes, and also she is the compliance 16 person on any of these chains. I haven't looked 17 them all because you guys were scrolling up and 18 down. She says, "Nope, just under 1 percent." 19 Now, what's really important, "and not included in 20 JD's group," presumably referring in to Jim 21 Dondero, meaning it's not a affiliate, so Sentinel 22 was good.</b></p> <p>23 <b>What these real estate guys think is 24 about as important as is if we went and got a man 25 off the street to make that determination.</b></p>

<p style="text-align: right;">277</p> <p>1 Q And when you say Sentinel is good, does 2 that mean you and Jim Dondero are free to make any 3 transactions you want with Sentinel, without 4 regard to whether or not you are -- they are 5 related entities to you? 6 <b>A Absolutely not.</b> 7 MS. SMITH: Objection to form. 8 THE WITNESS: Absolutely not. It means 9 compliance makes the decision, which on 10 7/31/2019 at 12:14 p.m. Lorne Thedford, the 11 compliance professional makes the determination. 12 BY MR. CLUBOK: 13 Q And is there a written determination 14 with respect to the Sentinel transaction on the 15 ATE policy in any writing anywhere that you are 16 aware of? 17 <b>A My personal knowledge, I don't know but</b> 18 <b>here is hers in writing. Sentinel is good, not</b> 19 <b>part of JD's group. Not an affiliate.</b> 20 <b>If you look up above, this actually got</b> 21 <b>Mr. Sargent and Mr. Post on 6/26/2019. The</b> 22 <b>"NexPoint Repurchase Event," along with</b> 23 <b>Ms. Thedford and Mr. Sargent and Mr. Post, the</b> 24 <b>three most senior people in compliance, including</b> 25 <b>the chief compliance officer.</b></p>	<p style="text-align: right;">279</p> <p>1 followed for CDO Funds during this timeframe? 2 <b>A Yes, for anything that's --</b> 3 -- (overspeaking) -- 4 MS. SMITH: Objection to form. 5 THE WITNESS: -- Highland and because 6 Highland, is my understanding, was the GP of that 7 entity, it would have been, like all funds, 8 governed by the same compliance process. But 9 again, that's a question for Mr. Sargent and his 10 staff. 11 Q Okay, so it would be Mr. Sargent who 12 would know whether or not the process for trades 13 out of CDO Fund, SOHC and HFP at the time, would 14 be subject to a compliance process that was 15 established? 16 <b>A Yes, and again my experience with</b> 17 <b>working with Mr. Sargent for 15 years, he was</b> 18 <b>incredibly diligent, incredibly careful CCO.</b> 19 Q Is Mr. Sargent honest? 20 <b>A In my opinion, yes.</b> 21 Q Does Mr. Sargent -- have you ever -- 22 strike that. 23 Have you ever heard of him being 24 accused of being dishonest? 25 MS. SMITH: Objection to form.</p>
<p style="text-align: right;">278</p> <p>1 Q Did Highland Capital Management have a 2 protocol for non -- for trades -- strike that. 3 Did Highland Capital Management have a 4 compliance review protocol for trades that were 5 not implicated by the Investment Advisors Act? 6 MS. SMITH: Objection to form. 7 THE WITNESS: I don't understand the 8 question. 9 BY MR. CLUBOK: 10 Q There is a compliance process to 11 approve trades that you described, and I take it 12 that applied to any transaction involving a fund 13 that Highland was managing for outside investors? 14 <b>A Yes, and the 33 Act, 34 Act, 40 Act,</b> 15 <b>the RAA, other codified laws, SEC letter rulings,</b> 16 <b>etcetera.</b> 17 Q Okay, and do any of those rules or 18 compliance reviews under those rules apply to a 19 transaction between CDO Fund, SOHC, HFP on the one 20 hand and Sentinel Insurance on the other hand or 21 do you know? 22 <b>A I do not know. That's a question for</b> 23 <b>Mr. Sargent and his staff.</b> 24 Q Was -- did -- was there a -- was there 25 a compliance process that was required to be</p>	<p style="text-align: right;">280</p> <p>1 THE WITNESS: I'm sure somebody's 2 accused him of being dishonest over the years. 3 BY MR. CLUBOK: 4 Q Did he have a reputation for honesty 5 around Highland Capital Management? 6 <b>A I don't know what his reputation was,</b> 7 <b>but I would assume he did.</b> 8 Q Did you have a reputation for honesty 9 around Highland Capital Management? 10 <b>A I believe so.</b> 11 Q Did Isaac Leventon have a reputation 12 for honesty? 13 <b>A Yes.</b> 14 MS. SMITH: Now that we've established 15 everyone's honest, is now a good time for a break? 16 BY MR. CLUBOK: 17 Q Almost. Did Jim Dondero have a 18 reputation for honesty in the community, as far as 19 you know. 20 <b>A What community?</b> 21 Q The business world that he dealt in. 22 MS. SMITH: Objection to form. 23 THE WITNESS: I haven't run any polls; 24 I don't really know. 25 BY MR. CLUBOK:</p>

281	<p>1 Q I understand. We're talking about</p> <p>2 reputation. You certainly know and have</p> <p>3 acknowledged in the past that Mr. Dondero did not</p> <p>4 have a reputation for honesty, correct?</p> <p>5 <b>A I know that people --</b></p> <p>6 MS. SMITH: Objection to do form.</p> <p>7 THE WITNESS: I know there's certain</p> <p>8 people that have that belief, yes.</p> <p>9 MR. CLUBOK: Okay, let's take a break.</p> <p>10 THE VIDEOGRAPHER: We're going off the</p> <p>11 record at 5:09 p.m.</p> <p>12 (Recess taken 5:09 p.m. to 5:33 p.m.)</p> <p>13 THE VIDEOGRAPHER: We are going back on</p> <p>14 the record at 5:34 p.m.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q We've put up as an exhibit and it is a</p> <p>17 cover letter from Leventon to Sevilla, dated</p> <p>18 April 19th, 2017 with attachment "UBS settlement</p> <p>19 structure, (9) and there's a PowerPoint. You're</p> <p>20 not copied on that email, but I believe you've</p> <p>21 seen whether this version or different versions of</p> <p>22 this document, it was a settlement analysis</p> <p>23 between UBS vs Highland and it talks about, in the</p> <p>24 first substantive page: If Highland does not</p> <p>25 settlement and UBS wins or Highland wins, bottom</p>	283	<p>1 Sentinel. Potential to repair UBS</p> <p>2 distribution/relationship, etcetera.</p> <p>3 Do you recall seeing this analysis,</p> <p>4 even if it wasn't this exact version, something</p> <p>5 like this?</p> <p>6 <b>A No, I don't.</b></p> <p>7 Q It goes on and has a UBS settlement</p> <p>8 structure. Where step 1 was HFP/CDO Fund buy</p> <p>9 \$100 million ATE policy from Sentinel. And the</p> <p>10 premium is all the assets in HFP/CDO Fund; do you</p> <p>11 see that?</p> <p>12 <b>A I do.</b></p> <p>13 Q And then step 2, was going to be</p> <p>14 negotiate settlement with UBS; do you see that?</p> <p>15 <b>A I do.</b></p> <p>16 Q Are you aware of this settlement</p> <p>17 structure that was being considered prior to the</p> <p>18 purchase of the ATE policy?</p> <p>19 <b>A No.</b></p> <p>20 Q You had no idea about this?</p> <p>21 <b>A I've never seen this. To my</b></p> <p>22 <b>recollection, I've never seen this.</b></p> <p>23 Q Did you know about the steps that are</p> <p>24 outlined on the page -- it's slide 8.</p> <p>25 <b>A Do I know about these steps? Obviously</b></p>
282	<p>1 line there's no upside going to trial in either</p> <p>2 matter.</p> <p>3 Do you recall this analysis that was done in</p> <p>4 connection with the decision to purchase the ATE</p> <p>5 policy?</p> <p>6 <b>A No. I do not recall seeing this,</b></p> <p>7 <b>period, much less relative to the ATE policy.</b></p> <p>8 <b>BY MR. CLUBOK:</b></p> <p>9 Q Okay, I'm going to flip through it?</p> <p>10 <b>A Okay.</b></p> <p>11 Q And whether or not you saw this</p> <p>12 specific version or and there was like nine or ten</p> <p>13 different ones, some with slightly different edits</p> <p>14 but it talks about if Highland wins, it losses</p> <p>15 because there's going to be a big tax liability.</p> <p>16 It says if Highland doesn't settle, UBS</p> <p>17 could appeal.</p> <p>18 It says if Highland doesn't settle and</p> <p>19 this was when CITI was still potentially in the</p> <p>20 mix what would happen. It says: If Highland</p> <p>21 Settles... Sentinel would control HFP/CDO Fund</p> <p>22 assets currently \$94 million. See slide 10.</p> <p>23 Sentinel and HCMLP can use HFP/CDO Fund assets to</p> <p>24 generate cash to pay UBS settlement, \$50 million</p> <p>25 tax liability avoided. Residual assets stay at</p>	284	<p>1 <b>I understand the steps, but I don't know who</b></p> <p>2 <b>drafted these or where they came up with these</b></p> <p>3 <b>steps.</b></p> <p>4 Q Well, on slide 8 of Exhibit 47, there</p> <p>5 is a plan that's entitled "UBS settlement</p> <p>6 Structure Summary."</p> <p>7 <b>A Yep.</b></p> <p>8 Q And it goes through step 1, HFC/CDO</p> <p>9 buying a \$100 million ATE policy from Sentinel.</p> <p>10 <b>A Yeah.</b></p> <p>11 Q Then it continues to a conclusion where</p> <p>12 "Sentinel keeps net assets (could be up to</p> <p>13 \$50 million). Do you see that?</p> <p>14 <b>A I'm sorry, you broke up. Are you</b></p> <p>15 <b>talking about the conclusion?</b></p> <p>16 Q Yep.</p> <p>17 <b>A You already asked me that. Yes.</b></p> <p>18 Q There's step 1 through step 6 and then</p> <p>19 the conclusion; do you see that?</p> <p>20 <b>A I do.</b></p> <p>21 Q Did you know about this settlement</p> <p>22 structure proposal in connection -- well, did you</p> <p>23 know about this proposal?</p> <p>24 <b>A I've never seen this. I didn't -- I</b></p> <p>25 <b>had no knowledge of this.</b></p>

<p style="text-align: right;">285</p> <p>1 Q Even though you never saw this</p> <p>2 document, did you know there was at some time a</p> <p>3 plan that's consistent with what you see here on</p> <p>4 page 8 of Exhibit 47?</p> <p>5 <b>A I certainly didn't know this was the</b></p> <p>6 <b>plan because I never saw this. I was never told</b></p> <p>7 <b>of this. I don't know who drafted it. I don't</b></p> <p>8 <b>know who the audience was. No idea.</b></p> <p>9 Q Did you know that there was a plan to</p> <p>10 buy \$100 million ATE policy from Sentinel by HFP</p> <p>11 and CDO Fund?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I knew there was a plan</p> <p>14 at some point to buy a policy from Sentinel by the</p> <p>15 ultimate insureds. I didn't know what they were</p> <p>16 paying for that policy.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q And you know that it was ultimately a</p> <p>19 \$100 million policy that was purchased from</p> <p>20 Sentinel; correct?</p> <p>21 <b>A I don't think I ever knew the policy</b></p> <p>22 <b>amount. I don't even know that I've ever seen the</b></p> <p>23 <b>policy.</b></p> <p>24 Q You are a 30 percent owner in Sentinel</p> <p>25 and you never knew what the policy amount was?</p>	<p style="text-align: right;">287</p> <p>1 true?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: No, I didn't discuss</p> <p>4 anything with CIMA because I don't think I spoke</p> <p>5 in the meeting.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q It was discussed in a meeting where you</p> <p>8 were present with CIMA -- strike that, the ATE</p> <p>9 policy was specifically discussed in a meeting</p> <p>10 that you were present with the CIMA</p> <p>11 representatives?</p> <p>12 <b>A It was generally discussed when Jan was</b></p> <p>13 <b>discussing the litigation.</b></p> <p>14 Q There was actually a PowerPoint</p> <p>15 presentation presented by your colleagues in that</p> <p>16 meeting; isn't that true?</p> <p>17 <b>A I don't recall.</b></p> <p>18 Q In any event, did you know that there</p> <p>19 was a \$100 million --</p> <p>20 When is the first time that you learned</p> <p>21 that the ATE was a \$100 million face value?</p> <p>22 <b>A I don't remember.</b></p> <p>23 Q How long ago?</p> <p>24 <b>A I don't know. A couple of years ago,</b></p> <p>25 <b>maybe longer.</b></p>
<p style="text-align: right;">286</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: I don't think I ever knew</p> <p>3 the final policy amount, no.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Did you ever hear it being discussed as</p> <p>6 being a roughly \$100 million ATE policy?</p> <p>7 <b>A Best of my recollection it was a number</b></p> <p>8 <b>lower than that, but no, I never knew the final</b></p> <p>9 <b>amount.</b></p> <p>10 Q What was the number, best of your</p> <p>11 recollection, it was?</p> <p>12 <b>A I thought was around 80 million, but</b></p> <p>13 <b>obviously I was wrong.</b></p> <p>14 Q All right. After the policy was</p> <p>15 purchased -- well, strike that.</p> <p>16 You know the policy was purchased</p> <p>17 sometime in approximately August of 2017; correct?</p> <p>18 <b>A I knew that that was roughly the</b></p> <p>19 <b>timeframe, yes.</b></p> <p>20 Q And by the way, you had a meeting with</p> <p>21 CIMA about this policy two years later, right?</p> <p>22 <b>A I had a meeting with CIMA about the</b></p> <p>23 <b>litigation; not about this policy.</b></p> <p>24 Q Well, you specifically discussed the</p> <p>25 ATE policy during that 2019 meeting, isn't that</p>	<p style="text-align: right;">288</p> <p>1 Q Okay, so after the policy you found --</p> <p>2 after the purchase and --</p> <p>3 <b>A I still don't recall it being</b></p> <p>4 <b>100 million. I thought it was less, but obviously</b></p> <p>5 <b>my memory is faulty with that.</b></p> <p>6 Q Sorry, did you ever know it was</p> <p>7 100 million?</p> <p>8 <b>A I can't recall.</b></p> <p>9 Q All right. You knew that the premium</p> <p>10 was going to equal all the assets in the HFP and</p> <p>11 CDO Fund, correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: No, as I've testified</p> <p>14 numerous times today, I don't know what was</p> <p>15 finally transferred.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q Well, you knew that the cash from all</p> <p>18 those entities were transferred; correct?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: I did not know what was</p> <p>21 transferred.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Okay, you knew that all of the cash</p> <p>24 from CDO Fund was transferred as part of the</p> <p>25 overall consideration for the ATE policy that was</p>



<p style="text-align: right;">289</p> <p>1 purchase and sent to Sentinel; correct?</p> <p>2 <b>A Not true. I don't know what was</b></p> <p>3 <b>transferred.</b></p> <p>4 Q You certainly knew that all the cash</p> <p>5 from the HFP -- strike that.</p> <p>6 You knew that the all the cash in the</p> <p>7 accounts associated with HFP was transferred to</p> <p>8 Sentinel as part of a consideration for purchasing</p> <p>9 the ATE policy in August of 2017, correct?</p> <p>10 MS. SMITH: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: You can ask it 100</p> <p>13 different ways. I don't know what was transferred</p> <p>14 from any entity to Sentinel as part of the premium</p> <p>15 or all the premium or a subset of the premium. I</p> <p>16 don't know.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q You were specifically told that all the</p> <p>19 cash from these funds, HFP and CDO Fund was being</p> <p>20 transferred to Sentinel as partial payment for the</p> <p>21 policy, weren't you?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 THE WITNESS: No, I don't recall that.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did you ever in words or substance,</p>	<p style="text-align: right;">291</p> <p>1 <b>know what was going on with the case, even though</b></p> <p>2 <b>they had no involvement.</b></p> <p>3 Q You were -- there was a -- this</p> <p>4 settlement analysis PowerPoint that I'm showing</p> <p>5 you here, that's been marked -- this version of it</p> <p>6 that's been marked as 47, isn't it true that you</p> <p>7 tasked Isaac Leventon and Ms. Vitiello to prepare</p> <p>8 this?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 THE WITNESS: Not that I remember.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Isn't it true that you had discussions</p> <p>13 in April of 2017 and tasked them with preparing</p> <p>14 the UBS settlement structure PowerPoint?</p> <p>15 <b>A Not that I recall and I don't recall</b></p> <p>16 <b>ever seeing this, so if I tasked them with it,</b></p> <p>17 <b>it's strange, they never sent it to me.</b></p> <p>18 Q Who, on behalf of CDO Fund, negotiated</p> <p>19 the terms of the ATE policy?</p> <p>20 <b>A I don't know.</b></p> <p>21 Q Do you have any idea -- can you</p> <p>22 identify a single human being who was tasked with</p> <p>23 considering CDO Fund's interest in connection with</p> <p>24 the purchase of the ATE policy?</p> <p>25 <b>A No idea.</b></p>
<p style="text-align: right;">290</p> <p>1 discuss the concept of substantially all of the</p> <p>2 assets in HFP and CDO Fund being transferred to</p> <p>3 satisfy the premium for the ATE policy?</p> <p>4 <b>A I never had a discussion with anybody</b></p> <p>5 <b>about what's being transferred because I wasn't</b></p> <p>6 <b>involved with that process and had no knowledge of</b></p> <p>7 <b>what was finally transferred.</b></p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Were you responsible for ever reviewing</p> <p>10 Sentinel's financial statements?</p> <p>11 <b>A No.</b></p> <p>12 Q Did you ever look at any Sentinel</p> <p>13 financial statement ever?</p> <p>14 <b>A Never.</b></p> <p>15 Q Were you ever asked to weigh in on the</p> <p>16 likelihood of UBS prevailing at trial, after the</p> <p>17 issuance of the ATE policy, but before the result?</p> <p>18 <b>A By whom?</b></p> <p>19 Q By anyone?</p> <p>20 <b>A I'm sure somebody asked me.</b></p> <p>21 Q Who?</p> <p>22 <b>A I don't -- I don't recall who.</b></p> <p>23 <b>Mr. Dondero, I know, asked me several times. I</b></p> <p>24 <b>can't tell you when. I was asked one time by the</b></p> <p>25 <b>retail fund board out of curiosity they wanted to</b></p>	<p style="text-align: right;">292</p> <p>1 Q Can you identify a single person who</p> <p>2 was tasked with considering SOHC's interest in</p> <p>3 connection with the purchase of the ATE policy?</p> <p>4 <b>A No, I cannot.</b></p> <p>5 Q Can you identify a single person who</p> <p>6 was tasked with considering Highland Financial</p> <p>7 Partners or HFP's interest in connection with the</p> <p>8 purchase of the ATE policy?</p> <p>9 <b>A No I cannot.</b></p> <p>10 Q Did Mr. Dondero sign off on the ATE</p> <p>11 policy purchase?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 -- (overspeaking) --</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Sorry, what's the form objection to</p> <p>16 that?</p> <p>17 MS. SMITH: He's testified multiple</p> <p>18 times that it's compliance that signed off on it.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Okay. Scott, did Mr. Dondero approve</p> <p>21 the purchase of the ATE policy?</p> <p>22 <b>A I don't know.</b></p> <p>23 Q Do you know if Mr. Dondero knew about</p> <p>24 the purchase of the ATE policy before it was</p> <p>25 consummated?</p>

<p style="text-align: right;">293</p> <p>1 <b>A Yes, I do.</b></p> <p>2 Q How do you know that?</p> <p>3 <b>A I'm the one that told him. After</b></p> <p>4 <b>Surgent told me it was going through, I was</b></p> <p>5 <b>walking towards Mr. Dondero's office and said</b></p> <p>6 <b>Surgent told me it's going through.</b></p> <p>7 Q And had you -- and was that the last</p> <p>8 time you had spoken to Mr. Dondero about the ATE</p> <p>9 policy?</p> <p>10 <b>A No, I think I spoke to him about it</b></p> <p>11 <b>infrequently after that, but it wasn't very often.</b></p> <p>12 Q What did he say since then about it?</p> <p>13 <b>A Since when?</b></p> <p>14 Q Since that -- you just said that after</p> <p>15 you saw Mr. Surgent and he said it's going to</p> <p>16 through or whatever the words you used --</p> <p>17 <b>A Yeah.</b></p> <p>18 Q I might have changed the words.</p> <p>19 <b>A Yeah.</b></p> <p>20 Q And then you went to Mr. Dondero and</p> <p>21 what were the exact words you said to him about</p> <p>22 the ATE policy?</p> <p>23 <b>A Surgent just told me that he greenlit</b></p> <p>24 <b>or approved, I don't remember what I said,</b></p> <p>25 <b>something to that effect, the ATE policy.</b></p>	<p style="text-align: right;">295</p> <p>1 that Mr. Surgent -- what Mr. Surgent said to you</p> <p>2 in the hallway?</p> <p>3 <b>A I think I mentioned earlier today that</b></p> <p>4 <b>I remembered Mr. Dondero oddly asking me if it was</b></p> <p>5 <b>still in place a couple of years after it was put</b></p> <p>6 <b>in place.</b></p> <p>7 Q And that's the only conversation you</p> <p>8 recall ever having with him?</p> <p>9 <b>A That I remember with any kind of</b></p> <p>10 <b>specificity. I remember talking to him countless</b></p> <p>11 <b>times about trying to settle with you guys.</b></p> <p>12 Q How was it determined -- strike that.</p> <p>13 Who negotiated with Sentinel on the</p> <p>14 other side of Sentinel on behalf of any entity</p> <p>15 that purchased price of the ATE policy?</p> <p>16 <b>A I don't know.</b></p> <p>17 Q Who negotiated on behalf of Sentinel</p> <p>18 the purchase for the ATE policy?</p> <p>19 <b>A I don't know.</b></p> <p>20 Q Who negotiated on behalf of Sentinel,</p> <p>21 any term in the policy?</p> <p>22 <b>A I don't know.</b></p> <p>23 Q Who negotiated on behalf of any party</p> <p>24 that had any connection to the ATE policy?</p> <p>25 <b>A I had absolutely zero transparency to</b></p>
<p style="text-align: right;">294</p> <p>1 Q And what did Mr. Dondero say?</p> <p>2 <b>A I don't remember. I don't remember</b></p> <p>3 <b>exuberance or anything; it just seems like it was,</b></p> <p>4 <b>you know, due course.</b></p> <p>5 Q And then at some point after that -- at</p> <p>6 various points after that you tried to talk</p> <p>7 Mr. Dondero into settling the UBS litigation;</p> <p>8 correct?</p> <p>9 <b>A Many, many times.</b></p> <p>10 Q Did you ever remind him during those</p> <p>11 discussions about the existence of the ATE policy</p> <p>12 that could be used to help settle the case?</p> <p>13 <b>A I don't remember specifically saying</b></p> <p>14 <b>that, but I mean that was a known fact. I didn't</b></p> <p>15 <b>know that I had to remind him.</b></p> <p>16 Q Well, did you ever generally raise or</p> <p>17 remind him or -- strike that.</p> <p>18 Did you ever generally bring up the</p> <p>19 existence of the ATE policy that could help</p> <p>20 facilitate a settlement you were trying to</p> <p>21 convince him to enter into with UBS?</p> <p>22 <b>A I don't recall specifically or</b></p> <p>23 <b>generally bringing it up after that time period.</b></p> <p>24 Q So, did you ever talk to Mr. Dondero</p> <p>25 again about the ATE policy after that passing on</p>	<p style="text-align: right;">296</p> <p>1 <b>that process. I don't know.</b></p> <p>2 Q Do you know who would know?</p> <p>3 <b>A Directors of Sentinel.</b></p> <p>4 Q The only people who would know who</p> <p>5 negotiated the terms of the ATE policy you can</p> <p>6 think of are the independent directors of Sentinel</p> <p>7 or all the directors of Sentinel?</p> <p>8 <b>A Well, the independent directors, I</b></p> <p>9 <b>believe, were the only people that were the</b></p> <p>10 <b>directors at the time this was put in place and</b></p> <p>11 <b>I -- you had asked me who may know. I would</b></p> <p>12 <b>assume, being the directors, they would know, but</b></p> <p>13 <b>you asked me to speculate.</b></p> <p>14 Q Who were the independent directors at</p> <p>15 the time that the policy was issued?</p> <p>16 <b>A I don't recall.</b></p> <p>17 Q Does it ring a bell, Andrew Dean and</p> <p>18 Christopher Watler?</p> <p>19 <b>A Doesn't ring a bell. I want to say it</b></p> <p>20 <b>was people at Maples FS, but I could be wrong.</b></p> <p>21 Q Other than believing those two people</p> <p>22 would know who negotiated the terms, is there</p> <p>23 anybody else that you can think of in the world</p> <p>24 who would know how -- how the terms -- strike</p> <p>25 that. Would know anything about the negotiations</p>

<p style="text-align: right;">297</p> <p>1 of the terms of the ATE policy other than --</p> <p>2 -- (overspeaking) --</p> <p>3 <b>A Maybe Mr. Surgent. Since he was the</b></p> <p>4 <b>final approver of the transaction, maybe he knows.</b></p> <p>5 Q All right. And you think Mr. Surgent</p> <p>6 might -- you think Mr. Surgent might know how the</p> <p>7 price and other terms of the ATE policy were set?</p> <p>8 <b>A Potentially. You know, again, you are</b></p> <p>9 <b>asking me to speculate. I just I learned it</b></p> <p>10 was -- (inaudible).</p> <p>11 -- (overspeaking) --</p> <p>12 Q Is there anybody that you would expect</p> <p>13 in the legal department to know?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 THE WITNESS: I don't know. I don't</p> <p>16 know if it was done through counsel. I don't know</p> <p>17 if the firm retained counsel. I just don't know</p> <p>18 how it was done. I literally have no idea.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q So Mr. Leventon sent this email to JP</p> <p>21 Sevilla in -- (overspeaking) -- of 2019 --</p> <p>22 -- (overspeaking) --</p> <p>23 <b>A Yes.</b></p> <p>24 Q -- 2017 This is several months before</p> <p>25 the policy is purchased, right?</p>	<p style="text-align: right;">299</p> <p>1 -- (overspeaking) --</p> <p>2 THE WITNESS: -- sorry, in the</p> <p>3 structure summary, yes.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q And, in fact, the premium did turn out</p> <p>6 to be all or virtually all of the assets in HFP</p> <p>7 and CDO Fund, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I just don't know.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Did you ever make any effort to</p> <p>12 consider whether or not HFP and CDO Fund would</p> <p>13 retain the sufficient ability to satisfy a future</p> <p>14 judgment that might be awarded against them by --</p> <p>15 in favor of UBS?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: No, that was a process</p> <p>18 that compliance ran. I was not part of that</p> <p>19 process.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Compliance ran a process specifically</p> <p>22 to consider what ability HFP would have to satisfy</p> <p>23 a potential future judgment in UBS's favor?</p> <p>24 <b>A Compliance ran the process of approving</b></p> <p>25 <b>this transaction, which I'm assuming would be the</b></p>
<p style="text-align: right;">298</p> <p>1 <b>A Yes.</b></p> <p>2 Q And in it he says that that the plan is</p> <p>3 to buy a \$100 million ATE policy.</p> <p>4 <b>A Correct.</b></p> <p>5 Q And he said --</p> <p>6 <b>A And you said that "he said." I don't</b></p> <p>7 <b>know that Mr. Leventon drafted this document.</b></p> <p>8 Q Okay. In the presentation that Mr.</p> <p>9 Leventon forwards to JP Sevilla it states that</p> <p>10 step one was for HFP and CDO Fund to buy</p> <p>11 \$100 million ATE policy from Sentinel, right?</p> <p>12 <b>A Correct.</b></p> <p>13 Q And in fact \$100 million ATE policy was</p> <p>14 purchased from Sentinel; correct?</p> <p>15 <b>A I'll take your word for it. I'd have</b></p> <p>16 <b>to look at the policy to tell you the amount, but</b></p> <p>17 <b>if that's what you say it is, okay.</b></p> <p>18 Q And Mr. Leventon, in this email -- in</p> <p>19 the document that he sends to Mr. Sevilla, also --</p> <p>20 strike that.</p> <p>21 In the document that Mr. Leventon sends</p> <p>22 to Sevilla, it also anticipates that the premium</p> <p>23 for the ATE policy will be all the assets in HFP</p> <p>24 and CDO Fund, right?</p> <p>25 MS. SMITH: Objection to form.</p>	<p style="text-align: right;">300</p> <p>1 <b>analysis of that.</b></p> <p>2 <b>I certainly didn't do that analysis nor</b></p> <p>3 <b>would I have the skills to analyze what these</b></p> <p>4 <b>securities would be worth at some point in the</b></p> <p>5 <b>future.</b></p> <p>6 <b>BY MR. CLUBOK:</b></p> <p>7 Q Did you ever test -- do you have any</p> <p>8 idea what the total assets in HFP and CDO Funds</p> <p>9 were worth at the time of the ATE transaction?</p> <p>10 <b>A No idea.</b></p> <p>11 Q Do you have any idea if there was a --</p> <p>12 strike that.</p> <p>13 Do you know what the premium was for</p> <p>14 the policy?</p> <p>15 <b>A No, I don't. I'd have to look at the</b></p> <p>16 <b>policy.</b></p> <p>17 Q Do you have any idea if the assets that</p> <p>18 were used to purchase the policy were a fair</p> <p>19 equivalent value for the amount of premium that</p> <p>20 was due to pay for the policy?</p> <p>21 MS. SMITH: Objection, calls for a</p> <p>22 legal conclusion.</p> <p>23 THE WITNESS: No, I didn't have the</p> <p>24 skills to analyze that.</p> <p>25 BY MR. CLUBOK:</p>

<p style="text-align: right;">301</p> <p>1 Q Did you ask anyone to specifically look 2 into the question of whether or not the assets 3 that were being used to purchase the ATE policy 4 represented fair value for the purchase of the 5 policy? 6 <b>A No, again, that would be part of, I 7 would assume, compliance's process and not my job.</b> 8 Q And do you know -- you say you would 9 assume, but did you do anything to determine 10 whether or not a analysis had been run to see if 11 the assets being transferred to Sentinel were fair 12 value in light of the policy that was obtained in 13 exchange? 14 <b>A No and, again, because of SEC guidance 15 that's not my position or right or obligation or, 16 by design, I'm not supposed to be there asking 17 those questions.</b> 18 Q SEC -- what SEC guidance prohibits you 19 from engaging in an analysis as to whether or not 20 that transaction constituted a fraudulent 21 transfer? 22 <b>A It's supposed to be the sole 23 responsibility of compliance and not due to 24 outside influence.</b> 25 Q What SEC guidance says that?</p>	<p style="text-align: right;">303</p> <p>1 specifically prohibited you from engaging in a 2 fraudulent transfer analysis with respect to the 3 ATE policy? 4 <b>A No, from me interfering in the process 5 he runs as the Chief Compliance Officer, so if I 6 was going to get my own analysis that, by 7 definition, is interfering.</b> 8 Q Okay, I want to be very specific in the 9 question that you are answering, okay. 10 I asked -- you said -- I specifically 11 want to ask you about an analysis of a transaction 12 like the one that was done to purchase the ATE 13 policy with respect to whether or not it 14 constitutes a fraudulent transfer. 15 And my question is whether you were 16 ever told, in words or substance, that SEC 17 guidance prohibited you as the general counsel 18 from considering that question? 19 <b>A Yes, solely compliance. You can ask it 20 a thousand times. Solely compliance.</b> 21 Q Okay, and Mr. Surgent told you that 22 there was such SEC guidance. 23 <b>A Mr. Surgent told everyone compliance 24 runs their own process. If they want knowledge 25 from you or analysis from you, they'll come and</b></p>
<p style="text-align: right;">302</p> <p>1 <b>A You'd have to ask Mr. Surgent. I've 2 been told that 20 times. Compliance deals with an 3 arbiter. Then they do their analysis, their own 4 due diligence and they come to a determination. 5 If they want information from me, they come and 6 ask me for it.</b> 7 Q You were told 20 times by Mr. Surgent 8 that SEC guidance prohibited you from considering 9 whether or not the ATE transaction constituted a 10 fraudulent transfer? 11 <b>A No, Andy, you asked me if I went and 12 asked anybody to perform that analysis. 13 SEC guidance, to my understanding, that 14 that is solely the responsibility of compliance 15 and others don't go and do their own analysis.</b> 16 Q No, my specific question was: You said 17 that there was SEC guidance that you were told 20 18 times, that supposedly prohibited you from 19 engaging in an analysis of whether or not a 20 transaction like the one involving the ATE policy 21 constituted a fraudulent transfer? 22 <b>A Solely responsibility of compliance, it 23 is not me to generate that analysis.</b> 24 Q And you are saying that you were told 25 by Mr. Surgent that there is SEC guidance that</p>	<p style="text-align: right;">304</p> <p>1 <b>ask you.</b> 2 Q Do you know anything more specific 3 about what Surgent supposedly told you about this 4 supposed SEC guidance? 5 MS. SMITH: Objection to form. 6 THE WITNESS: You need to ask Mr. 7 Surgent. 8 BY MR. CLUBOK: 9 Q No, I'm asking if you know anything 10 more -- if you can say anything more specific 11 about what Mr. Surgent supposedly told you, other 12 than what you've just said? 13 <b>A When Mr. Surgent --</b> 14 MS. SMITH: Objection to form. 15 THE WITNESS: When Mr. Surgent defined 16 a process that had to do with compliance, I 17 adhered to what he said. 18 BY MR. CLUBOK: 19 Q Move to strike as nonresponsive. 20 I am just asking: Did he tell you 21 anything more specific about the supposed SEC 22 guidance that you've described, other than what 23 you've -- 24 <b>A No.</b> 25 Q -- testified here?</p>

<p style="text-align: right;">305</p> <p><b>1 A No. He didn't given training seminars</b></p> <p><b>2 on SEC guidance.</b></p> <p>3 Q Did you have any idea of the rough</p> <p>4 value of the assets in CDO Fund and SOHC, and HFP</p> <p>5 at that time frame?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Have you ever known about the value of</p> <p>10 the assets in HFP since -- strike that.</p> <p>11 At some point HFP was declared</p> <p>12 insolvent; right?</p> <p><b>13 A I don't know.</b></p> <p>14 Q You'd know that there was an insolvency</p> <p>15 letter sent with respect to HFP, right?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: I don't know what letters</p> <p>18 were sent to the investors of HFP.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q You knew that HFP had been -- had told</p> <p>21 its investors that was insolvent, correct?</p> <p><b>22 A No, I don't know what it told its</b></p> <p><b>23 investors. I'm not an HFP investor.</b></p> <p>24 Q You knew that there would be tax</p> <p>25 consequences if it turned out that HFP were</p>	<p style="text-align: right;">307</p> <p>1 myself and I was never an investor in HFP and</p> <p>2 never took the deduction with them.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q No, you specifically in settlement</p> <p>5 discussions mentioned that you knew that HFP had</p> <p>6 been declared insolvent and that they would have</p> <p>7 tax liability if there were assets left after the</p> <p>8 UBS litigation; isn't that true?</p> <p><b>9 A Oh, absolutely. I informed you that I</b></p> <p><b>10 had been told, that there were people that took</b></p> <p><b>11 tax deductions, and if HFP had value past some</b></p> <p><b>12 date certain it would unwind those tax deductions.</b></p> <p><b>13 What you asked me if I knew -- if I</b></p> <p><b>14 knew a letter was sent to those investors, of what</b></p> <p><b>15 deductions they took, I have no knowledge of any</b></p> <p><b>16 of that.</b></p> <p>17 Q Did you ever tell Mr. Seery or the</p> <p>18 Pachulski firm anything about the likelihood that</p> <p>19 SOHC would be proven to have been insolvent?</p> <p><b>20 A No, I don't remember having that</b></p> <p><b>21 discussion with Mr. Seery or Pachulski, no.</b></p> <p>22 Q Did you know that a position was taken</p> <p>23 by the debtor in the bankruptcy court, that</p> <p>24 suggested that there was uncertainty as to whether</p> <p>25 or not insolvency could be proven with respect to</p>
<p style="text-align: right;">306</p> <p>1 solvent because it were to -- strike that.</p> <p>2 You specifically knew that if HFP were</p> <p>3 to prevail against UBS and retain assets after</p> <p>4 2016 that it would create a tax liability for</p> <p>5 Mr. Dondero and others, correct?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I knew that generally,</p> <p>8 yes.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And you knew that because you</p> <p>11 understood in HFP that all those investors,</p> <p>12 including Mr. Dondero had taken what was called a</p> <p>13 worthless stock deduction with respect to their</p> <p>14 interest in HFP; correct?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: I don't know what</p> <p>17 deductions they took.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q Okay, you knew that there had been</p> <p>20 deductions taken by Mr. Dondero and others</p> <p>21 including yourself, I believe, with respect to the</p> <p>22 supposed worthlessness of their investment</p> <p>23 interest in HFP; right?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: I would only know about</p>	<p style="text-align: right;">308</p> <p>1 HFP, SOHC and CDO Fund?</p> <p><b>2 A I don't know what the debtor decided to</b></p> <p><b>3 make a determination of those entities. I know</b></p> <p><b>4 they did their own analysis.</b></p> <p>5 Q Did you ever provide any information to</p> <p>6 assist debtor's counsel to determine whether or</p> <p>7 not UBS would be likely able to show insolvency</p> <p>8 with respect to HFP, CDO Fund and SOHC?</p> <p><b>9 A Me personally, no. I believe they did</b></p> <p><b>10 an evidence and document-based search and did</b></p> <p><b>11 their own analysis is my understanding.</b></p> <p>12 Q Did you ever explain to anyone your</p> <p>13 knowledge with respect to the worth -- did you</p> <p>14 ever explain to anyone your knowledge about the</p> <p>15 tax deductions that had been taken with respect to</p> <p>16 SOHC and HFP and CDO?</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 THE WITNESS: I remember telling Mr.</p> <p>19 Seery what I discussed with you in settlement</p> <p>20 discussions prior to Mr. Seery's involvement, that</p> <p>21 various individuals, including Mr. Dondero had</p> <p>22 taken these tax deductions, and that I understood</p> <p>23 that -- and again this was just told to me, that</p> <p>24 if there was value after a date certain, that it</p> <p>25 could jeopardize those tax deductions.</p>

<p style="text-align: right;">309</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever tell Mr. Seery that HFP,</p> <p>3 CDO Fund and SOHC were ghost funds?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 THE WITNESS: Well, that's namesake</p> <p>6 that the offshore community uses with funds with</p> <p>7 no directors so, yes, I told him that.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q You told him that because they had no</p> <p>10 directors. Did you ever tell them -- strike that.</p> <p>11 Do you know whether or not the ATE</p> <p>12 policy would be considered an asset of the</p> <p>13 insureds?</p> <p>14 <b>A I have no idea. I don't know -- I</b></p> <p>15 <b>don't have any training in how to assess that.</b></p> <p>16 Q Did you make any effort to get an</p> <p>17 answer to whether or not the ATE policy could be</p> <p>18 considered an asset of the insureds?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Let's look at Exhibit 2. It is a</p> <p>23 seven-page document entitled "Purchase Agreement</p> <p>24 dated August 7th, 2017."</p> <p>25 Have you ever seen this document</p>	<p style="text-align: right;">311</p> <p>1 of any of the entities for which Mr. Dondero</p> <p>2 signed his name to this agreement?</p> <p>3 MS. SMITH: I'm sorry, Andy, can you</p> <p>4 repeat the question? You kind of went out on me.</p> <p>5 I'm sorry.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q No problem. Mr. Ellington, can you</p> <p>8 identify a single human being from anywhere in the</p> <p>9 Highland organization, who acted on behalf of any</p> <p>10 of the entities for which Mr. Dondero signed his</p> <p>11 name to this agreement?</p> <p>12 <b>A I was not involved in this process.</b></p> <p>13 <b>I had no transparency in the process and the</b></p> <p>14 <b>answer is no.</b></p> <p>15 Q And sorry, you said you'd never seen</p> <p>16 this before today?</p> <p>17 <b>A I said I don't recall seeing it. I</b></p> <p>18 <b>don't believe I ever have.</b></p> <p>19 Q If you take a look at Schedule A, you</p> <p>20 see all the assets listed.</p> <p>21 <b>A I'm sorry, take a look at what?</b></p> <p>22 Q Schedule A.</p> <p>23 <b>A Yes, Schedule A, sorry.</b></p> <p>24 Q You see where it lists assets of the</p> <p>25 various entities.</p>
<p style="text-align: right;">310</p> <p>1 before?</p> <p>2 MS. SMITH: Objection, asked and</p> <p>3 answered.</p> <p>4 THE WITNESS: I don't believe I have.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q You see on the third page where</p> <p>7 Mr. Dondero signs on behalf of CDO Fund, CDO</p> <p>8 HoldCo, SOHC and CDO Opportunity Master Fund?</p> <p>9 <b>A CDO master, opportunity -- yes I do.</b></p> <p>10 Q And do you see where he also signed on</p> <p>11 behalf of the next page, HFC and HFP?</p> <p>12 <b>A Yes.</b></p> <p>13 Q And did Mr. Dondero negotiate the terms</p> <p>14 of all of these entities?</p> <p>15 <b>A I don't know.</b></p> <p>16 Q Did you advise Mr. Dondero on behalf of</p> <p>17 any of these entities that he signed on behalf of?</p> <p>18 <b>A No.</b></p> <p>19 Q Did you act in any way on behalf of any</p> <p>20 of these entities that Mr. Dondero signed his name</p> <p>21 on behalf of?</p> <p>22 <b>A No, I was not involved in this process</b></p> <p>23 <b>at all.</b></p> <p>24 Q Can you identify a single human being</p> <p>25 from the Highland organization who acted on behalf</p>	<p style="text-align: right;">312</p> <p>1 <b>A I do.</b></p> <p>2 Q Including cash in some cases.</p> <p>3 <b>A Yes.</b></p> <p>4 Q Did you know that all these assets were</p> <p>5 consideration for the purchase agreement?</p> <p>6 <b>A I see that now.</b></p> <p>7 MS. SMITH: Objection, calls for legal</p> <p>8 conclusion.</p> <p>9 THE WITNESS: I mean, I see it in the</p> <p>10 document. Obviously, I knew there was some assets</p> <p>11 as part of a premium, but these specific assets,</p> <p>12 I had zero knowledge of these specific assets.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Remember the settlement document that I</p> <p>15 showed you earlier?</p> <p>16 <b>A The what document?</b></p> <p>17 Q The settlement structure document that</p> <p>18 I showed you earlier.</p> <p>19 <b>A Oh, the PowerPoint presentation?</b></p> <p>20 Q Yeah.</p> <p>21 <b>A Yes.</b></p> <p>22 Q Was there any version of that that you</p> <p>23 ever told -- strike that.</p> <p>24 Did you ever have a discussion with</p> <p>25 Stephanie Vitiello about any UBS settlement</p>

<p style="text-align: right;">313</p> <p>1 structure in April of 2017, around the time of 2 that document? 3 <b>A Not that I recall, no.</b> 4 Q Let's show you what's behind tab 24. I 5 don't think you have this and we'll call it 6 whatever the next exhibit is. Could you put that 7 up. 8 What's the number, Shannon? 9 (Deposition Exhibit 88 was marked for 10 identification.) 11 BY MR. CLUBOK: 12 Q So Exhibit 88 is an email from 13 Stephanie Vitiello to Isaac Leventon. Previously 14 we showed you a document that had been marked 15 as -- that had a UBS settlement structure. 16 I think it was like version 9 at that 17 point. 18 This one which is a few days earlier, 19 it says, "UBS settlement structure (SV) maybe that 20 stands for Stephanie Vitiello. 21 And it says: "Thanks for sending. 22 Based on our discussion with Scott, I started 23 updating the first few slides. I will be in by 8 24 tomorrow so we can edit before we meet with Scott 25 if you would like."</p>	<p style="text-align: right;">315</p> <p>1 <b>and how long ago, but I have a pretty good memory.</b> 2 Q Do you remember less than an hour ago 3 when I asked you if you were ever told that cash 4 was transferred from HFP funds and CDO Funds to 5 Sentinel with respect to the ATE policy? 6 <b>A I do.</b> 7 Q Do you remember saying that you're 8 certain you never knew that? 9 <b>A That's not what I said. I said I don't</b> 10 <b>recall.</b> 11 Q Okay, I'm going to -- I'm going to show 12 you what's been marked as Exhibit 89, which is 13 behind tab 30. 14 (Deposition Exhibit 89 was marked for 15 identification.) 16 BY MR. CLUBOK: 17 Q This is a one-page document that starts 18 with Katie Irving sending an email to Carter Chism 19 and JP Sevilla with the subject "Sentinel wiring 20 info." That gets forwarded by Carter Chism to a 21 number of people and JP Sevilla then forwards it 22 to you. 23 <b>A Okay.</b> 24 Q And we'll have it up here in a second. 25 It's Exhibit 89. I am going to make it</p>
<p style="text-align: right;">314</p> <p>1 MS. SMITH: Objection. I would like a 2 copy of the exhibit before you start questioning 3 him and giving him... 4 BY MR. CLUBOK: 5 Q Yeah, sorry, do you have any -- does 6 this refresh your recollection that you had 7 discussions with Stephanie and Isaac about a UBS 8 settlement structure in April of 2017? 9 <b>A No.</b> 10 Q Do you recall ever discussing with them 11 a plan to start a new company to issue the ATE 12 policy? 13 MS. SMITH: Objection as to form. I'd 14 like to see the exhibit, please. 15 BY MR. CLUBOK: 16 Q Do you recall ever discussing with them 17 a plan to start a new company to issue the ATE 18 policy? 19 <b>A No.</b> 20 Q Do you consider yourself to have a good 21 memory? 22 <b>A Depends.</b> 23 Q Do you consider yourself to have a good 24 memory? 25 <b>A It depends on what we're talking about</b></p>	<p style="text-align: right;">316</p> <p>1 bigger here in a second, if Nate let's me. That 2 is probably too big. 3 I'll go down to the bottom email in the 4 chain. As I mentioned, it is wiring instructions. 5 It says: "Sentinel wire instructions 6 for cash arising from transaction below." 7 And it's the subject of Sentinel wiring 8 info and it's dated August 11, 2017. Do you see 9 that? 10 <b>A I do.</b> 11 Q And then there's an email that Carter 12 sends to a bunch of people not including you and 13 it says: 14 "Please confirm this serves as instruction 15 to wire cash from all HFP funds and all CDO Funds 16 to the account listed in the instructions below." 17 Referencing it's Sentinel. 18 Do you see that? 19 <b>A I do.</b> 20 Q And this is money that's all wired to 21 Bank of New York Mellon; correct? 22 <b>A That's what it looks like, yes.</b> 23 Q And the account name is MaplesFS 24 Limited. 25 <b>A Correct.</b></p>

<p style="text-align: right;">317</p> <p>1 Q And it is for Sentinel reinsurance</p> <p>2 Limited, correct?</p> <p>3 <b>A Correct.</b></p> <p>4 Q And that is all the cash from HFP funds</p> <p>5 and all CDO Funds, according to this, correct?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: No, it actually says:</p> <p>8 "Please confirm this serves as instructions to</p> <p>9 wire cash from all (the funds) and all CDO Funds."</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Okay.</p> <p>12 <b>A Also you've asked me over and over if</b></p> <p>13 <b>Mr. Sargent knew that Sentinel involved in the</b></p> <p>14 <b>transaction; he's on this email.</b></p> <p>15 <b>BY MR. CLUBOK:</b></p> <p>16 Q Right.</p> <p>17 <b>A And he didn't know if it was Sentinel.</b></p> <p>18 <b>That clears that up.</b></p> <p>19 Q And then this email's forwarded to you</p> <p>20 by JP Sevilla and it says "FYI," do you see that?</p> <p>21 <b>A I did.</b></p> <p>22 Q You just started shouting a little</p> <p>23 bit --</p> <p>24 <b>A I didn't shout; I was speaking.</b></p> <p>25 Q Well, we have an audio, so we'll see</p>	<p style="text-align: right;">319</p> <p>1 <b>before I am, and Cliff Stoops and Frank Waterhouse</b></p> <p>2 <b>and many others.</b></p> <p>3 Q Right. Is there a -- all right.</p> <p>4 <b>A It also says "wiring info," if you</b></p> <p>5 <b>noticed that.</b></p> <p>6 <b>It doesn't say anything -- unless you</b></p> <p>7 <b>read down in the chain of what is being wired, so</b></p> <p>8 <b>I highly doubt if I saw "Sentinel wiring info"</b></p> <p>9 that I would go and ... (inaudible) into what I</p> <p>10 received. I don't remember this at all.</p> <p>11 Q Right, so you get this email that says</p> <p>12 "Privileged and Confidential, Sentinel wiring</p> <p>13 info."</p> <p>14 <b>A Yes.</b></p> <p>15 Q And scrolling down just a little bit it</p> <p>16 says:</p> <p>17 "Please confirm this serves as instruction</p> <p>18 to wire cash from all HFP funds and all CDO Funds</p> <p>19 to the account listed in the instructions below."</p> <p>20 It's not a long email; it's one sentence</p> <p>21 under a subject that says in big bold caps,</p> <p>22 "Privileged and confidential" and then says in</p> <p>23 bold "Sentinel wiring info."</p> <p>24 <b>A It's not one sentence. It is further</b></p> <p>25 <b>on in the chain and it supposedly has an</b></p>
<p style="text-align: right;">318</p> <p>1 that you raised your voice there.</p> <p>2 <b>A I also leaned in closer to the</b></p> <p>3 <b>microphone, maybe that was the issue.</b></p> <p>4 Q Yeah, well this confirmed the</p> <p>5 instruction to wire cash from all HFP funds and</p> <p>6 all CDO Funds; do you see that?</p> <p>7 <b>A Yeah, I see that.</b></p> <p>8 Q And it's sent to you, so you certainly</p> <p>9 were aware of that, correct?</p> <p>10 <b>A I was aware of it? I don't even know</b></p> <p>11 <b>that I read it.</b></p> <p>12 MS. SMITH: Objection, that</p> <p>13 mischaracterizes this. That first email was not</p> <p>14 sent to him.</p> <p>15 THE WITNESS: Also you asked me if I</p> <p>16 knew all the cash was sent and that's not even</p> <p>17 what this email said. Wire cash from all HFP</p> <p>18 funds and all CDO.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q Right, first of all --</p> <p>21 <b>A There's is no schedule of what was</b></p> <p>22 <b>said. It doesn't say "all the cash" so you</b></p> <p>23 <b>mischaracterized or your question was different.</b></p> <p>24 Q Okay.</p> <p>25 <b>A And, again, Mr. Sargent is on this</b></p>	<p style="text-align: right;">320</p> <p>1 <b>attachment and furthermore, I got at this time</b></p> <p>2 <b>period, between 400 and 500 emails a day, so when</b></p> <p>3 <b>I saw something that is wiring info and, again,</b></p> <p>4 <b>you kept asking, I knew, I knew, all the cash,</b></p> <p>5 <b>that's not even what this says. This is wire</b></p> <p>6 <b>cash. That could be \$5. I don't know. There's</b></p> <p>7 <b>nothing on this email that even says how much cash</b></p> <p>8 <b>is being sent.</b></p> <p>9 Q Looking at this email, it's forwarded</p> <p>10 to you and it says FYI.</p> <p>11 Then there is an email that is</p> <p>12 forwarded to you that has one sentence that says,</p> <p>13 "Please confirm" etc; isn't that true?</p> <p>14 <b>A That is not true because then there's</b></p> <p>15 <b>from Katie Irving.</b></p> <p>16 Q Sorry -- just --</p> <p>17 -- (overspeaking) --</p> <p>18 <b>A Chism and JP Sevilla was on the same</b></p> <p>19 <b>chain. And it is "Sentinel wiring instructions</b></p> <p>20 <b>from cash arising from transaction..." Doesn't</b></p> <p>21 <b>say what transaction. "...are below, thank you."</b></p> <p>22 <b>So, no, what you're saying is not true.</b></p> <p>23 Q Right, but the -- I'm sorry, when you</p> <p>24 are forwarded an email that has one sentence that</p> <p>25 says, "Confirm this serves as instructions to wire</p>



<p style="text-align: right;">321</p> <p>1 cash from all HFP funds and all CDO Funds                  2 etcetera..."                  3 Then if you scroll down, you see that                  4 it's Sentinel wiring info and simply the                  5 instructions for how to wire the money to                  6 Sentinel.                  7 That's the entirety of the substance of                  8 this email.                  9 <b>A Totally agree. It doesn't have an</b>                  10 <b>amount of what was wired or anything or cash -- I</b>                  11 <b>don't know if they said \$100 or I don't know if</b>                  12 <b>they sent it all. It is completely</b>                  13 <b>non-informative of what's being sent, other than</b>                  14 <b>cash, generally.</b>                  15 Q You were well aware that there was a                  16 plan to transfer virtually all of the assets from                  17 CDO Fund and SOHC and HFP to Sentinel with respect                  18 to the ATE policy; isn't that true?                  19 <b>A No, I do not know what was transferred.</b>                  20 <b>I do not know what was contemplated to be</b>                  21 <b>transferred in the process.</b>                  22 Q Okay.                  23 <b>A As you can tell, when the mechanics</b>                  24 <b>were being put here, I'm not included by anyone.</b>                  25 <b>JP decides to send me an FYI, which certainly</b></p>	<p style="text-align: right;">323</p> <p>1 THE WITNESS: I do.                  2 BY MR. CLUBOK:                  3 Q And Mr. Dondero knew about this too,                  4 right?                  5 MS. SMITH: Objection to form.                  6 THE WITNESS: Mr. Dondero knew about                  7 what?                  8 BY MR. CLUBOK:                  9 Q Mr. Dondero knew that Sentinel had                  10 tried to redeem an interest in Multi Strat;                  11 correct?                  12 <b>A I don't know what Mr. Dondero knew and</b>                  13 <b>when he knew it?</b>                  14 Q Did you ever refer to the interest in                  15 Multi Strat being owned by SAS, as opposed to                  16 Sentinel in any document, internally?                  17 <b>A I'm sorry, you broke up. Did I ever</b>                  18 <b>what?</b>                  19 Q Do you know if at Highland it was ever                  20 record recorded that the interest in Multi Strat                  21 with respect to Sentinel was identified as being                  22 with respect to SAS?                  23 <b>A No, not that I'm aware of.</b>                  24 Q Would that be a mistake if it was                  25 listed that way?</p>
<p style="text-align: right;">322</p> <p>1 <b>doesn't say I need to take action or approve</b>                  2 <b>anything.</b>                  3 Q You are the 30 percent -- you own                  4 30 percent of the economic interest of whatever                  5 cash was transferred to Sentinel; correct?                  6 <b>A Of the ultimate beneficial ownership</b>                  7 <b>of entities I'm associated with.</b>                  8 Q Have you ever received any compensation                  9 in any form from Sentinel?                  10 <b>A No.</b>                  11 Q Have you ever had a valuation done of                  12 Sentinel since the one we looked at?                  13 <b>A No.</b>                  14 Q You are aware that one of the interests                  15 that was transferred from CDO Fund to Sentinel in                  16 August 2017 to pay for the insurance policy, was                  17 its interest in a Multi Strat fund?                  18 MS. SMITH: Objection to form.                  19 THE WITNESS: No, I don't know what was                  20 transferred.                  21 BY MR. CLUBOK:                  22 Q You know that there was a redemption                  23 purportedly by Sentinel with respect to Multi                  24 Strat; correct?                  25 MS. SMITH: Objection to form.</p>	<p style="text-align: right;">324</p> <p>1 <b>A I believe it would be a mistake because</b>                  2 <b>SAS certainly never owned it to my knowledge.</b>                  3 Q Do you know anything about -- well,                  4 does Sentinel today own any interest in Multi                  5 Strat, as far as you know?                  6 <b>A I don't know what Sentinel owns in</b>                  7 <b>Multi Strat today.</b>                  8 Q So, you have no idea one way or the                  9 other as to whether Sentinel has any right to any                  10 redemption interest it may have claimed with                  11 respect to Multi Strat, correct?                  12 MS. SMITH: Objection to form.                  13 THE WITNESS: I have no opinion, one                  14 way or the other. I don't know what Sentinel                  15 owns, that redemption right as to Multi Strat.                  16 BY MR. CLUBOK:                  17 Q You had Mr. Leventon working -- strike                  18 that.                  19 Did you ever tell Isaac Leventon that                  20 the ATE policy was Mr. Dondero's idea?                  21 <b>A Not that I recall, no.</b>                  22 Q Did you ever -- in July of 2020, do you                  23 recall a time when you and Mr. Leventon were                  24 involved with supposedly trying to find                  25 information about the assets of HFP, CDO Fund and</p>

<p style="text-align: right;">325</p> <p>1 SOHC?                  2 <b>A Yes.</b>                  3 MS. SMITH: Objection to form.                  4 BY MR. CLUBOK:                  5 Q And at that time did you discuss the                  6 ATE policy with Isaac Leventon as to whether or                  7 not it would be relevant to the -- to that task?                  8 <b>A Not that I recall.</b>                  9 Q Did you and Isaac Leventon do                  10 everything you possibly could to create a true and                  11 accurate document-based record of what happened at                  12 HFP, SHOC and CDO Fund with respect to their                  13 assets since 2009?                  14 MS. SMITH: Objection to form.                  15 THE WITNESS: We did everything we                  16 could to fulfill the request of DSI, Pachulski,                  17 Mr. Seery, etcetera as defined to us.                  18 BY MR. CLUBOK:                  19 Q Please listen to my question and answer                  20 my question and not yours.                  21 Is it true that you and Mr. Leventon                  22 did everything you could do to create a true and                  23 accurate document-based record of what happened at                  24 HFP, SOHC and CDO Fund?                  25 MS. SMITH: Objection to form, asked</p>	<p style="text-align: right;">327</p> <p>1 Q Were you responsible for managing                  2 Sentinel reinsurance and monitoring it?                  3 <b>A Managing its portfolio?</b>                  4 Q Let's break that down. Were you                  5 responsible -- strike that.                  6 Were you responsible for monitoring                  7 Sentinel reinsurance for you and Mr. Dondero?                  8 <b>A No.</b>                  9 Q Were you responsible for managing                  10 Sentinel reinsurance in any way?                  11 <b>A No.</b>                  12 Q Did you negotiate on behalf of HFP with                  13 respect to the purchase agreement that I showed                  14 you?                  15 <b>A No, I was not involved in the purchase</b>                  16 <b>agreement at all.</b>                  17 Q Did you ever direct SOHC's legal                  18 strategy?                  19 <b>A Objection to form.</b>                  20 MS. SMITH: Objection to form.                  21 THE WITNESS: No.                  22 BY MR. CLUBOK:                  23 Q After Sentinel reinsurance sold the ATE                  24 policy, did you ever -- did Sentinel ever direct                  25 the legal strategy of the insureds?</p>
<p style="text-align: right;">326</p> <p>1 and answered.                  2 THE WITNESS: As we were tasked, yes.                  3 BY MR. CLUBOK:                  4 Q Did you ever speak to Dondero about how                  5 to spend Sentinel's cash when it had cash                  6 available?                  7 <b>A No.</b>                  8 Q Did you craft the ATE policy?                  9 <b>A No.</b>                  10 MS. SMITH: Objection to form.                  11 BY MR. CLUBOK:                  12 Q Did you describe the ATE policy fully                  13 to Mr. Dondero?                  14 <b>A What do you mean by that?</b>                  15 Q Did you explain the ATE policy in any                  16 detail to Mr. Dondero?                  17 <b>A No, because I didn't know the detail of</b>                  18 <b>the ATE policy.</b>                  19 Q Did you make any efforts to get the ATE                  20 policy through the compliance process?                  21 <b>A No.</b>                  22 MS. SMITH: Objection to form.                  23 BY MR. CLUBOK:                  24 Q Can you answer the question, please?                  25 <b>A No.</b></p>	<p style="text-align: right;">328</p> <p>1 <b>A Of the insureds? That would have been</b>                  2 <b>coming from the directors. I don't know what they</b>                  3 <b>did.</b>                  4 Q Did you provide any legal advice with                  5 respect to the Sentinel transaction?                  6 <b>A No.</b>                  7 Q Did you give any advice on behalf of                  8 HCM in any way, in connection with the Sentinel                  9 transaction?                  10 <b>A No, I wasn't involved in the process</b>                  11 <b>other than the idea.</b>                  12 Q Did you give legal advice any party                  13 at all with respect to the Sentinel transaction?                  14 <b>A No, other than the idea and the initial</b>                  15 <b>couple, three meetings, I wasn't involved.</b>                  16 Q Were there any lawyers that you are                  17 aware of who gave advice with respect to the                  18 Sentinel transaction?                  19 <b>A I don't know because I wasn't involved.</b>                  20 Q Mr. Surgent is not a lawyer; correct?                  21 <b>A Mr. Surgent is a lawyer.</b>                  22 Q Oh, Mr. Surgent is a lawyer. Was Mr.                  23 Surgent giving legal advice in his role as chief                  24 of compliance?                  25 <b>A I don't know what Mr. Surgent was doing</b></p>

<p style="text-align: right;">329</p> <p><b>1 because I wasn't privy to what he was doing.</b></p> <p>2 Q Okay, I'm going to show you what's been</p> <p>3 marked as Exhibit 82. It's tab 36. And I just</p> <p>4 want to show you the third page of the document</p> <p>5 which is an attachment to the cover email and just</p> <p>6 see if you recognize it.</p> <p>7 That one you should have, I hope.</p> <p><b>8 A Yes, I do have it.</b></p> <p>9 Q And you will see the attachment is a</p> <p>10 request for redemption of shares, sent by Multi</p> <p>11 Strategy Credit Fund, care of SEI Investments,</p> <p>12 which we talked about earlier and it purports to</p> <p>13 redeem all the Sentinel's reinsurance business in</p> <p>14 Multi Strat; do you see that?</p> <p><b>15 A I'm sorry, which page?</b></p> <p>16 Q It's the third page of Exhibit 82.</p> <p>17 It's the attachment to the email. It's a document</p> <p>18 that's got some handwriting on it and it says</p> <p>19 "Request for Redemption of Shares." Do you see</p> <p>20 that?</p> <p><b>21 A Yes, I do see it. Sorry; they were</b></p> <p><b>22 stuck together.</b></p> <p>23 Q And have you ever seen this before?</p> <p><b>24 A I do not believe I have.</b></p> <p>25 Q Do you see that it's not signed, if you</p>	<p style="text-align: right;">331</p> <p>1 working for Highland, you mean?</p> <p><b>2 A Yes.</b></p> <p>3 Q And you don't remember anything else at</p> <p>4 all about that?</p> <p><b>5 A No.</b></p> <p>6 Q Do you remember who told you?</p> <p><b>7 A No.</b></p> <p>8 Q Do you remember who you ever discussed</p> <p>9 that issue with, if anyone?</p> <p><b>10 A I don't remember discussing it with</b></p> <p><b>11 anyone?</b></p> <p>12 Q Where -- who made the recommendation to</p> <p>13 the directors to purchase the ATE policy, as far</p> <p>14 as you know?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q I'm sorry, who made the recommendation</p> <p>18 to the directors of Sentinel to issue the ATE</p> <p>19 policy, if you know?</p> <p><b>20 A Don't know.</b></p> <p>21 MS. SMITH: Andy, I don't know about</p> <p>22 the witness, but I would like to take a break.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q Sure, we're getting pretty close to the</p> <p>25 end so this is a good time to take a break and I</p>
<p style="text-align: right;">330</p> <p>1 go to the next two pages. There's no signatures</p> <p>2 at all.</p> <p><b>3 A Yes, I do.</b></p> <p>4 Q Do you know whose handwriting that is?</p> <p><b>5 A I do not.</b></p> <p>6 Q Do you know whether Sentinel ever</p> <p>7 redeemed its -- tried to redeem its interest, if</p> <p>8 any, in Multi Strat?</p> <p>9 MS. SMITH: Object to the form.</p> <p>10 THE WITNESS: I believe that it did.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Why do you believe that, on what basis?</p> <p><b>13 A Because I think it was listed as a</b></p> <p><b>14 redeemer at some point.</b></p> <p><b>15 I think I saw on a table or something</b></p> <p><b>16 it was listed as a redeemer.</b></p> <p>17 Q You saw on a table that Sentinel was</p> <p>18 listed as a redeemer of Multi Strat.</p> <p><b>19 A I recall that, but I don't have</b></p> <p><b>20 certainty of where I saw it, but I thought maybe I</b></p> <p><b>21 was told they were a redeemer.</b></p> <p>22 Q Sorry, you say you saw a document or</p> <p>23 you were told; which is it?</p> <p><b>24 A I'm sorry, Andy, I don't remember.</b></p> <p>25 Q And was this while you were still</p>	<p style="text-align: right;">332</p> <p>1 will try to look through my notes and we'll come</p> <p>2 back for one final session.</p> <p><b>3 A How long a break?</b></p> <p>4 MR. CLUBOK: Well, let's make it 15</p> <p>5 minutes and then we'll come back in 15 minutes, if</p> <p>6 that's enough time.</p> <p>7 MS. SMITH: Fine. 5:45.</p> <p>8 MR. CLUBOK: And then we'll call it a</p> <p>9 day after that.</p> <p>10 THE WITNESS: Perfect. Thank you.</p> <p>11 THE VIDEOGRAPHER: We're going off</p> <p>12 record at 6:30 p.m. Eastern Time.</p> <p>13 (Break taken from 6:30 p.m. to 6:48</p> <p>14 p.m.)</p> <p>15 MR. CLUBOK: Next Exhibit is 90. And</p> <p>16 the next exhibit will be 38, tab 34.</p> <p>17 (Deposition Exhibit 90 was marked for</p> <p>18 identification.)</p> <p>19 THE VIDEOGRAPHER: One moment please.</p> <p>20 We're going back on the record at 6:48 p.m.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Mr. Ellington, I've got up on the --</p> <p>23 strike that, Mr. Ellington we're looking at</p> <p>24 Exhibit 38, which is asset transfer agreement</p> <p>25 dated December 31st 2019; do you see that?</p>

<p style="text-align: right;">333</p> <p>1 <b>A I do.</b></p> <p>2 Q And December 31st, 2019 was after the</p> <p>3 bankruptcy had already started, right?</p> <p>4 <b>A Yes.</b></p> <p>5 Q And after the bankruptcy there's an</p> <p>6 asset transfer agreement between Sentinel</p> <p>7 Reinsurance and an entity called Sebastian Clarke;</p> <p>8 do you see that?</p> <p>9 <b>A I do.</b></p> <p>10 Q And you -- were you aware of this</p> <p>11 transaction?</p> <p>12 <b>A No, I was not aware of this transaction</b></p> <p>13 <b>that I recall.</b></p> <p>14 Q Well, turn to the last page. Do you</p> <p>15 see where it's signed by Matt DiOrio on behalf of</p> <p>16 Sentinel Reinsurance?</p> <p>17 <b>A I do.</b></p> <p>18 Q And how come Matt DiOrio signed this,</p> <p>19 as opposed to any of the independent directors?</p> <p>20 <b>A You broke up Andy, how come what?</b></p> <p>21 Q Why did Matt DiOrio sign this as</p> <p>22 opposed to any of the independent directors.</p> <p>23 <b>A I don't (inaudible)...</b></p> <p>24 Q What's that?</p> <p>25 <b>A I don't know.</b></p>	<p style="text-align: right;">335</p> <p>1 independent directors in Sentinel?</p> <p>2 <b>A I don't.</b></p> <p>3 Q Do you know if the compliance group at</p> <p>4 Highland was advised about this transaction?</p> <p>5 <b>A I don't, but since they're not</b></p> <p>6 <b>regulating or the compliance group of Sentinel or</b></p> <p>7 <b>SAS, I don't think they would have been, but I</b></p> <p>8 <b>don't know.</b></p> <p>9 Q Do you know who Summit Management</p> <p>10 Limited is?</p> <p>11 <b>A Again, that's a fiduciary services</b></p> <p>12 <b>group in Cayman, as far as I know.</b></p> <p>13 Q Do you know if they -- if somebody on</p> <p>14 behalf of them signed this transfer agreement?</p> <p>15 <b>A No, all I've seen is what you've shown</b></p> <p>16 <b>me and it does not look like anyone signed.</b></p> <p>17 Q Do you know if there was any analysis</p> <p>18 done with respect to this transaction as to</p> <p>19 whether or not it constituted a fraudulent</p> <p>20 transfer?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: No, I don't. I didn't --</p> <p>23 I don't even know that I ever knew this took</p> <p>24 place. I have no memory of this.</p> <p>25 BY MR. CLUBOK:</p>
<p style="text-align: right;">334</p> <p>1 Q Did you run this transaction by anyone</p> <p>2 at compliance?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: Not that I'm aware of.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q Sebastian Clarke is an entity that you</p> <p>7 have beneficial ownership interest in, correct?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I would have to see the</p> <p>10 documents dated as at the time period 31 December,</p> <p>11 2019 to see if I did.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q Well, we previously looked at the SAS</p> <p>14 structure that listed, I believe, Sebastian</p> <p>15 Clarke.</p> <p>16 <b>A I could be wrong but wasn't those</b></p> <p>17 <b>draftings from Deloitte from 2017?</b></p> <p>18 Q It's true. So, in December of 2017 you</p> <p>19 have no idea whether you had any economic stake in</p> <p>20 Sebastian Clarke as at the time of this transfer?</p> <p>21 <b>A No, I don't.</b></p> <p>22 Q Do you know if Mr. Dondero did?</p> <p>23 <b>A I don't.</b></p> <p>24 Q Do you have any idea -- well, do you</p> <p>25 know if this transaction was identified to the</p>	<p style="text-align: right;">336</p> <p>1 Q Matt DiOrio, do you have any idea how</p> <p>2 Matt DiOrio came to be involved with this --</p> <p>3 <b>A No I don't.</b></p> <p>4 Q Did you tell -- did you ever tell</p> <p>5 anybody about this transaction?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: No, I didn't have any</p> <p>8 knowledge about it, so I didn't have an ability to</p> <p>9 tell.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q You had no knowledge whatsoever that</p> <p>12 assets of Sentinel were transferred to Sebastian</p> <p>13 Clarke at any time?</p> <p>14 <b>A Not that I recall, no.</b></p> <p>15 Q Do you know -- do you know that</p> <p>16 Sentinel, as part of the purchase of the ATE</p> <p>17 policy obtained a note from the DAF that CDO Fund</p> <p>18 generally held?</p> <p>19 <b>A Yes I was --</b></p> <p>20 <b>-- (overspeaking) --</b></p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: -- I was generally aware</p> <p>23 of that, yes.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Who told you about that?</p>

<p style="text-align: right;">337</p> <p>1 <b>A I believe Mark Patrick told me about it</b>                  2 <b>after the fact, that it had been part of the</b>                  3 <b>assets transferred, but I can't say that with</b>                  4 <b>certainty.</b>                  5 Q And do you know the economic status of                  6 the DAF today?                  7 <b>A No, I do not.</b>                  8 Q Do you know if that note -- do you know                  9 how DCO fund came to hold a note from the DAF?                  10 <b>A No idea.</b>                  11 Q Do you know if any assets were ever                  12 transferred to the CDO Fund to the DAF in exchange                  13 for that note?                  14 <b>A I do not.</b>                  15 Q Who would have been responsible for                  16 monitoring that between 2009 and 2017?                  17 <b>A Monitoring what?</b>                  18 Q Monitoring what happened with CDO                  19 Fund's assets?                  20 <b>A Oh, I don't know.</b>                  21 Q Is a note from the DAF worthless?                  22 MS. SMITH: Objection to form.                  23 THE WITNESS: I don't have any idea of                  24 what the DAF can pay or not pay. I don't know.                  25 BY MR. CLUBOK:</p>	<p style="text-align: right;">339</p> <p>1 Q Is Sebastian Clarke, do you have any                  2 idea if Dondero has any economic interest in the                  3 Sebastian Clarke at all?                  4 <b>A I do not. Let's look at Exhibit 55</b>                  5 <b>which also happens to be tab 55, by a happy</b>                  6 <b>coincidence. That is -- I think you have that in</b>                  7 <b>the binder in front of you. Hold, please. I do</b>                  8 <b>have 55.</b>                  9 Q Okay, 55 is an email exchange and                  10 attaches a unanimous written resolution of the                  11 board of directors of Sentinel Reinsurance with                  12 respect to the ATE policy. I want you to look at                  13 the last email on the chain which ends with Bates                  14 number -51.                  15 <b>A Okay.</b>                  16 Q And this is an email from Kim Willey to                  17 Paul Scrivener and Neil Horner; do you see that?                  18 <b>A Paul Scrivener and Neil Horner, yes.</b>                  19 Q Do you know any of those people?                  20 <b>A I don't know any of those people.</b>                  21 Q Okay, and then they forwarded -- Paul                  22 Scrivener forwards this to JP Sevilla, Lesley                  23 Thompson and a number of other people identified                  24 at the bottom of the page that starts with or ends                  25 in Bates -50; do you see that?</p>
<p style="text-align: right;">338</p> <p>1 Q Whose idea was it to include the DAF as                  2 part of the assets that were transferred to                  3 Sentinel?                  4 MS. SMITH: Objection to form.                  5 THE WITNESS: I think you meant the DAF                  6 note?                  7 BY MR. CLUBOK:                  8 Q Yes, the DAF note. Sorry.                  9 <b>A I don't know who came up with any of</b>                  10 <b>the assets to be transferred to Sentinel.</b>                  11 Q Who had the economic interest in the                  12 DAF, as far as you know?                  13 <b>A Charities, but from what I understand,</b>                  14 <b>that's a DAF donor-advised fund, so there was some</b>                  15 <b>type of contribution made and then it's managed, I</b>                  16 <b>believe, by outside entities and then the monies</b>                  17 <b>were given away, donated to qualifying charities.</b>                  18 Q Did Sentinel ever communicate to CDO                  19 HoldCo about a promissory note that it held?                  20 MS. SMITH: Objection to form.                  21 THE WITNESS: I don't know.                  22 BY MR. CLUBOK:                  23 Q When you found out that the DAF note                  24 had been transferred, did you take any action?                  25 <b>A No.</b></p>	<p style="text-align: right;">340</p> <p>1 <b>A I do.</b>                  2 Q And this is August 10th:                  3 "As requested by JP, please see in email                  4 below the advice followed by ASW."                  5 Do you see that?                  6 <b>A Yes.</b>                  7 Q And Lesley Thompson then writes to JP                  8 and Katie and that would have been Katie Irving;                  9 correct?                  10 <b>A Umm...</b>                  11 MS. SMITH: Objection to form.                  12 THE WITNESS: Let's see -- well, it                  13 doesn't -- it just so -- it doesn't say who it is                  14 written to. And above that, JP only responds to                  15 Lesley. I don't know which Katie it is.                  16 BY MR. CLUBOK:                  17 Q Was there another Katie that worked                  18 with JP in August of 2017, with respect to the ATE                  19 policy that you are aware of?                  20 <b>A No, but I don't know that there may be</b>                  21 <b>a Katie at these other entities. I just don't</b>                  22 <b>know.</b>                  23 Q Okay, and Lesley says: "Thank you for                  24 all the information and supporting documentation                  25 to the recommendation regarding the new ATE policy</p>

<p style="text-align: right;">341</p> <p>1 to be written by Sentinel Reinsurance." [As read.]</p> <p>2 Do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And you see one final question: Can</p> <p>5 you please confirm that in the event of an adverse</p> <p>6 loss which exceeds the existing assets equity of</p> <p>7 the company, the shareholders will inject the</p> <p>8 necessary capital in order for the company to meet</p> <p>9 (sic) its obligation and maintain its solvency."</p> <p>10 Do you see that?</p> <p>11 <b>A I do.</b></p> <p>12 Q And now Mr. Sevilla writes back:</p> <p>13 "Lesley, the shareholders have made a</p> <p>14 fundamental commitment both fiscally and</p> <p>15 governance-wise to Sentinel reinsurance for the</p> <p>16 long term, including in the situation of an</p> <p>17 adverse loss."</p> <p>18 Do you see that?</p> <p>19 <b>A I do.</b></p> <p>20 Q And that -- he does copy Katie Irving</p> <p>21 on it; do you see?</p> <p>22 <b>A Oh, yeah, yeah. I see it now, yes.</b></p> <p>23 Q Okay, and that's the subject is</p> <p>24 "Sentinel Reinsurance Proposed ATE policy," right?</p> <p>25 <b>A Yes.</b></p>	<p style="text-align: right;">343</p> <p>1 Q Is that an accurate statement?</p> <p>2 <b>A Yeah, that's an accurate statement. I</b></p> <p>3 <b>don't recall having this conversation with JP</b></p> <p>4 <b>about a fundamental commitment of the shareholders</b></p> <p>5 <b>both physically and governance-wise, no.</b></p> <p>6 Q No, no, no. Is the statement that Mr.</p> <p>7 Sevilla makes to Lesley Thompson --</p> <p>8 <b>A Yeah, that's what I'm reading. "The</b></p> <p>9 <b>shareholders made a fundamental commitment both</b></p> <p>10 <b>physically and governance-wise to Sentinel</b></p> <p>11 <b>Reinsurance for the long-term, including the</b></p> <p>12 <b>situation of adverse loss. Many thanks." [As</b></p> <p>13 <b>read.]</b></p> <p>14 <b>No, I don't remember having that</b></p> <p>15 <b>conversation with him.</b></p> <p>16 Q And my question is: Notwithstanding</p> <p>17 that you don't remember having that conversation,</p> <p>18 my question is: Is what he is saying here true?</p> <p>19 Is it correct that the shareholders for Sentinel</p> <p>20 Reinsurance had made a fundamental commitment,</p> <p>21 both physically and governance-wise to settle</p> <p>22 reinsurance for the long-term, including in the</p> <p>23 situation of an adverse loss?</p> <p>24 <b>A He could have talked to other</b></p> <p>25 <b>shareholders. I do not remember talking to him</b></p>
<p style="text-align: right;">342</p> <p>1 Q This is August of 2017, shortly before</p> <p>2 the policy is entered into; right?</p> <p>3 <b>A Yes.</b></p> <p>4 Q Now, Mr. Sevilla then talked to you</p> <p>5 about how to respond to Lesley Thompson, didn't</p> <p>6 he?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Didn't he?</p> <p>10 <b>A Not that I recall, no.</b></p> <p>11 Q When Mr. Sevilla said the shareholders</p> <p>12 made a fundamental commitment in this -- and this</p> <p>13 word she used, that was based on you authorizing</p> <p>14 him to make that statement, wasn't it?</p> <p>15 <b>A Not that I recall.</b></p> <p>16 MS. SMITH: Objection to form.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Did you have any -- reading this, does</p> <p>19 it refresh your recollection in any way that you</p> <p>20 discussed the ATE policy with Mr. Sevilla shortly</p> <p>21 before it was entered into?</p> <p>22 <b>A No.</b></p> <p>23 Q Did you authorize Mr. Sevilla to make</p> <p>24 that statement?</p> <p>25 <b>A Not that I recall.</b></p>	<p style="text-align: right;">344</p> <p>1 <b>about this, but we surely had a commitment</b></p> <p>2 <b>long-term to the reinsurer.</b></p> <p>3 Q Okay, you were a shareholder of</p> <p>4 Sentinel Reinsurance at the time through entities</p> <p>5 you controlled; correct?</p> <p>6 <b>A Yes, correct.</b></p> <p>7 Q And Mr. Dondero was a shareholder at</p> <p>8 the time, right?</p> <p>9 <b>A Yes.</b></p> <p>10 Q And can you identify one other single</p> <p>11 human being in the planet who was a shareholder</p> <p>12 that you know of at Sentinel Reinsurance at the</p> <p>13 time?</p> <p>14 <b>A No, but if the shareholders are</b></p> <p>15 <b>entities at directors and trustees, he could have</b></p> <p>16 <b>talked to them and not me. He also could have</b></p> <p>17 <b>talked to Mr. Dondero who had the controlling</b></p> <p>18 <b>70 percent shares either directly or indirectly</b></p> <p>19 <b>held through entities associated with him, and</b></p> <p>20 <b>that would be plenty for him to make this</b></p> <p>21 <b>assessment without ever speaking to me.</b></p> <p>22 Q Right. I didn't ask you for any of</p> <p>23 those things you just answered.</p> <p>24 MS. SMITH: Objection.</p> <p>25 BY MR. CLUBOK:</p>

<p style="text-align: right;">345</p> <p>1 Q In the final time -- few minutes, 2 please listen to my question so I don't have to go 3 beyond the time. 4 <b>A Okay.</b> 5 Q Are you aware of any other human being 6 who was a shareholder in Sentinel, through any 7 entity they controlled, other than you and 8 Mr. Dondero as of August 10th, 2017? 9 <b>A You asked me entities who had human</b> 10 <b>beings either as directors or trustees that he</b> 11 <b>could have spoken to, not -- (overspeaking) --</b> 12 <b>(inaudible) Mr. Dondero.</b> 13 Q Is there a human being you can name 14 right now who is a shareholder of -- an ultimate 15 shareholder, like you and Mr. Dondero were, of the 16 economic interest or other than you and 17 Mr. Dondero, that you can name? 18 Is there another human being that you 19 can name? Is there another human being you can 20 name who was a shareholder? 21 <b>A Me, personally, but I don't have any</b> 22 <b>transparency of who -- how Mr. Dondero could have</b> 23 <b>(inaudible) this.</b> 24 Q I didn't ask you that question, okay? 25 And this is where -- like, we're in the last --</p>	<p style="text-align: right;">346</p> <p>1 hopefully the last hour and I don't want to have 2 to ask you questions that you don't answer them 3 and then I will take more time. 4 -- (overspeaking) -- 5 <b>A I'm trying my best to answer. That I</b> 6 <b>personally know of, no.</b> 7 -- (overspeaking) -- 8 MS. SMITH: Mr. Clubok, you are 9 starting to yell at the witness. 10 BY MR. CLUBOK: 11 Q Mr. Ellington -- 12 <b>A Yes.</b> 13 Q -- can you name a human being that 14 you're aware of who was a shareholder of Sentinel 15 as of August 10th, 2017 other than you and 16 Mr. Dondero? 17 <b>A That I know of? No.</b> 18 Q Okay. And do you know of any person 19 that Mr. Sevilla actually spoke to, other than 20 speculated who he might have spoken to? 21 <b>A I can only say he didn't speak to me,</b> 22 <b>to my recollection, about any of this.</b> 23 Q If Mr. Sevilla -- is Mr. Sevilla an 24 honest person? 25 <b>A I find him to be, yes.</b></p>
<p style="text-align: right;">347</p> <p>1 Q If he testified under oath as to who he 2 spoke to after receiving this email, was that 3 something that you would expect to rely upon? 4 <b>A I don't know if Mr. Sevilla has a</b> 5 <b>perfect memory, but I -- I would not say that he</b> 6 <b>would purposely not tell the truth.</b> 7 Q If Mr. Sevilla said that he was 8 authorized by you to make this statement, would 9 that be true or false, as far as you know? 10 <b>A Solely me?</b> 11 Q Solely you. 12 <b>A I don't see how he could be bound by</b> 13 <b>me, since Mr. Dondero or his related entities</b> 14 <b>owned twice what I did.</b> 15 Q Okay, let's forget about "solely". 16 Maybe he asked both you and Mr. Dondero. But 17 would it be true if Mr. Sevilla testified that you 18 did authorize him to make this statement on your 19 behalf? 20 <b>A I would say that that's true to Mr.</b> 21 <b>Sevilla's memory. I do not have a memory of ever</b> 22 <b>speaking to him about this issue.</b> 23 Q Okay, in August of 2017 had you made a 24 fundamental commitment, both physically and 25 governance-wise to Sentinel Reinsurance for the</p>	<p style="text-align: right;">348</p> <p>1 long-term, including in the situation of an 2 adverse loss. 3 <b>A No, I've not made a commitment to</b> 4 <b>adverse loss, which is the question she'd answered</b> 5 <b>at the bottom and I don't know if Mr. Sevilla even</b> 6 <b>answered her question because he doesn't say,</b> 7 <b>"We'll inject the necessary --" If he had that</b> 8 <b>conversation with Mr. Dondero, that certainly</b> 9 <b>didn't (inaudible) to my knowledge.</b> 10 Q Again, I'd like to you answer the 11 question that I've asked you. You just added a 12 lot of information that may or may not be useful, 13 but I'm going to ask you carefully to listen to my 14 question, please, and just answer my question. 15 <b>A Okay.</b> 16 Q Is it true that as of August 10th, 17 2017, you had made a fundamental commitment both 18 physically and governance-wise to Sentinel 19 Reinsurance for the long-term, including in a 20 situation of an adverse loss, true or false? 21 <b>A No. No.</b> 22 Q And then Katie Irving, if you go to the 23 top of this email chain, then forwards on the 24 Sentinel Reinsurance proposed ATE policy to Helen 25 Kim and requests JD execution of the attached; do</p>

<p style="text-align: right;">349</p> <p>1 you see that?</p> <p>2 <b>A I do.</b></p> <p>3 Q And JD means Jim Dondero; right?</p> <p>4 MS. SMITH: Objection to form.</p> <p>5 BY MR. CLUBOK:</p> <p>6 Q People call Jim Dondero "JD" in emails</p> <p>7 like this, right?</p> <p>8 <b>A Yes, just like they call people other</b></p> <p>9 <b>shorthand, yes.</b></p> <p>10 Q Yes, and we see that the -- we know the</p> <p>11 attached does bear Mr. Dondero's signature --</p> <p>12 strike that.</p> <p>13 We saw another document where</p> <p>14 Mr. Dondero had signed the purchase agreement on</p> <p>15 behalf of a number of entities; correct?</p> <p>16 <b>A Yeah, but this entity is not signed by</b></p> <p>17 <b>Mr. Dondero, only by the directors or a director.</b></p> <p>18 Q Yeah.</p> <p>19 <b>A Sorry, the directors, my apologies.</b></p> <p>20 Q And any -- was there any final --</p> <p>21 strike that.</p> <p>22 In around this timeframe, was there any</p> <p>23 final discussion with you and Mr. Dondero about</p> <p>24 the policy or the purchase agreement?</p> <p>25 <b>A No.</b></p>	<p style="text-align: right;">351</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Okay, but you don't remember giving him</p> <p>3 authority to make the statement that he made to</p> <p>4 Lesley Thompson in the email that's 4:18 p.m</p> <p>5 August 10, 2017 in Exhibit 55; correct?</p> <p>6 <b>A No, but, again, if Mr. Dondero gave him</b></p> <p>7 <b>that my approval or (inaudible) --</b></p> <p>8 MS. SMITH: Objection.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Stop, stop, stop. Two things. Number</p> <p>11 one, I didn't ask you about Mr. Dondero, so I just</p> <p>12 move to strike and I'm going to ask you one more</p> <p>13 time, please for the remaining hour, just answer</p> <p>14 my question. And the judge has repeatedly --</p> <p>15 you've been there in court when the judge has</p> <p>16 stopped people from doing that, and I'm going to</p> <p>17 ask you now please do not do that for the short</p> <p>18 remaining time we have left.</p> <p>19 Second of all, this is one where you</p> <p>20 said "no" and I think you meant "yes," so please</p> <p>21 just listen to my question. You were so quick to</p> <p>22 jump in with the Dondero thing, that that's one of</p> <p>23 the reasons why I think you said "no" instead of</p> <p>24 just answering my question, so I'm going to jut</p> <p>25 ask you, please, listen to my question and just</p>
<p style="text-align: right;">350</p> <p>1 Q Are you as sure of that as you were</p> <p>2 that you didn't have a -- strike that.</p> <p>3 Are you saying you don't remember that</p> <p>4 or you're sure you didn't have that conversation?</p> <p>5 <b>A I don't recall any conversation with</b></p> <p>6 <b>Mr. Dondero about the purchase agreement or the</b></p> <p>7 <b>policy. Again, I wasn't involved in this process,</b></p> <p>8 <b>so I wouldn't even have anything to talk to him</b></p> <p>9 <b>about.</b></p> <p>10 Q Okay, and are you sure -- strike that.</p> <p>11 Are you just saying you don't recall one way or</p> <p>12 the other or are you pretty certain you did not</p> <p>13 talk to Mr. Dondero in this timeframe?</p> <p>14 <b>A I don't recall one way or the other.</b></p> <p>15 Q And same thing with Mr. Sevilla, are</p> <p>16 you saying that you are pretty sure you didn't</p> <p>17 give him authority to make that statement on your</p> <p>18 behalf or are you saying you don't remember, one</p> <p>19 way or the other if you did it?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: I do not have any</p> <p>22 recollection nor do I believe that I would have</p> <p>23 given him a guarantee of a situation of adverse</p> <p>24 loss, but, again, if Mr. Dondero gave him that,</p> <p>25 what I said was irrelevant.</p>	<p style="text-align: right;">352</p> <p>1 answer this.</p> <p>2 Is it true that you did not give Mr.</p> <p>3 Sevilla authority to make the statement he made on</p> <p>4 your behalf in an email that's time-stamped</p> <p>5 4:18 p.m. to Lesley Thompson as reflected in</p> <p>6 Exhibit 55?</p> <p>7 <b>A Well, first of all, Mr. Clubok, I don't</b></p> <p>8 <b>know whether he makes it on my behalf. He doesn't</b></p> <p>9 <b>say my name, so I think that, in itself, I don't</b></p> <p>10 <b>agree with. He doesn't say I said it.</b></p> <p>11 Q No, Mr. --</p> <p>12 -- (overspeaking) --</p> <p>13 <b>A You said made on my --</b></p> <p>14 -- (overspeaking) --</p> <p>15 Q -- Mr. Ellington --</p> <p>16 -- (overspeaking) --</p> <p>17 <b>A Sorry, I'm still speaking.</b></p> <p>18 -- (overspeaking) --</p> <p>19 Q Stop that. That's --</p> <p>20 -- (overspeaking) --</p> <p>21 <b>A -- on my behalf. He doesn't make --</b></p> <p>22 -- (overspeaking) --</p> <p>23 Q Hold on. I didn't ask what the email</p> <p>24 says about whether he --</p> <p>25 -- (overspeaking) --</p>



<p style="text-align: right;">353</p> <p>1     <b>A Yeah you did. You asked me --</b>                  2     Q No, no, no.                  3         -- (overspeaking) --                  4     <b>A -- if the statement which Mr. Sevilla</b>                  5 <b>made to Lesley was a true statement on my behalf,</b>                  6 <b>made on my behalf.</b>                  7     Q No, listen to my question one more                  8 time, okay. We can all see the statement that Mr.                  9 Sevilla made, the words that he made on 4:18 p.m.                  10 August 10, 2017 to Ms. Thompson, as reflected in                  11 Exhibit 55. You see that -- those words, without                  12 me repeating them again, correct?                  13    <b>A I do.</b>                  14    Q My simple question is this: Did you                  15 authorize Mr. Sevilla to make that statement on                  16 your behalf?                  17    <b>A No.</b>                  18    Q Thank you. Are you sure about that or                  19 is it just you don't remember one way or the other                  20 whether you authorized that?                  21        MS. SMITH: Objection to form. Asked                  22 and answered.                  23        THE WITNESS: I've answered you twice.                  24 I'll answer you again. No. Certain of it.                  25 BY MR. CLUBOK:</p>	<p style="text-align: right;">355</p> <p>1     <b>A No.</b>                  2     Q You never looked -- you've never seen                  3 this request before today; is that what you're                  4 saying?                  5     <b>A No, but the request that you and others</b>                  6 <b>made would go to presumably Pachulski and then</b>                  7 <b>they were tasked to the Highland employees to try</b>                  8 <b>to meet those requests but we were never given the</b>                  9 <b>direct document request.</b>                  10    Q Whose the "We" in that statement?                  11    <b>A The Highland employees.</b>                  12    Q You say Isaac Leventon never saw this                  13 document either.                  14    <b>A I don't know if Isaac saw it or not but</b>                  15 <b>very commonly we were told what to go and retrieve</b>                  16 <b>or search for without the actual document request.</b>                  17    Q Okay, but you just said "we" were never                  18 given this request.                  19        Are you saying that no one in the                  20 Highland legal department ever received this                  21 request for production of documents?                  22    <b>A I don't know because I never reviewed</b>                  23 <b>all their emails.</b>                  24    Q Were you aware of this request?                  25    <b>A No.</b></p>
<p style="text-align: right;">354</p> <p>1     Q Okay. Did Mr. Sevilla have the                  2 authority to make that statement on your behalf                  3 without checking with you?                  4        MS. SMITH: Objection to form. Asked                  5 and answered.                  6        THE WITNESS: No.                  7 BY MR. CLUBOK:                  8     Q Did you ever give anyone authority to                  9 speak on your behalf with respect to what, if any                  10 commitments you were going to make Sentinel                  11 Reinsurance?                  12    <b>A No.</b>                  13    Q Let's turn to Exhibit 69, which is tab                  14 44. These are UBS's first request for document                  15 production for debtor Highland Capital Management.                  16 It's the first formal document request that was                  17 made dated September 28th, 2020. Do you see that?                  18    <b>A Number 69? Oh, yes I see it. Sorry.</b>                  19    Q Yeah, Exhibit 69 is a copy of what's                  20 titled "UBS's first request for production of                  21 documents to debtor Highland Capital Management."                  22 Do you see that?                  23    <b>A I do.</b>                  24    Q Did you receive a copies of those                  25 requests ever?</p>	<p style="text-align: right;">356</p> <p>1     Q Were you given any task in connection                  2 with responding to the document request that's                  3 been identified as Exhibit 69?                  4     <b>A I'd have to read the entire request and</b>                  5 <b>remember if I was ever tasked with any of these</b>                  6 <b>items.</b>                  7     Q Well, in September 2020 do you remember                  8 going forward until the end of the -- of your                  9 tenure with Highland? Do you remember ever being                  10 tasked with helping to respond to request for                  11 production of documents to Highland Capital?                  12        MS. SMITH: Objection to form.                  13        THE WITNESS: Dozens upon dozens of                  14 requests from Pachulski, DSI, the creditor's                  15 committee, individual creditors, yes.                  16 BY MR. CLUBOK:                  17    Q Well, let's look specifically at                  18 request number 8, which is all documents                  19 pertaining to the assets and liabilities of HFP,                  20 CDO Fund and SOHC, including but not limited to."                  21        And it is a whole series of sub-parts.                  22 Do you see that request?                  23    <b>A I do.</b>                  24    Q It's request number 8 and it's on page                  25 -- starts on the bottom of the unnumbered page,</p>

<p style="text-align: right;">357</p> <p>1 but you see the request which very simply says:                  2 "All documents pertaining to the assets and                  3 liabilities of HFP CDO Fund and SOHC and then it                  4 is including but not limited to and it gives                  5 specific examples, right?                  6 <b>A Yes, for a 12-year period, yes.</b>                  7 Q Yes, do you remember making an effort                  8 to identify or help identify all documents                  9 pertaining to the assets and liabilities of HFP                  10 CDO Funds and SOHC over the period from 2007                  11 through 2019?                  12 <b>A I do.</b>                  13 Q And what efforts did you make to comply                  14 with this request, if any?                  15 MS. SMITH: Objection to form.                  16 THE WITNESS: We were told about this                  17 request or at least I was by, I believe, Mr. Seery                  18 potentially, not Mr. Seery, maybe Pachulski or                  19 DSI, I can't remember because there were so many                  20 requests. And myself, Isaac, Ms. Vitiello and                  21 Mr. Klos, I remember at least us as the working                  22 group, and maybe others were involved, I just                  23 don't know, started (inaudible) documents as far                  24 back as 2007, which was past the seven-year                  25 retention requirements of an RA and it was very</p>	<p style="text-align: right;">359</p> <p>1 would have been still been in existence under the                  2 seven-year retention; correct?                  3 <b>A In '11, sure, yes. But this request</b>                  4 <b>was made in '20 so the documents aren't</b>                  5 <b>necessarily on the system; they've been put on</b>                  6 <b>backup tapes and moved to offsite storage.</b>                  7 Q Sorry. Was there a document retention                  8 hold put in place with respect to the UBS                  9 litigation that covered documents going back to                  10 2007 with respect to assets of HFP, CDO Fund and                  11 SOHC?                  12 MS. SMITH: Objection to form.                  13 THE WITNESS: I do not know for certain                  14 but I would strongly assume there was.                  15 BY MR. CLUBOK:                  16 Q Well, as GC at least from 2011 forward,                  17 did you take responsibility for ensuring that a                  18 document hold was put in place to preserve all                  19 these documents going back to cover the time                  20 period asked for in this request?                  21 MS. SMITH: Objection to form.                  22 THE WITNESS: Yes, but the document                  23 hold would have been issued by Michael Colvin and                  24 -- before I was the GC, and then those document                  25 holds would have been in perpetuity through the</p>
<p style="text-align: right;">358</p> <p>1 difficult to start constructing from that far                  2 back.                  3 BY MR. CLUBOK:                  4 Q Okay, but how about just going back to                  5 prior seven years to 2012. That would -- those                  6 documents would have been available, right?                  7 <b>A Yeah, but that's not what's asked for.</b>                  8 <b>It's asking starting with seven.</b>                  9 <b>You can't just start mid stream and</b>                  10 <b>fulfill these, in my opinion.</b>                  11 Q And I'm sorry, you had been at                  12 litigation with UBS since 2009 over HFP, CDO Fund                  13 and SOHC; correct?                  14 <b>A Correct, correct.</b>                  15 Q Was there a document hold? You were                  16 the general counsel of the company during that                  17 time. Did you cause a --                  18 -- (overspeaking) --                  19 <b>A No, I was not. No, Michael Colvin was</b>                  20 <b>at the beginning of the litigation.</b>                  21 Q At the beginning of the litigation. At                  22 what point did you become general counsel?                  23 <b>A It was, I believe in either '10 or '11.</b>                  24 <b>I can't remember.</b>                  25 Q And in 2010 or '11, all the documents</p>	<p style="text-align: right;">360</p> <p>1 end of this period.                  2 BY MR. CLUBOK:                  3 Q Did you make any effort to refresh the                  4 document hold or to affirm that it was being                  5 maintained once you became GC, going forward?                  6 <b>A No, that's not common practice. The</b>                  7 <b>document hold is it in place until it is</b>                  8 <b>terminated.</b>                  9 Q And so when you -- you started                  10 answering this question by saying this was                  11 difficult because there is a seven-year retention                  12 period, is it fair to say that that normal                  13 seven-year retention period should not have                  14 applied at all to HFP, CDO Fund and SOHC in light                  15 of the litigation that was pending since 2009;                  16 correct?                  17 MS. SMITH: Objection to form.                  18 THE WITNESS: Correct, but in the                  19 latter part of my answer, I said that they had                  20 been moved to backup tapes and/or offsite storage.                  21 BY MR. CLUBOK:                  22 Q But were they?                  23 <b>A That's the difficulty. Is getting --</b>                  24 <b>and also, the document holds aren't necessarily</b>                  25 <b>some of these items, mapping a trial balance of</b></p>

<p style="text-align: right;">361</p> <p>1 <b>account and requested items. Some of these things</b>                  2 <b>you requested, from what I understand, never</b>                  3 <b>existed in the first place.</b>                  4 <b>Second of all, they were in offsite or</b>                  5 <b>backup tape storage and there was essentially one</b>                  6 <b>person that -- or including Ms. Vitiello, two, so</b>                  7 <b>Mr. Leventon and Ms. Vitiello, that could search</b>                  8 <b>for these and we had competing agendas that were</b>                  9 <b>being assigned to us by the independent board,</b>                  10 <b>Pachulski and others, so it wasn't the only</b>                  11 <b>request we were working on.</b>                  12 Q Did you -- as GC, did you ever endeavor                  13 to keep information about HFP, SOHC and CDO Fund's                  14 assets in readily available form during the                  15 pendency of the litigation?                  16 MS. SMITH: Objection to form --                  17 -- (overspeaking) --                  18 THE WITNESS: -- available form.                  19 (Court reporter clarification.)                  20 MR. CLUBOK: Okay.                  21 THE WITNESS: I don't know what you --                  22 I'm sorry, ma'am. I don't know what you mean by                  23 "readily available form."                  24 BY MR. CLUBOK:                  25 Q Did you -- okay. So my question is:</p>	<p style="text-align: right;">363</p> <p>1 BY MR. CLUBOK:                  2 Q Okay. You say -- you did not take any                  3 affirmative steps other than to make sure the                  4 documents were preserved.                  5 What specific steps did you take to                  6 make sure the documents were preserved with                  7 respect to the assets of HFP --                  8 -- (overspeaking) --                  9 <b>A There's protocols in place where</b>                  10 <b>nothing is destroyed -- (inaudible)</b>                  11 <b>-- (overspeaking) --</b>                  12 <b>(Court reporter clarification)</b>                  13 <b>A There's protocols in place that nothing</b>                  14 <b>is destroyed and that's why they were moved to</b>                  15 <b>backup tapes and put into secure offsite storage</b>                  16 <b>so they are readily available.</b>                  17 Q When did you do that or cause that to                  18 be done?                  19 <b>A I didn't cause it to be done. There's</b>                  20 <b>protocols in place that were put in place by</b>                  21 <b>compliance. Compliance is who oversees how these</b>                  22 <b>documents are handled.</b>                  23 Q Where is the asset information now                  24 related to HFP and CDO Fund and SOHC dating back                  25 to 2007?</p>
<p style="text-align: right;">362</p> <p>1 Did you make any effort to preserve the documents                  2 relating to HFP, CDO Fund and SOHC's assets in a                  3 way that they'd be readily accessible?                  4 <b>A I don't run the IT system and there is</b>                  5 <b>a finite amount of space for physical documents,</b>                  6 <b>so readily available I believe is subjective.</b>                  7 Q Okay. Move to strike as                  8 non-responsive. I didn't ask if you ran the IT                  9 system, I didn't ask you about space.                  10 I just want you to please listen to my                  11 question and answer my question directly.                  12 Did you, as general counsel, once you                  13 became general counsel, take any steps to ensure                  14 the preservation of documents relating to the                  15 assets of HFP, CDO Fund and SOHC in a manner that                  16 they would be readily accessible?                  17 MS. SMITH: Objection to form.                  18 THE WITNESS: I did not take any                  19 affirmative steps other than make sure the                  20 documents were preserved as to the litigation hold                  21 and, if I'm not mistaken, this is after the trial,                  22 Phase I of the trial so I assumed that those                  23 documents had been stored in a way that was                  24 readily available under the constraints of IT and                  25 physical space.</p>	<p style="text-align: right;">364</p> <p>1 <b>A I have no idea. I don't work there.</b>                  2 Q Is there any -- at the time you left                  3 how would it have been readily accessible if you                  4 had wanted to obtain it?                  5 <b>A It was stored by Iron Mountain.</b>                  6 Q And did you make any efforts to                  7 retrieve the asset information from Iron Mountain                  8 relating to HFP, CDO Fund and SOHC?                  9 <b>A I believe that was absolutely done.</b>                  10 Q Did you personally make any efforts to                  11 do that?                  12 <b>A No, me personally, no --</b>                  13 MS. SMITH: Objection to form.                  14 THE WITNESS: -- because the request of                  15 Iron Mountain is an IT function.                  16 BY MR. CLUBOK:                  17 Q Did you take any efforts to cause it to                  18 happen?                  19 <b>A Yes.</b>                  20 Q What --                  21 <b>A Yes.</b>                  22 Q What exactly did you personally do to                  23 try to meet these requests from --                  24 -- (overspeaking) --                  25 <b>A -- the head of IT and Mr. Leventon, who</b></p>

<p style="text-align: right;">365</p> <p><b>1 runs the discovery efforts, and said pull back</b></p> <p><b>2 anything you need to fulfill these requests that</b></p> <p><b>3 we are being asked for from the board and</b></p> <p><b>4 Pachulski.</b></p> <p>5 Q Okay. And what you did know at the</p> <p>6 time was that there had been a significant</p> <p>7 transfer of assets from these funds to Sentinel in</p> <p>8 August of 2017; correct?</p> <p><b>9 A Correct.</b></p> <p>10 Q And did you mention that in any way in</p> <p>11 response to these document requests, to anybody?</p> <p><b>12 A No, I did not.</b></p> <p>13 Q Did you cause that to be communicated</p> <p>14 in any way to Mr. Seery or the debtor's counsel,</p> <p>15 once you knew about this request for documents</p> <p>16 pertaining to the assets and liabilities of HFP,</p> <p>17 CDO Fund and SOHC?</p> <p><b>18 A I did not.</b></p> <p>19 Q Okay. We're going to turn to</p> <p>20 Exhibit 70, which is tab 45.</p> <p>21 Oh, strike that. Sorry, one more thing</p> <p>22 on this exhibit before we turn it...</p> <p>23 Sorry, that's fine. Let's go to</p> <p>24 Exhibit 70, tab 45.</p> <p><b>25 A Okay.</b></p>	<p style="text-align: right;">367</p> <p>1 correct?</p> <p><b>2 A Let's see, hold on here. Thursday,</b></p> <p><b>3 August 6. August 6.</b></p> <p><b>4 The farthest back I see is August 6th,</b></p> <p><b>5 so...</b></p> <p>6 Q Right. And on August 6th they're</p> <p>7 talking about giving stuff to UBS today and before</p> <p>8 they do that, they have to track down some more</p> <p>9 information, so fair to say that the request came</p> <p>10 in certainly no later than August 6th?</p> <p><b>11 A Yeah, that's fair to say.</b></p> <p>12 Q Okay, and Romey sends this email to</p> <p>13 Leventon and copies some other folks, and then the</p> <p>14 email gets forwarded -- there is an exchange that</p> <p>15 continues and if you flip the page, we're going to</p> <p>16 try to find the first time that you get introduced</p> <p>17 into it, and it looks like it is on the page</p> <p>18 that's marked Bates number 115 and Isaac Leventon</p> <p>19 says in response to an email that Greg Demo sent:</p> <p>20 "Guys, I don't think this is a prerequisite</p> <p>21 to delivering materials to UBS in satisfaction of</p> <p>22 our concerns. I am prepping the documents set for</p> <p>23 delivery tomorrow. Dave has not worked on this,</p> <p>24 so I will just call Greg and James. However, this</p> <p>25 is the current status."</p>
<p style="text-align: right;">366</p> <p>1 Q That is an email from Scott Ellington</p> <p>2 to Greg Demo, copying Mr. Leventon, Mr. Romey,</p> <p>3 Mr. Klos and Mr. Seery; do you see that?</p> <p><b>4 A Mr. Klos and Mr. Seery, yes, I do.</b></p> <p>5 Q That's the top email and that is a</p> <p>6 response to a long chain that goes on for several</p> <p>7 pages and begins with an email that starts on the</p> <p>8 page marked 17 at the end; do you see that?</p> <p><b>9 A 117, yes, I do.</b></p> <p>10 Q And this is: "UBS diligent request</p> <p>11 about Highland credit opportunities, CDO Ltd.</p> <p>12 Importance: High." And this is from August 2020</p> <p>13 before those formal requests were sent; do you see</p> <p>14 that?</p> <p><b>15 A Let's see. I don't know the date of</b></p> <p><b>16 when your formal request was sent.</b></p> <p>17 Q Well, we just looked at the document</p> <p>18 that was dated September 2020.</p> <p><b>19 A Oh, yeah, I see that now, yes, we</b></p> <p><b>20 looked at it before.</b></p> <p>21 Q Right. So the previous -- the formal</p> <p>22 requests were dated September 28th, 2020.</p> <p>23 These -- this information request was</p> <p>24 called UB -- I assume they mean UBS diligence</p> <p>25 request, came in to prior to August 6th, 2020;</p>	<p style="text-align: right;">368</p> <p>1 Do you see that?</p> <p><b>2 A Yes.</b></p> <p>3 Q And all of this was about -- before</p> <p>4 they're trying to figure out what's the assets on</p> <p>5 CDO Fund's books with respect to an interest in</p> <p>6 Multi Strat. That was the subject of the previous</p> <p>7 emails. And Greg says:</p> <p>8 "Scott and Isaac, I spoke to Jim about this</p> <p>9 issue this morning. It is a high priority at this</p> <p>10 point and we need to do what we can to push to</p> <p>11 conclusion.</p> <p>12 I understand that it is going to take some</p> <p>13 work.</p> <p>14 Can we schedule a time Wednesday morning to</p> <p>15 discuss progress and where we're at. I am</p> <p>16 generally available so whatever works for you will</p> <p>17 work for me."</p> <p>18 Do you see that?</p> <p><b>19 A I do.</b></p> <p>20 Q And that's August 15th, 2020; correct?</p> <p><b>21 A Yes.</b></p> <p>22 Q And in response you then write your</p> <p>23 email that starts with:</p> <p>24 "I don't think there is any need for a call.</p> <p>25 I can tell you where we are currently."</p>

<p style="text-align: right;">369</p> <p>1 Do you see that?</p> <p>2 <b>A Yes.</b></p> <p>3 Q And you say how documents were created</p> <p>4 as far back as 15 years ago, and records and</p> <p>5 storage practices were different in 2005; do you</p> <p>6 see that?</p> <p>7 <b>A I do.</b></p> <p>8 Q And you say in the middle here:</p> <p>9 "As I'm sure you are aware, and I know UBS</p> <p>10 is aware, that the document retention policy of</p> <p>11 the SEC is that the RIAs are required to maintain</p> <p>12 documents for seven years."</p> <p>13 Do you see that?</p> <p>14 <b>A I do.</b></p> <p>15 Q And you intimated or told various</p> <p>16 people, like you intimated at the beginning of our</p> <p>17 conversation, that there just might not be</p> <p>18 documents available prior to seven years because</p> <p>19 of the supposed retention policies of the SEC.</p> <p>20 Correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: That's not what I said</p> <p>23 at all. I said we were required to retain them</p> <p>24 for seven years. To your point, there was a</p> <p>25 litigation hold here, but the difficulty it had</p>	<p style="text-align: right;">371</p> <p>1 with the litigation hold requirements; correct?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: What does that have to do</p> <p>4 with anything? I said what we --</p> <p>5 -- (overspeaking) --</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Sir, I --</p> <p>8 <b>A I'm giving an update here, Andy. If</b></p> <p>9 <b>you are going to ask me a question I'd like the</b></p> <p>10 <b>opportunity to answer. I am giving a full update</b></p> <p>11 <b>here to Mr. Demo, and this is an update about how</b></p> <p>12 many requests (inaudible) want. Jim Seery has</p> <p>13 been copied on all of these and I spoke to Jim</p> <p>14 Seery about what was priorities and what I find</p> <p>15 super-interesting is that this thing was highly</p> <p>16 urgent on August 6th, Greg Demo, in his infinite</p> <p>17 urgency, doesn't even write me back until</p> <p>18 August 15th. He wants to schedule a call on</p> <p>19 August 19th.</p> <p>20 So 13 days later is when he even wants</p> <p>21 to discuss it. I'd say by any anybody's</p> <p>22 estimation that is not highly urgent, especially</p> <p>23 after Mr. Seery, who was the person that did have</p> <p>24 the authority to prioritize all these various</p> <p>25 document requests told me to work the best we</p>
<p style="text-align: right;">370</p> <p>1 been sent off site.</p> <p>2 Furthermore -- furthermore, we did not</p> <p>3 have a document request from you. This is a</p> <p>4 general request that came in from Pachulski and</p> <p>5 DSI who asked us to go back to 2005 and look for</p> <p>6 very specific information in regards to -- CDO</p> <p>7 Opportunity Master Fund that we then discovered</p> <p>8 had changed names to where they are confused</p> <p>9 themselves. This was a specific search at this</p> <p>10 point relayed to us by Pachulski and DSI, not a</p> <p>11 document request like you showed me.</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q You say that there's a document</p> <p>14 retention policing of seven years. You do not say</p> <p>15 anywhere words to the effect of: Oh, but we have a</p> <p>16 litigation hold so we have the documents, or words</p> <p>17 to that effect. You don't say anything about</p> <p>18 that, do you?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: No, and I don't say we</p> <p>21 don't have the documents.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q But you mention a seven-year document</p> <p>24 retention policy but you don't mention anything</p> <p>25 about what, if any, efforts you've taken to comply</p>	<p style="text-align: right;">372</p> <p>1 could on this, but other things were more</p> <p>2 important at the time.</p> <p>3 Q My question to you was: In this email</p> <p>4 you mentioned a seven-year document retention</p> <p>5 policy?</p> <p>6 <b>A Yes.</b></p> <p>7 Q You don't mention anything about what,</p> <p>8 if any, efforts you've taken to comply with</p> <p>9 litigation hold requirements with respect to UBS;</p> <p>10 isn't that true?</p> <p>11 MS. SMITH: Objection. Asked and</p> <p>12 answered --</p> <p>13 -- (Overspeaking) --</p> <p>14 THE WITNESS: -- about litigation hold</p> <p>15 requirements. I'm giving an update: Here's where</p> <p>16 we are currently. I'm letting Mr. Demo know that</p> <p>17 there is a seven-year hold on all these documents.</p> <p>18 Some of the things they were asking for, I don't</p> <p>19 think were even subject to the litigation hold</p> <p>20 with UBS because it is before the transaction,</p> <p>21 Andy. They were asking us stuff as far back as</p> <p>22 2005, which is before the transaction with UBS.</p> <p>23 So it wouldn't be subject to the litigation hold.</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Okay. Move to strike as</p>

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1 non-responsive.  
 2 **A No, you asked me if I addressed the**  
 3 **litigation hold, so it is responsive in my**  
 4 **opinion.**  
 5 Q My question to you, and I'd like a  
 6 direct answer to this question, is: In this email  
 7 you mention a seven-year document retention policy  
 8 but you don't mention anything about what, if any,  
 9 efforts you've taken to comply with litigation  
 10 hold requirements with respect to UBS; isn't that  
 11 true?  
 12 **A Yes.**  
 13 MS. SMITH: Objection to form.  
 14 BY MR. CLUBOK:  
 15 Q Okay. Continuing on this email, you  
 16 say that -- when you talk about ghost funds you  
 17 don't simply say that they don't have directors or  
 18 officers. You also say they don't have bank  
 19 accounts. They sit dormant and in all caps:  
 20 "No one knows what they truly retain,  
 21 etc."  
 22 Correct?  
 23 THE WITNESS: Yes, it's about the 6,000  
 24 ghost funds in totality, digital description of  
 25 the situation, of various 6,000 ghost funds that

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1 KPMG came and told me about. Yes.  
 2 BY MR. CLUBOK:  
 3 Q But there were people at Highland who  
 4 specifically did know that substantially all of  
 5 the assets of these funds had been transferred to  
 6 Sentinel on or about August 2017; correct?  
 7 **A Yes, I'm not talking about just**  
 8 **Sentinel. I'm talking about 6,000 funds and the**  
 9 **commonalities they have.**  
 10 Q Right. But with respect to HFP, CDO  
 11 Fund, and SOHC, with respect to those three  
 12 specific funds, there were lots of people, you  
 13 said before, at HCM who fully knew that  
 14 substantially all of the assets of those three  
 15 funds had been transferred to Sentinel Reinsurance  
 16 in August 2017; correct?  
 17 **A Essentially true and right before the**  
 18 **break you showed me an email with a bunch of those**  
 19 **people copied showing wires out of Sentinel -- I**  
 20 **mean to Sentinel.**  
 21 Q And you were one of those people who  
 22 knew that; correct?  
 23 **A Correct.**  
 24 Q And Mr. Leventon was another one of  
 25 those people who knew that; correct?

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1 **A Correct.**  
 2 Q And Mr. Sevilla was another person who  
 3 knew that; correct?  
 4 **A Correct.**  
 5 Q And Mr. DiOrio was another person who  
 6 knew that; correct?  
 7 **A Correct. Mr. Surgent, Mr. Waterhouse,**  
 8 **Carter Chism, Cliff Stoops, we could list them**  
 9 **all.**  
 10 Q You say then:  
 11 "Isaac and myself have spent in excess of a  
 12 hundred hours trying to piece together everything  
 13 we can to create a true and accurate  
 14 document-based record of what happened with these  
 15 target entities."  
 16 So is it true that you and Isaac together  
 17 spent in excess of 100 hours trying to piece  
 18 together everything you could to create a true and  
 19 accurate document-based record of what happened  
 20 with CDO Fund's assets?  
 21 **A Yes.**  
 22 MS. SMITH: Objection to form.  
 23 THE WITNESS: Yes, starting in 2005,  
 24 which we were tasked to do, as you can see in my  
 25 second paragraph.

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1 BY MR. CLUBOK:  
 2 Q But you knew completely that all of CDO  
 3 Fund's assets had been transferred, or  
 4 substantially all of them had been transferred in  
 5 August 2017 to Sentinel Reinsurance; correct?  
 6 **A I did not --**  
 7 -- (overspeaking) --  
 8 MS. SMITH: Objection, asked and  
 9 answered.  
 10 THE WITNESS: I did not -- sorry. I  
 11 did not know they had been transferred and that's  
 12 not what we were asked to do.  
 13 We were asked to start back in 2005, as  
 14 you can see in the email chain and specifically  
 15 give information on CDO Opportunity Master Fund,  
 16 which became MSCF or MBCDO, and go through that,  
 17 from 2005. That's where we were told to start by  
 18 Mr. Seery.  
 19 BY MR. CLUBOK:  
 20 Q You knew when you wrote this email that  
 21 substantially all of CDO Fund's assets had been  
 22 transferred in August 2017 to Sentinel  
 23 Reinsurance; correct?  
 24 **A I knew that something was transferred**  
 25 **and it was a substantial portion.**

<p style="text-align: right;">377</p> <p>1 Q And there were lots of people that you                  2 could have identified to Mr. Demo and others who                  3 could have told them exactly what was transferred                  4 in 2017 to Sentinel Reinsurance from CDO Fund,                  5 SOHC, and HFP; correct?                  6 <b>A Correct, but we were not tasked with                  7 anything but starting in 2005 and Mr. Seery was                  8 very clear that we -- that he did not want                  9 anything that was guess work, that he wanted a                  10 chain of custody in that entity starting in 2005.</b>                  11 Q Well, actually, you told him that a                  12 large majority of your efforts was based in                  13 educated "guess work." You --                  14 <b>A Yes, starting --</b>                  15 Q -- you specifically said that that is                  16 what you were doing; isn't that right?                  17 <b>A Yes, starting in 2005 because no one                  18 was hardly left from that time period and the                  19 document storage was -- was not up to par, let's                  20 put it that way.</b>                  21 Q Sorry, Mr. -- you are telling Mr. Demo                  22 that a large majority of your efforts was                  23 supposedly based on educated guess work?                  24 <b>A Yes.</b>                  25 Q That was only possible due to your long</p>	<p style="text-align: right;">379</p> <p>1 MS. SMITH: Objection to form --                  2 BY MR. CLUBOK:                  3 Q Correct?                  4 <b>A This task was starting from 2005, go                  5 from there.</b>                  6 Q Sorry, you keep answering over                  7 Ms. Smith's objections and I --                  8 <b>A My apologies.</b>                  9 Q -- think the court reporter could not                  10 get your answer. So I'm going to say it again.                  11 <b>A Okay.</b>                  12 Q When you sent this email you were aware                  13 that there was documented evidence showing exactly                  14 what happened with CDO Fund, SOHC and HFP's assets                  15 in 2017; correct?                  16 <b>A Correct.</b>                  17 Q And you did not mention that in any way                  18 to Mr. Demo, Mr. Seery or anybody else; correct?                  19 <b>A Correct.</b>                  20 Q And you did not cause that information                  21 to be shared with them by any of your colleagues                  22 at HCM; correct?                  23 <b>A Correct, and I didn't stop anyone from                  24 sharing it either.</b>                  25 Q Okay. And is it true that you did --</p>
<p style="text-align: right;">378</p> <p>1 tenure with the debtor; correct?                  2 <b>A Yes, because we knew, anecdotally,                  3 things that people had told us about what went on                  4 in 2005.</b>                  5 Q And you're claiming that Mr. Seery,                  6 though, specifically told you not to engage in any                  7 educated guess work?                  8 <b>A (Witness reads document                  9 unintelligibly.)                  10 And if you look at the top, Mr. Seery                  11 is copying me on the email. Do you think if I                  12 made an assertion that Jim Seery had told me to do                  13 something and he was copied that he wouldn't have                  14 corrected it?</b>                  15 Q Did Mr. Seery tell you not to engage in                  16 educated guess work?                  17 <b>A Exactly. He said I want documented                  18 evidence. I don't care what you guys think you                  19 know, I want documented evidence.</b>                  20 Q And you were aware that there was --                  21 that the email that you were copied on showing                  22 cash transfers to Sentinel, you were aware there                  23 was documented evidence showing exactly what                  24 happened with every one of these funds in 2017;                  25 correct?</p>	<p style="text-align: right;">380</p> <p>1 that you were trying to create a true and accurate                  2 document-based record of what happened with --                  3 well, strike that.                  4 You also knew specifically that                  5 Sentinel Reinsurance had obtained a redemption                  6 interest in Multi Strat from CDO Fund; correct?                  7 MS. SMITH: Objection to form.                  8 THE WITNESS: I became aware of that at                  9 some point.                  10 BY MR. CLUBOK:                  11 Q And that awareness came before you sent                  12 this email; correct?                  13 <b>A I don't know.</b>                  14 Q Okay. When you did become aware of                  15 that did you pass that information on to Mr. Demo                  16 or to anyone else connected with him or Mr. Seery?                  17 <b>A I did not pass it on. I believe that                  18 at some point it was put in a presentation to you                  19 that there was a redemption.</b>                  20 Q At some point was there a presentation                  21 provided to me that showed that Sentinel                  22 Reinsurance had made a redemption; was that ever                  23 provided to me?                  24 <b>A I don't know what was provided to you                  25 in terms of that.</b></p>

<p>381</p> <p>1 Q Sorry, you just said that at some point 2 there was a presentation made to me that there had 3 been a redemption? 4 <b>A Yeah, that there had been a redemption</b> 5 <b>but --</b> 6 -- (overspeaking) -- 7 Q -- redemption -- 8 -- (overspeaking) -- 9 <b>A -- I think that was prepared by</b> 10 <b>Mr. Klos and I believe given to you by</b> 11 <b>Mr. Dondero.</b> 12 Q Did that presentation show that 13 Sentinel Reinsurance had made a redemption? 14 <b>A I don't know. I'd have to see it.</b> 15 Q Okay. Did that -- did Mr. Dondero ever 16 communicate in words or substance that the 17 redeemers were unaffiliated with him? 18 MS. SMITH: Objection to form. 19 THE WITNESS: I wasn't on your 20 communications with Mr. Dondero. 21 BY MR. CLUBOK: 22 Q What -- how do you know that a 23 presentation was made regarding the subject? Who 24 told you? 25 <b>A Mr. Dondero wrote an email to me</b></p>	<p>382</p> <p>1 <b>wanting to put something together for a phone call</b> 2 <b>with you and he had already asked David Klos for</b> 3 <b>it and David Klos produced it before I was</b> 4 <b>involved.</b> 5 Q And -- 6 <b>A Or maybe he called me, I can't</b> 7 <b>remember, but -- I think he called me, now that I</b> 8 <b>remember, but he had already tasked Klos with it.</b> 9 Q Where does David Klos work now? 10 <b>A Highland, as far as I know.</b> 11 Q What's that? 12 <b>A As far as I know. I don't know if he's</b> 13 <b>still there or not.</b> 14 Q Did David Klos at the time that he made 15 that presentation know your connection with SAS? 16 <b>A Yes.</b> 17 Q Did he know Mr. Dondero's connection 18 with SAS? 19 <b>A Yes.</b> 20 Q Did he know SAS's connection with 21 Sentinel? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I assume that he did. 24 BY MR. CLUBOK: 25 Q Did -- has SAS made any redemption in</p>	<p>383</p> <p>1 Multi Strat? 2 <b>A Absolutely not that I'm aware of.</b> 3 MS. SMITH: And while Mr. Clubok is 4 formulating his next question, can I ask the court 5 reporter how much time is left. 6 MR. CLUBOK: Let's go off the record. 7 THE VIDEOGRAPHER: We're going off the 8 record at 7:39 p.m. 9 (Recess taken from 7:39 p.m. to 7:53 p.m.) 10 THE VIDEOGRAPHER: We're going back on 11 the record at 7:53 p.m. 12 (Deposition Exhibit 90 was marked for 13 identification.) 14 BY MR. CLUBOK: 15 Q We have an exhibit that's been marked 16 as Exhibit 90. Exhibit 90 is the same cover email 17 that we previously showed and Ms. Smith had 18 objected because at the time we didn't have the 19 attachment. We've now created a document, which 20 is Exhibit 90, that has both this cover email, 21 where Stephanie Vitiello sends to Isaac Leventon 22 an attachment, it's a PowerPoint, and she says: 23 "Thanks for sending. Based on our 24 discussion with Scott, I started updating the 25 first few slides. I'll be in by 8 tomorrow ..."</p>	<p>384</p> <p>1 Presumably referring to August 12th, 2017: 2 "... so we can edit before we meet with 3 Scott if you would like." 4 And this is an email that she sends at 5 6:28 p.m. on Tuesday April 11th, 2017. 6 Do you see that, Mr. Ellington? 7 <b>A Yes.</b> 8 Q Okay. And before we didn't have the 9 attachment so I'm hoping that seeing the 10 attachment will refresh your recollection that you 11 had had a discussion with Stephanie and Isaac that 12 led to them creating this document. 13 And if I go down to the next page -- if 14 Scott gives me the ability, you can see an early 15 version of this settlement analysis. And it says 16 "UBS Settlement: Introduction" and it talks about 17 what we should say upfront, and "Here's why we 18 should settle." 19 Do you see where -- and it looks like 20 an early draft. 21 <b>A I see the words on the page.</b> 22 Q Yeah, and it's clearly an early draft 23 of whatever's being written; right? It just 24 describes things like "brief intro" instead of 25 laying out an actual intro?</p>
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<p style="text-align: right;">385</p> <p><b>1 A Sure.</b></p> <p>2 MS. SMITH: Objection to form. I'm</p> <p>3 also objecting to the continuation of the</p> <p>4 deposition to the extent it goes past the</p> <p>5 five-minute mark. We understood from the court</p> <p>6 videographer that we were over time and we agreed</p> <p>7 to give you, as a courtesy, professional courtesy,</p> <p>8 an extra five minutes.</p> <p>9 Also, I still don't have these exhibits</p> <p>10 in the chat.</p> <p>11 MR. CLUBOK: Let's go off the record.</p> <p>12 THE VIDEOGRAPHER: We're going off the</p> <p>13 record at 7:55 p.m.</p> <p>14 (Recess taken from 7:55 p.m. to 7:59 p.m.)</p> <p>15 THE VIDEOGRAPHER: We're going back on</p> <p>16 the record at 7:59 p.m.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Mr. Ellington, I'm referring you to</p> <p>19 Exhibit 90, the page that ends Bates number 433,</p> <p>20 there's a UBS settlement structure that</p> <p>21 contemplates:</p> <p>22 "NewCo Cayman controls HFP/CDO Fund</p> <p>23 assets in (what"); and ..."</p> <p>24 Et cetera, and as set forth on this</p> <p>25 page; do you see this?</p>	<p style="text-align: right;">387</p> <p>1 the next day, April 12th.</p> <p>2 Let's put up Exhibit 91.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Okay.</p> <p>5 Remember Ms. Vitiello says that she's</p> <p>6 coming in at 8 so they can edit with Mr. Leventon</p> <p>7 before they meet with you, Mr. Ellington.</p> <p>8 Now we look at Exhibit 91, and this is</p> <p>9 an email from 3:26 the next day, and Stephanie</p> <p>10 sends it to Isaac and says:</p> <p>11 "Started making updates ..."</p> <p>12 In response to an email that Isaac had</p> <p>13 sent her at 11:30 a.m. that morning; do you see</p> <p>14 that?</p> <p><b>15 A I do.</b></p> <p>16 Q And now we're up to settlement</p> <p>17 structure version 4, according to Stephanie's</p> <p>18 attachment; do you see that?</p> <p><b>19 A Yeah, I do but the subject line says</b></p> <p><b>20 "UBS Settlement Structure v2."</b></p> <p>21 Q Well, that's what Isaac said at 11:30,</p> <p>22 but this email where Stephanie responds at</p> <p>23 3:26 says version 4; correct?</p> <p><b>24 A I see that now in the attachment.</b></p> <p><b>25 Okay.</b></p>
<p style="text-align: right;">386</p> <p><b>1 A Yes.</b></p> <p>2 Q And this, again, is an email that was</p> <p>3 sent or a PowerPoint attached to an email sent by</p> <p>4 Stephanie Vitiello to Isaac Leventon on the</p> <p>5 evening of August -- I'm sorry, April 11th, 2017</p> <p>6 where she says based on discussion with Scott she</p> <p>7 started updating the first few slides, and then</p> <p>8 she'll be "in by 8 tomorrow so we can edit before</p> <p>9 we meet with Scott."</p> <p>10 Does seeing this refresh your</p> <p>11 recollection that you discussed a UBS settlement</p> <p>12 structure with Ms. Vitiello and Mr. Leventon about</p> <p>13 potentially starting a new company in Cayman that</p> <p>14 would control the HFP, CDO Fund assets and would</p> <p>15 be part of a UBS settlement structure?</p> <p><b>16 A No.</b></p> <p>17 Q Do you deny that you had that</p> <p>18 discussion or you just say you don't remember one</p> <p>19 way or the other?</p> <p><b>20 A I don't remember having this discussion</b></p> <p><b>21 at all.</b></p> <p>22 (Deposition Exhibit 91 was marked for</p> <p>23 identification.)</p> <p>24 MR. CLUBOK: Okay. We're going to look</p> <p>25 at now Exhibit 91. Exhibit 91 is an email from</p>	<p style="text-align: right;">388</p> <p>1 Q Okay?</p> <p><b>2 A Yes.</b></p> <p>3 Q So she sends her attachment and the</p> <p>4 attachment -- I'm going to go down, if I have</p> <p>5 control here, and I'm going to go down to the page</p> <p>6 that Bates-labeled 508.</p> <p>7 I am going to rotate my screen here.</p> <p>8 And on the page that says 508 it now</p> <p>9 says "If Highland settles" and it still talks</p> <p>10 about:</p> <p>11 "NewCo Cayman controls HFP/CDO Fund</p> <p>12 assets (currently \$94 million) ..."</p> <p>13 So that's new information that's been</p> <p>14 added to this version on April 12th; do you see</p> <p>15 that?</p> <p><b>16 A I do.</b></p> <p>17 Q And it still talks about the NewCo and</p> <p>18 HCMLP using "HFP/CDO Fund assets to generate cash</p> <p>19 to pay UBS settlement, Citi, and outstanding legal</p> <p>20 fees."</p> <p>21 Do you see that?</p> <p><b>22 A I do.</b></p> <p>23 Q And it talks about this allowing HCMLPs</p> <p>24 to avoid a \$50 million-plus tax liability.</p> <p><b>25 A Yes.</b></p>

389	<p>1 Q And how residual assets up to 50 2 million will stay at this NewCo Cayman which will 3 controlled by Highland, according to this slide; 4 do you see that? 5 <b>A I do.</b> 6 Q Do you remember having a discussion 7 with Mr. Leventon and Ms. -- I won't say her name 8 right -- how do you pronounce her name? 9 <b>A Ms. Vitiello.</b> 10 Q -- Ms. Vitiello that is reflected in 11 Exhibit 91 on the page that ends in 508. 12 <b>A Yes.</b> 13 Q Okay. 14 <b>A Stop. Did you ask if it refreshed my 15 recollection; is that your question?</b> 16 Q Yes. 17 <b>A No, it does not.</b> 18 Q Oh, but you remember having that 19 discussion? 20 <b>A No, I do not.</b> 21 Q Oh, I'm sorry, what did you say "Yes" 22 to? 23 <b>A I thought you were asking me if I saw 24 the language in number 5.</b> 25 Q I see. Okay. So you see this slide</p>	391	<p>1 chain I want to point you to is Exhibit number 92. 2 That ends [sic] in Bates number 593. 3 MS. SMITH: Are we on Exhibit 2 now -- 4 Exhibit 92? 5 MR. CLUBOK: We're on Exhibit 92 and it 6 ends [sic] in Bates number 593. 7 MS. SMITH: Begins at 593? 8 MR. CLUBOK: Yes. 9 (Ellington Exhibit 92 was marked for 10 identification.) 11 BY MR. CLUBOK: 12 Q Yes, and you can see that Mr. Leventon 13 has sent Ms. Vitiello at 7:49 p.m. a document he 14 calls appendix 1, which is entitled "UBS - 15 Settlement Assets" with an Excel spreadsheet, and 16 in response, at about 7:56 p.m., Ms. Vitiello is 17 sending Mr. Leventon on April 12th a document 18 where we are up to version 6 of the UBS settlement 19 structure; do you see that? 20 <b>A Yes.</b> 21 Q And this is all happening -- this is 22 all -- approximately 24 hours has passed, or less, 23 since we saw that first email when she said that 24 she was updating the slide based on conversation 25 and would meet with you tomorrow, which was</p>
390	<p>1 but seeing this doesn't refresh your recollection 2 that you actually met with Ms. Vitiello and 3 Mr. Leventon that day and this reflects that 4 meeting; is that what your testimony is? 5 <b>A No.</b> 6 Q And again, are you saying it didn't 7 happen or are you saying you don't remember one 8 way or the other? 9 <b>A I don't remember it happening.</b> 10 Q Okay. Do you remember -- so, are you 11 saying you do not believe it happened or are you 12 saying you don't remember if it did or not? 13 <b>A I don't recall that it happened.</b> 14 Q Are you saying you don't recall whether 15 or not it happened or are you saying that as far 16 as you recall it did not happen? 17 MS. SMITH: Objection to form. Asked 18 and answered. 19 THE WITNESS: I have no memory of the 20 meeting. I don't know how else to answer the 21 question. 22 (Deposition Exhibit 92 was marked for 23 identification.) 24 BY MR. CLUBOK: 25 Q Okay. So the last exhibit in this</p>	392	<p>1 Exhibit 90; is that correct? 2 <b>A Yes.</b> 3 Q So if we go down Exhibit 92, we now see 4 that -- that it looks a lot more like the final 5 version that we looked at later. It's got this 6 first page that says "UBS vs. Highland," like a 7 more -- I think it was version 9 that we talked 8 about earlier. Do you see that on page 1? 9 Did Mr. Ellington freeze again? Did we 10 lose him? 11 <b>A I only see half of a cover page.</b> 12 Q Scott, I'm sorry, you froze for a 13 second or maybe it was me. 14 Do you see -- 15 <b>A Oh no, it's me. It says my internet 16 connection is unstable. Is it back to normal?</b> 17 Q Okay, yes, you are back to normal. So 18 close to being done so let's try to get this last 19 one? 20 <b>A Okay.</b> 21 Q We are on Exhibit 92. I've scrolled 22 down and you can see that Exhibit 92, which I 23 think is version 6 according to Ms. Vitiello, is 24 looking a lot more like the version 9 that we 25 talked about earlier today?</p>

<p style="text-align: right;">393</p> <p>1     <b>A I apologize, Mr. Clubok, I can still</b>  2 <b>only see the cover page.</b>  3     <b>Q</b> Yeah, I'm only showing that one slide  4 right now.  5     <b>A Okay.</b>  6     <b>Q</b> So right now I'm -- I'll just make it a  7 little smaller so you can see it.  8     <b>A Okay.</b>  9     <b>Q</b> I just looked, showing -- this first  10 slide -- "Settlement Analysis," that looks  11 familiar to you, right?  12    <b>A Correct.</b>  13    <b>Q</b> That was the version that we looked at  14 later --  15    <b>A Yes.</b>  16    <b>Q</b> -- earlier today, I mean?  17    <b>A Yes.</b>  18    <b>Q</b> So now I am going to scroll down and  19 now it's got more of this detailed information  20 like we saw in the version 9. It says:  21        "If Highland does not settle ..."  22        And what happens if UBS wins or  23 Highland wins. And it has got that:  24        "Bottom line: There is no upside to go  25 to trial in either matter."</p>	<p style="text-align: right;">395</p> <p>1     <b>Q</b> And then we've put it down, and you can  2 see a lot of these pages are more similar and now  3 we get to slide 6 and now -- and this is  4 August 12th, the day after that slide show she  5 talked about NewCo, now all of a sudden we're  6 talking about Sentinel controlling the assets,  7 "the HFP/CDO Fund assets (currently \$94 million)."  8        Do you see that?  9     <b>A I do.</b>  10    <b>Q</b> And now it says:  11        "Sentinel and HCMLP can use HFP/CDO  12 Fund assets to generate cash to pay UBS settlement  13 ..."  14        Right?  15    <b>A Yes.</b>  16    <b>Q</b> And it talks about HCMLP's \$50 million  17 tax liability but almost all of that is actually  18 Jim Dondero's personal tax liability; right?  19        MS. SMITH: Objection to form.  20        -- (overspeaking) --  21        THE WITNESS: I don't know if there was  22 an additional HCMLP tax liability.  23 BY MR. CLUBOK:  24    <b>Q</b> Well, if you look here on the list of  25 tax liabilities, it has got 50 million-plus for</p>
<p style="text-align: right;">394</p> <p>1        On the page that ends at 595 for  2 Exhibit 92; do you see that?  3     <b>A Yes.</b>  4     <b>Q</b> And if we continue, it's got specific  5 information filled in about resulting tax  6 liability and in particular, it's got more than  7 50 million for Dondero?  8     <b>A Yes.</b>  9     <b>Q</b> And then small amounts for other people  10 who were affiliated at one point with Highland,  11 like Todd Travers and Pat Daugherty and some  12 others?  13    <b>A Correct.</b>  14    <b>Q</b> So when you talk about 50 million plus  15 tax liability for HCMLP, most of that is  16 Mr. Dondero's tax liability?  17        MS. SMITH: Objection to form.  18 Objection to form.  19 BY MR. CLUBOK:  20    <b>Q</b> Sorry. When the document refers to  21 50 million plus tax liability later, it -- most of  22 that tax liability is associated with Mr. Dondero  23 with respect to the HCM-affiliated individuals;  24 correct?  25    <b>A Yes.</b></p>	<p style="text-align: right;">396</p> <p>1 Dondero and then it has some unaffiliated  2 entities, Crusader, Goldman, and then it has got  3 some individuals that have collectively a couple  4 of million.  5        So, fair to say that HCMLP's  6 50 million-plus tax liability means Jim Dondero's  7 primarily?  8     <b>A I can see why that assumption would be</b>  9 <b>made but I don't know if they're the same.</b>  10    <b>Q</b> Okay. And then it talks about residual  11 assets now up to 50 million staying at Sentinel;  12 right?  13    <b>A Yes.</b>  14    <b>Q</b> So you see over the course of 24 hours,  15 roughly, the proposal has changed from a NewCo in  16 the Caymans that would obtain the assets and  17 somehow settle things, to Sentinel controlling the  18 assets and using the assets to generate cash to  19 settle; do you see that?  20    <b>A Yes.</b>  21        MS. SMITH: Objection to form.  22 BY MR. CLUBOK:  23    <b>Q</b> And in fact on page 8 we now see that  24 the settlement structure now specifically talks  25 about HFP and CDO Fund to buy a \$100 million ATE</p>

<p style="text-align: right;">397</p> <p>1 policy from Sentinel in exchange for all the</p> <p>2 assets in HFP/CDO Fund; do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And in the span of this 24 hours, did</p> <p>5 Ms. Vitiello have any discussions with the</p> <p>6 independent directors of Sentinel as far as you</p> <p>7 know?</p> <p>8 <b>A I don't know.</b></p> <p>9 Q Was Ms. Vitiello authorized to call the</p> <p>10 independent directors of Sentinel and discuss this</p> <p>11 matter with them on this day?</p> <p>12 <b>A She could easily have done that. I</b></p> <p>13 <b>don't know.</b></p> <p>14 Q Did you authorize her to do that?</p> <p>15 <b>A Not that I recall, no.</b></p> <p>16 Q Did you authorize Mr. Leventon to have</p> <p>17 any discussions with the independent directors of</p> <p>18 Sentinel to see if they were good with this</p> <p>19 proposed settlement structure reflected on page --</p> <p>20 that ends in Bates number 601 for Exhibit 92?</p> <p>21 <b>A Did I authorize Mr. Leventon? Not that</b></p> <p>22 <b>I'm aware of, no.</b></p> <p>23 Q Did you authorize anybody anyone to</p> <p>24 reach out to the independent directors on or about</p> <p>25 April 11th or 12th to see if they would be willing</p>	<p style="text-align: right;">399</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: No, if their memory is</p> <p>3 better than mine, I don't think they'd be lying.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Okay.</p> <p>6 <b>A It also -- they could have had limited</b></p> <p>7 <b>input from me. They may have been asking me how</b></p> <p>8 <b>to organize the slides, if they did meet with me.</b></p> <p>9 <b>It doesn't mean they asked me for the input of</b></p> <p>10 <b>numbers. I wouldn't even have known what numbers</b></p> <p>11 <b>to put in there.</b></p> <p>12 Q Who came up with the idea to make the</p> <p>13 proposed settlement structure as reflected in the</p> <p>14 page that ends Bates number 601 of Exhibit 92 as</p> <p>15 opposed to the original settlement structure that</p> <p>16 we saw from the day before?</p> <p>17 <b>A I don't know.</b></p> <p>18 Q It was you, wasn't it?</p> <p>19 <b>A No, it wasn't me. I don't remember</b></p> <p>20 <b>coming up with this structure. It could have been</b></p> <p>21 <b>compliance.</b></p> <p>22 Q It could have been who at compliance?</p> <p>23 <b>A If compliance -- part of the process</b></p> <p>24 <b>was examining various structures of what was</b></p> <p>25 <b>possible.</b></p>
<p style="text-align: right;">398</p> <p>1 to sell a \$100 million ATE policy in exchange for</p> <p>2 all the assets in HFP and CDO Fund?</p> <p>3 <b>A Did I authorize anyone to do that? No.</b></p> <p>4 Q Who came up with these numbers in the</p> <p>5 span of 24-hour period between when Ms. Vitiello</p> <p>6 tells Isaac Leventon she spoke to you and they're</p> <p>7 going to have a meeting with you tomorrow at the</p> <p>8 end of the day, April 12th; do you know?</p> <p>9 <b>A No idea if this is again during the</b></p> <p>10 <b>timeframe where obviously all these ideas were</b></p> <p>11 <b>being bandied about in large group and subsets of</b></p> <p>12 <b>the groups. There could have been numerous inputs</b></p> <p>13 <b>of the list.</b></p> <p>14 Q Was there a large group that met on</p> <p>15 April 12th on this subject?</p> <p>16 <b>A I cannot remember what times people</b></p> <p>17 <b>met.</b></p> <p>18 Q Did you ever meet --</p> <p>19 <b>A It was four years ago.</b></p> <p>20 Q Did you ever meet just in a small group</p> <p>21 with Mr. Leventon and Ms. Vitiello to discuss this</p> <p>22 structure?</p> <p>23 <b>A Not that I remember.</b></p> <p>24 Q If either of them said you did, would</p> <p>25 they be lying?</p>	<p style="text-align: right;">400</p> <p>1 Q You are just totally speculating about</p> <p>2 that, you have no memory of talking to compliance</p> <p>3 at this time about --</p> <p>4 <b>A I didn't say I talked to compliance.</b></p> <p>5 <b>You asked me who they talked to or who gave the</b></p> <p>6 <b>input to this and I told you I don't know. And</b></p> <p>7 <b>you said, "It was you, wasn't it," and I said,</b></p> <p>8 <b>"No."</b></p> <p>9 Q But you were certainly involved with</p> <p>10 the proposal that's reflected on the page that</p> <p>11 ends 601 for Exhibit 92; correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I have no memory of this</p> <p>14 at all, period.</p> <p>15 MR. CLUBOK: Okay, that's all that</p> <p>16 I have, I believe.</p> <p>17 Thank you very much. I will say, I</p> <p>18 guess, since we're done with the deposition, just</p> <p>19 to briefly respond, because I don't want to get</p> <p>20 these arguments on the record.</p> <p>21 MS. SMITH: We are on the record.</p> <p>22 THE VIDEOGRAPHER: We are not off the</p> <p>23 record.</p> <p>24 MR. CLUBOK: We can stay on the record,</p> <p>25 I just don't want to have this -- we can go off</p>

<p style="text-align: right;">401</p> <p>1 the video of the deposition. The court reporter 2 can continue. 3 Let's shut the deposition down and the 4 court reporter can continue. 5 THE VIDEOGRAPHER: This marks the end 6 of the video deposition of Scott Ellington. We 7 are going off the video record at 8:14 p.m. 8 MR. CLUBOK: Just so we don't get into 9 a debate about this. I didn't want to respond to 10 everything that Ms. Smith said either in her last 11 comment or even before, frankly, about the other 12 issues. But, you know, we had a misunderstanding, 13 perhaps, a discrepancy in the time that the 14 videographer believed was left versus the time 15 that we had calculated and I don't know if 16 Ms. Smith had calculated a third time, but in any 17 event, as promised, I kept my questioning time to 18 I think just a few minutes, if you take out the 19 pauses and the time it took to get the exhibits up 20 and the objections and so forth, but hopefully 21 that was satisfactory and, in any event, I think 22 we, you know, I think that's all that needs to be 23 said about that. 24 We would like to serve Mr. Ellington. 25 We would like him not to dodge service of the</p>	<p style="text-align: right;">403</p> <p>1 Mr. Ellington if he either -- or if either of you 2 counsel, or if he's got other counsel that he can 3 refer us to for that matter would accept service 4 and avoid the expense of trying to achieve 5 service, which -- the experience we had in this 6 case on that was not pleasant and I'm hoping that 7 we don't have that same experience in this other 8 matter. 9 MS. SMITH: I don't want the perception 10 that he's dodging service when he has been in 11 town, you know, 36 hours or 30 hours and now he's 12 been sitting for your deposition. So, how could 13 he be dodging service when he's sitting for your 14 deposition? 15 MR. CLUBOK: Well, we are asking right 16 now through you, that he just simply accept 17 service of these papers. We have a process server 18 who will attempt to serve him beginning, perhaps, 19 tonight and continuing through tomorrow. 20 We hope we do not have to do that. It 21 is very simple. If we can just get an agreement 22 to accept service of those materials then it will 23 save everyone cost and expense and I hope that 24 that's just agreed upon. It is very simple. 25 It will be -- we'll be able to serve</p>
<p style="text-align: right;">402</p> <p>1 matter that's pending in New York. We'd like him 2 to -- 3 MS. SMITH: You need to go off the 4 record if you are going to be talking about other 5 stuff now. 6 MR. CLUBOK: Well, you brought it up 7 before on the record so I am just going to 8 continue on the record now and say we would very 9 much like Mr. Ellington to simply accept service 10 and not dodge it and not make it difficult for us 11 to serve him. 12 MR SODERLUND: She brought up your 13 violation of the confidentiality of the deposition 14 is what she brought up, Andy. 15 -- (overspeaking) -- 16 MS. SMITH: That's Eric Soderlund from 17 my office. 18 MR. CLUBOK: Yes, it's unhelpful. I 19 believe. 20 In any event, I passed on that request. 21 I want to make it clear that -- 22 -- (overspeaking) -- 23 MR. CLUBOK: I want to make it clear 24 that I have made that request very clearly to 25 avoid the necessity of trying to serve</p>	<p style="text-align: right;">404</p> <p>1 him but it will be a considerably unnecessary 2 expense, if the last time is the guide. 3 And I would hope that you and the 4 lawyers from Baker McKenzie are advising him not 5 to put us through that. That's all I can do. And 6 if Mr. Ellington has other counsel that are 7 representing him in that matter, then we'd ask 8 through you, Ms. Smith, to alert us to the names 9 of those people so we can avoid and we can move 10 cooperatively in that matter instead of -- 11 eventually we'll get service one way or the other, 12 no doubt, although we may have to go to the court 13 for it and we hope that that is not necessary. 14 MS. SMITH: Are we done? 15 MR. CLUBOK: Yes. Thank you. 16 If you -- if Mr. Ellington, will accept 17 service, if you could please just talk to him 18 after this, please call me back any time and 19 hopefully we can save everybody that trouble. 20 MS. SMITH: I'll talk to my client. 21 MR. CLUBOK: Thank you very much. 22 HOUSEKEEPING 23 MS. SMITH: Ms. Barrett, I would like a 24 draft, please, Frances Smith. 25 MS. McLAUGHLIN: We'll take the draft</p>

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1 too and then the final in ten days.  
2 MR. CLUBOK: Thank you so much. Thank  
3 you Nate, and Lisa and Robert Leonard for sticking  
4 around this late.

5 REMOTE TECHNICIAN: I just wanted to  
6 confirm as far as the exhibits go, do you just  
7 want the new exhibits, 86 through 92, attached to  
8 this transcript?

9 MR. CLUBOK: That's a great question.  
10 (Deposition concluded at 8:20 p.m. EST)

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1 REPORTER'S CERTIFICATION

2 I, Lisa M. Barrett, the officer before  
3 whom the foregoing deposition was taken, do hereby  
4 certify that the foregoing transcript is a true  
5 and correct record of the testimony given; that  
6 Said testimony was taken by me stenographically  
7 and thereafter reduced to typewriting under my  
8 direction; that reading and signing was requested;  
9 and that I am neither counsel for, related to, nor  
10 employed by any of the parties to this case and  
11 have no interest, financial or otherwise, in its  
12 outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand this 10th day of August, 2021.

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LISA M. BARRETT, RPR, CRR, CRC  
NOTARY PUBLIC IN AND FOR  
THE STATE OF MARYLAND



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# Transcript of Thomas Adamczak, 30(b)(6)

**Date:** April 12, 2022

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Thomas Adamczak, 30(b)(6)  
 Conducted on April 12, 2022

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<p>1 UNITED STATES BANKRUPTCY COURT                  NORTHERN DISTRICT OF TEXAS</p> <p>2 IN RE: )                  )                  3 HIGHLAND CAPITAL )                  MANAGEMENT, L.P. )                  4 )                  5 UBS SECURITIES, LLC )                  and UBS AG LONDON )                  BRANCH, )                  6 )                  7 Plaintiff, )                  )                  8 vs. ) Case No. 19-34054-SGJ11                  )                  9 HIGHLAND CAPITAL ) Chapter 11                  MANAGEMENT, L.P., )                  10 ) Adv. Proc. No. 21-03020-SGJ                  Defendant. )</p> <p>11 )                  12 VIDEOTAPED DEPOSITION OF                  THOMAS ADAMCZAK, 30(b)(6)                  13 )                  14 Tuesday, April 12, 2022                  9:06 a.m.</p> <p>15 )                  16 )                  17 )                  18 )                  19 Job No. 442674                  20 Pages: 1 - 315                  21 Reported by: Stephanie A. Battaglia, CSR, RMR,                  CRR                  22 )                  23 )                  24 )                  25 )</p>	<p>1 I N D E X</p> <p>2 WITNESS: PAGE:                  3 THOMAS ADAMCZAK, 30(b)(6)                  4 EXAMINATION BY:                  5 Mr. Burt 10, 311                  6 Mr. Weldon 307</p> <p>7 E X H I B I T S                  (Retained by Latham)                  8 Exhibit 112 Subpoena to Testify at 13                  a Deposition in a Bankruptcy                  Case (or Adversary Proceeding)                  9 Exhibit 113 Subpoena ad Testificandum 13                  10 Exhibit 114 Letter 22                  Re: Sentinel Reinsurance,                  Ltd. ("Sentinel"; License                  #642423) Request for Approval                  - Change in Ownership                  (CIMA Follow Up Questions)                  DISCSEN000097 -                  DISCSEN0000139                  15 Exhibit 115 E-mail 26                  Subject: FW:                  Sentinel Re, Ltd CIMA requests                  DISCSEN0008408 -                  DISCSEN0008410                  17 Exhibit 116 E-mail 36                  Subject: RE:                  Sentinel CIMA exam                  BC SEN000076061 -                  BC SEN000076080                  21 Exhibit 117 Management and Administrative 51                  Services Agreement                  BC SEN000361175 -                  BC SEN000361183                  23 )                  24 )                  25 )</p>
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<p>1 SUPREME COURT OF THE STATE OF NEW YORK                  COUNTY OF NEW YORK</p> <p>2 UBS SECURITIES LLC and )                  UBS AG, LONDON BRANCH, )                  3 )                  4 Plaintiffs, )                  )                  5 vs. ) Index No. :                  ) 650097/2009                  )                  6 HIGHLAND CAPITAL )                  MANAGEMENT, L.P., HIGHLAND )                  CDO OPPORTUNITY MASTER )                  7 FUND, L.P., HIGHLAND )                  SPECIAL OPPORTUNITIES )                  8 HOLDING COMPANY, HIGHLAND )                  FINANCIAL PARTNERS, L.P., )                  9 HIGHLAND CREDIT STRATEGIES )                  MASTER FUND, L.P., HIGHLAND )                  10 CRUSADER OFFSHORE PARTNERS,) )                  L.P., HIGHLAND CREDIT )                  11 OPPORTUNITIES CDO, L.P., )                  and STRAND ADVISORS, INC., )                  12 )                  13 Defendants. )                  14 )                  15 VIDEOTAPED DEPOSITION OF                  THOMAS ADAMCZAK, 30(b)(6)                  16 )                  17 Tuesday, April 12, 2022                  9:06 a.m.</p> <p>18 )                  19 )                  20 )                  21 )                  22 )                  23 )                  24 )                  25 )</p>	<p>1 (Cont'd.):</p> <p>2 Exhibit 118 E-mail 73                  Subject: RE: [EXTERNAL] FW:                  WinSure Yield Stack 2019                  Quota Share Reinsurance                  BC SEN000727319 -                  BC SEN000727328                  5 Exhibit 119 E-mail 79                  Subject: Fwd: London                  UBSPROD460936 -                  UBSPROD460948                  7 Exhibit 120 E-mail 89                  Subject: FW:                  Ellington - Request Reimbursement                  BC SEN000663342 -                  BC SEN000663344                  10 Exhibit 121 Letter 95                  KL_000029 -                  KL_000039                  12 Exhibit 122 E-mail 105                  Subject: RE:                  Expense Reimbursement                  BC SEN000662367 -                  BC SEN000662368                  15 Exhibit 123 2006 Tenuta San Guido 109                  Sassicaia Bolgheri                  (No Bates Numbers)                  17 Exhibit 124 E-mail 114                  Subject: Re:                  Sentinel Expenses for Approval                  BC SEN000074288 -                  BC SEN000074289                  20 Exhibit 125 E-mail 124                  Subject: UBS - Privileged                  Legal Liability                  Insurance Policy                  (No Bates Numbers)                  22 )                  23 )                  24 )                  25 )</p>



Conducted on April 12, 2022

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<p>1 (Cont'd.):</p> <p>2 Exhibit 126 E-mail 136                  Subject: Sentinel                  Reinsurance, Ltd. -                  Final Inspection Reports                  BC SEN000078777 -                  BC SEN000078828</p> <p>3</p> <p>4 Exhibit 127 E-mail 138                  Subject: RE:                  Draft ATE policy                  BC SEN0000745902 -                  BC SEN0000745906</p> <p>5</p> <p>6 Exhibit 128 E-mail 146                  Subject: FW:                  Sentinel Reinsurance -                  ATE policy                  BC SEN0000662979 -                  BC SEN0000745988</p> <p>7</p> <p>8 Exhibit 129 E-mail 157                  Subject: RE:                  Sentinel year-end                  actuarial analysis                  BC SEN000005065 -                  BC SEN000005085</p> <p>9</p> <p>10 Exhibit 130 Settlement Analysis 171                  UBS vs. Highland                  HCMUBS005304 -                  HCMUBS005321</p> <p>11</p> <p>12 Exhibit 131 E-mail 177                  Subject: Sentinel                  BC SEN000046128 -                  BC SEN000046129</p> <p>13</p> <p>14 Exhibit 132 Letter 184                  BC SEN0000767181 -                  BC SEN0000767182</p> <p>15</p> <p>16 Exhibit 133 Purchase Agreement 191                  (No Bates Numbers)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 (Cont'd.):</p> <p>2 Exhibit 143 Asset Transfer Agreement 276                  UBSPROD020567 -                  UBSPROD020576</p> <p>3</p> <p>4 Exhibit 144 E-mail 282                  Subject: Fw:                  Sebastian Clarke Ltd. - urgent                  BC SEN0000638649 -                  BC SEN0000638662</p> <p>5</p> <p>6 Exhibit 145 E-mail 304                  Subject: Interesting to now                  learn that Matt had been                  planning to also resign                  from Sentinel's board                  BC SEN000108912</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 (Cont'd.):</p> <p>2 Exhibit 134 E-mail 204                  Subject: RE: Time to                  Schedule a Meeting for                  Sentinel Re to have an                  "acquaintance" meeting                  Wednesday afternoon June 23</p> <p>3</p> <p>4 Exhibit 135 E-mail 217                  Subject: RE: Sentinel -                  12/31 VRC Valuation                  Source Docs                  BC SEN0000120230</p> <p>5</p> <p>6 Exhibit 136 Excel Worksheet 221                  BC SEN000064513</p> <p>7</p> <p>8 Exhibit 137 E-mail 225                  Subject: RE: Sentinel                  BC SEN0000707455 -                  BE SEN0000707459</p> <p>9</p> <p>10 Exhibit 138 Policy with 237                  Endorsement 1 and 2                  MD_000010 - MD_000028</p> <p>11</p> <p>12 Exhibit 139 E-mail 248                  Subject: Re:                  ATE Related Invoice                  BC SEN0000641688 -                  BC SEN0000641689</p> <p>13</p> <p>14 Exhibit 140 E-mail 262                  Subject: RE: Sentinel                  BC SEN0000585041</p> <p>15</p> <p>16 Exhibit 141 E-mail 267                  Subject: RE:                  Sentinel ATE endorsement #2                  BC SEN0000723353 -                  BC SEN0000723354</p> <p>17</p> <p>18 Exhibit 142 E-mail 271                  Subject: Re: Sentinel                  Reinsurance Invoice Approval                  BC SEN0000667053 -                  BC SEN0000667054</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 THE VIDEOGRAPHER: Here begins Disk No. 1</p> <p>2 in the video deposition of Thomas Adamczak.</p> <p>3 Today's date is April 12, 2022. The exact</p> <p>4 time on the video monitor is 9:06.</p> <p>5 Would the court reporter please swear in</p> <p>6 the witness.</p> <p>7 (Witness sworn.)</p> <p>8 MR. BURT: Should we make appearances for</p> <p>9 record?</p> <p>10 On behalf of UBS Jason Burt along with</p> <p>11 Katie George, and we have a number of colleagues</p> <p>12 over Zoom, Danielle McCall, Shannon McLaughlin,</p> <p>13 and Andy Clubok may join at points today.</p> <p>14 MR. WELDON: Chris Weldon as counsel for</p> <p>15 Beecher and Brown &amp; Brown and for the witness</p> <p>16 30(b)(6) designee Thomas Adamczak.</p> <p>17 MR. BURT: And I am not sure if</p> <p>18 Mr. Feinstein is able to -- if we figured out the</p> <p>19 Zoom, but Robert Feinstein is also here on behalf</p> <p>20 of the debtor and the trustee.</p> <p>21 MR. FEINSTEIN: Yes, I figured out the</p> <p>22 Zoom.</p> <p>23 Just for my purposes I see the witness</p> <p>24 although the name on the box is not him, I assume</p> <p>25 the court reporter, but the gentleman in the gray</p>

<p style="text-align: right;">9</p> <p>1 shirt is the witness and I see Daniella, Katie and                  2 Shannon, an 802 number, there is no picture                  3 associated with that, who all is on that number                  4 and where is that coming from?                  5 MS. GEORGE: Rob, that just the phone, we                  6 had to do the phone and the Zoom computer                  7 different. The computer looking at the witness                  8 does not have the audio, this phone number does                  9 instead. It is just a conference line in the room                  10 with us.                  11 MR. FEINSTEIN: Okay.                  12 And then who is doing the examination?                  13 MR. BURT: Rob, I am doing it. This is                  14 Jason.                  15 MR. FEINSTEIN: And you are not on the                  16 screen anywhere? Unless -- you are just on the                  17 phone?                  18 MR. BURT: No, I am here in person, only                  19 the witness is on the zoom screen.                  20 MR. FEINSTEIN: You are in the room with                  21 the witness.                  22 MR. BURT: I am.                  23 MR. FEINSTEIN: Got it, okay, thank you.                  24                  25</p>	<p style="text-align: right;">11</p> <p>1 they would if you were testifying in court?                  2 <b>A Yes.</b>                  3 Q From time to time I may ask a question                  4 today that you might not understand. If that's                  5 the case please just ask me to rephrase or tell me                  6 you don't understand and I will do my best to do                  7 that. If you do answer I will assume that you                  8 understood my question. Is that fair?                  9 <b>A That's fair.</b>                  10 Q If you need a break at any point during                  11 the deposition that's perfectly fine, just let us                  12 know. I just ask that you answer the question                  13 that has been asked before we take that break, is                  14 that fair?                  15 <b>A Okay.</b>                  16 Q Your attorney may object to some of the                  17 questions that I pose today. Unless your attorney                  18 instructs you not to answer do you understand that                  19 you are still obligated to answer the question?                  20 <b>A Yes.</b>                  21 Q Is there any reason, Mr. Adamczak, why you                  22 can't be able to answer my questions fully and                  23 truthfully today?                  24 <b>A No.</b>                  25 Q Throughout this deposition I am going to</p>
<p style="text-align: right;">10</p> <p>1 THOMAS ADAMCZAK, 30(b)(6),                  2 called as a witness herein, having been first duly                  3 sworn was examined and testified as follows:                  4 EXAMINATION                  5 BY MR. BURT:                  6 Q Mr. Adamczak, could you please state and                  7 spell your full name for the record?                  8 <b>A The name is Thomas Patrick Adamczak,</b>                  9 <b>T-h-o-m-a-s Patrick, P-a-t-r-i-c-k, Adamczak,</b>                  10 <b>A-d-a-m-c-z-a-k.</b>                  11 Q Mr. Adamczak, who do you work for?                  12 <b>A I work for Brown &amp; Brown formerly known as</b>                  13 <b>Beecher Carlson.</b>                  14 Q Have you been deposed before?                  15 <b>A No.</b>                  16 Q I would like to go over just a few of the                  17 ground rules, I am sure your counsel has described                  18 some of these, just so that we can make a clear                  19 record today. You understand you were just sworn                  20 by the court reporter, and do you understand that                  21 you are under oath and --                  22 <b>A Yes.</b>                  23 Q -- and obligated to tell the truth today?                  24 <b>A Yes.</b>                  25 Q And that penalties of perjury apply as</p>	<p style="text-align: right;">12</p> <p>1 refer to Sentinel as a shorthand, and by that what                  2 I mean is Sentinel Reinsurance Limited, is that                  3 fair?                  4 <b>A That's fair.</b>                  5 Q And I may also refer to Beecher or Beecher                  6 Carlson, and do you understand that unless I say                  7 otherwise I mean Beecher Carlson Insurance                  8 Services, LLC, and/or Beecher Carlson Cayman                  9 Limited?                  10 <b>A That's fair.</b>                  11 Q You understand that you have been                  12 designated as the corporate witness or                  13 representative for Beecher Carlson for purposes of                  14 this deposition, correct?                  15 <b>A That's correct.</b>                  16 Q And that your answers today are on behalf                  17 of Beecher Carlson?                  18 <b>A Correct.</b>                  19 Q So if I ask -- if I say you in a question                  20 I am referring not just to you, Mr. Adamczak, but                  21 to Beecher Carlson as a whole.                  22 <b>A Correct.</b>                  23 Q I'd like to show you quickly two exhibits,                  24 we will mark this, I think we are beginning at                  25 112, so we will mark these as 112 and 113.</p>

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<p style="text-align: right;">13</p> <p>1 MR. WELDON: Federal being 112, New York                  2 being 113?                  3 MR. BURT: No. They will both just be                  4 112. Excuse me, the same number for both cases,                  5 it's just continuous in the adversary proceeding                  6 and we won't mess with different exhibit labels.                  7 MR. WELDON: So Exhibit 112 are both                  8 subpoenas?                  9 MR. BURT: Correct.                  10 Exhibit 112 is the subpoena in the                  11 adversary proceeding, Exhibit 113 is the exhibit                  12 -- is the subpoena in the New York proceeding.                  13 MR. WELDON: That's what I said, okay.                  14 MR. BURT: Sorry, I got confused.                  15 MR. WELDON: No problem.                  16 (Document marked Walther Exhibit 112 for                  17 identification.)                  18 (Document marked Walther Exhibit 113 for                  19 identification.)                  20 BY MR. BURT:                  21 Q Mr. Adamczak, referring to Exhibit 112 do                  22 you recognize this as the subpoena issued in the                  23 bankruptcy proceeding?                  24 <b>A I do.</b>                  25 Q And have you seen this document before?</p>	<p style="text-align: right;">15</p> <p>1 BY MR. BURT:                  2 Q So you understand you are designated to                  3 testify on these topics in both proceedings?                  4 <b>A Correct.</b>                  5 Q Perfect.                  6 Mr. Adamczak, when did you begin working                  7 for Beecher Carlson?                  8 <b>A In 2014.</b>                  9 Q And when did you begin working on Sentinel                  10 matters?                  11 <b>A Probably shortly after I started with</b>                  12 <b>Beecher.</b>                  13 Q How did it come to be that you began                  14 working on the Sentinel matters?                  15 <b>A The person that I had replaced had</b>                  16 <b>previously done work with Sentinel and it was my</b>                  17 <b>designated client to work with.</b>                  18 Q Who did you replace?                  19 <b>A John, I don't remember his last name.</b>                  20 Q And so Sentinel is one of                  21 Beecher Carlson's clients, correct?                  22 <b>A It is.</b>                  23 Q How long has Sentinel been a Beecher                  24 client?                  25 <b>A Since its inception.</b></p>
<p style="text-align: right;">14</p> <p>1 <b>A I have.</b>                  2 Q And have you had a chance to review the                  3 topics listed in Attachment A?                  4 <b>A I have.</b>                  5 Q And you understand that you have been                  6 designated to testify about these topics that are                  7 listed in Attachment A, correct?                  8 <b>A I have.</b>                  9 Q Referring to Exhibit 113, do you see it is                  10 a subpoena to testify in the New York proceeding                  11 UBS versus Highland Capital Management and a                  12 number of other parties, is that right?                  13 <b>A Yes.</b>                  14 Q And also listed in this subpoena in                  15 Attachment A is a number of topics. Have you had                  16 a chance to review those topics?                  17 <b>A I am seeing this for the first time now.</b>                  18 Q And I will represent to you they are the                  19 same topics that are listed --                  20 <b>A I was going to ask.</b>                  21 Q -- in the other subpoena.                  22 MR. WELDON: We may have just sent him the                  23 attachment to it, but he's designated for both.                  24 MR. BURT: Perfect.                  25</p>	<p style="text-align: right;">16</p> <p>1 Q And when you say that Sentinel is a                  2 Beecher client, what precisely do you mean by                  3 that?                  4 <b>A Sentinel has an agreement with</b>                  5 <b>Beecher Carlson to provide captive management</b>                  6 <b>services consisting of financial statements,</b>                  7 <b>preparation, coordination of board meetings,</b>                  8 <b>corresponding with the regulators.</b>                  9 Q Anything else that's involved in being a                  10 captive insurance manager?                  11 <b>A Interacting with the various service</b>                  12 <b>providers that Sentinel would engage for audit,</b>                  13 <b>actuarial, whatever.</b>                  14 Q Do you know how it came to be that Beecher                  15 was hired to be Sentinel's captive insurance                  16 manager?                  17 <b>A I believe Beecher had helped set up the</b>                  18 <b>captive initially.</b>                  19 Q On whose request?                  20 <b>A Someone from Highland; whoever would have</b>                  21 <b>contacted Beecher Carlson to perform the work.</b>                  22 Q When you say Highland, who are you                  23 referring to?                  24 <b>A Highland Capital Management.</b>                  25 Q Do you know who works -- or who worked at</p>

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<p style="text-align: right;">17</p> <p>1 the time for Highland Capital Management?</p> <p>2 <b>A I believe it was J.P. Sevilla. There were</b></p> <p>3 <b>a number of other employees as well that we worked</b></p> <p>4 <b>with, but he was I believe the one who had done</b></p> <p>5 <b>the initial work with Beecher in setting it up.</b></p> <p>6 Q Who else do you recall worked at that time</p> <p>7 for Highland Capital Management?</p> <p>8 <b>A Katie Irving.</b></p> <p>9 Q Anyone else?</p> <p>10 <b>A At that time that it was set up that's all</b></p> <p>11 <b>that I am aware of.</b></p> <p>12 Q And over time did you correspond with</p> <p>13 others at Highland Capital Management?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Who did you correspond with?</p> <p>16 <b>A Matt DiOrio.</b></p> <p>17 Q Did you understand him to work for</p> <p>18 Highland Capital Management?</p> <p>19 <b>A Yes.</b></p> <p>20 Q Anyone else?</p> <p>21 <b>A Isaac Leventon, but it was primarily</b></p> <p>22 <b>through Matt DiOrio that we worked with him and on</b></p> <p>23 <b>a very limited basis.</b></p> <p>24 Q Anyone else at Highland Capital Management</p> <p>25 that you've worked with over the years?</p>	<p style="text-align: right;">19</p> <p>1 Q So on the one hand you have the sponsoring</p> <p>2 organization and on the other you have the</p> <p>3 insurance management which in this case was</p> <p>4 Beecher?</p> <p>5 <b>A Correct.</b></p> <p>6 Q How does the sponsoring organization or</p> <p>7 Highland Capital work with the insurance manager</p> <p>8 in Beecher, how did that happen?</p> <p>9 <b>A So the captive managers like</b></p> <p>10 <b>Beecher Carlson are specialized in setting up and</b></p> <p>11 <b>helping to manage the captives. We have all the</b></p> <p>12 <b>contacts, we being Beecher Carlson, has all the</b></p> <p>13 <b>contacts with regulators and the various service</b></p> <p>14 <b>providers, whether they are actuaries, attorneys,</b></p> <p>15 <b>claims handlers, investment bankers.</b></p> <p>16 Q And what does the sponsoring business do?</p> <p>17 <b>A They have the understanding of the risks</b></p> <p>18 <b>that are being insured within the captive.</b></p> <p>19 Q This might be an overbroad question, but</p> <p>20 let me ask it first.</p> <p>21 Who makes the substantive decisions for</p> <p>22 the captive insurance company?</p> <p>23 MR. WELDON: Objection.</p> <p>24 Go ahead, you can answer.</p> <p>25 THE WITNESS: The directors.</p>
<p style="text-align: right;">18</p> <p>1 <b>A Those are the only ones that come to mind.</b></p> <p>2 Q How about Stephanie Vitiello, does that</p> <p>3 ring a bell?</p> <p>4 <b>A I think I have seen the name. I</b></p> <p>5 <b>understand that she had attended a meeting down in</b></p> <p>6 <b>the Cayman with a few other folks from Highland</b></p> <p>7 <b>Capital on behalf of Sentinel, but we have had no</b></p> <p>8 <b>interaction with her other than her awareness of</b></p> <p>9 <b>that meeting.</b></p> <p>10 Q I want to ask a question about something</p> <p>11 you just said, that they attended a meeting from</p> <p>12 Highland Capital on behalf of Sentinel. Was it</p> <p>13 common that employees of Highland Capital would do</p> <p>14 things on behalf of Sentinel?</p> <p>15 <b>A Well, a captive insurance company does not</b></p> <p>16 <b>generally have any employees, so all of the</b></p> <p>17 <b>employees are typically from a sponsoring</b></p> <p>18 <b>organization. In this case it was Highland</b></p> <p>19 <b>Capital that was that sponsoring organization.</b></p> <p>20 Q And what exactly does sponsoring</p> <p>21 organization mean?</p> <p>22 <b>A They provide the direction, ideas for</b></p> <p>23 <b>insurance coverage, pretty much the concept for</b></p> <p>24 <b>the captive and why it came to be in the first</b></p> <p>25 <b>place.</b></p>	<p style="text-align: right;">20</p> <p>1 BY MR. BURT:</p> <p>2 Q The directors of the insurance?</p> <p>3 <b>A Of the insurance company.</b></p> <p>4 Q Who appoints the directors?</p> <p>5 <b>A That's generally another director who</b></p> <p>6 <b>might be on the board or a parent organization.</b></p> <p>7 Q With respect to Sentinel do you know who</p> <p>8 was making the decisions for Sentinel?</p> <p>9 <b>A For his time that he was there Matt DiOrio</b></p> <p>10 <b>was.</b></p> <p>11 Q When you say the time that he was there,</p> <p>12 what do you mean when he was where, at Highland</p> <p>13 Capital Management?</p> <p>14 <b>A Right, when he was -- when he had joined</b></p> <p>15 <b>Highland Capital he was appointed on the Sentinel</b></p> <p>16 <b>board and was our main contact at that point</b></p> <p>17 <b>forward.</b></p> <p>18 Q Do you know if he was making decisions on</p> <p>19 his own?</p> <p>20 <b>A I do not.</b></p> <p>21 Q We will come back to some of those topics.</p> <p>22 We listed a few names, people who worked</p> <p>23 at Highland Capital Management. Let me throw out</p> <p>24 another name and let me know if you recognize it.</p> <p>25 Scott Ellington.</p>

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<p style="text-align: right;">21</p> <p>1 <b>A I do.</b></p> <p>2 Q Who do you understand Mr. Ellington to be?</p> <p>3 <b>A I understand that Scott Ellington was an</b></p> <p>4 <b>attorney with Highland Capital and also one of the</b></p> <p>5 <b>ultimate beneficial owners of Sentinel.</b></p> <p>6 Q What does ultimate beneficial owner mean?</p> <p>7 <b>A They would be the individuals that</b></p> <p>8 <b>ultimately owned Sentinel.</b></p> <p>9 Q Was there another ultimate beneficial</p> <p>10 owner of Sentinel?</p> <p>11 <b>A There was.</b></p> <p>12 Q Who was that?</p> <p>13 <b>A Jim Dondero.</b></p> <p>14 Q Does he also go by James Dondero?</p> <p>15 <b>A James Dondero, yes.</b></p> <p>16 Q So it's correct, is it not, that both</p> <p>17 Mr. Ellington and Mr. Dondero with were the</p> <p>18 ultimate beneficial owners of Sentinel?</p> <p>19 <b>A Correct.</b></p> <p>20 Q How did you know that?</p> <p>21 <b>A We have been provided with organizational</b></p> <p>22 <b>charts from Highland Capital and were informed</b></p> <p>23 <b>that the two UBOs that sat at the top were</b></p> <p>24 <b>Mr. Dondero and Mr. Ellington.</b></p> <p>25 Q Who provided you those documents of</p>	<p style="text-align: right;">23</p> <p>1 <b>A Sure.</b></p> <p>2 Q Looking at Exhibit 114, do you see that</p> <p>3 this is a letter from Beecher Carlson Cayman</p> <p>4 limited dated November 17, 2015, correct?</p> <p>5 <b>A Correct.</b></p> <p>6 Q And it is signed by a Peter A. Kranz who</p> <p>7 you list as the managing director of that Beecher</p> <p>8 entity, correct?</p> <p>9 <b>A Correct.</b></p> <p>10 Q What was Mr. Kranz's role?</p> <p>11 <b>A He is -- was the primary person that was</b></p> <p>12 <b>performing captive management duties with respect</b></p> <p>13 <b>to Sentinel.</b></p> <p>14 Q Is he located in the Caymans?</p> <p>15 <b>A He is not.</b></p> <p>16 Q Is he located here?</p> <p>17 <b>A He is located in Vermont.</b></p> <p>18 Q In Vermont, okay.</p> <p>19 I meant to ask earlier, does Beecher</p> <p>20 Carlson -- is it still the captive insurance</p> <p>21 manager for Sentinel?</p> <p>22 <b>A It is.</b></p> <p>23 Q And are you still working on that account?</p> <p>24 <b>A I am.</b></p> <p>25 Q Drawing your attention to the second page</p>
<p style="text-align: right;">22</p> <p>1 Highland Capital?</p> <p>2 <b>A My recollection is Matt DiOrio and</b></p> <p>3 <b>J.P. Sevilla.</b></p> <p>4 Q What is the role of an ultimate beneficial</p> <p>5 owner?</p> <p>6 <b>A The ultimate person who would call the</b></p> <p>7 <b>shots for the captive.</b></p> <p>8 Q Because they own it?</p> <p>9 <b>A Correct.</b></p> <p>10 Q I would like to show you our next exhibit,</p> <p>11 Tab 3, we will mark this as Exhibit 114. It looks</p> <p>12 big but we are only going to look at a couple of</p> <p>13 pages.</p> <p>14 MR. WELDON: 114?</p> <p>15 MR. BURT: 114.</p> <p>16 (Document marked Exhibit 114 for</p> <p>17 identification.)</p> <p>18 BY MR. BURT:</p> <p>19 Q Mr. Adamczak, for ease I am just going to</p> <p>20 refer you to the letter that's the first and</p> <p>21 second page, and then actually the very last page</p> <p>22 of the exhibit. Feel free to flip through it, but</p> <p>23 those are the two pages that I have questions</p> <p>24 about.</p> <p>25 Are you ready, Mr. Adamczak?</p>	<p style="text-align: right;">24</p> <p>1 of this letter, No. 7, it states that the</p> <p>2 executive -- the executed representation from the</p> <p>3 directors of Sentinel confirming that Messrs James</p> <p>4 Dondero and Scott Ellington will remain as the</p> <p>5 majority beneficial owners of Sentinel and that</p> <p>6 both individuals will have the ultimate</p> <p>7 responsibility of meeting capital and solvency</p> <p>8 requirements under the proposed new structure, is</p> <p>9 that what it says there?</p> <p>10 <b>A That is correct.</b></p> <p>11 Q That was Beecher's understanding in 2015?</p> <p>12 <b>A Correct.</b></p> <p>13 Q Has that been the case throughout</p> <p>14 Sentinel's existence that Beecher has been</p> <p>15 servicing Sentinel that Messrs Dondero and</p> <p>16 Ellington are the ultimate beneficial owners?</p> <p>17 <b>A That is true.</b></p> <p>18 Q And it is still true to this day?</p> <p>19 <b>A That is correct.</b></p> <p>20 Q And is it true that both have always had</p> <p>21 the responsibility of meeting capital and solvency</p> <p>22 requirements for Sentinel?</p> <p>23 <b>A That is correct.</b></p> <p>24 Q And that is true to this day as well?</p> <p>25 <b>A That is correct.</b></p>

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<p style="text-align: right;">25</p> <p>1 Q You stated a moment ago that the ultimate 2 -- the role of an ultimate beneficial owner is 3 that they are the person who ultimately calls the 4 shots for the captive. Is that true with respect 5 to Mr. Dondero and Ellington and Sentinel, that 6 they are the ones ultimately calling the shots for 7 Sentinel? 8 MR. WELDON: Objection. 9 BY MR. BURT: 10 Q You can answer. 11 MR. WELDON: You may answer. 12 THE WITNESS: To the best of our knowledge 13 that is correct. 14 BY MR. BURT: 15 Q With Mr. Kranz did he report to you or did 16 you report to him or work together with the 17 Sentinel account? 18 <b>A I reported to Mr. Kranz.</b> 19 Q Is that that true to this day? 20 <b>A He has moved up to a different level, but</b> 21 <b>in an indirect way, yes, that's still true.</b> 22 Q Do you report to somebody else more 23 directly for the Sentinel account? 24 <b>A For the Sentinel account we have a</b> 25 <b>Clayton Price down in Cayman. We actually opened</b></p>	<p style="text-align: right;">27</p> <p>1 BY MR. BURT: 2 Q So, Mr. Adamczak, I am showing you what's 3 been marked as Exhibit 115 an e-mail, it's an 4 organizational chart attachment. Go ahead and 5 take a look at that and let me know when you are 6 ready. 7 <b>A Okay.</b> 8 Q So you see the top e-mail is a June, 2019 9 e-mail from Clayton price who you mentioned a 10 moment ago to a Leonna Saintvil at CIMA, is that 11 right? 12 <b>A Correct.</b> 13 Q I am probably mispronouncing the name 14 there, and it's regarding Sentinel Re CIMA 15 requests, do you see that? 16 <b>A I do.</b> 17 Q What was going on in the June-July, 2019 18 timeframe with respect to CIMA and Sentinel? 19 <b>A CIMA had performed its periodic inspection</b> 20 <b>of Sentinel and this was in response to a few</b> 21 <b>questions they had on that inspection.</b> 22 Q And looking at the first e-mail, which is 23 from CIMA to Clayton price, I see you are cc'd on 24 this, Question No. II is as follows, "Is USP1 and 25 USP2 individuals, if so please amend the</p>
<p style="text-align: right;">26</p> <p>1 <b>the Cayman office and have staff on hand in Cayman</b> 2 <b>and Clayton Price is in the Cayman and he is I</b> 3 <b>guess our main Cayman contact.</b> 4 Q Within Beecher Carlson though you were the 5 manager of the Sentinel account, is that right? 6 MR. WELDON: Objection. 7 You can answer. 8 THE WITNESS: The Beecher Carlson Cayman 9 entity for which Beecher Carlson Insurance 10 Services was contracted to provide services for 11 was the manager. 12 (Document marked Exhibit 115 for 13 identification.) 14 BY MR. BURT: 15 Q I would like to show you Tab 4, we will 16 mark it as Exhibit 115. I apologize, these aren't 17 stapled. 18 MR. WELDON: Can you grab a stapler? 19 MR. BURT: Go off the record while he is 20 grabbing it. 21 THE VIDEOGRAPHER: We are going off the 22 record, the time is 9:31. 23 (Recess taken.) 24 THE VIDEOGRAPHER: We are back on the 25 record, the time is 9:33.</p>	<p style="text-align: right;">28</p> <p>1 organizational chart." Do you see that? 2 <b>A I do.</b> 3 Q And then in response in the front e-mail 4 from Mr. Price, No. 2 says, "USP1 and USP2 are 5 individuals, U.S. Person 1 and U.S. Person 2, who 6 are known to CIMA. As referenced in my e-mail 7 with the org chart USP1 is Scott Ellington while 8 USP2 is James Dondero. The org chart has been 9 revised to include their names." Do you see where 10 I was reading? 11 <b>A I do.</b> 12 Q Is the org chart that was attached here is 13 that the org chart that was presented to CIMA at 14 that time? 15 <b>A That is.</b> 16 Q In looking at this org chart you see at 17 the bottom where the branches come together the 18 first entity underneath that is Sentinel 19 Reinsurance Limited, is that right? 20 <b>A That is correct.</b> 21 Q Underneath that is SS Holdings, Limited. 22 Do you know what SS Holdings Limited was? 23 <b>A SS Holdings Limited was a subsidiary of</b> 24 <b>Sentinel Reinsurance.</b> 25 Q What function did it have?</p>

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29	<p>1 <b>A To hold the investment in SeaOne.</b></p> <p>2 Q And what was SeaOne?</p> <p>3 <b>A SeaOne is a limited partnership startup</b></p> <p>4 <b>company that was contributed to Sentinel back in</b></p> <p>5 <b>2014, I believe.</b></p> <p>6 Q And who contributed it to Sentinel?</p> <p>7 <b>A James Dondero.</b></p> <p>8 Q Who runs SeaOne?</p> <p>9 <b>A I do not know.</b></p> <p>10 Q Do you know if Mr. Dondero -- strike that.</p> <p>11 How was Mr. Dondero affiliated with SeaOne</p> <p>12 if you know?</p> <p>13 MR. WELDON: Objection.</p> <p>14 THE WITNESS: I do not know how he is</p> <p>15 affiliated with SeaOne.</p> <p>16 BY MR. BURT:</p> <p>17 Q Do you know why he transferred the SeaOne</p> <p>18 interest to Sentinel?</p> <p>19 <b>A As a capital contribution to increase the</b></p> <p>20 <b>capital in Sentinel.</b></p> <p>21 Q What form did that capital take, the</p> <p>22 SeaOne interest, was it shares of shown ownership,</p> <p>23 was it cash?</p> <p>24 <b>A Shares of ownership.</b></p> <p>25 Q How did the shares of ownership increase</p>	31	<p>1 <b>of investees other than Sentinel.</b></p> <p>2 Q Do you know if those investees involve</p> <p>3 Mr. Dondero or Mr. Ellington?</p> <p>4 <b>A I do not.</b></p> <p>5 Q Or trusts or other organizations that they</p> <p>6 own or control?</p> <p>7 <b>A I do not, no.</b></p> <p>8 Q So looking again at the org chart when you</p> <p>9 have -- above Sentinel you have a split to the</p> <p>10 right and a split to the left. And the first</p> <p>11 entity on the right that has 70% value and 91%</p> <p>12 vote is Mainspring Limited, do you see that?</p> <p>13 <b>A I do.</b></p> <p>14 Q What do you understand Mainspring Limited</p> <p>15 to be?</p> <p>16 <b>A A parent entity for Sentinel Reinsurance.</b></p> <p>17 Q And is it correct that Mr. Dondero</p> <p>18 ultimately owns Mainspring?</p> <p>19 <b>A That is correct.</b></p> <p>20 Q Is he the only owner of Mainspring?</p> <p>21 <b>A I do not know that.</b></p> <p>22 Q As you follow up the org chart up to</p> <p>23 Mr. Dondero the 70% value that went to Mainspring</p> <p>24 95% of that value ultimately ends up with</p> <p>25 Mr. Dondero, correct?</p>
30	<p>1 Sentinel's balance sheet or capital?</p> <p>2 <b>A We understood that the cost basis of the</b></p> <p>3 <b>SeaOne ownership was \$7 million so the \$7 million</b></p> <p>4 <b>flowed down into Sentinel and increased its</b></p> <p>5 <b>capital base by 7 million.</b></p> <p>6 Q Is SeaOne -- does Sentinel still own that</p> <p>7 SeaOne interest?</p> <p>8 <b>A Sentinel does.</b></p> <p>9 Q Do you know what the value of it is today?</p> <p>10 <b>A The latest valuation that was performed it</b></p> <p>11 <b>was upwards of 40 to 45 million, I believe.</b></p> <p>12 Q Who performed that valuation?</p> <p>13 <b>A Valuation Research CORP.</b></p> <p>14 Q And they are referred to sometimes in the</p> <p>15 documents as VRC?</p> <p>16 <b>A Correct.</b></p> <p>17 Q When was that valuation?</p> <p>18 <b>A 2020.</b></p> <p>19 Q Do you know if Sentinel wholly owns SeaOne</p> <p>20 or are there other owners of SeaOne?</p> <p>21 <b>A There are several other owners.</b></p> <p>22 Q Do you know who they are?</p> <p>23 <b>A I do not. I have seen a document with all</b></p> <p>24 <b>of the listed shareholders, various individuals,</b></p> <p>25 <b>trusts, whatever. There is a significant number</b></p>	32	<p>1 <b>A According to the org chart, correct.</b></p> <p>2 Q Do you have an understanding to the</p> <p>3 contrary?</p> <p>4 <b>A I do not.</b></p> <p>5 Q And then 9% of the vote goes to</p> <p>6 Mr. Dondero and then 91% of the vote is split off</p> <p>7 into Kind Holdings, Limited, do you see that?</p> <p>8 <b>A I do.</b></p> <p>9 Q What is Kind Holdings?</p> <p>10 <b>A An entity in the structure.</b></p> <p>11 <b>We really did not have any knowledge other</b></p> <p>12 <b>than what was presented in the org chart as far as</b></p> <p>13 <b>any of the entities above Sentinel.</b></p> <p>14 Q Was that something that Highland was</p> <p>15 managing?</p> <p>16 <b>A Correct.</b></p> <p>17 Q And was it Mr. DiOrio who most often</p> <p>18 communicated to you about those issues?</p> <p>19 <b>A Anything pertaining to the entities within</b></p> <p>20 <b>the Sentinel structure or the SAS structure as we</b></p> <p>21 <b>would refer to it would either be communicated by</b></p> <p>22 <b>Matt DiOrio, JP Sevilla, or Katie Irving.</b></p> <p>23 Q Got it.</p> <p>24 Looking to the left branch above Sentinel</p> <p>25 it states 30% of value and 9% of vote goes to</p>

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33	<p>1 Montage Holdings, Limited do you see that on the 2 chart? 3 <b>A I do.</b> 4 Q Is Montage Holdings Limited owned by 5 Mr. Ellington? 6 <b>A According to the org chart.</b> 7 Q And you don't have an understanding 8 differently? 9 <b>A I do not.</b> 10 Q And then 99% of that value that went to 11 Montage ultimately flows up to Mr. Ellington 12 according to the chart, correct? 13 <b>A Correct.</b> 14 Q In the middle, for the it looks like 15 approximately 1.5% of value that does not go to 16 Mr. Dondero and Mr. Ellington it looks like it 17 flows ultimately to SAS Holdings/SPV Limited, 18 correct? 19 <b>A Correct.</b> 20 Q What do you understand that entity to be? 21 <b>A I do not have any knowledge of what that 22 entity represents.</b> 23 Q Do you know who owned it? 24 <b>A I do not.</b> 25 Q Do you know who controlled it?</p>	35
34	<p>1 <b>A I do not.</b> 2 Q And above that it states ITA Red Cross. 3 Do you know what that refers to? 4 <b>A To my knowledge there was a charitable 5 organization that was set up to have some partial 6 ownership. And that's all I know, that's all we 7 were really told about.</b> 8 Q As far as the voting interests in Sentinel 9 where the majority of that goes to SAS Holdings 10 and then up to ITA, do you know what that meant in 11 practical terms, that the voting interests in 12 Sentinel went to SAS and then to ITA? 13 <b>A I do not know.</b> 14 Q No understanding at all? 15 <b>A I do not know, no.</b> 16 Q But ultimately, as you testified earlier, 17 you understood that Mr. Dondero and Mr. Ellington 18 were the ones calling the shots? 19 <b>A That is correct.</b> 20 Q Was there a corporate reorganization of 21 all of these entities that occurred around this 22 time in 2019? 23 <b>A There was some reorganization at the 24 request of CIMA.</b> 25 Q And do you know what that request was?</p>	36
	<p>1 <b>A There were a few entities that CIMA 2 identified as not really adding any value to the 3 organization and they felt those entities confused 4 the purpose and the structure and they had 5 requested that those entities be removed, 6 simplified.</b> 7 Q Did they send that request to Beecher? 8 <b>A It was included within the inspection 9 report.</b> 10 Q We will come to that in a few minutes. 11 And in response to that there was a 12 simplification of the -- 13 <b>A That is correct.</b> 14 Q -- the ownership structure. 15 Who carried out that reorganization? 16 <b>A The Sentinel directors and the folks at 17 Highland Capital along with their attorneys.</b> 18 Q But Beecher didn't have any role in that? 19 <b>A Other than communicating with CIMA that 20 was our role.</b> 21 Q Keep that handy, that org chart. 22 I do want to show you another exhibit. We 23 will mark this mark this one as 116. Fortunately 24 this one is stapled. 25</p>	
	<p>1 (Document marked Exhibit 116 for 2 identification.) 3 BY MR. BURT: 4 Q If you can just look first at the e-mail 5 chain, Mr. Adamczak, I have a few questions about 6 that and then I will direct you to specific 7 attachments and you obviously can take your time 8 to look at the attachments when we go there. 9 <b>A Okay.</b> 10 Q So the beginning with the first-in-time 11 e-mail, it's from you dated February 5, 2019 to 12 Clayton, Mr. Price, regarding the Sentinel CIMA 13 exam. You referred -- I think you referred to 14 that earlier. Was that -- the CIMA annual exam, 15 was that going on in February of 2019? 16 <b>A So it's not an annual exam, it probably 17 occurs on whatever periodic schedule they might 18 have, but on average every five years is the 19 standard.</b> 20 <b>This time period I believe would have been 21 their initial notice of certain request items for 22 the examination maybe and these were items that 23 were being provided during the inspection.</b> 24 Q And you say here, "Clayton, here are the 25 items that have not been uploaded on account of</p>	



37	<p>1 them being unavailable." If you recall, what did                  2 you mean by that?  <b>3 A Typically with the inspection is they will</b>  <b>4 send out a request list require by a certain date</b>  <b>5 these documents are provided. These documents</b>  <b>6 would have been either unavailable at a time</b>  <b>7 whether it was we had to obtain them from somebody</b>  <b>8 else or we were still searching for the applicable</b>  <b>9 documents that they were looking for.</b>                  10 Q So as we go through some of these                  11 attachments I will ask you if these were ones that                  12 you had to obtain from Highland or that Beecher                  13 didn't have before then.                  14 And it appears then that in early March,                  15 about a month later, Mr. Price forwards these on                  16 to CIMA and then CIMA confirms receipt, is that                  17 right?  <b>18 A That is correct.</b>                  19 Q The first -- and we see Alli in the top                  20 e-mail, the last-in-time, there is four                  21 attachments listed, right?  <b>22 A Yes.</b>                  23 Q The first one I want to look at is                  24 actually the third attachment, and I will point                  25 you to that. There is advisory -- there is the</p>	39
38	<p>1 board of directors minutes, so skip that for now,                  2 and then there is a number of pages of bullet                  3 point notes from an advisory committee, so skip                  4 that. And then Attachment 3, and you will see at                  5 the bottom the number, the Bates number ends in                  6 76075, do you see that?  <b>7 A Yes, I do have it.</b>                  8 Q And, actually, while we are looking at                  9 that Bates number you see it begins with BC SEN, a                  10 number of 0s, and then 76075?  <b>11 A I do.</b>                  12 Q And do you understand that those are                  13 documents that Beecher Carlson produced pursuant                  14 to subpoena?  <b>15 A I do.</b>                  16 Q And documents that have the -- that                  17 beginning with BC SEN or SEN, those were documents                  18 that Beecher had in its possession, is that right?  <b>19 A Correct.</b>                  20 Q And keeping these documents was part of                  21 Beecher's normal business practices?  <b>22 A That was the role of the captive manager,</b>  <b>23 correct.</b>                  24 Q And these documents would have been kept                  25 in the ordinary course of that role, is that</p>	40
39	<p>1 right?  <b>2 A Correct.</b>                  3 Q Now, okay, so looking at this document its                  4 title is Resolutions of ITA Global Trust Limited,                  5 the Trustee, of the Trust Declared Pursuant to a                  6 Deed Dated 17 February 2015.                  7 Now, to orient, that org chart that we                  8 were looking at in the previous exhibit at the top                  9 had ITA and then Red Cross, is that right?  <b>10 A It does.</b>                  11 Q Do you know if this ITA Global Trust                  12 Limited referred to in this exhibit refers to the                  13 same ITA?  <b>14 A I do not.</b>                  15 Q Okay. Are you familiar with ITA Global                  16 Trust Limited?                  17 MR. WELDON: Objection, asked and                  18 answered.                  19 You can answer it again.                  20 THE WITNESS: I am sorry, I do not.                  21 BY MR. BURT:                  22 Q You are not familiar?  <b>23 A I am not familiar.</b>                  24 Q Is today the first time you have heard of                  25 it?</p>	40

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<p style="text-align: right;">41</p> <p><b>1 A I am familiar with the existence of it.</b></p> <p>2 Q What do you know about it?</p> <p>3 MR. WELDON: Objection, asked and</p> <p>4 answered.</p> <p>5 You can answer it again.</p> <p>6 THE WITNESS: Just that it existed and</p> <p>7 that's really all I know about it.</p> <p>8 BY MR. BURT:</p> <p>9 Q Going to the second attachment, right</p> <p>10 after the board minute meetings, the board meeting</p> <p>11 minutes, it talks about a Sentinel advisory</p> <p>12 committee discussion, do you see that?</p> <p><b>13 A I do see it.</b></p> <p>14 Q Do you know what the Sentinel advisory</p> <p>15 committee was?</p> <p><b>16 A My recollection is these were internal</b></p> <p><b>17 discussions had by Mr. Ellington and Mr. Dondero</b></p> <p><b>18 regarding the Sentinel structure.</b></p> <p>19 Q Did they call themselves the Sentinel</p> <p>20 Advisory Committee?</p> <p><b>21 A I am not aware.</b></p> <p>22 Q You are aware that they were the ones who</p> <p>23 were having these discussions?</p> <p><b>24 A That is correct.</b></p> <p>25 Q And you see that Scott Ellington signs</p>	<p style="text-align: right;">43</p> <p>1 Ellington were reporting to the Sentinel board</p> <p>2 that they were having discussions about the</p> <p>3 potential ATE policy?</p> <p><b>4 A They never attended the board meetings.</b></p> <p>5 Q Do you know if copies of these advisory</p> <p>6 committee discussions were provided to the board</p> <p>7 for the board to review?</p> <p><b>8 A I am not aware of them being provided to</b></p> <p><b>9 the board for review.</b></p> <p>10 Q And part of Beecher's role as the</p> <p>11 insurance manager is to maintain the books and</p> <p>12 records for the company, right?</p> <p><b>13 A That is correct.</b></p> <p>14 Q But these records were not provided to</p> <p>15 Beecher at the time that they were actually</p> <p>16 created?</p> <p><b>17 A That is correct.</b></p> <p>18 MR. WELDON: You are talking about, just</p> <p>19 so we are clear, the Sentinel Advisory Committee</p> <p>20 discussions?</p> <p>21 MR. BURT: Correct, yes.</p> <p>22 BY MR. BURT:</p> <p>23 Q Do you know if the ITA Global Trust</p> <p>24 resolution was provided to Beecher prior to</p> <p>25 February, 2019 or was that only later as well?</p>
<p style="text-align: right;">42</p> <p>1 this as the recording member, is that right?</p> <p><b>2 A I do see that.</b></p> <p>3 Q Did Beecher -- when did Beecher get a copy</p> <p>4 of these advisory committee discussion notes?</p> <p><b>5 A We would have obtained these at the</b></p> <p><b>6 request of CIMA probably around the same time that</b></p> <p><b>7 this was conducted.</b></p> <p>8 Q So that would have been in February</p> <p>9 of 2019?</p> <p><b>10 A Correct.</b></p> <p>11 Q This committee discussion, the very first</p> <p>12 one, says Q1 2017 and is dated February 2, 2017.</p> <p>13 And it states, "Discussion of potential ATE policy</p> <p>14 and engagement of actuary, review of investment</p> <p>15 returns," do you see that?</p> <p><b>16 A I do.</b></p> <p>17 Q So this was not provided to Beecher in</p> <p>18 February of 2017 but only two years later, is that</p> <p>19 right?</p> <p><b>20 A That is correct.</b></p> <p>21 Q Did Beecher have any knowledge that in</p> <p>22 February of 2017 Mr. Ellington and Mr. Dondero</p> <p>23 were talking about a potential ATE policy?</p> <p><b>24 A No.</b></p> <p>25 Q Do you know if Messrs Dondero and</p>	<p style="text-align: right;">44</p> <p><b>1 A I don't recall having seen it prior to</b></p> <p><b>2 when it was provided to CIMA.</b></p> <p>3 Q In looking at your e-mail, what we first</p> <p>4 looked at when you said they were unavailable, do</p> <p>5 you recall who provided them to you in February</p> <p>6 of 2019, these materials?</p> <p><b>7 A I believe they would have come from</b></p> <p><b>8 Matt DiOrio.</b></p> <p>9 Q Looking back at the advisory committee</p> <p>10 discussions, we have looked at the first page, the</p> <p>11 second page is dated May 4, 2017, it says</p> <p>12 discussion re audit, do you know what they were</p> <p>13 referring to then, an audit in May of 2017?</p> <p><b>14 A The Sentinel annual audit, which would</b></p> <p><b>15 have been conducted around that time period.</b></p> <p>16 Q And who conducted the audit?</p> <p><b>17 A In 2017 I believe that was Crowe.</b></p> <p>18 Q And were they one of the service providers</p> <p>19 that Beecher are arranged?</p> <p><b>20 A That is correct.</b></p> <p>21 Q Then Q3 of 2017 it states there is a</p> <p>22 discussion of potential ATE policy and engagement</p> <p>23 of actuary and then another discussion re about</p> <p>24 it.</p> <p>25 Again, Beecher was not aware that this</p>

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45	<p>1 committee of Mr. Ellington and Dondero were</p> <p>2 discussing the potential ATE policy in August</p> <p>3 of 2017, correct?</p> <p>4 MR. WELDON: Objection.</p> <p>5 THE WITNESS: Correct.</p> <p>6 BY MR. BURT:</p> <p>7 Q If you flip to the next page, Q4, 2017,</p> <p>8 dated November 7, 2017, it states documentation of</p> <p>9 ATE policy and closing of same.</p> <p>10 And, again, Beecher was not aware that</p> <p>11 Messrs Dondero and Ellington were speaking about</p> <p>12 and documenting these discussions at that time,</p> <p>13 correct?</p> <p>14 MR. WELDON: Objection, you can answer.</p> <p>15 THE WITNESS: That's correct.</p> <p>16 BY MR. BURT:</p> <p>17 Q It states that the closing of the ATE</p> <p>18 policy -- I don't know if it states that it took</p> <p>19 place around November -- strike that.</p> <p>20 Let me just ask this way. When did the</p> <p>21 ATE policy close or come into effect?</p> <p><b>22 A I believe the ATE policy inception in</b></p> <p><b>23 August of 2017.</b></p> <p>24 Q And then they discussed the settlement of</p> <p>25 the transferred investment portfolio.</p>	47	<p>1 transfer in a little bit more detail in a bit, but</p> <p>2 let me just ask this. Do you know when the</p> <p>3 valuation of those assets took place?</p> <p><b>4 A The valuations would have been performed</b></p> <p><b>5 late in 2017, early 2018, but there would have</b></p> <p><b>6 been valuations that were performed as of the date</b></p> <p><b>7 that the assets were transferred in so that we had</b></p> <p><b>8 a starting point and then another valuation as of</b></p> <p><b>9 the 12/31/2017 year-end.</b></p> <p>10 Q And were those valuations done by</p> <p>11 valuation Resource Corp.?</p> <p><b>12 A Research Corp., correct.</b></p> <p>13 Q Research.</p> <p>14 When did Beecher first become aware of the</p> <p>15 possibility of an ATE policy for Sentinel?</p> <p><b>16 A The business plan for Sentinel had</b></p> <p><b>17 previously requested and approved from CIMA the</b></p> <p><b>18 ability to write ATE coverage, and I believe there</b></p> <p><b>19 were several different types of coverages that</b></p> <p><b>20 were requested at the time. There were multiple</b></p> <p><b>21 discussions between Pete Kranz and J.P. Sevilla to</b></p> <p><b>22 discuss insurance coverages to put in to the</b></p> <p><b>23 captive, and ATE was one concept that J.P. had</b></p> <p><b>24 brought to the discussion.</b></p> <p><b>25 The specific event that was ultimately</b></p>
46	<p>1 Again, that information that they were</p> <p>2 discussing, that investment portfolio, that was</p> <p>3 not conveyed to Beecher at the time, correct?</p> <p>4 MR. WELDON: Objection.</p> <p>5 You can answer.</p> <p>6 THE WITNESS: So this time period here,</p> <p>7 November of 2017, would have been after the ATE</p> <p>8 policy had inception and after the transfer of the</p> <p>9 assets to Sentinel, so we were aware of the</p> <p>10 portfolio as we were attempting to try and value</p> <p>11 everything that was received.</p> <p>12 BY MR. BURT:</p> <p>13 Q Right.</p> <p>14 And my question was that Beecher wasn't</p> <p>15 aware that Mr. Dondero and Ellington as part of</p> <p>16 this Sentinel Advisory Committee were having these</p> <p>17 discussions.</p> <p><b>18 A At no point until we --</b></p> <p>19 MR. WELDON: Hold on, objection.</p> <p>20 You can answer, go ahead.</p> <p>21 THE WITNESS: At no point until we</p> <p>22 received these summaries did we know of the</p> <p>23 existence of these internal discussions.</p> <p>24 BY MR. BURT:</p> <p>25 Q We are going to talk about the asset</p>	48	<p><b>1 insured in the captive I believe it was in early</b></p> <p><b>2 2017 that they were -- J.P. and Pete were</b></p> <p><b>3 discussing it and started looking at moving it</b></p> <p><b>4 forward and drafting the policy.</b></p> <p>5 Q Were you involved in those discussions?</p> <p><b>6 A I was not involved directly into</b></p> <p><b>7 discussions, but I was provided with information</b></p> <p><b>8 subsequently.</b></p> <p>9 Q When did you get involved with that</p> <p>10 particular ATE policy that was actually --</p> <p><b>11 A For me it was primarily once the</b></p> <p><b>12 accounting needed to be addressed.</b></p> <p>13 Q When was that?</p> <p><b>14 A Mid 2017.</b></p> <p>15 Q The discussions that Mr. Kranz had with</p> <p>16 J.P. in early 2017, what did those involve?</p> <p>17 MR. WELDON: Objection, it misstates his</p> <p>18 earlier testimony.</p> <p>19 BY MR. BURT:</p> <p>20 Q You can answer, and if I did it was</p> <p>21 unintentional.</p> <p>22 The discussions that Mr. Sevilla and</p> <p>23 Mr. Kranz were having, I believe you said in early</p> <p>24 2017, they began discussing the particular ATE</p> <p>25 policy that was ultimately issued.</p>

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49	<p>1 <b>A That's correct.</b></p> <p>2 Q Do you know what they were discussing</p> <p>3 precisely?</p> <p>4 <b>A They would have discussed limits, premium,</b></p> <p>5 <b>the nature of how the premium would be paid,</b></p> <p>6 <b>policy language.</b></p> <p>7 Q Who the insureds would be?</p> <p>8 <b>A Who the insureds would be, the specific</b></p> <p>9 <b>event that was being covered.</b></p> <p>10 Q And what was the event that was being</p> <p>11 covered?</p> <p>12 <b>A It was the UBS litigation matter.</b></p> <p>13 Q And at that time what was Beecher's</p> <p>14 understanding of who was involved in that UBS</p> <p>15 litigation, who was UBS suing, in other words,</p> <p>16 what was Beecher's knowledge?</p> <p>17 <b>A Highland Capital and the particular funds.</b></p> <p>18 Q What did Beecher understand at that time</p> <p>19 about who controlled and owned those funds?</p> <p>20 <b>A Beecher's understanding was that the funds</b></p> <p>21 <b>were controlled by Highland Capital Management.</b></p> <p>22 Q Do you know which funds in particular were</p> <p>23 at issue?</p> <p>24 <b>A The funds that -- I don't know off the top</b></p> <p>25 <b>of my head, but it's the funds that are the</b></p>	51
50	<p>1 insureds.</p> <p>2 Q In the policy?</p> <p>3 <b>A In the policy.</b></p> <p>4 Q Got it, okay. We will come to that in a</p> <p>5 moment.</p> <p>6 Actually, let's -- I do want to show him</p> <p>7 the policy.</p> <p>8 MR. BURT: Do you need a break, you good?</p> <p>9 THE WITNESS: I am good for now.</p> <p>10 MR. BURT: Usually we take a break about</p> <p>11 every hour, but we can keep going for a few</p> <p>12 minutes.</p> <p>13 MR. WELDON: Do you want water or</p> <p>14 anything? I will make it easy.</p> <p>15 THE WITNESS: Let's do that.</p> <p>16 MR. BURT: That's why you have an attorney</p> <p>17 here, we will go off the record.</p> <p>18 THE VIDEOGRAPHER: This marks the end of</p> <p>19 Disk No. 1 in the deposition of Thomas Adamczak,</p> <p>20 the time on the video monitor is 10:00 o'clock --</p> <p>21 10:05.</p> <p>22 (Recess taken.)</p> <p>23 THE VIDEOGRAPHER: Here begins Disk No. 2</p> <p>24 in the deposition of Thomas Adamczak, we are back</p> <p>25 on the record, the time is 10:18.</p>	52
	<p>1 BY MR. BURT:</p> <p>2 Q So I am going to show you another exhibit,</p> <p>3 Mr. Adamczak, we are going to come back to the ATE</p> <p>4 policy in just a moment.</p> <p>5 You mentioned the management agreement</p> <p>6 between Beecher and Sentinel, I just would like to</p> <p>7 take a quick look at that. We will mark this as</p> <p>8 117.</p> <p>9 (Document marked Exhibit 117 for</p> <p>10 identification.)</p> <p>11 BY MR. BURT:</p> <p>12 Q Showing you, Mr. Adamczak, what has been</p> <p>13 Bates labeled BC SEN000361175, go ahead and take a</p> <p>14 look at that and let me know when you are ready.</p> <p>15 <b>A I am ready.</b></p> <p>16 Q Great.</p> <p>17 So what do you understand this document to</p> <p>18 be?</p> <p>19 <b>A This is the agreement between Beecher</b></p> <p>20 <b>Carlson Cayman and Sentinel to provide captive</b></p> <p>21 <b>management services.</b></p> <p>22 Q And this is the agreement that governed</p> <p>23 the relationship between Beecher and Sentinel, is</p> <p>24 that right?</p> <p>25 <b>A That is correct.</b></p>	
	<p>1 Q And continues to do so to this day?</p> <p>2 <b>A Correct.</b></p> <p>3 Q And the effective date of this agreement</p> <p>4 is October 1, 2013, right?</p> <p>5 <b>A That is correct.</b></p> <p>6 Q Which is just before you began at Beecher?</p> <p>7 <b>A Correct.</b></p> <p>8 Q Flipping to the signature page, Page 4, do</p> <p>9 you know who signed on behalf of Beecher Carlson?</p> <p>10 <b>A Jason Flexbeard.</b></p> <p>11 Q Who is he?</p> <p>12 <b>A Jason Flexbeard at the time was the leader</b></p> <p>13 <b>of the captive practice at Beecher Carlson.</b></p> <p>14 Q Who signed on behalf of Sentinel?</p> <p>15 <b>A Kobi Dorenbush.</b></p> <p>16 Q It states director, is that a Mr. or Ms.?</p> <p>17 <b>A Mr., I believe.</b></p> <p>18 Q Is he a director of Sentinel at the time?</p> <p>19 <b>A He was a director of Sentinel and was with</b></p> <p>20 <b>Caledonian. Caledonian was a company that had</b></p> <p>21 <b>provided outside director services to captives or</b></p> <p>22 <b>investment companies or whatever in the Cayman.</b></p> <p>23 Q Looking at Exhibit A to the agreement, do</p> <p>24 you see the first section is the description of</p> <p>25 services. Is it correct, Mr. Adamczak, that this</p>	

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53	<p>1 section, Section 1, describes all of the services                  2 that Beecher Carlson provides for Sentinel?  <b>3 A It describes all of the standard services                  4 that are provided under the captive management.</b>                  5 Q Are there any services beyond what's                  6 listed here that Beecher provides?  <b>7 A No.</b>                  8 Q So I just want to look at a couple of                  9 these, the first, which is a little a, states                  10 "Maintain copies of such records, ledgers, and                  11 books of accounts as will constitute a complete                  12 and current record of the financial condition of                  13 Sentinel in accordance with establishing                  14 accounting principles applicable to the business                  15 of insurance and reinsurance as directed by                  16 Sentinel's directors and officers," do you see                  17 that?  <b>18 A I do.</b>                  19 Q And is that something that Beecher                  20 provides?  <b>21 A That is.</b>                  22 Q B states "Prepare comprehensive quarterly                  23 financial statements, including profit and loss                  24 and balance sheet statements and information with                  25 respect to Sentinel as may be required by law or</p>	55	<p>1 statements, profit and loss and balance sheet                  2 statements, to Beecher, is that right?  <b>3 A Correct.</b>                  4 Q And is that how its actually been in                  5 practice, that Highland Capital requests that                  6 financial information?  <b>7 A That is correct.</b>                  8 Q And has it mostly been J.P. Sevilla and                  9 Matt DiOrio who requested that information?  <b>10 A That is correct.</b>                  11 Q Has Katie Irving as well?  <b>12 A She was probably copied on the                  13 correspondence when the financial statements were                  14 sent out, but she wouldn't necessarily -- she                  15 wouldn't necessarily provide the financial                  16 direction requests.</b>                  17 Q Those would come through Mr. Sevilla --                  18 you say Sevilla?  <b>19 A Sevilla.</b>                  20 Q -- Sevilla or Mr. DiOrio the direction?  <b>21 A Correct.</b>                  22 Q And at times Mr. Leventon?                  23 MR. WELDON: Objection.                  24 THE WITNESS: No.                  25</p>
54	<p>1 requested by Sentinel through Highland Capital,"                  2 do you see that?  <b>3 A I do.</b>                  4 Q And those are services that Beecher                  5 provides?  <b>6 A That is correct.</b>                  7 Q So one question about this, the last                  8 clause states "requested by Sentinel through                  9 Highland Capital." What did you understand or                  10 what does that mean in the context of the services                  11 agreement?  <b>12 A That would mean that Highland Capital                  13 being the sponsoring organization that I described                  14 earlier would be the one providing direction for                  15 Sentinel and what Sentinel wanted to do.</b>                  16 Q And does Highland Capital here refer to                  17 Highland Capital Management?  <b>18 A I believe that is correct.</b>                  19 Q And is that the same entity that is a                  20 defendant in the UBS suit in New York?                  21 MR. WELDON: Objection.                  22 THE WITNESS: I believe that's correct.                  23 BY MR. BURT:                  24 Q And so according to this Sentinel can                  25 request through Highland Capital financial</p>	56	<p>1 BY MR. BURT:                  2 Q Did Mr. Dondero or Mr. Ellington ever make                  3 requests for this information?  <b>4 A Not directly to Beecher Carlson.</b>                  5 Q Did they make it indirectly?                  6 MR. WELDON: Objection.                  7 THE WITNESS: I am not aware if they did                  8 or not.                  9 BY MR. BURT:                  10 Q The communications came from Mr. Sevilla                  11 and Mr. DiOrio?  <b>12 A That is correct.</b>                  13 Q Do you know at whose direction Mr. Sevilla                  14 or Mr. DiOrio would request this type of                  15 information?  <b>16 A I do not.</b>                  17 Q The visibility sort of ended there for                  18 Beecher Carlson at that level?  <b>19 A Yes.</b>                  20 Q Have you ever spoken with Mr. Dondero or                  21 Mr. Ellington directly?  <b>22 A I have not.</b>                  23 Q Have you ever had e-mail communications                  24 with them directly?  <b>25 A I have not.</b></p>

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57	<p>1 Q Do you know if anyone at Beecher has?</p> <p>2 <b>A I believe that when the captive was set up</b></p> <p>3 <b>Beecher Carlson might have had a few initial</b></p> <p>4 <b>discussions with Scott Ellington, but it was only</b></p> <p>5 <b>initially and certainly hasn't been anything since</b></p> <p>6 <b>then. Everything has gone through Matt DiOrio and</b></p> <p>7 <b>J.P. Sevilla.</b></p> <p>8 Q Is that typical that ultimate beneficial</p> <p>9 owners don't have communications with Beecher?</p> <p>10 MR. WELDON: Objection.</p> <p>11 THE WITNESS: I think that's probably not</p> <p>12 out of the ordinary. There is always going to be</p> <p>13 somebody that may have -- maybe the risk manager</p> <p>14 or somebody that's more involved with the risk</p> <p>15 management program than, say, the ultimate</p> <p>16 openers, so it's not out of the ordinary that it</p> <p>17 wouldn't be the top dogs that we are dealing with.</p> <p>18 BY MR. BURT:</p> <p>19 Q You have also testified that Mr. Dondero</p> <p>20 and Ellington were calling the shots for Sentinel.</p> <p>21 Is it ordinary that the people who are actually</p> <p>22 calling the shots for the captive don't</p> <p>23 communicate with Beecher directly?</p> <p>24 MR. WELDON: Objection.</p> <p>25 THE WITNESS: It's difficult to say</p>	59	<p>1 <b>A Mr. DiOrio would as well as the other</b></p> <p>2 <b>directors.</b></p> <p>3 Q Would Mr. Sevilla attend as well?</p> <p>4 <b>A He had attended some of them, but</b></p> <p>5 <b>typically once Matt was involved it was just Matt</b></p> <p>6 <b>from Highland.</b></p> <p>7 Q How about Ms. Irving, did she attend?</p> <p>8 <b>A I think early on, but not the later</b></p> <p>9 <b>meetings.</b></p> <p>10 Q Do you know why they attended?</p> <p>11 <b>A It was before Matt so J.P. was our main</b></p> <p>12 <b>contact at Highland at the time.</b></p> <p>13 Q But he wasn't on the Sentinel board,</p> <p>14 right?</p> <p>15 <b>A He was never on the board.</b></p> <p>16 Q Is it common for the sponsoring company's</p> <p>17 personnel to attend board meetings even if not on</p> <p>18 the board?</p> <p>19 <b>A It is.</b></p> <p>20 Q Item F here states "Facilitate the</p> <p>21 investment of available funds in accordance with</p> <p>22 written instructions from Sentinel through</p> <p>23 Highland Capital." So did Beecher provide that</p> <p>24 service for Sentinel?</p> <p>25 <b>A Yes.</b></p>
58	<p>1 because our contact was with J.P. and Matt and</p> <p>2 they were the ones that would provide any</p> <p>3 direction for what we were doing.</p> <p>4 BY MR. BURT:</p> <p>5 Q Looking down at E, referring back to the</p> <p>6 management agreement, E states "coordinate and</p> <p>7 attend Sentinel's annual meeting." What does that</p> <p>8 refer to?</p> <p>9 <b>A There would be a requirement in the Cayman</b></p> <p>10 <b>for the captives to have periodic meetings to</b></p> <p>11 <b>discuss governance items typically on an annual</b></p> <p>12 <b>basis. As part of our role as captive managers we</b></p> <p>13 <b>would be preparing the board books, pulling all</b></p> <p>14 <b>documentation together, coordinating with anyone</b></p> <p>15 <b>that would be presenting and scheduling the</b></p> <p>16 <b>meeting.</b></p> <p>17 Q How often did the Sentinel board have a</p> <p>18 meeting?</p> <p>19 <b>A Approximately once a year.</b></p> <p>20 Q Would Beecher schedule those?</p> <p>21 <b>A Beecher would.</b></p> <p>22 Q And Beecher would attend those meetings?</p> <p>23 <b>A That is correct.</b></p> <p>24 Q And is it also correct that Mr. DiOrio as</p> <p>25 director of Sentinel would attend?</p>	60	<p>1 Q And were those instructions for investing</p> <p>2 funds did those come from Highland Capital?</p> <p>3 <b>A They did.</b></p> <p>4 Q So Highland Capital made all decisions as</p> <p>5 far as the investments of Sentinel assets, is that</p> <p>6 right?</p> <p>7 <b>A That is correct.</b></p> <p>8 Q Beecher wasn't making those decisions on</p> <p>9 its own, correct?</p> <p>10 <b>A Beecher was not.</b></p> <p>11 Q Wasn't authorized to make those decision</p> <p>12 the?</p> <p>13 <b>A They were not. We may have been consulted</b></p> <p>14 <b>with and discussions, we can advise the directors</b></p> <p>15 <b>on how to or how we think that might make sense</b></p> <p>16 <b>given their situations, but we wouldn't ultimately</b></p> <p>17 <b>call the shots, that decision was either with the</b></p> <p>18 <b>directors.</b></p> <p>19 Q Here it says actually that the</p> <p>20 instructions come from Highland Capital, not the</p> <p>21 directors, right?</p> <p>22 <b>A So at the time there were outside</b></p> <p>23 <b>directors that didn't have Highland's financial</b></p> <p>24 <b>interest in mind, I guess they would have been</b></p> <p>25 <b>focusing on Sentinel, so any direction would have</b></p>

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61	<p><b>1 been at the request of Highland Capital.</b></p> <p>2 Q Let me break that down a little bit to</p> <p>3 make sure I understand.</p> <p>4 You said the directors didn't have</p> <p>5 Highland's financial interest in mind, did I have</p> <p>6 that right?</p> <p>7 MR. WELDON: Objection, for clarification,</p> <p>8 outside directors.</p> <p>9 MR. BURT: The outside directors, thank</p> <p>10 you.</p> <p>11 BY MR. BURT:</p> <p>12 Q The outside directors didn't have</p> <p>13 Highland's financial interest in mind?</p> <p><b>14 A At the time that's correct, they weren't</b></p> <p><b>15 -- when the captive was originally set up I am not</b></p> <p><b>16 sure. We can back up.</b></p> <p>17 Q Let's back up and break it down.</p> <p>18 So outside directors first, by that do you</p> <p>19 mean directors who were not affiliated with</p> <p>20 Highland?</p> <p><b>21 A That is correct.</b></p> <p><b>22 So there was a requirement that there were</b></p> <p><b>23 some outside independent directors that were</b></p> <p><b>24 involved on the board for Sentinel, and up until</b></p> <p><b>25 Matt DiOrio was -- had joined Highland Capital</b></p>	63	<p><b>1 focused on liquidity on some of the investments</b></p> <p><b>2 maybe, I don't know.</b></p> <p>3 Q Instructions for investments never came</p> <p>4 from those outside directors, right, for the</p> <p>5 Sentinel investments?</p> <p><b>6 A They wouldn't have initiated. They would</b></p> <p><b>7 have been brought in to discussions with the</b></p> <p><b>8 Highland folks or J.P. and Matt and ultimately</b></p> <p><b>9 made the decision at the end to invest in this</b></p> <p><b>10 vehicle or that vehicle.</b></p> <p>11 Q They being the entire board?</p> <p><b>12 A The board of directors were ultimately</b></p> <p><b>13 responsible for making those decisions.</b></p> <p>14 Q Do you know what -- if J.P. was overseeing</p> <p>15 that or directing those decisions that the board</p> <p>16 was making?</p> <p><b>17 A I believe so.</b></p> <p>18 Q Do you know if the board ever rejected</p> <p>19 directions given by a Highland employee and did</p> <p>20 something different?</p> <p><b>21 A I am not aware of anything.</b></p> <p>22 Q Moving down to J in the management</p> <p>23 agreement, and then there is a bunch of sub</p> <p>24 romanettes there, I will highlight a couple, J</p> <p>25 states "Make withdrawals from time to time in</p>
62	<p><b>1 there were only outside independent directors on</b></p> <p><b>2 Sentinel's board and then Matt was appointed,</b></p> <p><b>3 there was another individual from Highland Capital</b></p> <p><b>4 that was added to the board, and so there were</b></p> <p><b>5 four total directors, two outside independent</b></p> <p><b>6 directors and two Highland Capital</b></p> <p><b>7 representatives.</b></p> <p>8 Q Who was the other Highland Capital</p> <p>9 director?</p> <p><b>10 A Dilip Massand.</b></p> <p>11 Q When did Mr. DiOrio join the board?</p> <p><b>12 A I believe it was 2018.</b></p> <p>13 Q Let's go back to the outside directors,</p> <p>14 you said they didn't have Highland's financial</p> <p>15 interests in mind because they weren't affiliated</p> <p>16 with Highland, right?</p> <p><b>17 A They weren't affiliated with Highland but</b></p> <p><b>18 they were appointed to act on behalf of Sentinel;</b></p> <p><b>19 not necessarily what Highland's motives might be,</b></p> <p><b>20 I guess.</b></p> <p>21 Q Why would it matter as far as Sentinel's</p> <p>22 investments went whether the directors had</p> <p>23 Highland's financial interests in mind?</p> <p><b>24 A I don't know that it necessarily mattered</b></p> <p><b>25 other than they might -- they might be more</b></p>	64	<p>1 accordance with written authorization procedures</p> <p>2 established by Sentinel from any bank account or</p> <p>3 accounts established by Sentinel in order to pay</p> <p>4 in a timely manner the necessary, reasonable, and</p> <p>5 proper expenses of Sentinel." And then it lists</p> <p>6 the expenses that are included but not limited to</p> <p>7 and it lists a bunch, do you see that?</p> <p><b>8 A I do.</b></p> <p>9 Q Is that what Beecher does, it makes those</p> <p>10 withdrawals for payments that come from Sentinel?</p> <p>11 MR. WELDON: Objection.</p> <p>12 THE WITNESS: That is a typical service</p> <p>13 that is provided, but it is going to come with</p> <p>14 proper authorization from the directors.</p> <p>15 BY MR. BURT:</p> <p>16 Q And who would provide -- who would</p> <p>17 actually provide authorization for payments to</p> <p>18 Beecher?</p> <p><b>19 A The directors.</b></p> <p><b>20 The way that the account was set up was</b></p> <p><b>21 that Beecher would initiate the transactions in</b></p> <p><b>22 the system at least as far as the current bank</b></p> <p><b>23 account is Beecher would initiate the transactions</b></p> <p><b>24 and the invoice and requests for processing and</b></p> <p><b>25 request for approval would be sent to the</b></p>

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65	<p>1 <b>directors who would give their formal approval,</b></p> <p>2 <b>this is the outside directors, and they would</b></p> <p>3 <b>release the payments on the system.</b></p> <p>4 Q Where did Beecher -- who provided the</p> <p>5 invoice in the initial request to Beecher?</p> <p>6 <b>A The primary person to provide invoices to</b></p> <p>7 <b>Beecher, it was Matt DiOrio, unless it was a</b></p> <p>8 <b>service provider that Beecher worked closely with,</b></p> <p>9 <b>whether it was the audit firm or the actuary,</b></p> <p>10 <b>those would come directly to Beecher and then</b></p> <p>11 <b>Beecher would submit them to Matt, get his okay,</b></p> <p>12 <b>and then they would go to the outside directors</b></p> <p>13 <b>for their approval.</b></p> <p>14 Q So ultimately the outside directors had to</p> <p>15 sign off on any expense payment by Sentinel?</p> <p>16 <b>A That is correct.</b></p> <p>17 Q Did that always happen?</p> <p>18 <b>A That is true, yes.</b></p> <p>19 Q Were any invoices from DiOrio -- that</p> <p>20 DiOrio submitted were any not approved by the</p> <p>21 directors? The outside directors, let me be more</p> <p>22 specific.</p> <p>23 <b>A I don't believe there were any that</b></p> <p>24 <b>ultimately were not approved.</b></p> <p>25 Q Since Mr. DiOrio is no longer with</p>	67
66	<p>1 Highland Capital, where are the requests coming</p> <p>2 from now?</p> <p>3 MR. WELDON: Objection.</p> <p>4 Clarification, you are talking about where</p> <p>5 the invoice is coming from now?</p> <p>6 MR. BURT: Right.</p> <p>7 BY MR. BURT:</p> <p>8 Q So any requests for payment for Sentinel</p> <p>9 to make a payment, where are those coming from? I</p> <p>10 understand some might be coming from service</p> <p>11 providers.</p> <p>12 <b>A Invoices that come from the service</b></p> <p>13 <b>providers still follow the same channel. Any</b></p> <p>14 <b>invoices that would originate from the Highland</b></p> <p>15 <b>side will now or have been since the new directors</b></p> <p>16 <b>took over since the old directors and Matt</b></p> <p>17 <b>resigned are coming through to those directors and</b></p> <p>18 <b>then they submit them to us.</b></p> <p>19 Q The directors -- the new directors of</p> <p>20 Sentinel?</p> <p>21 <b>A The current independent directors, yes.</b></p> <p>22 Q So prior to Mr. DiOrio leaving the request</p> <p>23 -- the Highland-related request, let's call them,</p> <p>24 those were coming from an inside director from</p> <p>25 Mr. DiOrio?</p>	68
	<p>1 <b>A Correct.</b></p> <p>2 Q Now post-Mr. DiOrio leaving those</p> <p>3 requests, the Highland requests, are coming from</p> <p>4 the independent directors for Sentinel?</p> <p>5 <b>A That is correct.</b></p> <p>6 Q You mentioned a Sentinel account and it</p> <p>7 sounded like you said account in the singular, so</p> <p>8 I just want to understand that.</p> <p>9 Did Sentinel have a single account from</p> <p>10 which payments were made for reimbursement or</p> <p>11 expenses?</p> <p>12 <b>A They have a single checking account and an</b></p> <p>13 <b>investment custodial account.</b></p> <p>14 Q Where is that checking account located?</p> <p>15 <b>A CIBC in the Cayman.</b></p> <p>16 Q And they have a single you said investment</p> <p>17 account?</p> <p>18 <b>A Correct, custodial account with CIBC as</b></p> <p>19 <b>well.</b></p> <p>20 Q CIBC Caymans?</p> <p>21 <b>A Yes.</b></p> <p>22 Q So help me understand the difference.</p> <p>23 In the checking account there is cash, is</p> <p>24 that right?</p> <p>25 <b>A That is correct.</b></p>	



69	<p><b>1 would process payments on their end.</b></p> <p>2 Q I want to ask about Maples, but let me ask</p> <p>3 one question about the investments that never made</p> <p>4 it.</p> <p>5 Do you know where those investments are</p> <p>6 that never made it to Sentinel?</p> <p>7 <b>A As far as I know they are still in the</b></p> <p>8 <b>name of the insureds.</b></p> <p>9 Q And do you know which ones never made it?</p> <p>10 <b>A Any that are not in the custody account.</b></p> <p>11 Q Sure.</p> <p>12 <b>A There is a number of them. I would</b></p> <p>13 <b>recognize them if I saw them.</b></p> <p>14 Q Okay, all right. We will come back to</p> <p>15 that.</p> <p>16 You mentioned Maples, what is Maples?</p> <p>17 <b>A Maples, just like Caledonian, just like a</b></p> <p>18 <b>number of firms in the Cayman provided outside</b></p> <p>19 <b>independent director services to companies in the</b></p> <p>20 <b>Cayman. They also have a legal arm. They have a</b></p> <p>21 <b>corporate services arm.</b></p> <p>22 Q And you said during the time that Maples</p> <p>23 was providing directors they had a checking</p> <p>24 account for Sentinel?</p> <p>25 <b>A They had a segregated account that they</b></p>	71	<p><b>1 correct.</b></p> <p>2 Q Do you know, were there terms of</p> <p>3 reimbursements what was authorized to be</p> <p>4 reimbursed for these types of expenses, travel and</p> <p>5 entertainment costs?</p> <p>6 <b>A As long as the directors approved it and</b></p> <p>7 <b>supported that it was in relation to Sentinel it</b></p> <p>8 <b>would be dispersed out of the account.</b></p> <p>9 Q And we are going to talk about one of the</p> <p>10 -- we believe what one of the things that happens</p> <p>11 with the insurance policy is through the second</p> <p>12 endorsement there is a risk mitigation fee that's</p> <p>13 taken out of the policy, a \$9 million risk</p> <p>14 mitigation figure. Does that sound familiar?</p> <p>15 <b>A That does.</b></p> <p>16 Q Was that 9 million was that held in this</p> <p>17 checking account?</p> <p>18 <b>A The \$9 million was carved out of the</b></p> <p>19 <b>premium and tracked separately.</b></p> <p>20 <b>As far as the specific cash dollars it</b></p> <p>21 <b>would have been commingled with any other cash</b></p> <p>22 <b>that Sentinel had.</b></p> <p>23 Q And was all the cash held in the checking</p> <p>24 account at CIBC?</p> <p>25 <b>A Correct.</b></p>
70	<p><b>1 held for Sentinel that was -- and they were able</b></p> <p>2 <b>to disperse payments on behalf of Sentinel</b></p> <p>3 <b>through.</b></p> <p>4 Q During that time were all of the Sentinel</p> <p>5 payments for reimbursement or expenses were they</p> <p>6 coming out of the Maples account?</p> <p>7 <b>A That is correct.</b></p> <p>8 Q What time period was that?</p> <p>9 <b>A 2015 through 2017.</b></p> <p>10 Q After the Maples account was no longer</p> <p>11 being used it's been since that time the single</p> <p>12 checking account from Sentinel from which</p> <p>13 reimbursements and expenses have been paid?</p> <p>14 <b>A That is correct.</b></p> <p>15 Q Looking at the management agreement, one</p> <p>16 of the expenses here -- we have claim payments</p> <p>17 listed, Beecher Carlson management fees, other</p> <p>18 fees, and then under romanette 8 at the bottom it</p> <p>19 says "travel and entertainment costs incurred by</p> <p>20 officers of Sentinel."</p> <p>21 So is it a fair reading of that that out</p> <p>22 of this single checking account that held cash the</p> <p>23 travel and entertainment costs by Sentinel</p> <p>24 officers were paid?</p> <p>25 <b>A To the extent that there were any, that's</b></p>	72	<p>1 Q In terms of if something was a risk</p> <p>2 mitigation reimbursement or expense it would have</p> <p>3 just been coded as such in a ledger but the cash</p> <p>4 would have come from the same account --</p> <p>5 <b>A Correct.</b></p> <p>6 Q -- as the cash?</p> <p>7 <b>A Correct.</b></p> <p>8 <b>When those invoices were provided to</b></p> <p>9 <b>Sentinel from Matt DiOrio if it wasn't explicitly</b></p> <p>10 <b>explained as being risk mitigation fees we would</b></p> <p>11 <b>inquire the nature of the fees just so that we had</b></p> <p>12 <b>a sense of how to account for it on the Sentinel</b></p> <p>13 <b>side.</b></p> <p>14 Q Was there a standard or policy for what</p> <p>15 constituted a risk mitigation fee versus what</p> <p>16 should not be accounted for as such?</p> <p>17 <b>A If there were invoices that were coming in</b></p> <p>18 <b>in somebody else's name we would inquire whether</b></p> <p>19 <b>they were risk mitigation fees.</b></p> <p>20 Q Do you know whether any travel and</p> <p>21 entertainment expenses of Sentinel officers were</p> <p>22 coded as risk mitigation?</p> <p>23 <b>A Of Sentinel officers? I don't believe</b></p> <p>24 <b>there were any travel or expense.</b></p> <p>25 Q How about of Highland employees or</p>

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73	<p>1 Highland personnel, were any of those risk                  2 mitigation fees?  <b>3 A There were some travel costs that came                  4 through and paid under the risk mitigation fees.</b>                  5 Q And whose travel costs were those?  <b>6 A I believe those were Scott Ellington's.</b>                  7 Q Do you know why those were paid out of the                  8 risk mitigation fee?  <b>9 A We were informed that they related to the                  10 defense of the UBS litigation matter.</b>                  11 Q So that was the justification that was                  12 given?  <b>13 A Correct.</b>                  14 Q Who informed you of that?  <b>15 A Matt DiOrio.</b>                  16 Q And did the outside directors approve                  17 those expenses?  <b>18 A They did.</b>                  19 MR. BURT: Let's look at a couple of those                  20 while we are talking about risk mitigation. Let                  21 me just find the right tab here. I believe it is                  22 Tab 48. 118.                  23 (Document marked Exhibit 118 for                  24 identification.)                  25</p>	75
74	<p>1 BY MR. BURT:                  2 Q So while you are looking at that just for                  3 the record I am showing the witness the Bates                  4 label BC SEN000727319, which is Beecher Carlson                  5 e-mails and attachments.  <b>6 A Okay.</b>                  7 Q I actually want to draw your attention to                  8 the last two e-mails in time, it is on the first                  9 page right in the middle, an e-mail from you dated                  10 February 6, 2020, to Alli Devins. Who is                  11 Alli Devins?  <b>12 A Alli Devins is an employee with Beecher                  13 Carlson.</b>                  14 Q Does she work on your team?  <b>15 A She does.</b>                  16 Q And does she work on the Sentinel account?  <b>17 A She did at the time.</b>                  18 Q No longer?  <b>19 A We have since transitioned that work to                  20 Gareth Pereira because he is in our Cayman office                  21 with Clayton.</b>                  22 Q And you write in this e-mail on                  23 February 6, "We have a bunch of invoices for                  24 Sentinel that are in need of processing. Do you                  25 have time to get approvals on those?"</p>	76
	<p>1 Do you recall this timeframe, early 2020,                  2 getting a bunch of invoices from Sentinel that                  3 needed processing?  <b>4 A We get a lot of invoices from Sentinel so                  5 it's not out of the ordinary that we would receive                  6 a flurry of them.</b>                  7 Q So early 2020 doesn't stand out in any                  8 way?  <b>9 A No.</b>                  10 Q And when you say that, Ms. Devins, "Do you                  11 have time to get approval," what did you mean by                  12 approval?  <b>13 A To seek approval from the directors to                  14 process the invoices.</b>                  15 Q So that was part of the process where you                  16 had received them from Highland and -- from                  17 Mr. DiOrio most likely and you were going to then                  18 turn around and seek approval from the outside                  19 directors?  <b>20 A That's correct.</b>                  21 Q And then Ms. Devins responds in the top                  22 e-mail --                  23 MR. WELDON: I want to note my objection,                  24 you refer to Highland, but DiOrio was a director,                  25 inside director for Sentinel. To the extent that</p>	
	<p>1 he is receiving them, you are qualifying him, I                  2 just want there to be a clarification. He has                  3 identified him as an inside director for Sentinel.                  4 He does work as Highland but inside director for                  5 Sentinel.                  6 BY MR. BURT:                  7 Q Let me ask you, when you received these                  8 types of expense requests for reimbursement for                  9 Mr. DiOrio did you understand them to be providing                  10 them in his role as an independent director -- as                  11 a director of Sentinel or his role as a Highland                  12 employee?  <b>13 A We understood the invoices to be coming                  14 through Matt because they would have been provided                  15 to Matt from somebody at Highland Capital or would                  16 have been coming from somebody with his                  17 connections at Highland Capital.</b>                  18 Q So ultimately the requests were coming                  19 from Highland Capital through Mr. DiOrio to                  20 Beecher, is that right?  <b>21 A Correct.</b>                  22 Q So looking back at this e-mail, Ms. Devins                  23 says, "Yes" -- and this is on February 6, 2020,                  24 "Yes, that was actually on my list to do today. I                  25 have them all pulled together, just need to send</p>	

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77	<p>1 them out. These are the three I have. Not sure                  2 if you have any additional invoices."                  3 And the first attachment states SEN 200206                  4 Scott Ellington invoices for \$176,334.77, it's a                  5 PDF. Do you see that?                  6 <b>A I do.</b>                  7 Q And referring to that attachment which                  8 begins the Bates ending 727324, do you see where I                  9 am at?                  10 <b>A Yes.</b>                  11 Q And at the top it says Ellington expenses                  12 London and Paris, total \$78,841.93.                  13 <b>A Yes.</b>                  14 Q Do you know what these requests were for?                  15 <b>A It says risk mitigation fees, so I am not</b>                  16 <b>certain the nature of what these travel expenses</b>                  17 <b>related to.</b>                  18 Q So that information specifically how they                  19 related to risk mitigation that was not provided                  20 at the time?                  21 <b>A No.</b>                  22 Q And as you look at this, starting on                  23 December 23, 2019, London Hilton Parklane is the                  24 first expense for \$388. The next expense is the                  25 Novikov Bar and Grill in London for \$1,397. Do</p>	79
78	<p>1 you see that?                  2 <b>A I do.</b>                  3 Q And then there is a payment at Claridge's                  4 Hotel for \$2006.29 right underneath that. Do you                  5 see that?                  6 <b>A I do.</b>                  7 Q And you have no insight into what these                  8 expenses actually were?                  9 <b>A I do not.</b>                  10 Q Looking down do you see a few rows down a                  11 \$15,000 expense at Browns Hotel in London?                  12 <b>A Yes.</b>                  13 Q Looking down a little bit more there is a                  14 Four Seasons Hotel George V for \$7900, do you see                  15 that one?                  16 <b>A Yes.</b>                  17 MR. WELDON: 7978, is that what you are                  18 referring to?                  19 MR. BURT: \$7,978.46.                  20 BY MR. BURT:                  21 Q A few lines after that Park Chinois -                  22 London \$4,000 expense, do you see that?                  23 <b>A I do.</b>                  24 Q There is some expense for \$716 at Sexy                  25 Fish London, do you see that?</p>	80
79	<p>1 <b>A I do.</b>                  2 Q And then a \$21,991 expense for Browns                  3 Hotel in London, do you see that?                  4 <b>A I do.</b>                  5 Q And Beecher had no insight into what these                  6 actually were, right?                  7 <b>A No.</b>                  8 <b>If these were all under risk mitigation</b>                  9 <b>they would have been -- our understanding is that</b>                  10 <b>they would have been expenses related to the</b>                  11 <b>insureds under the ATE policy and that all costs</b>                  12 <b>related to the insureds were to be paid under</b>                  13 <b>these risk mitigation fees.</b>                  14 Q So Beecher was relying on accurate                  15 information to come from Highland through                  16 Mr. DiOrio?                  17 <b>A That is correct.</b>                  18 (Document marked Exhibit 119 for                  19 identification.)                  20 BY MR. BURT:                  21 Q Showing you we will mark our next exhibit,                  22 keep that handy, that London trip from DiOrio, we                  23 are going to do some comparison. This one I don't                  24 think you have seen before, what I just handed                  25 you, 119, is Bates labeled UBSPROD460936. And</p>	80

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<p style="text-align: right;">81</p> <p>1 Stephanie Archer to Scott Ellington on                  2 December 11, 2019, with the subject forward                  3 London, do you see that?                  4 <b>A I do.</b>                  5 Q And she writes there, "For you to approve                  6 or change I would like to do Matilda the 26th at                  7 7:00 p.m., we leave for Paris the next morning, so                  8 I thought we do room service that evening or                  9 something simple after the play. As for holiday                  10 meals I would love to do Christmas dinner at                  11 Claridges, Christmas Day lunch at Browns, New                  12 Years dinner at Alain Ducasse at the Dorchester,                  13 second sitting preferably. I would love if                  14 dinners are planned at 7:00 p.m. as they are all                  15 incredibly long." Do you see that?                  16 <b>A I do.</b>                  17 Q And Beecher had no insight into any of                  18 this, right?                  19 <b>A I have never seen this document before.</b>                  20 Q At the top of the next page Ms. Archer                  21 writes, "As far as other activities I have in mind                  22 Tower of London for Jack to tour, London Bridge,                  23 Hyde Park Winter Wonderland Market, Bond Street,                  24 and Covenant Garden Christmas lights," and she                  25 lists the other dining she would like to try as</p>	<p style="text-align: right;">83</p> <p>1 <b>A I do see that.</b>                  2 Q On the next page, Christmas lights, she                  3 lists a bunch of information and winter markets,                  4 winter skating, a bunch of information for that.                  5 And then on the next page London restaurants and                  6 there is a calendar from 22nd December, 2019                  7 through January 2, 2020. Do you see that there?                  8 <b>A I do.</b>                  9 Q And then a bunch of restaurants, afternoon                  10 tea is listed for the next few pages. Do you see                  11 all that?                  12 <b>A I do.</b>                  13 Q And to be absolutely clear, none of this                  14 was provided to Beecher Carlson as part of the                  15 request for reimbursement, correct?                  16 <b>A This is the first time I am seeing any of</b>                  17 <b>this.</b>                  18 Q Now, looking at the calendar that we                  19 looked at that had the 22nd of December through                  20 January 1, keep that handy and let's look back at                  21 the Ellington expense request in the previous                  22 exhibit and compare dates. According to the                  23 calendar they would arrive in London on the                  24 morning of the 22nd of December, and if you look                  25 at the dates here the 22nd of December Scott's</p>
<p style="text-align: right;">82</p> <p>1 well, do you see that?                  2 <b>A I do.</b>                  3 Q Again, none of this is familiar, correct?                  4 <b>A That is correct.</b>                  5 Q If you flip then to the next attachment                  6 there is a couple of blank pages and then you see                  7 there is a listing of London plays.                  8 Sorry, before we get there, we do need to                  9 look at the last e-mail in the chain, that will                  10 provide content what follows.                  11 The last e-mail in the chain is from Sarah                  12 Goldsmith to Scott Ellington and Stephanie Archer.                  13 It says, "Attached is the information I have put                  14 together for your trip to London. I will e-mail                  15 you both the Paris information tomorrow, but I                  16 wanted to break it up so I wasn't sending too much                  17 information at once. Please let me know if you                  18 would like me to do any additional research, have                  19 any questions, or would like me to make any                  20 reservations," with Sarah Goldsmith listed as SAS                  21 Asset Recovery, do you see that?                  22 <b>A I do.</b>                  23 Q So the first attachment is London plays,                  24 she includes here a bunch of musicals, Wicked,                  25 School of Rock, et cetera?</p>	<p style="text-align: right;">84</p> <p>1 London is listed and then on the 23rd London                  2 Hilton Parklane, and the expenses begin there on                  3 the 23rd and continue down through January 2, do                  4 you see that?                  5 <b>A I do.</b>                  6 Q And that's what was submitted to                  7 Beecher Carlson, correct?                  8 <b>A Correct.</b>                  9 Q And those are the exact same dates in this                  10 itinerary that was provided to Ms. Archer and                  11 Mr. Ellington, is that right?                  12 MR. WELDON: You ask whether the dates                  13 correspond?                  14 BY MR. BURT:                  15 Q Do the dates correspond?                  16 <b>A The dates appear to correlate.</b>                  17 Q And the locations appear to correlate as                  18 well, London and Paris?                  19 <b>A They do.</b>                  20 Q Do you have any knowledge of whether                  21 Mr. Ellington did any risk mitigation work in                  22 London and Paris?                  23 <b>A We were only provided with the direction</b>                  24 <b>that the invoice was to be paid under the risk</b>                  25 <b>mitigation fees.</b></p>

<p style="text-align: right;">85</p> <p>1 Q Did Ms. Archer to your knowledge have any 2 business with Sentinel? 3 <b>A I am not aware who Ms. Archer is.</b> 4 Q Did she provide any services with regard 5 to the ATE policy to your knowledge? 6 <b>A I am not aware of who Ms. Archer is.</b> 7 Q So if you were to hear for the first time 8 today that she is Mr. Ellington's girlfriend would 9 that be news to you? 10 <b>A That would be news to me.</b> 11 Q And this was a personal trip that they 12 took to London and Paris? 13 <b>A That would also be news to me.</b> 14 Q And those would not have been appropriate 15 risk mitigation reimbursements -- 16 MR. WELDON: Objection. 17 BY MR. BURT: 18 Q -- had Beecher known about it? 19 MR. WELDON: Objection. 20 BY MR. BURT: 21 Q You can answer. 22 <b>A Had Beecher known about it we would have</b> 23 <b>pushed that the expenses not be reimbursed under</b> 24 <b>the risk mitigation. But if the directors had</b> 25 <b>approved it and that it was appropriate to pay</b></p>	<p style="text-align: right;">87</p> <p>1 Q A number of these are listed as risk 2 mitigation and then others are listed as business 3 development, is that right? 4 <b>A That is correct.</b> 5 Q Do you know what the distinction was 6 between risk mitigation and business development? 7 <b>A We were informed that anything business</b> 8 <b>development related to business opportunities that</b> 9 <b>Sentinel was looking into for future insurance</b> 10 <b>programs.</b> 11 Q And who informed you of that? 12 <b>A Matt DiOrio.</b> 13 Q And do you -- did Beecher have any 14 firsthand knowledge of what Mr. Ellington might 15 have been doing in terms of business development 16 efforts or only what was told to you by 17 Mr. DiOrio? 18 <b>A Only what was told to us by Mr. DiOrio.</b> 19 Q Here the first expense requested the 20 Shangri-La Toronto a \$15,511 bill for risk 21 mitigation. The other risk mitigations include a 22 \$6,883 bill at Jacobs &amp; Company Steakhouse on the 23 17th, do you see that? 24 <b>A I do.</b> 25 Q I skipped one, on the 14th another</p>
<p style="text-align: right;">86</p> <p>1 <b>under it we would have had no choice other than to</b> 2 <b>follow the direction of the directors.</b> 3 Q Because ultimately Beecher didn't have the 4 authority one way or the other? 5 <b>A Beecher did not.</b> 6 Q And it was the outside directors who were 7 ultimately approving, right? 8 <b>A That is correct.</b> 9 Q Do you know if any of this information was 10 provided to the outside directors? 11 <b>A I am aware that the invoices themselves</b> 12 <b>would have been provided, but whether or not they</b> 13 <b>scrutinized it, I am not aware.</b> 14 Q And the e-mails back and forth between 15 Ms. Archer and Mr. Ellington, Beecher never had 16 those, correct? 17 <b>A Beecher never received those, so as to</b> 18 <b>whether or not they made it to the directors, I do</b> 19 <b>not know.</b> 20 Q If you look at -- looking at the exhibit 21 with the reimbursement requests, the Ellington 22 expenses, the next expense report included here is 23 for a Toronto trip from January 15 through 24 January 19, do you see that? 25 <b>A I do.</b></p>	<p style="text-align: right;">88</p> <p>1 Shangri-La Toronto for \$2,637, do you see that at 2 the top? 3 <b>A I do.</b> 4 Q And then there is it looks like eight in a 5 row for the Shangri-La Hotel in various amounts, 6 do you see that? 7 <b>A I do.</b> 8 Q And, again, as before is it correct that 9 beyond what was included here and that you were 10 told that it was risk mitigation Beecher had no 11 insight into what was actually happening in 12 Toronto? 13 <b>A That is correct.</b> 14 Q And this -- Ms. Devins would have passed 15 this information that is here on to the 16 independent directors or the outside directors, is 17 that right? 18 <b>A That is correct.</b> 19 <b>I do remember speaking with Matt on this</b> 20 <b>particular invoice and he had indicated that the</b> 21 <b>Toronto trip had some involvement with the</b> 22 <b>litigation.</b> 23 Q Do you recall what he said precisely? 24 <b>A I don't remember other than that and it</b> 25 <b>was a conversation we had.</b></p>

89	<p>1 Q And would that conversation have been</p> <p>2 around the February, 2020 timeframe when this was</p> <p>3 provided?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Most likely.</p> <p>6 Mr. Adamczak, having now seen the</p> <p>7 London/Paris itinerary and what was happening I am</p> <p>8 just going to ask what's your reaction to that</p> <p>9 sitting here today?</p> <p>10 MR. WELDON: Objection.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: I don't know what to say.</p> <p>13 BY MR. BURT:</p> <p>14 Q It's news to you today sitting here?</p> <p>15 <b>A It is.</b></p> <p>16 Q It was never disclosed to you at the time?</p> <p>17 <b>A No, it was not.</b></p> <p>18 (Document marked Exhibit 120 for</p> <p>19 identification.)</p> <p>20 BY MR. BURT:</p> <p>21 Q Showing you what's been Bates labeled BC</p> <p>22 SEN0000663342 marked as Exhibit 120, go ahead and</p> <p>23 take a look, a couple e-mails and an expense</p> <p>24 report.</p> <p>25 <b>A Okay.</b></p>	91
90	<p>1 Q Looking at the bottom e-mail it is an</p> <p>2 e-mail from Sarah Goldsmith to Matt DiOrio both at</p> <p>3 SAS Management, cc'ing Connie and Scott Ellington</p> <p>4 at SAS Management for subject Ellington request</p> <p>5 reimbursement, do you see that?</p> <p>6 <b>A I do.</b></p> <p>7 Q Let me ask while we are looking at e-mail</p> <p>8 addresses, Mr. DiOrio is listed here as having an</p> <p>9 SAS Management e-mail address. Is that the e-mail</p> <p>10 address he typically used in communicating with</p> <p>11 you?</p> <p>12 <b>A That is typically the e-mail address that</b></p> <p>13 <b>they would use. We were told that any e-mails</b></p> <p>14 <b>that were coming from the Highland folks were</b></p> <p>15 <b>because it was a Cayman entity that they were</b></p> <p>16 <b>representing they had to use the Cayman e-mail</b></p> <p>17 <b>address, which was the sasmanagement.com e-mail</b></p> <p>18 <b>address.</b></p> <p>19 Q Did you at times receive e-mails from</p> <p>20 their Highland Capital accounts as well?</p> <p>21 <b>A We would.</b></p> <p>22 Q Even when it related to Sentinel business?</p> <p>23 <b>A We would. And then when I would reply I</b></p> <p>24 <b>would try to remember to put the SAS management</b></p> <p>25 <b>e-mail.</b></p>	92
91	<p>1 Q To include all of them?</p> <p>2 <b>A Right.</b></p> <p>3 Q Got it.</p> <p>4 So here Ms. Goldsmith says, "Matt, as</p> <p>5 discussed earlier I am submitting the attached</p> <p>6 expense reimbursement on behalf of Scott Ellington</p> <p>7 subject to review and approval by directors.</p> <p>8 Please instruct reimbursement to Scott Ellington</p> <p>9 for the attached travel expenses. Total is</p> <p>10 \$318,938. Please let me know if you have any</p> <p>11 additional questions. And then wire account</p> <p>12 information is provided from Scott Ellington and</p> <p>13 his bank account at Wells Fargo." Do you see</p> <p>14 that?</p> <p>15 <b>A Yes.</b></p> <p>16 Q And then in the e-mail above Mr. DiOrio</p> <p>17 forwards it to you and Ms. Devins on Friday</p> <p>18 December 20, 2019, so this appears to be about a</p> <p>19 month and a half prior to the expenses that we</p> <p>20 just looked at, the London and Paris?</p> <p>21 <b>A Uh-huh.</b></p> <p>22 Q And he says, "Hi guys, please submit the</p> <p>23 attached expenses for approval and reimbursement.</p> <p>24 Just a heads up, settlement talks are cranking up</p> <p>25 as we understand it so there will be an increase</p>	92
92	<p>1 in travel expenses over the next few months.</p> <p>2 These are actually related to business development</p> <p>3 as we try to plan for potential world post-ATE."</p> <p>4 Do you recall receiving that e-mail from</p> <p>5 Mr. DiOrio and hearing about settlement talks and</p> <p>6 potential world post-ATE in this timeframe?</p> <p>7 <b>A I do.</b></p> <p>8 Q What do you remember about that?</p> <p>9 <b>A I specifically had a discussion with him</b></p> <p>10 <b>relating to these invoices just to understand the</b></p> <p>11 <b>nature of business development costs and</b></p> <p>12 <b>Mr. DiOrio explained to me that there was a</b></p> <p>13 <b>convention in Las Vegas that was the type of</b></p> <p>14 <b>clientele that Highland Capital were looking at as</b></p> <p>15 <b>far as the next potential insurance programs that</b></p> <p>16 <b>they might be considering, so there was a lot of</b></p> <p>17 <b>wining and dining that went on in Las Vegas.</b></p> <p>18 Q Highland Capital was considering, is that</p> <p>19 right?</p> <p>20 MR. WELDON: Objection.</p> <p>21 THE WITNESS: Highland Capital was</p> <p>22 considering for Sentinel.</p> <p>23 BY MR. BURT:</p> <p>24 Q For Sentinel in particular?</p> <p>25 <b>A Correct.</b></p>	92

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<p style="text-align: right;">93</p> <p>1 Q When he says post -- a potential world</p> <p>2 post-ATE, did you discuss what he meant by that?</p> <p>3 <b>A It was understood at the time and it was</b></p> <p>4 <b>discussed in board meetings that because of the</b></p> <p>5 <b>magnitude of the ATE policy the potential exposure</b></p> <p>6 <b>that was there they didn't want to write any</b></p> <p>7 <b>additional policies through Sentinel until they</b></p> <p>8 <b>got on the other side of that UBS litigation.</b></p> <p>9 Q And when you say the potential -- the size</p> <p>10 of the policy and the potential exposure, describe</p> <p>11 what you mean by that.</p> <p>12 <b>A Potential exposure \$91 million of maximum</b></p> <p>13 <b>loss on the policy.</b></p> <p>14 Q And did Sentinel have the assets to cover</p> <p>15 that?</p> <p>16 <b>A They did.</b></p> <p>17 Q And in terms of the potential settlement</p> <p>18 that was being discussed, was it being discussed</p> <p>19 that the ATE policy would cover that settlement?</p> <p>20 <b>A I do not know of any settlement talks</b></p> <p>21 <b>other than what Matt shared with us here.</b></p> <p>22 Q Did Mr. DiOrio share with you that the</p> <p>23 judge the prior month had issued a ruling finding</p> <p>24 in favor totally for UBS?</p> <p>25 <b>A He did not.</b></p>	<p style="text-align: right;">95</p> <p>1 and I believe your answer was no, is that right?</p> <p>2 <b>A That is correct.</b></p> <p>3 (Document marked Exhibit 121 for</p> <p>4 identification.)</p> <p>5 BY MR. BURT:</p> <p>6 Q So now looking at Exhibit 121, you can</p> <p>7 actually flip to the fourth physical page, and you</p> <p>8 will see a document that has a file stamp, it has</p> <p>9 a case heading on it, do you see that?</p> <p>10 <b>A Yes.</b></p> <p>11 Q And the Bates at the bottom of that is</p> <p>12 KL_0000036. And you see that this is a judgment</p> <p>13 in the Supreme Court of the State of New York in</p> <p>14 the case of UBS Securities, LLC and another UBS</p> <p>15 entity plaintiffs against Highland Capital</p> <p>16 Management, LLP and a number of Highland entities,</p> <p>17 do you see that?</p> <p>18 <b>A I do.</b></p> <p>19 Q And looking at that case caption are those</p> <p>20 the -- is this the action that you understood to</p> <p>21 be the event in the ATE policy?</p> <p>22 <b>A I believe so.</b></p> <p>23 Q Now, looking at Page 2 of this order or</p> <p>24 this judgment the second paragraph begins with</p> <p>25 "and", do you see where I am?</p>
<p style="text-align: right;">94</p> <p>1 Q Let's take a look at 55A. We are going to</p> <p>2 come back to that one so keep that handy.</p> <p>3 <b>A Are we done with the other ones?</b></p> <p>4 Q You can set those ones aside for the</p> <p>5 moment, yes.</p> <p>6 MR. WELDON: Is this a good place to take</p> <p>7 a break?</p> <p>8 MR. BURT: We can, yes, sure.</p> <p>9 THE VIDEOGRAPHER: This marks the end of</p> <p>10 Disk No. 2 in the deposition of Thomas Adamczak,</p> <p>11 we are going off the record at 11:13.</p> <p>12 (Recess taken.)</p> <p>13 THE VIDEOGRAPHER: Here begins Disk No. 3</p> <p>14 in the deposition of Thomas Adamczak, we are going</p> <p>15 back on the record at 11:27.</p> <p>16 BY MR. BURT:</p> <p>17 Q So, Mr. Adamczak, before the break we were</p> <p>18 looking at this e-mail that was forwarded to you</p> <p>19 from Mr. DiOrio for expense reimbursements from</p> <p>20 Mr. Ellington, and the date of that e-mail was</p> <p>21 December 20, 2019. Do you recall that?</p> <p>22 <b>A Yes.</b></p> <p>23 Q Now, I believe I had asked you had</p> <p>24 Mr. DiOrio informed you anything about a recent</p> <p>25 court order in a UBS case finding in favor of UBS</p>	<p style="text-align: right;">96</p> <p>1 <b>A Yes.</b></p> <p>2 Q It states, "And the Court having rendered</p> <p>3 a final decision and order after trial on</p> <p>4 November 14, 2019 in which it found in favor of</p> <p>5 Plaintiffs UBS Securities, LLC and UBS AG London</p> <p>6 Branch on their third and fourth causes of actions</p> <p>7 against the counter-parties and dismissed</p> <p>8 Defendant Highland Capital Management, LLP's</p> <p>9 counterclaims with prejudice."</p> <p>10 My question for you is did Mr. DiOrio make</p> <p>11 you aware of the court order on November 14, 2019</p> <p>12 finding in favor of UBS?</p> <p>13 <b>A I believe he had mentioned it and</b></p> <p>14 <b>indicated that there were appeals that were going</b></p> <p>15 <b>through.</b></p> <p>16 Q When did he first mention it to you?</p> <p>17 <b>A I don't recall.</b></p> <p>18 Q Looking at this December 20, 2019 e-mail</p> <p>19 in the previous exhibit do you know whether he had</p> <p>20 mentioned it to you around this time when he was</p> <p>21 sending these expense reimbursements along?</p> <p>22 <b>A I don't believe so.</b></p> <p>23 Q So --</p> <p>24 <b>A I don't recall.</b></p> <p>25 Q But your best estimate probably would have</p>

97	<p>1 come sometime later?</p> <p>2 MR. WELDON: Objection.</p> <p>3 THE WITNESS: I don't recall.</p> <p>4 BY MR. BURT:</p> <p>5 Q What did he say about appeals?</p> <p>6 <b>A He didn't really have a lot of information</b></p> <p>7 <b>related to the process or where it was, but they</b></p> <p>8 <b>were trying to appeal.</b></p> <p>9 Q Do you know if appeals were ever taken?</p> <p>10 <b>A I do not know.</b></p> <p>11 Q Did you ever speak with anybody else at</p> <p>12 Highland about the judgment entered against them?</p> <p>13 <b>A At the end of each year, probably sometime</b></p> <p>14 <b>in January to March, so post-year end, we would</b></p> <p>15 <b>have discussion with the actuary and include J.P.,</b></p> <p>16 <b>Matt, and Isaac Leventon to try to determine the</b></p> <p>17 <b>scenarios for the outcome of the case and with the</b></p> <p>18 <b>end goal being to determine what the loss,</b></p> <p>19 <b>ultimate loss, would end up being that Sentinel</b></p> <p>20 <b>would record in their financial statements.</b></p> <p>21 Q And did you engage in that process after</p> <p>22 this judgment had come down?</p> <p>23 <b>A We would have had a discussion in sometime</b></p> <p>24 <b>between January and March of 2020.</b></p> <p>25 Q Do you recall anything about that</p>	99	<p>1 <b>was for loss reserves would be what the directors</b></p> <p>2 <b>approved to be recorded as a liability in</b></p> <p>3 <b>Sentinel's books.</b></p> <p>4 Q We will come back to that. We will come</p> <p>5 back to that in a couple of minutes.</p> <p>6 So looking back at Exhibit I think it is</p> <p>7 120, the expense reimbursement request, if we look</p> <p>8 at the actual attachment, the expense report of</p> <p>9 Mr. Ellington, dated December 19, 2019 for a total</p> <p>10 of \$318,934.88, here it doesn't have a listing of</p> <p>11 risk mitigation or business development included</p> <p>12 in this report. Do you know how this would have</p> <p>13 been accounted for?</p> <p>14 <b>A This was explained to be all business</b></p> <p>15 <b>development expenses.</b></p> <p>16 Q And as we have discussed earlier, whether</p> <p>17 it was risk mitigation or business development it</p> <p>18 was coming out of the same Sentinel checking</p> <p>19 account, right?</p> <p>20 <b>A That is correct.</b></p> <p>21 Q So it was just for accounting purposes how</p> <p>22 it was included in the ledger whether it was a</p> <p>23 business development?</p> <p>24 <b>A Correct.</b></p> <p>25 Q Or risk mitigation, okay.</p>
98	<p>1 discussion, what was discussed?</p> <p>2 <b>A I don't, other than potential outcomes and</b></p> <p>3 <b>with the attempt to try and assign weights to that</b></p> <p>4 <b>for calculating the loss reserves.</b></p> <p>5 Q What if anything do you recall about what</p> <p>6 Mr. Sevilla or Leventon said about the potential</p> <p>7 outcomes?</p> <p>8 <b>A I don't recall anything specific.</b></p> <p>9 Q Okay.</p> <p>10 <b>A The discussion was really for the actuary</b></p> <p>11 <b>primarily.</b></p> <p>12 Q And what would the actuary do with that</p> <p>13 information precisely?</p> <p>14 <b>A The actuary would take those outcomes and</b></p> <p>15 <b>probabilities of each outcome and run it through</b></p> <p>16 <b>the models to try and determine the liability, the</b></p> <p>17 <b>ultimate loss liability.</b></p> <p>18 Q One moment.</p> <p>19 Were those actuarial estimates were those</p> <p>20 used for accounting purposes or how did they end</p> <p>21 up being used?</p> <p>22 <b>A For accounting purposes.</b></p> <p>23 Q And how specifically would they affect the</p> <p>24 accounting?</p> <p>25 <b>A So whatever the calculation by the actuary</b></p>	100	<p>1 MR. WELDON: Objection.</p> <p>2 BY MR. BURT:</p> <p>3 Q Is that right?</p> <p>4 <b>A That is correct.</b></p> <p>5 MR. WELDON: Objection.</p> <p>6 BY MR. BURT:</p> <p>7 Q Here if we look at these expenses you see,</p> <p>8 for example, on December 12, 2019 a charge of</p> <p>9 \$152,000 at the Wynn Las Vegas Hotel, do you have</p> <p>10 any insight on that charge what is listed here?</p> <p>11 <b>A The only thing I know is what Matt DiOrio</b></p> <p>12 <b>explained that these were business development</b></p> <p>13 <b>expenses related to wining and dining</b></p> <p>14 <b>opportunities, potential future insurance</b></p> <p>15 <b>opportunities for Sentinel.</b></p> <p>16 Q Do you know if any of those insurance</p> <p>17 opportunities ever came to fruition?</p> <p>18 <b>A Sentinel has not written any policies</b></p> <p>19 <b>since the ATE policy.</b></p> <p>20 Q So none of this business development</p> <p>21 resulted in any new ATE policy or other policy for</p> <p>22 Sentinel?</p> <p>23 MR. WELDON: Objection.</p> <p>24 THE WITNESS: Not currently.</p> <p>25</p>



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<p style="text-align: right;">101</p> <p>1 BY MR. BURT:</p> <p>2 Q There is charges at an Omnia Las Vegas.</p> <p>3 Do you know what Omnia is?</p> <p>4 <b>A No.</b></p> <p>5 Q No one ever told you what it was?</p> <p>6 <b>A No.</b></p> <p>7 Q And if I were to represent to you that it</p> <p>8 was a nightclub, would that be news to you?</p> <p>9 <b>A No.</b></p> <p>10 Q Did you have an understanding?</p> <p>11 <b>A I did not. That wasn't one that I</b></p> <p>12 <b>particularly looked at. I think I might have</b></p> <p>13 <b>looked at the Sapphire expense and questioned</b></p> <p>14 <b>that.</b></p> <p>15 Q And what do you understand Sapphire to be?</p> <p>16 <b>A A typical Las Vegas strip club.</b></p> <p>17 Q Did you look at that at the time?</p> <p>18 <b>A I did.</b></p> <p>19 Q And you asked Mr. DiOrio specifically</p> <p>20 about that?</p> <p>21 <b>A I did.</b></p> <p>22 Q And his answer was that it was business</p> <p>23 development?</p> <p>24 <b>A They were all business development, this</b></p> <p>25 <b>is how they do business.</b></p>	<p style="text-align: right;">103</p> <p>1 <b>A That is mine.</b></p> <p>2 Q And you recall sending that?</p> <p>3 <b>A I do.</b></p> <p>4 Q And what raised your concern there?</p> <p>5 <b>A The fact that there was \$318,000 worth of</b></p> <p>6 <b>expenses at first, but there was a significant</b></p> <p>7 <b>amount of that seemed to be club-related.</b></p> <p>8 Q Was it after that that you had the</p> <p>9 conversation with Mr. DiOrio?</p> <p>10 <b>A Correct.</b></p> <p>11 Q So you tried to do some more diligence on</p> <p>12 this?</p> <p>13 <b>A I did.</b></p> <p>14 Q And the answer that you were given was --</p> <p>15 <b>A Business development.</b></p> <p>16 Q Business development.</p> <p>17 And then was this sent on to the directors</p> <p>18 for approval?</p> <p>19 <b>A It was.</b></p> <p>20 Q And do you know if the directors approved</p> <p>21 it?</p> <p>22 <b>A Ultimately they did, but they also</b></p> <p>23 <b>questioned it.</b></p> <p>24 Q What did they question?</p> <p>25 <b>A They requested the nature of those</b></p>
<p style="text-align: right;">102</p> <p>1 Q "They" being who?</p> <p>2 <b>A Highland Capital.</b></p> <p>3 Q So he explained to you that Highland</p> <p>4 Capital did business at strip clubs?</p> <p>5 MR. WELDON: Objection.</p> <p>6 THE WITNESS: He explained that this is</p> <p>7 all of the events that took place in Las Vegas as</p> <p>8 a whole related to the business development and</p> <p>9 this is what they -- this is how they conduct</p> <p>10 business.</p> <p>11 BY MR. BURT:</p> <p>12 Q Please finish.</p> <p>13 <b>A He didn't offer more than that.</b></p> <p>14 Q Did he explain whether anybody accompanied</p> <p>15 Mr. Ellington to Las Vegas?</p> <p>16 <b>A He did not.</b></p> <p>17 Q Now, looking at the e-mail at the very top</p> <p>18 there is a To line to Alli Devins and the planner</p> <p>19 this was produced to us, we don't know who the</p> <p>20 from was, but it states, "Nice, what the hell is</p> <p>21 going on with these expenses? I question how much</p> <p>22 business development is actually being done. Did</p> <p>23 you look at this?"</p> <p>24 Was that -- did you write that e-mail to</p> <p>25 Alli?</p>	<p style="text-align: right;">104</p> <p>1 <b>expenses as well and specifically inquired whether</b></p> <p>2 <b>all or both of the UBOs would be okay with running</b></p> <p>3 <b>these expenses through the captive as business</b></p> <p>4 <b>development.</b></p> <p>5 Q And who did they ask that question to?</p> <p>6 <b>A Matt DiOrio.</b></p> <p>7 Q And what was the answer he gave?</p> <p>8 <b>A That it was appropriate.</b></p> <p>9 Q So he -- did he tell them specifically</p> <p>10 that both the UBOs, Scott Ellington and James</p> <p>11 Dondero, were okay with running these types of</p> <p>12 expenses through Sentinel?</p> <p>13 MR. WELDON: Objection.</p> <p>14 THE WITNESS: I don't specifically</p> <p>15 remember.</p> <p>16 BY MR. BURT:</p> <p>17 Q So what's your best memory?</p> <p>18 MR. WELDON: Objection.</p> <p>19 THE WITNESS: That it was appropriate to</p> <p>20 include it as business development expense.</p> <p>21 BY MR. BURT:</p> <p>22 Q So I guess what -- the distinction I am</p> <p>23 trying to make sure I drill down on is it's</p> <p>24 appropriate because the UBOs said it was</p> <p>25 appropriate?</p>

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<p style="text-align: right;">105</p> <p>1 MR. WELDON: Objection.</p> <p>2 THE WITNESS: To my knowledge, yes.</p> <p>3 BY MR. BURT:</p> <p>4 Q I just want to look at one more of these</p> <p>5 expense requests, give me one moment.</p> <p>6 Mark this as 122.</p> <p>7 (Document marked Exhibit 122 for</p> <p>8 identification.)</p> <p>9 BY MR. BURT:</p> <p>10 Q Showing what has been marked as</p> <p>11 Exhibit 122 BC SEN000662367, are you ready,</p> <p>12 Mr. Adamczak?</p> <p>13 <b>A Yes.</b></p> <p>14 Q So the first-in-time e-mail here from</p> <p>15 Matt DiOrio to you dated July 2, 2019, submitting</p> <p>16 the below for approval and the below appears to be</p> <p>17 a Sentinel expense reimbursement related to travel</p> <p>18 for a CIMA meeting on June 25, 2019, do you see</p> <p>19 that?</p> <p>20 <b>A Yes.</b></p> <p>21 Q The amount being \$4,615.90.</p> <p>22 What CIMA meeting, if you recall, was</p> <p>23 occurring in June of 2019?</p> <p>24 <b>A So in connection with the CIMA inspection</b></p> <p>25 <b>CIMA specifically had questions related to the</b></p>	<p style="text-align: right;">107</p> <p>1 MR. WELDON: Objection.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. BURT:</p> <p>4 Q Did Ms. Vitiello attend the meeting?</p> <p>5 <b>A Who?</b></p> <p>6 Q Stephanie Vitiello.</p> <p>7 <b>A I think she did, and that was the only</b></p> <p>8 <b>reference to her that I have seen.</b></p> <p>9 Q In regards to this CIMA meeting?</p> <p>10 <b>A Her existence anywhere within Sentinel</b></p> <p>11 <b>operations.</b></p> <p>12 Q Do you know whether they traveled by</p> <p>13 private jet?</p> <p>14 <b>A I do not know.</b></p> <p>15 Q Are you aware of any instances in which</p> <p>16 Highland employees traveled by private jet to the</p> <p>17 Caymans?</p> <p>18 <b>A To the Caymans? Not necessarily. But I</b></p> <p>19 <b>do know that they have had chartered flights for</b></p> <p>20 <b>other meetings.</b></p> <p>21 Q Did they seek reimbursement from Sentinel</p> <p>22 for those?</p> <p>23 <b>A Yes.</b></p> <p>24 Q What do you know about those flights?</p> <p>25 <b>A I believe there was one flight, it might</b></p>
<p style="text-align: right;">106</p> <p>1 <b>investments and how they fit into Sentinel's</b></p> <p>2 <b>investment policy. So this was a meeting at the</b></p> <p>3 <b>request of the directors with CIMA to specifically</b></p> <p>4 <b>cover the investments.</b></p> <p>5 Q And which directors attended?</p> <p>6 <b>A I believe all of them had.</b></p> <p>7 Q Did Mr. Sevilla attend as well?</p> <p>8 <b>A I believe he did as well.</b></p> <p>9 Q Did Ms. Irving attend?</p> <p>10 <b>A I believe she did.</b></p> <p>11 Q Mr. Leventon?</p> <p>12 <b>A I don't think so.</b></p> <p>13 Q Do you know if Mr. Dondero or Ellington</p> <p>14 appeared?</p> <p>15 <b>A I don't believe so.</b></p> <p>16 Q Now, do you recall this particular expense</p> <p>17 reimbursement that Mr. DiOrio submitted?</p> <p>18 <b>A I don't recall it, but this would have</b></p> <p>19 <b>been the expenses that Matt covered on that trip.</b></p> <p>20 Q Would that have come out of risk</p> <p>21 mitigation?</p> <p>22 <b>A This would have been travel expenses for</b></p> <p>23 <b>Sentinel, I believe.</b></p> <p>24 Q But the same one common bank account at</p> <p>25 CIBC?</p>	<p style="text-align: right;">108</p> <p>1 <b>have been the Toronto flight, that was --</b></p> <p>2 <b>actually, I don't even know that this one took</b></p> <p>3 <b>place.</b></p> <p>4 <b>There was a fee that came through for a</b></p> <p>5 <b>chartered flight that the trip ended -- never</b></p> <p>6 <b>ended up taking place so the funds were</b></p> <p>7 <b>reimbursed.</b></p> <p>8 Q In this e-mail Jonathan Arbeit also</p> <p>9 appears. Who is that?</p> <p>10 <b>A He was an employee of mine.</b></p> <p>11 Q Working on the Sentinel account?</p> <p>12 <b>A Correct.</b></p> <p>13 Q Is he still?</p> <p>14 <b>A No.</b></p> <p>15 Q And on the same day, the second to last</p> <p>16 e-mail, Mr. Arbeit e-mails you and says, the first</p> <p>17 line says, I am not going to pronounce it right,</p> <p>18 maybe someone knows, Sassiciaoa,</p> <p>19 S-A-S-S-I-C-A-I-A-O-6, did you know what that is?</p> <p>20 <b>A I do not.</b></p> <p>21 Q And then he has a URL there and it says</p> <p>22 "looks like they overpaid a lot."</p> <p>23 DO you recall that e-mail from Mr. Arbeit?</p> <p>24 <b>A I do not.</b></p> <p>25 Q You responded to it on the same day "wow".</p>

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<p style="text-align: right;">109</p> <p>1 No recollection of that?</p> <p>2 <b>A I don't.</b></p> <p>3 Q Do you recall if you clicked on the link</p> <p>4 that you sent?</p> <p>5 <b>A I don't remember.</b></p> <p>6 (Document marked Exhibit 123 for</p> <p>7 identification.)</p> <p>8 BY MR. BURT:</p> <p>9 Q Handing you Exhibit 122 -- or 123.</p> <p>10 I will represent to you, Mr. Adamczak,</p> <p>11 this is the link that was clicked on or that was</p> <p>12 included by Mr. Arbeit. It is for a 2006 Italian</p> <p>13 wine and it lists various prices for that.</p> <p>14 Did you know that Mr. DiOrio was seeking</p> <p>15 reimbursement for expensive bottles of wine?</p> <p>16 <b>A Is that what this \$4,000 is?</b></p> <p>17 Q Well, I am asking you.</p> <p>18 <b>A I don't. I don't remember, no.</b></p> <p>19 Q We are going off of what Mr. Arbeit</p> <p>20 included here, it says "it looks like they</p> <p>21 overpaid a lot" in the link. That doesn't ring a</p> <p>22 bell?</p> <p>23 <b>A It does not.</b></p> <p>24 Q So you were not aware at the time that</p> <p>25 they were seeking reimbursement for bottles of</p>	<p style="text-align: right;">111</p> <p>1 Q Do you know how that indemnification came</p> <p>2 to be?</p> <p>3 <b>A I don't.</b></p> <p>4 Q What was told to you -- strike that.</p> <p>5 When did you first learn about the</p> <p>6 indemnification agreement?</p> <p>7 <b>A Matt had mentioned it to us I think at the</b></p> <p>8 <b>time that they were putting that in place, but it</b></p> <p>9 <b>didn't -- it didn't -- I didn't see anything more</b></p> <p>10 <b>about it until months later when I actually saw a</b></p> <p>11 <b>copy of the agreement.</b></p> <p>12 Q What did Matt say when he first mentioned</p> <p>13 it to you?</p> <p>14 <b>A That they were putting this in place to</b></p> <p>15 <b>cover the expenses for the employees. I don't</b></p> <p>16 <b>remember anything more than that.</b></p> <p>17 Q To cover the legal expenses in particular?</p> <p>18 <b>A Legal expenses, yes.</b></p> <p>19 Q Which employees?</p> <p>20 <b>A I believe the agreement specified which</b></p> <p>21 <b>employees, but I don't recall.</b></p> <p>22 Q Mr. DiOrio is covered?</p> <p>23 <b>A He was on the list, yes.</b></p> <p>24 Q Was Mr. Sevilla?</p> <p>25 <b>A I don't recall.</b></p>
<p style="text-align: right;">110</p> <p>1 wine in the thousands of dollars?</p> <p>2 MR. WELDON: Objection.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. BURT:</p> <p>5 Q They didn't tell you that?</p> <p>6 <b>A No.</b></p> <p>7 Q There is one other type of expense I want</p> <p>8 to briefly talk about.</p> <p>9 What if anything, Mr. Adamczak, do you</p> <p>10 know about Sentinel indemnifying former Highland</p> <p>11 employees?</p> <p>12 <b>A I know of an indemnification agreement</b></p> <p>13 <b>related to former Highland employees that worked</b></p> <p>14 <b>on Sentinel.</b></p> <p>15 Q Does Beecher have a copy of that</p> <p>16 indemnification agreement?</p> <p>17 <b>A I believe they do.</b></p> <p>18 Q And have you seen that?</p> <p>19 <b>A I have.</b></p> <p>20 Q What does it provide?</p> <p>21 <b>A I believe it's covering indemnification of</b></p> <p>22 <b>legal expenses for those employees.</b></p> <p>23 Q Legal expenses related to what?</p> <p>24 <b>A Related to deposition subpoenas, court</b></p> <p>25 <b>proceedings related to the UBS litigation matter.</b></p>	<p style="text-align: right;">112</p> <p>1 Q Do you recall if -- if I go through names</p> <p>2 would you be able to recall?</p> <p>3 <b>A I would just be guessing.</b></p> <p>4 Q Okay.</p> <p>5 MR. WELDON: We don't want you to guess or</p> <p>6 speculate.</p> <p>7 BY MR. BURT:</p> <p>8 Q Do you know who approved the</p> <p>9 indemnification agreement?</p> <p>10 <b>A I believe the directors may have.</b></p> <p>11 Q Was Mr. DiOrio still a director at the</p> <p>12 time?</p> <p>13 <b>A He was.</b></p> <p>14 Q Who drafted it?</p> <p>15 <b>A I don't recall. I don't know that I knew.</b></p> <p>16 Q Are they being paid out of that same</p> <p>17 Sentinel checking account at CIBC, the expenses</p> <p>18 related to the indemnification agreement?</p> <p>19 MR. WELDON: Objection.</p> <p>20 THE WITNESS: There were no expenses paid</p> <p>21 directly to the employees that I am aware of. I</p> <p>22 believe the only expenses would have come through</p> <p>23 as legal fees, maybe a retainer.</p> <p>24 BY MR. BURT:</p> <p>25 Q For various law firms and lawyers?</p>

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<p style="text-align: right;">113</p> <p>1 <b>A Yes.</b></p> <p>2 Q Do those invoices still come to Beecher</p> <p>3 for processing?</p> <p>4 <b>A I haven't seen any recently.</b></p> <p>5 Q When was the last time you saw one?</p> <p>6 <b>A I believe it was just a retainer upfront,</b></p> <p>7 <b>and I don't remember the name of the law firm.</b></p> <p>8 Q That's the only request for reimbursement</p> <p>9 or for payment that you have seen related to the</p> <p>10 indemnification agreement?</p> <p>11 <b>A As far as I know.</b></p> <p>12 Q As far as -- as the corporate</p> <p>13 representative of Beecher as far as Beecher is</p> <p>14 aware just the retainer?</p> <p>15 <b>A That is correct.</b></p> <p>16 Q Do you -- was that paid, that retainer?</p> <p>17 <b>A Yes.</b></p> <p>18 Q Was it classified as a risk mitigation</p> <p>19 expense?</p> <p>20 <b>A I do not recall. I believe it would have</b></p> <p>21 <b>been, but I don't recall.</b></p> <p>22 Q So if any of those -- if any further</p> <p>23 expenses have been submitted and paid that would</p> <p>24 have been -- Beecher would not have knowledge of</p> <p>25 that? I just want to make sure I am understanding</p>	<p style="text-align: right;">114</p> <p>1 that right.</p> <p>2 <b>A We have seen a lot of legal bills come</b></p> <p>3 <b>through Sentinel, so it's possible there could</b></p> <p>4 <b>have been some other ones that I am just not</b></p> <p>5 <b>remembering. There were a lot of legal bills.</b></p> <p>6 Q Aside from the indemnification ones, what</p> <p>7 other types of legal bills are coming from</p> <p>8 Sentinel?</p> <p>9 <b>A There is the legal bills for Collas Crill</b></p> <p>10 <b>who is Sentinel's attorney, and then all the other</b></p> <p>11 <b>law firms that they have worked with, whether they</b></p> <p>12 <b>were related to the UBS matter or not.</b></p> <p>13 Q And those continue to come to Beecher?</p> <p>14 <b>A I don't remember which ones we have seen</b></p> <p>15 <b>recently, but they do -- the only way that they</b></p> <p>16 <b>can be paid through Sentinel is if they come</b></p> <p>17 <b>through Beecher.</b></p> <p>18 MR. BURT: 124 I believe.</p> <p>19 (Document marked Exhibit 124 for</p> <p>20 identification.)</p> <p>21 THE WITNESS: Are we finished with these</p> <p>22 documents?</p> <p>23 MR. BURT: You can set those aside.</p> <p>24 BY MR. BURT:</p> <p>25 Q Showing you 124 Bates labeled BC SEN</p>
<p style="text-align: right;">115</p> <p>1 0000074288, are you ready, Mr. Adamczak?</p> <p>2 <b>A Yes.</b></p> <p>3 Q So what I actually want to look at is the</p> <p>4 bottom e-mail on the first page from</p> <p>5 Gareth Pereira dated the 24th of June, 2021 to</p> <p>6 Casey McDonald. We have spoken about Mr. Pereira,</p> <p>7 but who is Mr. McDonald?</p> <p>8 <b>A Mr. McDonald is one of the current</b></p> <p>9 <b>directors of Sentinel and he is an outside</b></p> <p>10 <b>independent director.</b></p> <p>11 Q When was he appointed?</p> <p>12 <b>A Shortly before this e-mail.</b></p> <p>13 Q So in the April, May timeframe?</p> <p>14 <b>A I want to say probably final approval came</b></p> <p>15 <b>through in early June maybe.</b></p> <p>16 Q 2021?</p> <p>17 <b>A '21, yes.</b></p> <p>18 Q Do you know who appointed him?</p> <p>19 <b>A Matt DiOrio as the current -- then current</b></p> <p>20 <b>remaining director on the Sentinel board.</b></p> <p>21 Q Was he still a member of the Sentinel</p> <p>22 board at that time?</p> <p>23 <b>A At the time that he was appointed, yes.</b></p> <p>24 <b>They didn't want to have all the directors resign</b></p> <p>25 <b>at the same time because that would leave the</b></p>	<p style="text-align: right;">116</p> <p>1 <b>company with no directors.</b></p> <p>2 Q When did Mr. DiOrio leave the board,</p> <p>3 resign from the board?</p> <p>4 <b>A It was probably early June. It would have</b></p> <p>5 <b>been right after the formal approval by CIMA of</b></p> <p>6 <b>the new directors.</b></p> <p>7 Q Do you know if Mr. DiOrio was still</p> <p>8 working for Highland at that time?</p> <p>9 <b>A He told us that he was no longer working</b></p> <p>10 <b>for Highland.</b></p> <p>11 Q But was still a board member of Sentinel?</p> <p>12 <b>A Correct.</b></p> <p>13 Q Do you know what diligence went into</p> <p>14 finding Mr. McDonald?</p> <p>15 <b>A I do not.</b></p> <p>16 Q It is a name that Mr. DiOrio presented?</p> <p>17 <b>A I don't remember who presented his name.</b></p> <p>18 Q I think you testified earlier that DiOrio</p> <p>19 appointed him as a director, is that right?</p> <p>20 <b>A I believe that is how it went.</b></p> <p>21 Q Also included in the cc column in this</p> <p>22 e-mail is a Kenny Wade at the same Calderwood</p> <p>23 entity. Do you know what that is?</p> <p>24 <b>A He is another independent director.</b></p> <p>25 Q When was he appointed?</p>

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<p>117</p> <p>1 <b>A The same time that Mr. McDonald was.</b></p> <p>2 Q Did Mr. DiOrio appoint him as well?</p> <p>3 <b>A He would have appointed both of them.</b></p> <p>4 Q And then there is a Stephen Leontsinis at</p> <p>5 Collas Crill. Do you know who that is?</p> <p>6 <b>A He is the attorney for Sentinel.</b></p> <p>7 Q And Matt DiOrio at a gmail account, do you</p> <p>8 recognize that to be his personal gmail account?</p> <p>9 <b>A That was the e-mail account that he was</b></p> <p>10 <b>using since he left Highland.</b></p> <p>11 Q He no longer used an SAS account either?</p> <p>12 <b>A No.</b></p> <p>13 Q And then there is a J.S. de Jager, CSI.</p> <p>14 Do you know what that is?</p> <p>15 <b>A J.S. is the third independent director.</b></p> <p>16 <b>He was appointed shortly after Mr. McDonald and</b></p> <p>17 <b>Mr. Kenny were appointed.</b></p> <p>18 Q Who appointed Mr. de Jager?</p> <p>19 <b>A I don't remember, but Mr. McDonald and</b></p> <p>20 <b>Mr. Kenny may have.</b></p> <p>21 Q And then you and Mr. Price are also on</p> <p>22 this e-mail, do you see that?</p> <p>23 <b>A Correct.</b></p> <p>24 Q Here Mr. Pereira writes, "Good morning,</p> <p>25 Casey. Following on from last week please can you</p>	<p>119</p> <p>1 Q And so then Mr. DiOrio -- yes, Mr. DiOrio</p> <p>2 responds at the top e-mail, it says, "This is an</p> <p>3 order and should be settled. The company</p> <p>4 indemnified a group of former employees, myself</p> <p>5 included, a while back and it relates to our</p> <p>6 defense with respect to today's hearing that I</p> <p>7 mentioned." Do you see that?</p> <p>8 <b>A I do.</b></p> <p>9 Q Do you know what hearing he was referring</p> <p>10 to?</p> <p>11 <b>A I do not.</b></p> <p>12 Q And is this the indemnification agreement</p> <p>13 that we have been discussing?</p> <p>14 <b>A I believe that's correct.</b></p> <p>15 Q Now, Mr. McDonald had requested if this</p> <p>16 comes out of the pre-fund mitigation risk balance.</p> <p>17 It doesn't appear that Mr. DiOrio directly</p> <p>18 responded to that question, but is it your</p> <p>19 understanding that that is where the</p> <p>20 reimbursements are coming from?</p> <p>21 MR. WELDON: Objection.</p> <p>22 THE WITNESS: I don't recall.</p> <p>23 BY MR. BURT:</p> <p>24 Q Do you know specifically what matter these</p> <p>25 former employees were indemnified for?</p>
<p>118</p> <p>1 provide your approval through e-mail and also</p> <p>2 release the following payments that have been set</p> <p>3 up in CIBC for Sentinel. There is a Ross &amp; Smith</p> <p>4 legal expense for \$75,854.90 and Q3 Beecher</p> <p>5 Carlson Captive Management fee of 15,000, is that</p> <p>6 right? And Risk International Actuarial expense</p> <p>7 of 7500."</p> <p>8 <b>A Correct.</b></p> <p>9 Q Do you recall this request coming from</p> <p>10 Mr. Pereira?</p> <p>11 <b>A I do.</b></p> <p>12 Q What do you remember about it?</p> <p>13 <b>A This is the typical expense request where</b></p> <p>14 <b>we would provide the invoices to the directors for</b></p> <p>15 <b>their approval and release in the CIBC system.</b></p> <p>16 Q And then Mr. McDonald responds, "Thanks,</p> <p>17 Gareth. I can go in and approve, but as Wade and</p> <p>18 I don't have any visibility into the legal bill I</p> <p>19 appreciate Matt confirming it is all in order and</p> <p>20 should be settled. As it's for U.S. counsel am I</p> <p>21 right in thinking it is coming out of the pre-fund</p> <p>22 mitigation balance or is there any additional</p> <p>23 background we can get on the expenses?" Do you</p> <p>24 see that?</p> <p>25 <b>A I do.</b></p>	<p>120</p> <p>1 <b>A I assumed it related to the UBS</b></p> <p>2 <b>litigation.</b></p> <p>3 Q Are you aware of any directions from CIMA</p> <p>4 that are currently in place regarding payments of</p> <p>5 expenses and things of that nature?</p> <p>6 <b>A CIMA had requested that Sentinel refrain</b></p> <p>7 <b>from making any payments and disposing of any of</b></p> <p>8 <b>the assets.</b></p> <p>9 Q When did CIMA make that request?</p> <p>10 <b>A I don't remember the date.</b></p> <p>11 Q Was it in 2021?</p> <p>12 <b>A I believe it was in 2021.</b></p> <p>13 Q Was it before these requests for</p> <p>14 reimbursement came in?</p> <p>15 <b>A I don't believe so, but I don't remember.</b></p> <p>16 Q Are you aware of CIMA issuing a retraining</p> <p>17 notice or restraint on Sentinel from dispersing</p> <p>18 any funds whatsoever?</p> <p>19 <b>A Yes, that's what I was referring to.</b></p> <p>20 Q That's what you were referring to, okay.</p> <p>21 <b>A Yes.</b></p> <p>22 Q And to your knowledge has Sentinel adhered</p> <p>23 to that since receiving it?</p> <p>24 <b>A Beecher sought clarification from CIMA</b></p> <p>25 <b>whether they intended us to not pay any service</b></p>

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<p style="text-align: right;">121</p> <p><b>1 providers and let everything lapse or if they</b></p> <p><b>2 wanted to at least continue the operations and</b></p> <p><b>3 they specified that we could continue paying</b></p> <p><b>4 normal business expenses.</b></p> <p>5 Q Was that in a written response to Beecher?</p> <p><b>6 A I believe so, yes.</b></p> <p>7 Q Would that have come to --</p> <p><b>8 A Clayton.</b></p> <p>9 Q Clayton, all right.</p> <p>10 Would indemnification reimbursement</p> <p>11 expenses fall within those types of payments that</p> <p>12 are still being paid?</p> <p><b>13 A I don't recall this being before that</b></p> <p><b>14 cease and desist, whatever you termed it as.</b></p> <p>15 Q The restraint?</p> <p><b>16 A The restraint.</b></p> <p>17 Q Setting this document aside, just in</p> <p>18 general after receiving that restraint and</p> <p>19 receiving the clarification about paying sort of</p> <p>20 the normal course payments to service providers,</p> <p>21 would legal expense reimbursements for the</p> <p>22 indemnified employees fall within that category of</p> <p>23 expenses that could still be paid?</p> <p><b>24 A I don't know.</b></p> <p>25 Q Beecher doesn't know one way or the other?</p>	<p style="text-align: right;">123</p> <p>1 relationship between any of the current or former</p> <p>2 Sentinel independent directors and Mr. Dondero and</p> <p>3 Mr. Ellington?</p> <p><b>4 A The independent directors?</b></p> <p>5 Q Uh-huh.</p> <p><b>6 A No.</b></p> <p>7 MR. BURT: We can take a break.</p> <p>8 THE VIDEOGRAPHER: We are going off the</p> <p>9 record, the time is 12:05.</p> <p>10 (Lunch recess taken.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">122</p> <p><b>1 A It would be up to the directors to make</b></p> <p><b>2 that call.</b></p> <p>3 Q What types of expenses are on hold and</p> <p>4 restrained that Sentinel is not making?</p> <p><b>5 A Sentinel is not disposing of any of the</b></p> <p><b>6 assets currently, so any -- where they had</b></p> <p><b>7 originally planned on selling some of the</b></p> <p><b>8 securities or liquidating securities they have</b></p> <p><b>9 foregone any decisions to do that in the near</b></p> <p><b>10 term.</b></p> <p>11 Q Who had made the decision to liquidate</p> <p>12 securities?</p> <p><b>13 A The directors had originally.</b></p> <p>14 Q At what time was that decision made?</p> <p><b>15 A Sometime in the summer of 2021.</b></p> <p>16 Q So it was the new directors?</p> <p><b>17 A The new directors.</b></p> <p>18 Q Who wanted to liquidate certain assets?</p> <p><b>19 A Correct.</b></p> <p>20 Q But that's on hold?</p> <p><b>21 A Correct.</b></p> <p>22 MR. WELDON: Good place to stop?</p> <p>23 MR. BURT: One more question.</p> <p>24 BY MR. BURT:</p> <p>25 Q Are you aware of any connection or</p>	<p style="text-align: right;">124</p> <p>1 AFTERNOON SESSION</p> <p>2 THE VIDEOGRAPHER: We are going back on</p> <p>3 the record, the time is 1:01.</p> <p>4 (Document marked Exhibit 125 for</p> <p>5 identification.)</p> <p>6 BY MR. BURT:</p> <p>7 Q I am showing you, Mr. Adamczak,</p> <p>8 Exhibit 125, which is produced by Highland Capital</p> <p>9 Management and has an e-mail and attachment. Go</p> <p>10 ahead and take a look at that.</p> <p><b>11 A I am all set.</b></p> <p>12 Q What do you recognize the attachment to</p> <p>13 be?</p> <p><b>14 A This is the ATE policy.</b></p> <p>15 Q Now, we have been talking a lot about ATE</p> <p>16 policy. Can you describe what an ATE policy is?</p> <p><b>17 A ATE is after the event, it's a legal</b></p> <p><b>18 liability insurance policy covering a negative</b></p> <p><b>19 outcome on a particular matter.</b></p> <p>20 Q Does Beecher have any other clients that</p> <p>21 issue ATE policies?</p> <p><b>22 A No.</b></p> <p>23 Q Sentinel is the only one?</p> <p><b>24 A The only one that I am aware of.</b></p> <p>25 Q And how many ATE policies did Sentinel</p>

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<p style="text-align: right;">125</p> <p>1 produce?</p> <p>2 <b>A Just one.</b></p> <p>3 Q And it's this one we are looking at here?</p> <p>4 <b>A Correct.</b></p> <p>5 Q I believe you testified earlier that the</p> <p>6 event referred to in this policy is the UBS</p> <p>7 litigation against Highland Capital and the</p> <p>8 various Highland entities?</p> <p>9 <b>A Correct.</b></p> <p>10 Q And you are familiar with this document,</p> <p>11 you have seen it before?</p> <p>12 <b>A I have.</b></p> <p>13 Q Let's flip to the schedule of this</p> <p>14 document near the very end, the last two pages is</p> <p>15 what I am going to look at, and listed here is the</p> <p>16 schedule of the ATE policy and the insurer is</p> <p>17 listed as Sentinel Reinsurance Limited, correct?</p> <p>18 <b>A Correct.</b></p> <p>19 Q The insured are three entities, Highland</p> <p>20 CDO Master Fund LP, Highland CDO Holding Company,</p> <p>21 and Highland Special Opportunities Holding</p> <p>22 Company, do you see that?</p> <p>23 <b>A Yes.</b></p> <p>24 Q Do you know how it was decided that these</p> <p>25 three entities should be the insured?</p>	<p style="text-align: right;">127</p> <p>1 Q If you look down in the legal action row,</p> <p>2 do you see that?</p> <p>3 <b>A Yes.</b></p> <p>4 Q It lists the title of the legal action and</p> <p>5 the case number, and if you look at the entities</p> <p>6 whom UBS is suing it includes Highland Capital</p> <p>7 Management, LP, which is not an insured, correct?</p> <p>8 <b>A Correct.</b></p> <p>9 Q It includes Highland Special Opportunities</p> <p>10 Holding Company, which is an insured, correct?</p> <p>11 <b>A Correct.</b></p> <p>12 Q It includes Highland Financial Partners,</p> <p>13 LP, which is not an insured, correct?</p> <p>14 <b>A Correct.</b></p> <p>15 Q And it includes Highland CDO Opportunity</p> <p>16 Master Fund LP, which is an insured, correct?</p> <p>17 <b>A Correct.</b></p> <p>18 Q It includes Highland Credit Opportunities</p> <p>19 CDO, LP and Strand Advisors, neither of which are</p> <p>20 insureds, correct?</p> <p>21 <b>A Correct.</b></p> <p>22 Q Not listed in that legal action was</p> <p>23 Highland CDO Holding Company, the middle of the</p> <p>24 three insureds up above, do you see that?</p> <p>25 <b>A Yes.</b></p>
<p style="text-align: right;">126</p> <p>1 <b>A At the direction of J.P. Sevilla.</b></p> <p>2 Q What direction specifically did he give?</p> <p>3 <b>A That these would be the insureds on the</b></p> <p>4 <b>policy.</b></p> <p>5 Q When did he give that?</p> <p>6 <b>A When the policy was drafted.</b></p> <p>7 Q Which was when?</p> <p>8 <b>A Prior to August 1, 2017.</b></p> <p>9 Q Did he ever mention that there were other</p> <p>10 entities involved in the UBS -- other Highland</p> <p>11 entities involved in the UBS litigation that would</p> <p>12 not be insured?</p> <p>13 <b>A Not to my knowledge.</b></p> <p>14 Q Did he represent that these three entities</p> <p>15 were all in the litigation?</p> <p>16 <b>A Could you clarify?</b></p> <p>17 Q Sure.</p> <p>18 So it lists three entities. Did</p> <p>19 Mr. Sevilla tell Beecher that these three</p> <p>20 entities, the insureds, are all part of the UBS</p> <p>21 litigation?</p> <p>22 <b>A That's our understanding, yes.</b></p> <p>23 Q Did Beecher ever check to see if that was</p> <p>24 correct?</p> <p>25 <b>A No.</b></p>	<p style="text-align: right;">128</p> <p>1 Q Was that known to Beecher at the time?</p> <p>2 <b>A It may have been, but it would have -- if</b></p> <p>3 <b>we asked we would have assumed or been under the</b></p> <p>4 <b>assumption that it was part of the affiliation of</b></p> <p>5 <b>those entities whether a subsidiary of those</b></p> <p>6 <b>entities or some relation that was covered under</b></p> <p>7 <b>that.</b></p> <p>8 Q And that would have been told to you by</p> <p>9 Mr. Sevilla?</p> <p>10 <b>A Correct.</b></p> <p>11 Q Now, I want to actually talk about that</p> <p>12 for a moment.</p> <p>13 The affiliation of these entities, what</p> <p>14 was Beecher's understanding of how all these</p> <p>15 entities were related?</p> <p>16 <b>A They were either subsidiaries of Highland</b></p> <p>17 <b>Capital Management or funds that Highland Capital</b></p> <p>18 <b>Management managed.</b></p> <p>19 Q That was known to Beecher, that fact that</p> <p>20 these were all affiliated?</p> <p>21 <b>A That was our understanding.</b></p> <p>22 Q Based on what Mr. Sevilla told you?</p> <p>23 <b>A Correct.</b></p> <p>24 Q So from Beecher's perspective it wouldn't</p> <p>25 make any difference to the efficacy of the policy</p>

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<p style="text-align: right;">129</p> <p>1 that one of the insured's was not part of the</p> <p>2 event in the after the event policy?</p> <p><b>3 A I don't know.</b></p> <p>4 Q Let me rephrase it.</p> <p>5 Because it was an affiliated entity with</p> <p>6 the other Highland entities it was not of a</p> <p>7 concern to Beecher at the time that it wasn't</p> <p>8 named as a defendant in the event, the litigation?</p> <p>9 MR. WELDON: Objection.</p> <p>10 THE WITNESS: I don't believe so.</p> <p>11 BY MR. BURT:</p> <p>12 Q Did Beecher ever ask why -- ever ask</p> <p>13 Mr. Sevilla why the other defendants weren't being</p> <p>14 included as insureds?</p> <p><b>15 A Not to my knowledge.</b></p> <p>16 Q Why not?</p> <p><b>17 A I don't know.</b></p> <p>18 Q Would it be fair to say that Beecher was</p> <p>19 just following what Mr. Sevilla told it to do?</p> <p>20 MR. WELDON: Objection.</p> <p>21 THE WITNESS: I don't know.</p> <p>22 BY MR. BURT:</p> <p>23 Q The court in which this case is pending is</p> <p>24 the Supreme Court of the State of New York, lists</p> <p>25 the opponent, and then it lists the limit of</p>	<p style="text-align: right;">131</p> <p><b>1 A None.</b></p> <p>2 Q Did any of the directors -- did any of the</p> <p>3 outside directors have any role in putting the</p> <p>4 policy together?</p> <p><b>5 A At the time that this policy was put in</b></p> <p><b>6 place there were only outside directors.</b></p> <p>7 Q And none of them had any role in putting</p> <p>8 it together?</p> <p>9 MR. WELDON: Objection.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. BURT:</p> <p>12 Q The insureds are listed as, again, as we</p> <p>13 just read, the three Highland entities, and each</p> <p>14 of them is signed for by James Dondero as</p> <p>15 president or director, do you see that?</p> <p><b>16 A I do.</b></p> <p>17 Q What was Beecher's understanding at the</p> <p>18 time of Mr. Dondero's role with respect to those</p> <p>19 Highland entities?</p> <p><b>20 A That he had authority to act on each of</b></p> <p><b>21 those entities as president or CEO or whatever his</b></p> <p><b>22 role was with Highland Capital.</b></p> <p>23 Q Who told you that?</p> <p><b>24 A I don't believe anyone told us, it was</b></p> <p><b>25 probably assumed.</b></p>
<p style="text-align: right;">130</p> <p>1 indemnity, and that is listed as \$100 million in</p> <p>2 the aggregate, do you see that?</p> <p><b>3 A Yes.</b></p> <p>4 Q Payment date for premium is listed as</p> <p>5 August 31, 2017 and the premium is listed as</p> <p>6 \$25 million, do you see that?</p> <p><b>7 A Yes.</b></p> <p>8 Q And I want to come back to how both of</p> <p>9 those figures were arrived at, but before we do,</p> <p>10 looking at the next page the signature page for</p> <p>11 the insurer and the insureds, first, insurer,</p> <p>12 Andrew Dean signed for Sentinel, is that right?</p> <p><b>13 A Correct.</b></p> <p>14 Q And is it correct that he was a director</p> <p>15 of Sentinel at the time?</p> <p><b>16 A Correct.</b></p> <p>17 Q Did he work for one of those agencies or</p> <p>18 groups that provided --</p> <p><b>19 A Maples.</b></p> <p>20 Q He worked for Maples.</p> <p>21 How long did Mr. Dean serve as a director?</p> <p><b>22 A From 2015-ish to 2018.</b></p> <p>23 Q What role to your knowledge or to</p> <p>24 Beecher's knowledge did Mr. Dean have in putting</p> <p>25 this policy together?</p>	<p style="text-align: right;">132</p> <p>1 Q Mr. Sevilla didn't explain why Mr. Dondero</p> <p>2 was signing?</p> <p><b>3 A He may have. I don't remember.</b></p> <p><b>4 We have seen Mr. Dondero's name on a</b></p> <p><b>5 number of documents so it's not uncommon to see</b></p> <p><b>6 him related to Highland Capital.</b></p> <p>7 Q So the understanding of Beecher at the</p> <p>8 time -- let me make sure I get this right.</p> <p>9 With Highland Capital Management, LP was</p> <p>10 it Beecher's understanding that of that entity</p> <p>11 Mr. Dondero was the CEO or president?</p> <p>12 MR. WELDON: Objection.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. BURT:</p> <p>15 Q And that as president or CEO of that</p> <p>16 entity, the Highland Capital Management, LP, he</p> <p>17 had authority to sign for the various Highland</p> <p>18 entities underneath it?</p> <p>19 MR. WELDON: Objection.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MR. BURT:</p> <p>22 Q Did Beecher have any understanding --</p> <p>23 strike that. I will come back to that.</p> <p>24 Let's talk about for a moment the</p> <p>25 \$100 million limit of indemnity. Could you</p>



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133	<p>1 describe how that figure was arrived at?</p> <p>2 <b>A It was actuarially -- sorry, the 100</b></p> <p>3 <b>million?</b></p> <p>4 Q The 100 million limit of indemnity.</p> <p>5 <b>A It was the figure that Mr. Sevilla had</b></p> <p>6 <b>given us.</b></p> <p>7 Q Had he ever provided other figures that he</p> <p>8 was considering?</p> <p>9 <b>A 80 million and I believe I have seen 120</b></p> <p>10 <b>million.</b></p> <p>11 Q When did Mr. Sevilla start providing these</p> <p>12 possible limits of indemnity figures?</p> <p>13 <b>A At the time that they were discussing</b></p> <p>14 <b>writing the policy.</b></p> <p>15 Q And thinking back to before lunch, was</p> <p>16 that in early 2017?</p> <p>17 <b>A Early 2017.</b></p> <p>18 Q And that was when Mr. Kranz and</p> <p>19 Mr. Sevilla were talking about it?</p> <p>20 <b>A Correct.</b></p> <p>21 Q Do you know or did Beecher know where</p> <p>22 these numbers were coming from, why these amounts?</p> <p>23 <b>A I think it was based on the premium that</b></p> <p>24 <b>they were willing to pay and the exposure that</b></p> <p>25 <b>they were willing to put into the captive.</b></p>	135	<p>1 <b>A The assumptions that were used in the</b></p> <p>2 <b>model.</b></p> <p>3 Q Were the assumptions provided to</p> <p>4 Mr. Stubbs by Mr. Kranz and Mr. Sevilla?</p> <p>5 <b>A Correct.</b></p> <p>6 Q So is it correct to say that -- let me ask</p> <p>7 it this way.</p> <p>8 Is it right that the amount of the premium</p> <p>9 depended on the assumptions provided?</p> <p>10 <b>A The way that the actuarial modeling worked</b></p> <p>11 <b>was whatever the outcomes were and the exposure</b></p> <p>12 <b>and the probability of secession that would factor</b></p> <p>13 <b>in to the calculation to determine the ultimate</b></p> <p>14 <b>premium that would be paid.</b></p> <p>15 Q And those calculations were done by</p> <p>16 Mr. Stubbs?</p> <p>17 <b>A Correct.</b></p> <p>18 Q Do you recall this issue of how the</p> <p>19 premium was set being raised by CIMA in their 2019</p> <p>20 audit of Sentinel?</p> <p>21 <b>A In what way?</b></p> <p>22 Q Did they have questions about it, how the</p> <p>23 premium was determined?</p> <p>24 <b>A They may have. I don't remember.</b></p> <p>25 Q I will show you a document that maybe will</p>
134	<p>1 Q When you say exposure willing to put in,</p> <p>2 what does that mean?</p> <p>3 <b>A Exposure, risk that Sentinel could</b></p> <p>4 <b>potentially be on the hook for.</b></p> <p>5 Q I see. So the exposure to Sentinel.</p> <p>6 <b>A Yes.</b></p> <p>7 Q And Mr. Sevilla was providing those</p> <p>8 figures to Mr. Kranz?</p> <p>9 <b>A I don't know.</b></p> <p>10 Q Did you or Mr. Kranz ever offer your own</p> <p>11 figures or provide feedback to the figures that</p> <p>12 Mr. Sevilla was giving?</p> <p>13 <b>A I don't know that.</b></p> <p>14 Q Let's let me ask about the premium figure,</p> <p>15 the 25 million. How was that figure arrived at?</p> <p>16 <b>A The premium was actuarially determined</b></p> <p>17 <b>based on a set of outcomes and their probabilities</b></p> <p>18 <b>of secession.</b></p> <p>19 Q Who was the actuary you were using?</p> <p>20 <b>A Jason Stubbs of International Risk.</b></p> <p>21 Q Is it correct to say that Mr. Stubbs</p> <p>22 arrived at the \$25 million figure?</p> <p>23 <b>A He arrived at the \$25 million figure in</b></p> <p>24 <b>discussions with Pete and J.P.</b></p> <p>25 Q What were those discussions about?</p>	136	<p>1 refresh. Mark this as 126.</p> <p>2 (Document marked Exhibit 126 for</p> <p>3 identification.)</p> <p>4 BY MR. BURT:</p> <p>5 Q I have handed you, Mr. Adamczak, what's</p> <p>6 been marked as Exhibit 126, Bates BC</p> <p>7 SEN00000078777, which is an e-mail from a CIMA</p> <p>8 employee to Clayton price, cc'ing amongst others</p> <p>9 yourself, and then it has four attachments,</p> <p>10 including CIMA final reports.</p> <p>11 <b>A Yes.</b></p> <p>12 Q Are you familiar with this?</p> <p>13 <b>A Yes.</b></p> <p>14 Q And you recall receiving these reports in</p> <p>15 May of 2019 from CIMA?</p> <p>16 <b>A Yes.</b></p> <p>17 Q I want to look at one page in particular,</p> <p>18 I know they are very lengthy, bear with me one</p> <p>19 moment. It is actually on Page 8 of the AML</p> <p>20 report, the Bates at the bottom will end in 78822,</p> <p>21 and it is Section 5.2.1.4 under Authorities</p> <p>22 Response, do you see that?</p> <p>23 <b>A I do.</b></p> <p>24 Q And in here CIMA writes on April 4, 2019,</p> <p>25 "The authority held a telephone interview with</p>

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<p style="text-align: right;">137</p> <p>1 Mr. Jason D. Stubbs of Risk International, the                  2 licensee's actuary. During the interview                  3 Mr. Stubbs informed the authority that he was not                  4 involved in the determination of premium pricing                  5 for the licensee to any extent at all but rather                  6 his role was limited to technical reserving. He                  7 added that his involvement arose after premium                  8 decisions had been finalized by the licensee. The                  9 authority notes with concern that the management's                  10 assertion that the ATE policy premium of U.S.                  11 25,000,000 was established based on a pricing                  12 study conducted by the licensee's actuary                  13 contradicts the actuary's position."                  14 Were you aware of that finding of the                  15 authority?                  16 <b>A It states here that that is the case, so I</b>                  17 <b>was aware.</b>                  18 Q Do you disagree with that finding?                  19 <b>A I disagree with the fact that there were</b>                  20 <b>discussions with Mr. Stubbs and Mr. Kranz and</b>                  21 <b>Mr. Sevilla regarding pricing analysis. The</b>                  22 <b>pricing analysis was never formally finalized, so</b>                  23 <b>from the standpoint of Mr. Stubbs response maybe</b>                  24 <b>that's true because it wasn't formalized.</b>                  25 Q I guess what I am trying to understand is</p>	<p style="text-align: right;">139</p> <p>1 <b>A I have never heard of Neil Horner.</b>                  2 Q And what role did Paul Scrivener play in                  3 the June, 2017 timeframe with respect --                  4 <b>A Hold on, let me catch up.</b>                  5 Q Sure.                  6 <b>A We are on Page 3 or 2?</b>                  7 Q Page 3, the June 12, 2017 e-mail.                  8 <b>A Yes, I am with you.</b>                  9 Q The subject of this e-mail is the draft                  10 ATE policy, and my question is what role                  11 Mr. Scrivener played with that, with the ATE                  12 policy.                  13 <b>A What was the question again?</b>                  14 Q No problem.                  15 The question was what role did                  16 Mr. Scrivener play with respect to the ATE policy?                  17 <b>A I believe we had contacted Solomon Harris</b>                  18 <b>along with a number of legal firms to provide</b>                  19 <b>guidance in terms of drafting the ATE policy.</b>                  20 Q Around here in the third paragraph that                  21 begins with "the insurer here", do you see that?                  22 <b>A Yes.</b>                  23 Q It says, "The insurer here, Sentinel                  24 Reinsurance Limited, or Sentinel, is a Cayman                  25 licensed insurer and is affiliated with both a</p>
<p style="text-align: right;">138</p> <p>1 the timing in arriving at the figure. Did that                  2 figure come prepackaged by Mr. Sevilla to                  3 Mr. Stubbs say I want a policy with around a                  4 premium of 25 million, make it work, or did                  5 Mr. Stubbs arrive at that figure independently?                  6 <b>A I was not part of those discussions so I</b>                  7 <b>do not know.</b>                  8 Q Well, how about Beecher, as Beecher's                  9 corporate representative do you know?                  10 <b>A I do not know.</b>                  11 Q Let's look at a few other documents maybe                  12 that will help here.                  13 (Document marked Exhibit 127 for                  14 identification.)                  15 BY MR. BURT:                  16 Q I am showing you what's been marked as                  17 Exhibit 127 Bates number BC SEN00007459020. And                  18 I'd like to draw your attention first to the                  19 second-in-time e-mail which is on the third page,                  20 it's an e-mail from Paul Scrivener to Neil Horner,                  21 cc'ing J.P. Sevilla, Pete Kranz, and Robert                  22 Humphries.                  23 First, do you know what Paul Scrivener is?                  24 <b>A He was an attorney with Solomon Harris.</b>                  25 Q And who was Neil Horner?</p>	<p style="text-align: right;">140</p> <p>1 litigation funding business and a U.S. hedge fund                  2 management company." Do you see that?                  3 <b>A Yes.</b>                  4 Q And that's consistent with Beecher's                  5 understanding as well, correct, that Sentinel was                  6 affiliated with both the litigation funding                  7 business and the U.S. hedge fund management                  8 company or Highland?                  9 <b>A Directly affiliated with litigation</b>                  10 <b>funding business through the Sentinel structure</b>                  11 <b>and affiliated with the U.S. hedge fund management</b>                  12 <b>company through common ownership.</b>                  13 Q And that was Highland Capital was the U.S.                  14 hedge fund company, right?                  15 MR. WELDON: Objection.                  16 THE WITNESS: Correct.                  17 BY MR. BURT:                  18 Q And the common ownership being                  19 James Dondero and Scott Ellington?                  20 <b>A Correct.</b>                  21 Q So James Dondero and Scott Ellington are                  22 the owners of the U.S. hedge fund management                  23 company or Highland Capital Management, correct?                  24 MR. WELDON: Objection.                  25 THE WITNESS: I don't know to what extent</p>

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<p>1 they own Highland Capital Management.                  2 BY MR. BURT:                  3 Q I believe you just testified when I asked                  4 the common ownership being James Dondero and                  5 Scott Ellington and you said correct.                  6 <b>A I don't know how much ownership they had</b>                  7 <b>of it, but it was our assumption that they had</b>                  8 <b>some ownership.</b>                  9 Q Of Highland?                  10 <b>A Yes.</b>                  11 Q And did Mr. Sevilla ever tell you that?                  12 <b>A No.</b>                  13 Q How about Mr. DiOrio?                  14 <b>A No.</b>                  15 Q No one from Highland ever told you that?                  16 <b>A Maybe did it, I don't remember.</b>                  17 Q So then he says, "Sentinel in the                  18 litigation funding business are existing clients                  19 of Solomon Harris, I understand that this policy                  20 will be the first third-party business written by                  21 Sentinel with Sentinel initially set up to insure                  22 or reinsurer certain group risks."                  23 Do you know what he meant by third-party                  24 business written by Sentinel?                  25 <b>A Third-party business being not the parent</b></p>	<p>141</p>	<p>1 Q Is that consistent with Beecher's                  2 understanding at the time that the total assets of                  3 the funds to be insured have an NAV of around                  4 100 million?                  5 MR. WELDON: Objection.                  6 THE WITNESS: No.                  7 BY MR. BURT:                  8 Q What was Beecher's understanding?                  9 <b>A That the fair value was undetermined.</b>                  10 Q So in June of 2017 it was unknown as far                  11 as Beecher was aware of --                  12 <b>A Correct.</b>                  13 Q -- of the value?                  14 Do you have any idea where Mr. Scrivener                  15 may have gotten that figure?                  16 <b>A I don't know.</b>                  17 Q And he says here that -- strike that. All                  18 right.                  19 He says, "There is scope for a settlement                  20 still, the deal that Sentinel has reached with the                  21 funds is that for a premium of U.S. 20 million                  22 Sentinel will provide cover of up to 85 million on                  23 either, one, judgment against the funds or, two,                  24 settlement being reached."                  25 So here we see him talking about a premium</p>	<p>143</p>
<p>1 <b>risks.</b>                  2 Q I am not sure I understand that, what do                  3 you mean by that?                  4 <b>A It is not -- if it is in a direct line</b>                  5 <b>with the ownership, the parents, it would be</b>                  6 <b>affiliated risk. If it's a sister company or some</b>                  7 <b>distant relationship it would fall under the</b>                  8 <b>third-party risk.</b>                  9 Q I see.                  10 So the fact that it had common ownership                  11 didn't mean that it was first-party business it                  12 could still be called third-party business?                  13 <b>A Correct.</b>                  14 Q Then he writes in the next paragraph, "The                  15 insureds under this policy will be Cayman and                  16 Bermuda hedge funds that are currently embroiled                  17 in well-advanced litigation as defendants. The                  18 matter is set down for trial in August/September                  19 of this year. The total potential exposure in the                  20 litigation is in the order of U.S. 500 million and                  21 the total assets of the funds have an NAV of                  22 around U.S. 100 million."                  23 I will stop there. Do you understand NAV                  24 to mean net asset value?                  25 <b>A Yes.</b></p>	<p>142</p>	<p>1 of 20 million and a cover of up to 85 million. Is                  2 that consistent with Beecher's understanding in                  3 June of 2017 that those were the figures being                  4 considered?                  5 MR. WELDON: Objection.                  6 THE WITNESS: Yes.                  7 BY MR. BURT:                  8 Q And where did those figures come from?                  9 <b>A Through the discussions with the actuary.</b>                  10 Q So Beecher's testimony would be that the                  11 actuary had provided both the \$25 million figure                  12 and the \$85 million figure?                  13 <b>A I know there was a discussion between</b>                  14 <b>J.P., Pete, and Jason Stubbs to prepare the</b>                  15 <b>premium pricing model, and that was the outcome of</b>                  16 <b>the draft premium pricing model that was provided.</b>                  17 Q And, again, the assumptions that went into                  18 that model were provided by Mr. Sevilla and                  19 Mr. Kranz?                  20 <b>A That is my understanding.</b>                  21 Q It then says, "Cover includes any legal                  22 costs payable to the plaintiffs but not the fund's                  23 own legal costs." And we have seen that is                  24 actually not how the policy ended up being                  25 written, is that right?</p>	<p>144</p>

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<p style="text-align: right;">145</p> <p>1 MR. WELDON: Objection.</p> <p>2 THE WITNESS: Correct.</p> <p>3 BY MR. BURT:</p> <p>4 Q Then it says, "The U.S. 20 million premium</p> <p>5 will be satisfied in kind by the funds</p> <p>6 transferring their investment portfolios to</p> <p>7 Sentinel. There will be an actuarial assessment</p> <p>8 of the portfolio assets." Do you see that, do you</p> <p>9 see where I was reading?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Was it Beecher's understanding that the</p> <p>12 plan was for the premium to be satisfied by the</p> <p>13 transfer of the entire investment portfolios of</p> <p>14 the funds?</p> <p>15 <b>A Yes.</b></p> <p>16 Q So that was always understood?</p> <p>17 <b>A Always.</b></p> <p>18 Q Where did that idea come from?</p> <p>19 <b>A J.P.</b></p> <p>20 Q And he says, "Again, in future tense there</p> <p>21 will be an actuarial assessment of the portfolio</p> <p>22 asset."</p> <p>23 That gets back to my question about timing</p> <p>24 whether the actuarial assessment happened after</p> <p>25 the figures had been arrived at or was informed by</p>	<p style="text-align: right;">146</p> <p>1 these figures.</p> <p>2 <b>A I don't know what he is referring to in</b></p> <p>3 <b>terms of an actuarial assessment of the portfolio</b></p> <p>4 <b>assets.</b></p> <p>5 Q Let's look at -- keep that handy, I am</p> <p>6 going to show you another exhibit along these</p> <p>7 lines.</p> <p>8 MS. REPORTER: It will be 128.</p> <p>9 (Document marked Exhibit 128 for</p> <p>10 identification.)</p> <p>11 BY MR. BURT:</p> <p>12 Q This is a somewhat lengthy e-mail</p> <p>13 exchange, feel free to take a look at it, but I</p> <p>14 also can draw your attention to specific portions.</p> <p>15 I will state for the record it is Exhibit 128</p> <p>16 Bates label BC SEN0000662979.</p> <p>17 Mr. Adamczak, let me know when you are</p> <p>18 ready.</p> <p>19 <b>A I am ready.</b></p> <p>20 Q The first e-mail, it is hard to see</p> <p>21 because of all of the disclaimers that appear at</p> <p>22 the end, it is the end of page, 1, 2, 3, 4, 5, 6,</p> <p>23 at the bottom there is an e-mail from J.P. Sevilla</p> <p>24 to a Jason Stubbs at Bartlett Actuarial Group</p> <p>25 dated June 12, 2017?</p>
<p style="text-align: right;">147</p> <p>1 <b>A Yes.</b></p> <p>2 Q Do you see that?</p> <p>3 Cc'd on that are Pete Kranz and Isaac</p> <p>4 Leventon.</p> <p>5 So just to level set in terms of timing,</p> <p>6 this e-mail is dated June 12 and I believe the</p> <p>7 last e-mail that we have been looking at from</p> <p>8 Mr. Scrivener was also dated June 12, 2017.</p> <p>9 <b>A Okay.</b></p> <p>10 Q Do you see that?</p> <p>11 <b>A I do.</b></p> <p>12 Q So here Mr. Sevilla writes to Jason</p> <p>13 Stubbs, "Jason, I will be speaking to your GC</p> <p>14 later this afternoon and I anticipate we will</p> <p>15 finalize the NDA then." Do you know what NDA</p> <p>16 refers to?</p> <p>17 <b>A Nondisclosure agreement, or something like</b></p> <p>18 <b>that, I don't know.</b></p> <p>19 Q Was that part of retaining or bringing on</p> <p>20 Bartlett Actuarial to provide work?</p> <p>21 <b>A Nothing that I am involved with.</b></p> <p>22 Q You are not involved with that at all, all</p> <p>23 right.</p> <p>24 And then they have a few back and forth</p> <p>25 about setting up a time to have a call and getting</p>	<p style="text-align: right;">148</p> <p>1 the NDA signed.</p> <p>2 If you look at the next page that ends in</p> <p>3 Bates 662983, it is about almost halfway up,</p> <p>4 J.P. Sevilla's e-mail on June 13 to Jason Stubbs</p> <p>5 and says, "I have it signed and ready to go,</p> <p>6 referring to the NDA, I just don't know how to</p> <p>7 fill in the first blank describing our company."</p> <p>8 Excuse me, that was an e-mail from Mr. Stubbs to</p> <p>9 Mr. Sevilla and then Mr. Sevilla responds that can</p> <p>10 be left blank, do you see that?</p> <p>11 <b>A Yes.</b></p> <p>12 Q And then Mr. Stubbs sends an executed copy</p> <p>13 of the NDA and at the top of this e-mail chain is</p> <p>14 an e-mail from Jason Stubbs to J.P. Sevilla on</p> <p>15 June 16, 2017 regarding the ATE policy, do you see</p> <p>16 that?</p> <p>17 <b>A Yes.</b></p> <p>18 Q And this actually includes, if you look at</p> <p>19 the bottom of the next page, responses from</p> <p>20 J.P. Sevilla to Jason Stubbs in all caps, do you</p> <p>21 see that, J.P. writes, "thanks, Jason please see</p> <p>22 my comment in caps. Isaac, please weigh in."</p> <p>23 <b>A Okay, I do see that.</b></p> <p>24 Q So if you go to the next e-mail --</p> <p>25 <b>A I see, yes.</b></p>

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<p style="text-align: right;">149</p> <p>1 Q In that e-mail you see the all capped 2 comments from Mr. Sevilla. So Mr. Stubbs writes 3 on Friday June 16, "I seem to have confused 4 myself. In the original dialogue I thought 5 Sentinel would be writing a policy to the 6 plaintiff, UBS, to cover legal costs for the 7 defendant CB and HFP and affiliates in case UBS 8 lost the suit. But the call clarified that the 9 insurance would be for damages, not legal costs, 10 so the policy would really be for CDO and HFP and 11 affiliates," and then in all caps it says, "YES, 12 THAT IS CORRECT," do you see that? 13 <b>A I do.</b> 14 Q So it appears that Mr. Stubbs was learning 15 about what this proposed policy would be around -- 16 at or around June 16, 2017, is that right? 17 <b>A Yes, correct.</b> 18 Q So that's after those figures that 19 Mr. Scrivener had given in that June 12 e-mail, 20 right? 21 <b>A I see, yes.</b> 22 MR. WELDON: Objection. 23 BY MR. BURT: 24 Q It very much appears that those figures 25 had been arrived at prior to Mr. Stubbs providing</p>	<p style="text-align: right;">151</p> <p>1 optimistic scenarios, do you see that? 2 <b>A Correct.</b> 3 Q Do you recall him doing that type of work, 4 providing three scenarios? 5 <b>A Yes.</b> 6 Q And when you testified earlier about the 7 actuarial analysis that Mr. Stubbs was doing, is 8 this what you were referring to? 9 <b>A Yes.</b> 10 Q So he would have done this based on 11 information provided to him by Mr. Sevilla and 12 Mr. Leventon and Mr. Kranz? 13 <b>A Correct.</b> 14 Q And in fact if you look at the second page 15 there is an e-mail from Isaac Levenson to Jason 16 Stubbs on June 22, where he says, "Jason, please 17 take a look at my modifications in red below. 18 Please run the scenarios based on these 19 assumptions and then let's determine if it is 20 appropriate to go to a final letter." And we see 21 that the red that Mr. Levenson added reflects 22 probability, he was adjusting probabilities, do 23 you see that? 24 <b>A Yes.</b> 25 Q And then the same day Mr. Stubbs responds,</p>
<p style="text-align: right;">150</p> <p>1 any analysis, is that right? 2 <b>A Yes.</b> 3 Q Then Mr. Stubbs says, "Isaac said UBS's 4 case is strong and the defense's strategy would be 5 to contest the amount of damages," and then in all 6 caps it says, "NOT ENTIRELY, part of the strategy 7 is trying to settle and of course part of the 8 strategy would be to win." And Mr. Stubbs writes, 9 "So if I am thinking about this correctly Sentinel 10 is going to write a policy for 80 million and it 11 is likely that the policy will pay some or all of 12 that limit," and then it says, "that is 13 incorrect." And Mr. Stubbs asks further, "Is 14 there any chance of post judgment interest in 15 addition to the limit?" 16 Do you know why Mr. Sevilla would have 17 written that it's incorrect that Sentinel was 18 going to write a policy for 80 million to cover 19 some or all of that limit? 20 <b>A I do not know.</b> 21 Q If you go up we see on pages -- beginning 22 on Page 2 and going into Page 3 of the e-mail we 23 see -- feel free to take your time to look at it, 24 three scenarios that Mr. Stubbs is working up, and 25 I think he calls them going from pessimistic to</p>	<p style="text-align: right;">152</p> <p>1 he says, "Using the new probabilities you 2 suggested here are the following expected results, 3 Scenario 1, pessimistic, loss of 28.5 million; 4 Scenario 2, moderate, profit of 1.0 million; 5 Scenario 3, optimistic, profit of 3.5 million." 6 It says, "These all still assume a premium of 7 20 million and a policy limit of 80 million." Do 8 you see that? 9 <b>A Yes.</b> 10 Q It appears that his scenarios were 11 assuming the premium and policy limit that 12 Mr. Scrivener had described on June 12? 13 <b>A Not really. He said 20 million and 85 14 million of coverage.</b> 15 Q Fair enough. 16 So instead of 85 million he says the 17 assumption is the policy limit of 80 million? 18 <b>A Sure.</b> 19 Q But otherwise the same premium is used, 20 correct? 21 <b>A Correct.</b> 22 Q Were you aware at the time in June of 2017 23 about these scenarios in the loss and profits that 24 Mr. Stubbs was calculating? 25 <b>A Yes.</b></p>

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<p>1 Q What did you understand about those 2 calculations? 3 <b>A That there was -- these were the 4 calculations that were going to determine the 5 ultimate liability that was attached to the policy 6 as well as the premium.</b> 7 Q Mr. Kranz, if we go to Page 16 of the 8 e-mail chain, Mr. Kranz writes to Mr. Stubbs, 9 "Jason, are you comfortable with the probabilities 10 in providing a letter outlining the conclusions 11 below? Is it common to request an actuarial 12 letter in these types of situations when premiums 13 and policies are being determined?" 14 <b>A Yes. There has got to be some kind of 15 support for how the premium is determined.</b> 16 Q Then Mr. Stubbs responds on June 22 again 17 and he says, "I just realized I had some wayward 18 numbers in my analysis related to ultimate limits 19 I have been looking at. It only affected Scenario 20 2. Instead of profit of a million in this 21 scenario it should have been a loss of 22 12.5 million. My most sincere apologies for the 23 error." 24 Were you aware that he miscalculated first 25 on Scenario 2?</p>	<p>153</p> <p>1 <b>A That's what it would state.</b> 2 Q Did Beecher understand that at the time? 3 <b>A Yes.</b> 4 Q Was Beecher concerned about that, that 5 this policy would result in a loss to Sentinel 6 even under the most optimistic? 7 <b>A I don't --</b> 8 MR. WELDON: Objection. 9 THE WITNESS: I don't recall. 10 BY MR. BURT: 11 Q You recall being aware of it but you don't 12 recall whether it was a concern? 13 MR. WELDON: Objection. 14 THE WITNESS: I don't. 15 BY MR. BURT: 16 Q Let's look at the letter that ends up 17 being submitted on June 27, I think it's the last 18 few pages of that exhibit. Do you see where I am 19 looking at that letter? 20 <b>A Yes, I am with you.</b> 21 Q Okay, perfect. 22 And here it is the June 27 letter to 23 Mr. Kranz from Bartlett Actuarial Group. Now, in 24 the background section it says in the first 25 paragraph, "Sentinel is a captive insurance</p>
<p>1 <b>A Yes.</b> 2 Q So under this sort of not pessimistic/not 3 optimistic but under the moderate scenario his 4 actuarial analysis was that this policy would 5 result in a loss of 12.5 million to Sentinel, is 6 that right? 7 MR. WELDON: Objection. 8 THE WITNESS: It would appear so. 9 BY MR. BURT: 10 Q And then in his next e-mail, he says, 11 Mr. Stubbs says, "I spoke too soon, both Scenario 12 2 and Scenario 3 were affected. Using the 13 probabilities provided by Isaac there would also 14 be a loss in the third scenario of 0.5 million. 15 Apparently I was in favor of looking at lower 16 limits and forgot to reset the assumptions back to 17 what I provided originally." 18 Here he is saying that even under the most 19 optimistic scenario given the probabilities and 20 assumptions that have been provided the scenario 21 was a loss on the policy of 0.5 million, correct? 22 <b>A That's what it states.</b> 23 Q So even under the most optimistic view of 24 the policy the actuarial analysis was it would 25 result in a loss to Sentinel?</p>	<p>154</p> <p>1 company domiciled in the Cayman Islands and owned 2 by SAS Asset Recovery Limited. Sentinel was 3 incorporated on March 1, 2014 to provide directors 4 and officers liability coverage to SAS Asset 5 Recovery Limited and its affiliated entities. 6 Sentinel would to provide" -- looks like there is 7 a typo there -- "ATE insurance company to 8 unrelated parties, Highland Special Opportunities 9 Holding Company and codefendants, collectively 10 Highlands, related to a lawsuit that has been 11 filed against Highlands." 12 Do you know where he got the idea that the 13 parties were unrelated? 14 <b>A Either through discussions with Beecher 15 Carlson or J.P. Sevilla.</b> 16 Q As we have discussed the parties had 17 common ownership though, right? 18 MR. WELDON: Objection. 19 THE WITNESS: Yes. 20 BY MR. BURT: 21 Q And in that sense were related parties? 22 MR. WELDON: Objection. 23 THE WITNESS: Not entirely the way that I 24 would see it. 25</p>
<p>155</p>	<p>156</p>

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<p style="text-align: right;">157</p> <p>1 BY MR. BURT:</p> <p>2 Q And how is that?</p> <p>3 <b>A Because we were talking about from an</b></p> <p>4 <b>insurance standpoint affiliated risks were those</b></p> <p>5 <b>in the direct line of the parent, whereas the</b></p> <p>6 <b>unrelated risks would be more distant cousins or</b></p> <p>7 <b>other entities not closely related to Sentinel.</b></p> <p>8 Q So it's that distinction that you had made</p> <p>9 before?</p> <p>10 <b>A Correct.</b></p> <p>11 Q Is that a distinction that when you were</p> <p>12 discussing with CIMA that you made that -- did you</p> <p>13 make that same distinction?</p> <p>14 MR. WELDON: Objection.</p> <p>15 THE WITNESS: Yes, I believe so.</p> <p>16 MR. BURT: One moment, please.</p> <p>17 (Document marked Exhibit 129 for</p> <p>18 identification.)</p> <p>19 MR. BURT: Keep that prior exhibit handy,</p> <p>20 but we will look at this one.</p> <p>21 BY MR. BURT:</p> <p>22 Q Handing you what's been marked as</p> <p>23 Exhibit 129, Bates BCS EN a bunch of 0s, 5065.</p> <p>24 Let me know when you are ready.</p> <p>25 <b>A I am ready.</b></p>	<p style="text-align: right;">159</p> <p>1 point to CIMA that all are related in some way,</p> <p>2 Sentinel UBO ultimately controls the insureds."</p> <p>3 Do you see that?</p> <p>4 <b>A Yes.</b></p> <p>5 Q Do you recall telling CIMA that fact, that</p> <p>6 the Sentinel UBOs ultimately controls the</p> <p>7 insureds?</p> <p>8 <b>A I don't recall.</b></p> <p>9 Q Do you recall writing that at the time in</p> <p>10 2019?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Why did you tell that to Mr. Stubbs?</p> <p>13 <b>A I don't recall.</b></p> <p>14 Q Is it -- were you correct that the</p> <p>15 Sentinel UBO ultimately controls the insureds, was</p> <p>16 that Beecher's understanding?</p> <p>17 <b>A The insureds of the ATE?</b></p> <p>18 Q Correct.</p> <p>19 <b>A Correct.</b></p> <p>20 Q So not only did -- the Sentinel UBOs we</p> <p>21 have established are Mr. Dondero and</p> <p>22 Mr. Ellington, correct?</p> <p>23 <b>A Correct.</b></p> <p>24 Q So not only did they own at least part of</p> <p>25 the Highland, Highland Capital and its entities,</p>
<p style="text-align: right;">158</p> <p>1 Q So looking at the first page here, this is</p> <p>2 in the May, 2019 period and you have -- second</p> <p>3 e-mail down is from you to Mr. Stubbs, again, on</p> <p>4 May 9, 2019, do you see that?</p> <p>5 <b>A Yes.</b></p> <p>6 Q And this regards the Sentinel year-end</p> <p>7 actuarial analysis, right?</p> <p>8 <b>A Yes.</b></p> <p>9 Q Did you testify before, and I apologize if</p> <p>10 I misunderstood, that he did a yearly actuarial</p> <p>11 analysis?</p> <p>12 <b>A Correct. That's for determining the loss</b></p> <p>13 <b>reserves.</b></p> <p>14 Q Understood. Okay.</p> <p>15 So here you write, "I have a few edits</p> <p>16 based on the recent examination." What</p> <p>17 examination were you referring to?</p> <p>18 <b>A This is the inspection that CIMA conducted</b></p> <p>19 <b>in early 2019.</b></p> <p>20 Q The first bullet, we will skip that.</p> <p>21 The second bullet, Page 3, third</p> <p>22 paragraph, you write, "I want to get Matt to weigh</p> <p>23 in here as it references the ATE coverage being</p> <p>24 provided to unaffiliated entities," and you have</p> <p>25 unaffiliated in quotes, "yet we keep making the</p>	<p style="text-align: right;">160</p> <p>1 but you state also they controlled those insureds</p> <p>2 as well, correct?</p> <p>3 <b>A Yes.</b></p> <p>4 Q And that was Beecher's understanding?</p> <p>5 <b>A Yes.</b></p> <p>6 Q And if you actually -- if you actually</p> <p>7 look at this draft report, and we look at Page 3,</p> <p>8 it is actually the attachment that Mr. Stubbs sent</p> <p>9 back, it says, "Hi Tom, here is the revised draft</p> <p>10 report." And if we go to the third paragraph on</p> <p>11 Page 3 we will see that it's taken out the</p> <p>12 affiliated language so it states, "As of August 1,</p> <p>13 2017, Sentinel began providing after the event</p> <p>14 insurance coverage. Sentinel has currently</p> <p>15 written one ATE policy to Highland Special</p> <p>16 Opportunities Holding Company and codefendants,</p> <p>17 collectively Highlands, relating to a lawsuit that</p> <p>18 has been filed against Highlands." Do you see</p> <p>19 that?</p> <p>20 <b>A Yes, I do see that.</b></p> <p>21 Q So Mr. Stubbs followed your edited and</p> <p>22 took the affiliate out?</p> <p>23 <b>A Yes.</b></p> <p>24 Q Do you recall that?</p> <p>25 <b>A Yes.</b></p>

<p style="text-align: right;">161</p> <p>1 Q Let's go back to the June 27, 2017 letter                  2 that Mr. Stubbs wrote. In the last paragraph on                  3 the first page under background it states, "The                  4 plaintiff in the lawsuit is seeking damages of                  5 over 680 million from Highlands. Sentinel is                  6 proposing to write a policy to cover Highlands                  7 liability to the plaintiff up to a limit of 80                  8 million and they have suggested a premium of 20                  9 million." Do you see that?  <b>10 A I do.</b>                  11 Q So Mr. Stubbs here is saying it appears                  12 that Sentinel has suggested that the premium be 20                  13 million, right?  <b>14 A That would appear to be the case.</b>                  15 Q And that would be consistent also with                  16 what CIMA found in that report that we already                  17 looked at about how the premium was arrived, do                  18 you recall that?  <b>19 A I don't recall that.</b>                  20 Q We can come back to that in a moment.                  21 It states, "The policy would cover pre and                  22 post judgment interest within the limit and would                  23 pay in the event of a judgment against Highlands                  24 or pretrial settlement between the parties to the                  25 lawsuit. Legal expenses would not be covered.</p>	<p style="text-align: right;">163</p> <p><b>1 A That's what it says.</b>                  2 Q Again, that was information provided by                  3 Mr. Leventon and Mr. Sevilla?  <b>4 A Correct.</b>                  5 Q Liability reduced in judgment 40%                  6 probability, 40 million expected payout. The                  7 total -- so the probability totals to 100% and the                  8 expected payout totals to 48.5 million.                  9 Do you know how he arrives at the                  10 48.5 million?  <b>11 A Math?</b>                  12 Q Is it just an average?  <b>13 A I think it is the average based on the</b>  <b>14 probabilities.</b>                  15 Q So a weighted average?  <b>16 A Yes.</b>                  17 Q Then he lists the premium there of 20                  18 million and then so the profit loss in the                  19 pessimistic scenario based on the probabilities                  20 and the weighted average would be negative                  21 28.5 million the way the policy is written, right?  <b>22 A Correct.</b>                  23 Q So I don't want to belabor, Scenario 2,                  24 the same analysis, this is the moderate scenario,                  25 he calculates the profit loss at negative</p>
<p style="text-align: right;">162</p> <p>1 The court has set a trial date of September,                  2 2017." Okay.                  3 On Page 2 we see Scenarios 1 and 2 that we                  4 looked at in the e-mail exchange, and I just want                  5 to make sure I am understanding these right.                  6 Under Scenario 1, and I think he said this was the                  7 pessimistic outcome.  <b>8 A Yes.</b>                  9 Q He has here a pretrial settlement, the                  10 probability is 5% and the expected payout would be                  11 10 million on that probability, is that right?  <b>12 A That's what it says.</b>                  13 Q Do you know how he arrives at the expected                  14 payout number based on the probability?  <b>15 A I believe those were numbers that were</b>  <b>16 provided in the discussion with Isaac and J.P.</b>                  17 Q The next line is judgment in favor of                  18 Highlands, so the defendant, probability 15% and                  19 then in that case there would be zero payout,                  20 right, because they won?  <b>21 A Correct.</b>                  22 Q And then judgment in favor of plaintiff,                  23 the full liability, 686 million plus pre and post                  24 judgment interests probability 40% expected payout                  25 80 million, is that right?</p>	<p style="text-align: right;">164</p> <p>1 12.5 million, correct?  <b>2 A Correct.</b>                  3 Q And Scenario 3, the next page, again, same                  4 analysis, this time this is the optimistic                  5 scenario and he calculates the profit loss on the                  6 policy negative 0.5 million, is that right?  <b>7 A Correct.</b>                  8 Q Is it common to write policies when the                  9 actuary has determined that under any scenario                  10 there will be a loss on the policy?  <b>11 A No.</b>                  12 Q Do you know why this one was written even                  13 though that's what the actuary found?  <b>14 A I do not.</b>                  15 Q Did Beecher have any involvement in making                  16 the final determination to issue the policy?  <b>17 A Sorry, say that again?</b>                  18 Q It might not have been clear.                  19 Did Beecher have any involvement in the                  20 decision to actually end up issuing the policy?  <b>21 A No.</b>                  22 MR. WELDON: Objection.                  23 BY MR. BURT:                  24 Q Who would have made that decision                  25 ultimately to issue the policy?</p>



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<p style="text-align: right;">165</p> <p>1 <b>A The directors ultimately approved the ATE</b>                  2 <b>policy.</b>                  3 Q And at the time was it outside directors                  4 or was there also Highland directors?                  5 <b>A It was outside directors at that time.</b>                  6 Q Does Beecher have any insight into how the                  7 directors decided to issue the policy despite this                  8 actuarial analysis that had been done?                  9 <b>A This wouldn't have been the final premium</b>                  10 <b>that was contemplated. The premium actually</b>                  11 <b>jumped up to 25 million, I don't know how it would</b>                  12 <b>have affected this.</b>                  13 Q One moment, please.                  14 I guess my next question is how that                  15 decision was made or how it came to be that the                  16 premium did jump up by the 5 million.                  17 <b>A I don't know.</b>                  18 Q Did Beecher have any involvement with                  19 that?                  20 <b>A I do not know.</b>                  21 Q Sorry, let's go back to, I lost track of                  22 the exhibit, it is the e-mails with Paul                  23 Scrivener, see if this will help refresh your                  24 memory, it is Exhibit 127.                  25 So the next -- we have looked at that</p>	<p style="text-align: right;">166</p> <p>1 June 12 e-mail. The next-in-time e-mail is from                  2 J.P. Sevilla to Paul Scrivener on August 4, 2017.                  3 I do have a question about that date, the                  4 August 4 date. If you look at the policy itself                  5 on the schedule that we were looking at, the date                  6 of commencement of period of insurance is                  7 August 1, 2017.                  8 <b>A Yes.</b>                  9 Q How is it that the date of insurance could                  10 begin before the drafts of the policy were                  11 finalized?                  12 <b>A I don't think it's uncommon that the</b>                  13 <b>policy language might be finalized shortly after</b>                  14 <b>the policy accepts.</b>                  15 Q So it applies retroactively back to a                  16 date?                  17 <b>A In this case, yes.</b>                  18 Q And that's not uncommon?                  19 <b>A It happens.</b>                  20 MR. WELDON: Off the record, I just -- I                  21 will point you to the --                  22 MS. REPORTER: We are still on the record                  23 we have video.                  24 BY MR. BURT:                  25 Q Mr. Sevilla writes, "We are ready to move</p>
<p style="text-align: right;">167</p> <p>1 forward with these, can you please give a final                  2 review and add signature pages and any other final                  3 cleanups, we will enter the correct signature                  4 blocks. Below are the names of the insureds.                  5 There will be two separate policies, one for each                  6 of the below entities. We will handle filling out                  7 the schedule and final numbers." And then he                  8 lists Highland CDO Opportunity Fund and Highland                  9 CDO Holding Company.                  10 That is what Mr. Sevilla said on                  11 August 14, right?                  12 Were you aware -- sorry, you need to                  13 answer audibly.                  14 <b>A Yes.</b>                  15 Q Were you aware there was two policies                  16 being considered at that point?                  17 <b>A Yes.</b>                  18 Q What was your understanding for the                  19 reasons why?                  20 <b>A Well, I personally wasn't aware so I</b>                  21 <b>don't know --</b>                  22 Q But Beecher was generally?                  23 <b>A Beecher would have been because Pete was</b>                  24 <b>copied on these.</b>                  25 Q And so Beecher was aware.</p>	<p style="text-align: right;">168</p> <p>1 Did you ever have discussions with                  2 Mr. Kranz about that at the time?                  3 <b>A About there being two policies, no.</b>                  4 Q Or the reasons why it eventually ended up                  5 as just one?                  6 <b>A No.</b>                  7 Q And then the next e-mail Mr. Sevilla                  8 writes, "One more point, Paul, can you please add                  9 language into the policy that specifies that the                  10 insurance policies will cover the insured's own                  11 costs and expenses as of the effective date, thank                  12 you." Do you see that?                  13 <b>A I do.</b>                  14 Q So we had seen before that it would not                  15 fund the legal costs, here Mr. Sevilla changes                  16 that to the policy would cover the insured's own                  17 costs, right?                  18 <b>A Yes.</b>                  19 Q Does Beecher know the reasons why the                  20 switch?                  21 <b>A I don't know particularly related to the</b>                  22 <b>legal costs, but I understand from J.P. that upon</b>                  23 <b>payment of the premium there were no funds to be</b>                  24 <b>able to pay any business costs or legal costs or</b>                  25 <b>whatever within the insureds so those costs would</b></p>

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<p style="text-align: right;">169</p> <p><b>1 be borne by Sentinel under this own costs</b></p> <p><b>2 provision.</b></p> <p>3 Q And that was because the whole idea was to</p> <p>4 transfer all of the assets out of the insureds?</p> <p><b>5 A Correct.</b></p> <p>6 Q Going to the first page of this e-mail,</p> <p>7 Mr. Sevilla has some final changes on August 8,</p> <p>8 2017, this is the second to last e-mail in the</p> <p>9 chain, here he says, number one, he would like to</p> <p>10 consolidate the policies into one policy with</p> <p>11 three insureds, all of whom are codefendants with</p> <p>12 equal liability, do you see any issue in doing so,</p> <p>13 do you see that?</p> <p><b>14 A I do.</b></p> <p>15 Q Do you recall we walked through the</p> <p>16 schedule?</p> <p><b>17 A I do.</b></p> <p>18 Q One of them is not a defendant, right?</p> <p><b>19 A Correct.</b></p> <p>20 Q Would that have affected this because one</p> <p>21 of the defendants would not share an equal</p> <p>22 liability, would that have affected the policy?</p> <p><b>23 A I don't know.</b></p> <p>24 Q And then he says the policy limit is 120</p> <p>25 million and the premium will be 30 million, so</p>	<p style="text-align: right;">171</p> <p>1 exclusion if the insureds didn't have any funds to</p> <p>2 prosecute the action then the policy wouldn't</p> <p>3 cover it and that was removed, does that appear</p> <p>4 correct?</p> <p><b>5 A That is what it would appear.</b></p> <p>6 Q And to the best of your understanding, is</p> <p>7 that because all of the funds again were being</p> <p>8 transferred out of the insureds to Sentinel?</p> <p><b>9 A I don't know.</b></p> <p>10 Q You don't know that one, okay.</p> <p>11 That was your -- that was Beecher's</p> <p>12 understanding --</p> <p>13 MR. WELDON: Objection.</p> <p>14 BY MR. BURT:</p> <p>15 Q -- that all the assets were to be sent to</p> <p>16 Sentinel?</p> <p><b>17 A That is.</b></p> <p>18 Q Pete Kranz then responds at the very top</p> <p>19 and he says, "I see no issues with one policy," so</p> <p>20 Beecher Carlson at the time had no issue combining</p> <p>21 the two into one, it appears?</p> <p><b>22 A Correct.</b></p> <p>23 (Document marked Exhibit 130 for</p> <p>24 identification.)</p> <p>25</p>
<p style="text-align: right;">170</p> <p>1 here we are on August, 2017, we get new policy</p> <p>2 limit numbers and new premium numbers. Was</p> <p>3 Beecher aware of that at the time?</p> <p><b>4 A As Pete Kranz was copied on this we would</b></p> <p><b>5 have been aware.</b></p> <p>6 Q Any knowledge about why the change from 80</p> <p>7 to 120?</p> <p><b>8 A I do not know.</b></p> <p>9 Q Or from 20 to 30 million on the premium?</p> <p><b>10 A I do not know.</b></p> <p>11 Q It was Beecher's understanding, was it</p> <p>12 not, that these changes were coming from</p> <p>13 Mr. Sevilla?</p> <p><b>14 A Correct.</b></p> <p>15 Q And then No. 3, I want to look at, I have</p> <p>16 a question about, it says, "Finally, please remove</p> <p>17 the clause that says in Section 3 that it's an</p> <p>18 exclusion if insured does not have funds to</p> <p>19 prosecute the action."</p> <p>20 So my first question is what is an</p> <p>21 exclusion in an insurance policy?</p> <p><b>22 A An exclusion is a clause that identifies</b></p> <p><b>23 scenarios that would not be covered under that</b></p> <p><b>24 policy.</b></p> <p>25 Q So it appears that the draft had as an</p>	<p style="text-align: right;">172</p> <p>1 BY MR. BURT:</p> <p>2 Q Mr. Adamczak, I have handed you what has</p> <p>3 been marked as Exhibit 130 with the Bates label</p> <p>4 HCMUBS005304, and I understand this was not</p> <p>5 produced by Beecher. So my question for you is</p> <p>6 whether you have ever seen this before.</p> <p><b>7 A This does not look familiar to me.</b></p> <p>8 Q If we look at Page 6, and I will represent</p> <p>9 to you this is a document that Highland Capital</p> <p>10 produced in litigation, if we look at Page 6 it</p> <p>11 says if Highland settles," and then it says</p> <p>12 "Sentinel controls HFP CDO fund assets currently</p> <p>13 94 million and Sentinel and HCM LP can use HFP CDO</p> <p>14 assets to generate cash to pay UBS settlement city</p> <p>15 and outstanding legal fees." And it talks about a</p> <p>16 tax liability being avoided and then it states</p> <p>17 that residual assets up to 50 million would stay</p> <p>18 at Sentinel.</p> <p>19 My question for you is did Beecher have</p> <p>20 any role in this settlement analysis or these</p> <p>21 considerations?</p> <p><b>22 A No.</b></p> <p>23 Q And then on -- if you flip to Page 8, so</p> <p>24 we will skip Slide 7, and it states "UBS</p> <p>25 settlement structure summary, Step 1, HFP/CDO fund</p>

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1 buys 90 million ATE policy from Sentinel. ATE  
 2 premium equals all assets in the HFP/CDO fund," do  
 3 you see that?  
 4 **A I do.**  
 5 Q Again, the question is did Beecher have  
 6 any knowledge that this was the consideration  
 7 going on internally at Highland at the time?  
 8 MR. WELDON: Objection.  
 9 THE WITNESS: This being?  
 10 BY MR. BURT:  
 11 Q That the ATE premium would be all assets  
 12 and that the policy of HFP CDO fund and the policy  
 13 would be a \$90 million policy?  
 14 MR. WELDON: Objection.  
 15 THE WITNESS: Is HFP CDO fund the insureds  
 16 in the policy?  
 17 BY MR. BURT:  
 18 Q Well, let's look at the policy. I think  
 19 you have it right there.  
 20 MR. WELDON: Exhibit 125.  
 21 THE WITNESS: Okay.  
 22 BY MR. BURT:  
 23 Q So HFP is not listed as an insured,  
 24 correct?  
 25 **A Well, I don't know what the acronym is**

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1 **there.**  
 2 Q If you look under legal action do you see  
 3 there is an entity about halfway down called  
 4 Highland Financial Partners, LP?  
 5 **A Yes. But that's taking the assumption**  
 6 **that HFP stands for Highland Financial Partners,**  
 7 **but I see where you are going.**  
 8 Q You never heard as Highland Financial  
 9 Partners referred to as HFP?  
 10 **A I have.**  
 11 Q And it is not listed as one of the  
 12 insureds above in the schedule, Highland Financial  
 13 Partners?  
 14 **A Correct.**  
 15 Q So, again, the question is did Beecher  
 16 have any involvement with these discussions  
 17 regarding a potential settlement structure and  
 18 policy?  
 19 MR. WELDON: Objection, asked and  
 20 answered.  
 21 THE WITNESS: No.  
 22 BY MR. BURT:  
 23 Q And then the conclusion you see on that  
 24 slide is that Sentinel keeps the net assets, could  
 25 be up to \$50 million, do you see that?

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1 **A I do.**  
 2 Q I assume your answer is the same, you are  
 3 not aware at the time of those discussions to end  
 4 up in a scenario where Sentinel would keep  
 5 \$50 million worth of assets?  
 6 MR. WELDON: Objection, asked and  
 7 answered.  
 8 THE WITNESS: I was not.  
 9 BY MR. BURT:  
 10 Q Real quick, back on Slide 6, I neglected  
 11 to ask, they state here that the fund -- that  
 12 Sentinel controls the HFP CDO fund assets  
 13 currently 94 million. Do you have any knowledge  
 14 about how that value was arrived at?  
 15 **A I do not.**  
 16 Q And it was -- your knowledge -- it was  
 17 Beecher's knowledge at the time that was yet to be  
 18 determined?  
 19 MR. WELDON: Objection.  
 20 THE WITNESS: I don't know the timeframe  
 21 that this was prepared.  
 22 BY MR. BURT:  
 23 Q I am talking about the May/June 2017  
 24 timeframe those e-mails we were looking at.  
 25 **A We knew nothing of the fair value of the**

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1 **assets that would be received.**  
 2 Q So looking at Slide 6 and 8, they value,  
 3 it appears, the assets at 94 million and wanted to  
 4 purchase a \$90 million ATE policy. Do you see  
 5 that?  
 6 **A Yes.**  
 7 Q And that all the assets would fund the ATE  
 8 premium, so the 94 million under this scenario  
 9 would fund the premium.  
 10 MR. WELDON: Objection.  
 11 BY MR. BURT:  
 12 Q Is that right?  
 13 **A It was the understanding at the time that**  
 14 **the ATE policy was issued that all funds or assets**  
 15 **within the insureds would transfer to Sentinel to**  
 16 **pay premium.**  
 17 Q You can set that exhibit aside.  
 18 **A Are we going to need a lot of these?**  
 19 Q I would keep the policy, that one -- you  
 20 can set the other ones aside.  
 21 MR. BURT: Why don't we take a break, we  
 22 only have a few minutes left on the disk.  
 23 THE VIDEOGRAPHER: This marks the end of  
 24 Disk No. 3 in the deposition of Thomas Adamczak,  
 25 we are off the record at 2:10.

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<p style="text-align: right;">177</p> <p>1 (Recess taken.)</p> <p>2 THE VIDEOGRAPHER: Here begins Disk No. 4</p> <p>3 in the deposition of Thomas Adamczak, we are back</p> <p>4 on the record at 2:17.</p> <p>5 (Document marked Exhibit 131 for</p> <p>6 identification.)</p> <p>7 BY MR. BURT:</p> <p>8 Q Mr. Adamczak, showing you what's been</p> <p>9 marked as Exhibit 131 with the Bates BC</p> <p>10 SEN0000046128. Go ahead and take a look at that</p> <p>11 and let me when you are ready.</p> <p>12 <b>A I am ready.</b></p> <p>13 Q This is an e-mail to you David A. Roberts</p> <p>14 at Crowe Horwath on May 23, 2017, is that right?</p> <p>15 <b>A Correct.</b></p> <p>16 Q Who is David Roberts?</p> <p>17 <b>A David Roberts is a partner in an audit</b></p> <p>18 <b>firm that we typically work with.</b></p> <p>19 Q And is that from -- you referred to them</p> <p>20 as Crowe?</p> <p>21 <b>A Crowe Horwath, shortened their name to</b></p> <p>22 <b>Crowe.</b></p> <p>23 Q Are they located in Burlington?</p> <p>24 <b>A They have an office in Burlington.</b></p> <p>25 Q I saw their building over there.</p>	<p style="text-align: right;">179</p> <p>1 expectation it will limit issues/concerns with the</p> <p>2 future audit."</p> <p>3 And that -- you ended up hiring Valuation</p> <p>4 -- what was the name?</p> <p>5 <b>A Valuation Research Corporation.</b></p> <p>6 Q Did David Roberts recommend them?</p> <p>7 <b>A I think that might have been a</b></p> <p>8 <b>recommendation coming from him.</b></p> <p>9 Q Now, in the May -- on May 23, 2017 you</p> <p>10 knew that Sentinel was looking to receive these</p> <p>11 assets as premium on an ATE policy, right?</p> <p>12 <b>A We were provided with a list of assets</b></p> <p>13 <b>from J.P. I do not know if these were the assets</b></p> <p>14 <b>that ultimately came in or the value of them</b></p> <p>15 <b>coming in.</b></p> <p>16 Q So that was -- you answered my next</p> <p>17 question, which was where did this come from, it</p> <p>18 was from J.P. Sevilla.</p> <p>19 MR. WELDON: Objection.</p> <p>20 BY MR. BURT:</p> <p>21 Q Is that right?</p> <p>22 <b>A That is correct.</b></p> <p>23 Q Although Beecher was holding books and</p> <p>24 records for Sentinel at the time as its captive</p> <p>25 insurance manager, these were not at the time part</p>
<p style="text-align: right;">178</p> <p>1 And did he work on the Sentinel auditing</p> <p>2 for --</p> <p>3 <b>A No.</b></p> <p>4 Q He did not?</p> <p>5 <b>A No.</b></p> <p>6 Q Why did you e-mail him at this time?</p> <p>7 <b>A Just to touch base with him regarding</b></p> <p>8 <b>investment valuation if there were any</b></p> <p>9 <b>recommendations that they might have for firms</b></p> <p>10 <b>that we could reach out to engage.</b></p> <p>11 Q So here you write, "Dave, do you have a</p> <p>12 few minutes to discuss an item on Sentinel."</p> <p>13 Did he know who Sentinel was?</p> <p>14 <b>A I think we bounced some things off him</b></p> <p>15 <b>before.</b></p> <p>16 Q It says, "It is not an audit issue yet,</p> <p>17 but I would like to pick your brain so it doesn't</p> <p>18 become an issue after next year. I have attached</p> <p>19 a list of investments that Sentinel is looking to</p> <p>20 receive as premium payment on the new after the</p> <p>21 event coverage they will begin writing shortly.</p> <p>22 Since these investments are not readily marketable</p> <p>23 my concern is with valuation. Pete indicated you</p> <p>24 might be able to provide suggestions on firms we</p> <p>25 can engage to assist in valuing these with the</p>	<p style="text-align: right;">180</p> <p>1 of anything that Sentinel owned, is that right?</p> <p>2 <b>A Correct.</b></p> <p>3 Q How did you know that they were not</p> <p>4 readily marketable at the time?</p> <p>5 <b>A Based on discussions with J.P.</b></p> <p>6 Q When did J.P. first raise this with you?</p> <p>7 <b>A When they were talking about writing the</b></p> <p>8 <b>policy. I believe it was always known or conveyed</b></p> <p>9 <b>to us from J.P. that the investments would -- that</b></p> <p>10 <b>they did not have enough cash to pay and the</b></p> <p>11 <b>premium would come in the form of assets, on</b></p> <p>12 <b>liquid assets.</b></p> <p>13 Q Is that common with insurance policies</p> <p>14 that premiums come not in cash but through other</p> <p>15 types of assets?</p> <p>16 <b>A It can happen. It doesn't happen</b></p> <p>17 <b>frequently but it can happen.</b></p> <p>18 Q How about with the types of assets that</p> <p>19 were ultimately transferred here, is that a unique</p> <p>20 situation?</p> <p>21 <b>A This was a unique situation.</b></p> <p>22 Q You had never seen this type of transfer</p> <p>23 before?</p> <p>24 <b>A I have not.</b></p> <p>25 Q And how many different insurance policies</p>

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1 would you say you have worked on or managed over  
 2 the years?  
 3 **A In all of my years?**  
 4 Q Yes.  
 5 **A Thousands.**  
 6 Q And you have never seen anything like  
 7 this?  
 8 **A It doesn't mean that it is not possible to**  
 9 **happen.**  
 10 Q What about it stands out as unique, what  
 11 happened with these transfers?  
 12 **A Rephrase the question.**  
 13 Q So you said it was unique.  
 14 **A Unique in that the premium was in the form**  
 15 **of non-marketable securities.**  
 16 Q So referring back to this exhibit, beyond  
 17 just a list that was provided by J.P., did Beecher  
 18 have any knowledge whatsoever about these assets  
 19 at the time or what they were or their value?  
 20 **A No, we did not.**  
 21 Q Did you do anything further with this list  
 22 that J.P. gave you?  
 23 **A No.**  
 24 Q You can set that one aside.  
 25 I did -- I actually lied, there is one

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1 that I told you you could set aside, there was one  
 2 further thing I wanted to ask you in 127.  
 3 Before I ask that I have one more question  
 4 as I am thinking about unique, were they unique  
 5 also in that the value of the assets would be  
 6 greater than the amount of the premium?  
 7 MR. WELDON: Objection.  
 8 THE WITNESS: The value of the assets was  
 9 unknown at the time because there was no valuation  
 10 done, so there was a risk that it could be a  
 11 windfall to Sentinel and there was also a risk  
 12 that everything could be worthless.  
 13 BY MR. BURT:  
 14 Q So looking very quickly at Exhibit 127, I  
 15 actually wanted to look at the first-in-time  
 16 e-mail from Paul Scrivener to J.P. Sevilla and  
 17 cc'ing Pete Kranz on June 2, 2017. Do you see  
 18 where I am looking?  
 19 **A Yes.**  
 20 Q And we can skip down until the last figure  
 21 paragraph that begins with "by the way", do you  
 22 see that?  
 23 **A Yes.**  
 24 Q And here Mr. Scrivener states, "By the  
 25 way, I was thinking further about the idea that

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1 the premium will be satisfied by the transfer of  
 2 the hedge fund's investment portfolios. Has any  
 3 thought been given to the legal validity of such a  
 4 transfer bearing in mind that these assets will  
 5 then be put beyond the reach of the plaintiffs in  
 6 the U.S. litigation against the funds. Obviously  
 7 the last thing that you want to find is that the  
 8 premium has to be returned or is set aside as some  
 9 unlawful reference or similar. Obviously an issue  
 10 for U.S. counsel, but just thought that I would  
 11 raise it." Do you see that?  
 12 **A I do.**  
 13 Q Do you know if that was ever raised with  
 14 U.S. counsel by Sentinel or by Highland?  
 15 **A I do not.**  
 16 Q Did Beecher ever discuss that issue with  
 17 Highland or Sentinel?  
 18 **A Not to my knowledge.**  
 19 Q In your experience working on insurance  
 20 matters have you ever seen a similar situation  
 21 where all of the assets of an entity in litigation  
 22 is transferred to pay for an insurance premium?  
 23 **A I have not.**  
 24 Q Now you can really set that one aside.  
 25 Now, we have talked a lot about the

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1 Sentinel side of the policy and we saw in the  
 2 policy that Mr. Dondero signed for the Highland  
 3 entities. Are you aware of who the authorized  
 4 representative was for the Highland entities that  
 5 were insured?  
 6 **A I am not.**  
 7 Q Did that ever come up?  
 8 **A It did not.**  
 9 Q I would like to show you Tab 24.  
 10 (Document marked Exhibit 132 for  
 11 identification.)  
 12 BY MR. BURT:  
 13 Q For the record showing you what's been  
 14 marked Exhibit 132 Bates label BSEEN00007678181.  
 15 The first page appears to be an e-mail from  
 16 J.P. Sevilla to Pete Kranz dated November 20, 2017  
 17 with an attachment untitled and then the second  
 18 page has the title Highland CDO Opportunity Master  
 19 Fund, LP, do you see that?  
 20 **A Yes.**  
 21 Q Have you seen this document before today?  
 22 **A I have.**  
 23 Q When did you first see it?  
 24 **A A while back, a couple years ago. I don't**  
 25 **know.**

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<p style="text-align: right;">185</p> <p>1 Q So this was something that was produced 2 out of the Beecher files and something that you 3 are familiar with? 4 <b>A Correct.</b> 5 Q So here on November 20, 2017 it states, 6 "To whom it may concern, this will confirm that as 7 of today's date we have appointed Beecher Carlson 8 as our exclusive representative with respects the 9 following coverage, after the event insurance. 10 This appointment of Beecher Carlson rescinds all 11 previous appointments and the authority continued 12 herein shall remain in full force until canceled 13 in writing." Then authorizes Beecher Carlson "to 14 negotiate on our behalf directly with any 15 interested company with respect to a quote for our 16 coverage." And at the bottom you see is listed 17 Highland CDO Opportunity Master Fund with a number 18 of Highland entities and Strand advisors as 19 partners and members, do you see that? 20 <b>A I do.</b> 21 Q And do you know whose signature that is? 22 <b>A I do not.</b> 23 Q I know you have a big pile, but 24 Exhibit 116 I want to look at so we can look at 25 the signature to refresh what it is. These are</p>	<p style="text-align: right;">187</p> <p>1 Q Was Beecher aware or was this document 2 provided to Beecher? 3 <b>A Yes.</b> 4 Q And it was aware then beginning in 5 November of 2017 that it also represented the 6 insureds, is that right? 7 <b>A Yes.</b> 8 Q So explain that to me how Beecher is the 9 captive insurance manager could also be the sole 10 representative of the insureds. 11 <b>A This is for the broker brokerage deal on</b> 12 <b>the after the event insurance policy, so this is</b> 13 <b>separate, separate work that was performed here</b> 14 <b>from the captive management.</b> 15 Q So what was the broker deal? I am not 16 familiar with that. 17 <b>A So it is not uncommon for Beecher Carlson</b> 18 <b>to serve in a brokerage capacity as well as</b> 19 <b>captive management capacity with a number of our</b> 20 <b>clients. We have a brokerage arm that handles a</b> 21 <b>lot of policy issuance and that's separate from</b> 22 <b>the captive management.</b> 23 Q So here it was brokering the policy for 24 the insureds on the ATE policy? 25 <b>A That's what it would look like.</b></p>
<p style="text-align: right;">186</p> <p>1 the Sentinel Advisory Committee discussions of 2 Mr. Ellington and Mr. Dondero that we looked at 3 earlier, it is Exhibit 116. The front page would 4 be a CIMA e-mail actually. 5 <b>A Yes okay, yes.</b> 6 Q So looking at those Sentinel Advisory 7 Committee discussions, do you see Mr. Ellington's 8 signature there? 9 <b>A Yes, I do.</b> 10 Q And if you look at that signature and the 11 signature that is in Exhibit 132 they appear to be 12 the same, do they not? 13 MR. WELDON: Objection. 14 MR. BURT: I am not asking for expert 15 opinion. 16 THE WITNESS: In my opinion they look 17 similar, but I am not an expert on signatures. 18 BY MR. BURT: 19 Q Right. 20 Were you aware or -- did Beecher have any 21 knowledge that Mr. Ellington had signed such a 22 document at the time appointing Beecher as the 23 representative of the insureds? 24 <b>A I don't know. I didn't recognize the</b> 25 <b>signature, so.</b></p>	<p style="text-align: right;">188</p> <p>1 Q After -- beyond just brokering the policy 2 did it do anything else as the sole 3 representative, did Beecher Carlson do anything 4 else as the representative? 5 <b>A Once the policy is issued there is no more</b> 6 <b>additional work that would need to be done.</b> 7 Q So in terms of filing a claim on the 8 policy, things like that, that wouldn't have been 9 part of what Beecher Carlson was authorized to do 10 in this document, is that right? 11 <b>A The policy generally defines how the claim</b> 12 <b>should be filed.</b> 13 Q Right, I understand. 14 But was Beecher Carlson, was it part of 15 its responsibilities under this agreement or this 16 confirmation that it needed to, for example, 17 monitor the litigation and file a claim on the 18 policy if the event arose to file a claim. 19 <b>A I don't know.</b> 20 Q Who would know that at Beecher, who is 21 dealing with this particular aspect of the 22 Beecher's work? 23 <b>A I am not sure.</b> 24 Q You said there was a separate brokerage 25 arm at Beecher that handles these types of things?</p>

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<p>189</p> <p>1 <b>A There is, and I don't know if they were</b>                  2 <b>the ones that had put this together or who was</b>                  3 <b>involved with it.</b>                  4 Q So it is important for us to understand if                  5 Beecher did anything else beyond just brokering                  6 under this agreement and as the 30(b)(6) witness                  7 is that something that you could take a break and                  8 call somebody or get information on, would that be                  9 hard to find out?                  10 <b>A I don't know that there was any additional</b>                  11 <b>work that was done after the policy was issued.</b>                  12 Q No, I understand.                  13 And getting that confirmation is something                  14 that is important for us. Is that something that                  15 could easily be confirmed on a short break?                  16 <b>A I don't -- maybe. I don't know.</b>                  17 Q Maybe at our next break you can discuss                  18 with counsel, we would appreciate it, we don't                  19 want to hold it open for that, but if it's an easy                  20 answer that would be helpful.                  21 <b>A And you are looking just to confirm</b>                  22 <b>whether there was any additional work that was</b>                  23 <b>done?</b>                  24 MR. WELDON: Under the broker agreement.                  25 MR. BURT: Under this.</p>	<p>191</p> <p>1 coming back to that one?                  2 MR. BURT: To the extent we can get those                  3 answers, yes.                  4 THE WITNESS: All set with the other                  5 documents?                  6 MR. BURT: Keep the policy handy, that is                  7 a key one.                  8 (Document marked Exhibit 133 for                  9 identification.)                  10 BY MR. BURT:                  11 Q Handing you 133 Bates labeled BC                  12 SEN00000614525, which is the purchase agreement.                  13 Mr. Adamczak, are you familiar with this                  14 document?                  15 <b>A I am.</b>                  16 Q And what is your understanding of what it                  17 is?                  18 <b>A This was the document that controlled the</b>                  19 <b>assets that were transferred as premium under the</b>                  20 <b>ATE policy.</b>                  21 Q Looking first at the signature pages here,                  22 it's the third and fourth pages, you see that                  23 Mr. Dondero signed on behalf of all the Highland                  24 entities, is that right?                  25 <b>A That is correct.</b></p>
<p>190</p> <p>1 MR. WELDON: I understand where you are.                  2 MR. BURT: Perfect.                  3 BY MR. BURT:                  4 Q Okay, great.                  5 I was just going to ask on the broker                  6 agreement did J.P. or any of the other Highland                  7 employees did they present this as an opportunity                  8 or did they just say they want you to do this, how                  9 did this come to pass?                  10 <b>A I don't remember how that came up.</b>                  11 Q Maybe if you could add that to the list of                  12 how it was presented.                  13 MR. WELDON: I got it.                  14 BY MR. BURT:                  15 Q Do you know whether any conflicts can                  16 arise in this type of situation where Beecher on                  17 the one hand is doing the brokerage here and on                  18 the other hand is the captive insurance manager?                  19 <b>A I am not aware of any conflicts, and as I</b>                  20 <b>explained this is not uncommon to have the same</b>                  21 <b>entity represent them from a captive management</b>                  22 <b>standpoint and a brokerage standpoint.</b>                  23 Q Let's look next at the purchase agreement                  24 that accompanied the policy, that is Tab 30.                  25 MR. WELDON: Are you done with that one or</p>	<p>192</p> <p>1 Q And that would have been consistent with                  2 Beecher's understanding that at least he was a                  3 part owner and controller of these entities,                  4 correct?                  5 <b>A Correct.</b>                  6 Q Then looking at let's turn to Schedule A                  7 of the policy, now, we had looked at the                  8 Exhibit 131 where you had been provided by                  9 J.P. Sevilla a list of assets that was -- had come                  10 from Highland and you were unfamiliar with, do you                  11 recall that?                  12 <b>A Yes.</b>                  13 Q And now we are looking here at Schedule A,                  14 the actual assets that were included as part of                  15 the APA.                  16 What role did Beecher have in arriving at                  17 or determining which assets should appear on                  18 Schedule A?                  19 <b>A None.</b>                  20 Q Who made those decisions?                  21 MR. WELDON: Objection.                  22 BY MR. BURT:                  23 Q If you know.                  24 <b>A This was provided by J.P. as part of the</b>                  25 <b>assets that would be transferred in.</b></p>

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<p style="text-align: right;">193</p> <p>1 Q Do you know when he first provided that to 2 Beecher? 3 <b>A Sometime in -- sometime after the policy 4 was incepted, so after August 1.</b> 5 Q You have used that -- I want to make sure 6 I am understanding insurance terminology 7 correctly. You have used the term incepted for 8 the policy, does that just mean the beginning? 9 <b>A Yes.</b> 10 Q We are not talking about the movie or 11 anything. 12 <b>A No.</b> 13 Q So the beginning of the policy. So after 14 the policy is signed Beecher is provided the 15 Schedule A assets? 16 <b>A Correct.</b> 17 Q Do you recall whether the purchase 18 agreement was signed after the policy was 19 incepted? 20 <b>A I believe it was, but I don't fully 21 recall.</b> 22 Q Now, J.P. provided it. Did he provide it 23 in the context of -- 24 MR. WELDON: Just for the record, I mean, 25 the purchase agreement says August 7, 2017, the</p>	<p style="text-align: right;">195</p> <p>1 understand Mr. Sevilla's hats that he was wearing, 2 was he providing the Schedule A assets to Beecher 3 as working for the insureds on that side or just 4 J.P. would send us everything? 5 <b>A I don't know.</b> 6 Q So he was just the point of contact. 7 <b>A He was the point of contact.</b> 8 Q And whether it related to Highland or 9 whether it related to Sentinel J.P. was the point 10 of contact? 11 <b>A He was the point of contact.</b> 12 Q Would that be the same for Matt DiOrio, he 13 was the point of contact whether it related to 14 Highland or Sentinel? 15 <b>A Correct.</b> 16 Q So looking first at the assets listed 17 under Highland CDO Opportunity Master Fund, LP, we 18 see at the very bottom cash is listed in the 19 amount of 7.779 million. 20 Are you familiar with these other assets 21 that are listed? 22 <b>A I am.</b> 23 Q Now, I think you testified earlier that 24 some assets did not actually end up being 25 transferred, is that right, to Sentinel, they were</p>
<p style="text-align: right;">194</p> <p>1 policy was August 1. 2 MR. BURT: Right, that's a fair point. 3 The policy is August 1 and the purchase agreement 4 is dated August 7, 2017. 5 MR. WELDON: And I think there was 6 something that this has already been addressed, 7 that the payment was due by August 30th. 8 MR. BURT: Premium payment. That is in 9 the policy, that's right. 10 BY MR. BURT: 11 Q So my question is, so J.P. provided this 12 list to Beecher. Now, what I want to understand, 13 and see if you can help me, it seems like J.P. 14 wears a number of hats. We have talked about him 15 a lot today in the context of communications he 16 had on behalf of Sentinel, right, where he would 17 communicate to Beecher on Sentinel issues. And we 18 have seen him on a lot of e-mails to that extent 19 as well, is that right? 20 <b>A Yes. It's not uncommon for any one of our 21 captives for us to have only one contact that we 22 are dealing with at the sponsoring organization or 23 parent entity.</b> 24 Q No, and that's fine. 25 And my question is, again, just trying to</p>	<p style="text-align: right;">196</p> <p>1 intended to be but weren't transferred? 2 <b>A No. I said the assets were not registered 3 in Sentinel's name.</b> 4 Q Were they registered in someone else's 5 name? 6 <b>A Whoever they were registered in before. 7 It wasn't like they were registered in anyone 8 else's name -- the intention was that when the 9 assets were transferred in they would be put into 10 Sentinel's name. That to my knowledge never took 11 place. Whether somebody transferred into somebody 12 else's name, I am not aware of.</b> 13 Q But you are aware that some assets were 14 intended to go to Sentinel but they were never 15 registered in Sentinel's name? 16 <b>A All of the assets were intended to go to 17 Sentinel.</b> 18 Q I want to make sure I am not 19 misunderstanding, are you saying also that all of 20 the assets are not registered in Sentinel's name 21 or just some of them were not registered in 22 Sentinel's name? 23 <b>A Some of them were not registered in 24 Sentinel's name.</b> 25 Q Got it, thanks. I apologize if I was slow</p>



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<p style="text-align: right;">197</p> <p>1 on the uptake there.</p> <p>2 So let's just look at some of these</p> <p>3 assets.</p> <p>4 So the first asset here is Aberdeen LN FDG</p> <p>5 LTD PFD. Do you know if that was an asset that</p> <p>6 was registered in Sentinel's name?</p> <p>7 <b>A I don't believe it was.</b></p> <p>8 Q Do you know who owned it prior to</p> <p>9 Sentinel?</p> <p>10 <b>A According to the schedule Highland CDO</b></p> <p>11 <b>Opportunity Master Fund, LP.</b></p> <p>12 Q To the best of Beecher's knowledge if it</p> <p>13 wasn't registered in Sentinel's name Beecher's</p> <p>14 knowledge is it would still be a Highland CDO</p> <p>15 opportunity?</p> <p>16 <b>A That is correct.</b></p> <p>17 Q How about the next two Southforks,</p> <p>18 Southforks CLO Ltd PFD 144A and then the Southfork</p> <p>19 underneath that. Were those registered in</p> <p>20 Sentinel's name?</p> <p>21 <b>A I believe they were.</b></p> <p>22 Q Are we going through these asset by asset?</p> <p>23 <b>A Yes.</b></p> <p>24 Q This is actually a really important piece</p> <p>25 for UBS to understand where these assets are so,</p>	<p style="text-align: right;">199</p> <p>1 Q And --</p> <p>2 <b>A The CIBC investment custody account. So</b></p> <p>3 <b>anything that was in that custody account of the</b></p> <p>4 <b>assets that were transferred in that made their</b></p> <p>5 <b>way into Sentinel would be in that custody</b></p> <p>6 <b>account. They couldn't hold anything in that</b></p> <p>7 <b>custody account that was not in Sentinel's name.</b></p> <p>8 MR. BURT: Maybe can we go off the record</p> <p>9 for just a second?</p> <p>10 THE VIDEOGRAPHER: We are going off the</p> <p>11 record, the time is 2:44.</p> <p>12 (Recess taken.)</p> <p>13 THE VIDEOGRAPHER: We are going on the</p> <p>14 record, the time is 2:57.</p> <p>15 BY MR. BURT:</p> <p>16 Q So, Mr. Adamczak, I want to go back, I</p> <p>17 believe during the break you were able to run down</p> <p>18 some answers on Exhibit 132, which was the</p> <p>19 document appointing Beecher Carlson as the</p> <p>20 authorized representative of the insureds.</p> <p>21 So with respect to the services that were</p> <p>22 provided under the agreement, this authorization,</p> <p>23 what were you able to find?</p> <p>24 <b>A There were no additional services, it was</b></p> <p>25 <b>just the work that was initially done on the ATE</b></p>
<p style="text-align: right;">198</p> <p>1 yes, we do need to. And if there is some you</p> <p>2 don't know and need to check that's fine, we can</p> <p>3 take a break and have you check.</p> <p>4 MR. WELDON: Is there a list that's</p> <p>5 provided relative to what assets have been</p> <p>6 registered, is that what you are asking?</p> <p>7 MR. BURT: We want to understand which</p> <p>8 assets were registered at Sentinel and which</p> <p>9 assets were not registered in Sentinel's name.</p> <p>10 That is a really important piece for us.</p> <p>11 MR. WELDON: I understand the importance</p> <p>12 of it.</p> <p>13 My issue more is are you saying that you</p> <p>14 don't have a list in your document production that</p> <p>15 identifies the ones that were listed ultimately in</p> <p>16 the name of the --</p> <p>17 MR. BURT: Katie can correct me, but I</p> <p>18 don't think that was something that was produced,</p> <p>19 no.</p> <p>20 THE WITNESS: I am pretty sure it existed.</p> <p>21 BY MR. BURT:</p> <p>22 Q If that's a document that Beecher has --</p> <p>23 <b>A It was probably an Excel schedule and it</b></p> <p>24 <b>would also be identified by looking at what's held</b></p> <p>25 <b>in the custody account.</b></p>	<p style="text-align: right;">200</p> <p>1 <b>policy.</b></p> <p>2 Q So in brokering the ATE policy?</p> <p>3 <b>A Correct.</b></p> <p>4 Q That was it, nothing further.</p> <p>5 <b>A Correct.</b></p> <p>6 Q So the \$50,000 fee, was that a one-time</p> <p>7 payment to Beecher Carlson?</p> <p>8 <b>A One-time.</b></p> <p>9 Q For Beecher, just so I am clear, what did</p> <p>10 -- what does brokering the agreement mean?</p> <p>11 <b>A It's part of the process of pulling the</b></p> <p>12 <b>policy together, finalizing it, I guess. I am not</b></p> <p>13 <b>familiar with that side of the operations.</b></p> <p>14 Q I guess just lining up times here, the</p> <p>15 policies dated retroactive to August 1 as we see</p> <p>16 and this is dated November 20, 2017.</p> <p>17 <b>A Yes.</b></p> <p>18 Q So how does that line up, can you just</p> <p>19 explain that?</p> <p>20 <b>A I think there was a delay in filing this</b></p> <p>21 <b>document. I think it was something that came in</b></p> <p>22 <b>after the fact to complete the files.</b></p> <p>23 Q Did Beecher understand at the time the</p> <p>24 policy was being put together that it was</p> <p>25 brokering for the insureds?</p>

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<p style="text-align: right;">201</p> <p>1 <b>A Yes.</b></p> <p>2 Q And so you can't give me any details about</p> <p>3 the work that was -- that Beecher did as far as</p> <p>4 brokering for the insureds?</p> <p>5 <b>A I wasn't a part of that work so I don't</b></p> <p>6 <b>know how much or what specifically was done.</b></p> <p>7 Q Going back to -- we were looking at</p> <p>8 Schedule A, I want to ask -- we were going list by</p> <p>9 list, I want to ask you a few high-level questions</p> <p>10 just to confirm a few points.</p> <p>11 So the assets that were not registered in</p> <p>12 Sentinel's name to Beecher's knowledge remained in</p> <p>13 the accounts under the entity listed on Schedule</p> <p>14 A, so, for example, the Aberdeen in the first</p> <p>15 line, not registered in Sentinel's name, would</p> <p>16 have remained at the Highland CDO Opportunity</p> <p>17 Master Fund, LP account, is that right?</p> <p>18 <b>A I don't know, but that's my understanding.</b></p> <p>19 Q Do you know what bank Highland CDO</p> <p>20 Opportunity Master Fund, LP was using?</p> <p>21 <b>A I don't necessarily know that there is a</b></p> <p>22 <b>custody account that these investments would sit</b></p> <p>23 <b>in.</b></p> <p>24 Q Where would they be located?</p> <p>25 <b>A I don't know.</b></p>	<p style="text-align: right;">203</p> <p>1 <b>records, the interim financial statement records.</b></p> <p>2 Q So the interim financial statement records</p> <p>3 of Beecher would show which of these assets ended</p> <p>4 up at a Sentinel account at CIBC?</p> <p>5 <b>A Correct.</b></p> <p>6 Q And the CIBC account, we talked about the</p> <p>7 checking account. Would this be the other CIBC</p> <p>8 account?</p> <p>9 <b>A This is the investment custody account.</b></p> <p>10 Q All of the assets that ended up being</p> <p>11 registered to Sentinel went to that CIBC</p> <p>12 investment custody account?</p> <p>13 <b>A Correct.</b></p> <p>14 Q And so if we looked at that and we did not</p> <p>15 see one of the Schedule A assets on that account</p> <p>16 it would -- we can conclude that that was not</p> <p>17 successfully registered in Sentinel's name, is</p> <p>18 that right?</p> <p>19 MR. WELDON: Objection.</p> <p>20 THE WITNESS: Either it wasn't registered</p> <p>21 in Sentinel's name or it has been since disposed</p> <p>22 of either through bankruptcy proceedings or</p> <p>23 whatever liquidation or whatever would have</p> <p>24 happened with the asset.</p> <p>25</p>
<p style="text-align: right;">202</p> <p>1 Q Would Beecher have access to that</p> <p>2 information?</p> <p>3 <b>A No.</b></p> <p>4 MR. WELDON: Just so we are clear, you are</p> <p>5 talking about accounts where they are coming from?</p> <p>6 MR. BURT: Where they are coming from.</p> <p>7 MR. WELDON: We know where they went, they</p> <p>8 went with the account they were in.</p> <p>9 BY MR. BURT:</p> <p>10 Q If they were not sent over in Sentinel's</p> <p>11 names, the originating account, Beecher does not</p> <p>12 have access to that information?</p> <p>13 <b>A No.</b></p> <p>14 Q I believe that Beecher has financial</p> <p>15 statements for Sentinel that would show</p> <p>16 definitively which accounts or which of these</p> <p>17 assets were transferred and registered in</p> <p>18 Sentinel's name, is that right?</p> <p>19 <b>A We wanted to keep track of each investment</b></p> <p>20 <b>and in particular which ones needed to have the</b></p> <p>21 <b>re-registration done.</b></p> <p>22 Q And would that be reflected in the audited</p> <p>23 financial statements, for example?</p> <p>24 <b>A The audited financial statements, no. But</b></p> <p>25 <b>it would have been in our financial statement</b></p>	<p style="text-align: right;">204</p> <p>1 BY MR. BURT:</p> <p>2 Q Well, right. But I am talking just about</p> <p>3 the Sentinel record because Sentinel hasn't gone</p> <p>4 into bankruptcy or liquidation.</p> <p>5 <b>A I am talking about the investments, each</b></p> <p>6 <b>particular investment though.</b></p> <p>7 Q So it's possible that it could have been</p> <p>8 disposed of another way through bankruptcy of the</p> <p>9 investment vehicle or the CLO that it was in?</p> <p>10 <b>A Yes.</b></p> <p>11 Q Let's actually go to this. I actually do</p> <p>12 want to ask about that. Keep that Schedule A</p> <p>13 handy. I want to look at another financial</p> <p>14 statement that's in another exhibit.</p> <p>15 (Document marked Exhibit 134 for</p> <p>16 identification.)</p> <p>17 BY MR. BURT:</p> <p>18 Q Before we look at that, let me -- you can</p> <p>19 set that down for just a second.</p> <p>20 Does Sentinel receive distributions from</p> <p>21 assets that were not re-registered in Sentinel's</p> <p>22 name?</p> <p>23 <b>A Yes.</b></p> <p>24 Q How does Sentinel get those distributions?</p> <p>25 <b>A I am not 100% sure on the process, but it</b></p>

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<p style="text-align: right;">205</p> <p><b>1 involves a letter that the directors send to State</b></p> <p><b>2 Street or whoever the custodian was that was</b></p> <p><b>3 holding those assets or funds.</b></p> <p>4 Q And that letter says essentially send the</p> <p>5 distributions to Sentinel?</p> <p><b>6 A I believe, yes.</b></p> <p>7 Q Even though they are not registered in</p> <p>8 Sentinel's name?</p> <p><b>9 A Correct.</b></p> <p><b>10 If they were registered in Sentinel's name</b></p> <p><b>11 the funds would flow automatically.</b></p> <p>12 Q Do you know if they are first deposited</p> <p>13 into the account of, for example, Highland CDO</p> <p>14 Opportunity Fund?</p> <p><b>15 A I do not know.</b></p> <p>16 Q Do you know what the originating bank of</p> <p>17 those transfers is that transfers over?</p> <p><b>18 A I do not know.</b></p> <p>19 Q And so the director's -- again, I am just</p> <p>20 trying to understand, the directors contact State</p> <p>21 Street or another entity financial entity to tell</p> <p>22 them these distributions need to come to us?</p> <p><b>23 A I believe so.</b></p> <p>24 Q And are those distributions ongoing?</p> <p><b>25 A With respect to the CLO investments they</b></p>	<p style="text-align: right;">207</p> <p><b>1 with the trustee or wherever it is and Sentinel</b></p> <p><b>2 has to go out and grab that through this process.</b></p> <p>3 Q Of sending a letter?</p> <p><b>4 A Of sending a letter signed by somebody on</b></p> <p><b>5 behalf of Sentinel. I am not part of that</b></p> <p><b>6 process.</b></p> <p>7 Q Does Beecher receive copies of those</p> <p>8 letters?</p> <p><b>9 A I have seen copies of it in the past.</b></p> <p>10 Q And the new directors that were appointed</p> <p>11 in the June, 2021 timeframe are they continuing to</p> <p>12 do that, send those letters to give those</p> <p>13 distributions?</p> <p><b>14 A That has not been done since before Matt</b></p> <p><b>15 resigned.</b></p> <p>16 Q So to your knowledge -- Beecher's</p> <p>17 knowledge CLO distributions that were not</p> <p>18 registered in Sentinel's name Sentinel has not</p> <p>19 received distributions since Matt resigned?</p> <p><b>20 A That is correct.</b></p> <p>21 Q So all of that money is sitting with the</p> <p>22 CLO trustee or whomever?</p> <p><b>23 A Correct.</b></p> <p>24 Q And if we were to look at a list of the</p> <p>25 CLOs would Beecher know who the trustee was or</p>
<p style="text-align: right;">206</p> <p><b>1 will typically pay out a distribution quarterly.</b></p> <p>2 Q And when is the next distribution set to</p> <p>3 hit?</p> <p>4 MR. WELDON: You are talking about the</p> <p>5 ones outside or the ones inside Sentinel?</p> <p>6 MR. BURT: The ones that are not</p> <p>7 registered in Sentinel's name.</p> <p>8 MR. WELDON: Do you understand the</p> <p>9 question?</p> <p>10 THE WITNESS: I do.</p> <p>11 So if we are talking just the CLOs the</p> <p>12 next distribution would be May 1.</p> <p>13 BY MR. BURT:</p> <p>14 Q Now, regarding the CLOs in particular are</p> <p>15 there certain CLOs that were registered in</p> <p>16 Sentinel's name and others that were not?</p> <p><b>17 A That is true.</b></p> <p>18 Q But all of the CLOs will be distributing</p> <p>19 on May 1?</p> <p><b>20 A Typically the distributions occur on</b></p> <p><b>21 May 1.</b></p> <p>22 Q And so for those -- even for those that</p> <p>23 are not registered in Sentinel's name Sentinel</p> <p>24 will get a distribution on May 1?</p> <p><b>25 A It doesn't come to Sentinel, it sits out</b></p>	<p style="text-align: right;">208</p> <p>1 what account was used?</p> <p><b>2 A No.</b></p> <p>3 Q That is beyond Beecher's knowledge?</p> <p><b>4 A That is correct.</b></p> <p>5 Q Do you know who would know that?</p> <p><b>6 A I do not know.</b></p> <p>7 Q Would the directors know that?</p> <p><b>8 A They may.</b></p> <p>9 Q I may have some follow-up, we are checking</p> <p>10 with our team on some of that information to see</p> <p>11 if we have some of those financial documents, I</p> <p>12 may have follow-up on that, but let's look in the</p> <p>13 meantime at the exhibit that I gave you, 134.</p> <p>14 Now, this is -- at the top it appears that</p> <p>15 Gareth Pereira sends to Clayton Price and Casey</p> <p>16 McDonald a bunch of financial documents, and this</p> <p>17 takes place in June of 2021 I think around the</p> <p>18 time of those new directors coming on. Does that</p> <p>19 sound right?</p> <p><b>20 A Okay, sorry.</b></p> <p>21 Q No, that's fine.</p> <p><b>22 A What was the question?</b></p> <p>23 Q So the question was to confirm that these</p> <p>24 financial documents were provided to the new</p> <p>25 directors last June, 2021.</p>

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<p style="text-align: right;">209</p> <p><b>1 A Correct.</b></p> <p>2 Q And was that part of their onboarding</p> <p>3 process to help them come up to speed?</p> <p><b>4 A I believe so.</b></p> <p>5 Q If you look at the management discussion</p> <p>6 and analysis, it's Page 4, I believe, this is part</p> <p>7 of a packet you sent to Mr. DiOrio if you look at</p> <p>8 the previous page on December 10, 2020.</p> <p><b>9 A Yes.</b></p> <p>10 Q So in this management an analysis states</p> <p>11 that overall for the 11 months ending November 30,</p> <p>12 2020 Sentinel recognized net income of 169,000,</p> <p>13 11 months ended November 30, 2019 Sentinel</p> <p>14 recognized net income of 3.2 million. Capital and</p> <p>15 surplus November 30, 2020, 2019 was 118.7 million</p> <p>16 and 77.2 million respectively. The increase in</p> <p>17 surplus is a result of the SeaOne valuation that</p> <p>18 was recorded in the books in 2019, although pushed</p> <p>19 back to 2018 as an audit restatement. Do you see</p> <p>20 that?</p> <p><b>21 A I do.</b></p> <p>22 Q You are familiar with these financial</p> <p>23 statements, right?</p> <p><b>24 A Correct.</b></p> <p>25 Q This is really the core of what Beecher</p>	<p style="text-align: right;">211</p> <p><b>1 A Correct.</b></p> <p>2 Q Do you know who made the decision to pay</p> <p>3 that dividend?</p> <p><b>4 A The directors of Sentinel.</b></p> <p>5 Q Were there outside directors involved in</p> <p>6 that decision at the time?</p> <p><b>7 A All of the directors resolved to pay the</b></p> <p><b>8 dividend.</b></p> <p>9 Q Do you know why?</p> <p><b>10 A I don't know why.</b></p> <p>11 Q Then looking back at the balance sheet the</p> <p>12 investments fair market value go from 36 million</p> <p>13 to 84.5 million in November, 2020. Was that all a</p> <p>14 result of SeaOne valuation?</p> <p><b>15 A Correct.</b></p> <p>16 Q So SeaOne increased almost by 50 million</p> <p>17 in value?</p> <p><b>18 A That's correct.</b></p> <p>19 Q And who provided -- was that Valuation</p> <p>20 Resource Group or Research Group who did that?</p> <p><b>21 A Valuation Research Corp., yes.</b></p> <p>22 Q And did they do that valuation under</p> <p>23 Beecher's direction?</p> <p><b>24 A It was under the direction of the</b></p> <p><b>25 directors.</b></p>
<p style="text-align: right;">210</p> <p>1 does for Sentinel?</p> <p><b>2 A Correct.</b></p> <p>3 Q So looking at the balance sheet here and</p> <p>4 comparing 2019 to 2020, do you see why cash</p> <p>5 decreased by 7 million year over year?</p> <p><b>6 A There would have been a dividend payment</b></p> <p><b>7 of 6.4 million.</b></p> <p>8 Q And where do we see that in the financial</p> <p>9 statements?</p> <p><b>10 A I am seeing that on the cashflow Page 3 of</b></p> <p><b>11 the document.</b></p> <p>12 Q Got it.</p> <p>13 And that's listed under cashflow from</p> <p>14 financing activities dividend paid 6.4 million and</p> <p>15 it shows up as a negative on the statement of</p> <p>16 cashflows?</p> <p><b>17 A Correct.</b></p> <p>18 Q What was the nature of that dividend?</p> <p><b>19 A Dividend up to the parent company of</b></p> <p><b>20 Sentinel.</b></p> <p>21 Q Was it Mainspring and Montage that it was</p> <p>22 paid to on the org chart?</p> <p><b>23 A I believe so.</b></p> <p>24 Q Ultimately owned by Mr. Dondero and</p> <p>25 Ellington, correct?</p>	<p style="text-align: right;">212</p> <p>1 Q Do you know the basis of increasing the</p> <p>2 value so significantly in SeaOne over that year?</p> <p><b>3 A The investment had been carried at</b></p> <p><b>4 historical cost and the appreciation over that</b></p> <p><b>5 time resulted in the valuation. This was the</b></p> <p><b>6 first valuation that was done on it.</b></p> <p>7 Q Is it true that SeaOne is an ongoing</p> <p>8 concern with active business going and growing?</p> <p><b>9 A That's my understanding.</b></p> <p>10 Q Based on the valuation?</p> <p><b>11 A Yes.</b></p> <p>12 Q Once the dividend is paid does Beecher</p> <p>13 track what happens to that money at the next level</p> <p>14 after it gets up to the first level?</p> <p><b>15 A No.</b></p> <p>16 Q Under shareholders equity under retained</p> <p>17 earnings increases by about 50 million, is that</p> <p>18 also to account for the SeaOne valuation?</p> <p><b>19 A Yes.</b></p> <p>20 Q So the end -- looking at the statement of</p> <p>21 cashflows, the end of 2020 or November, 2020, cash</p> <p>22 on hand is \$27,076,000?</p> <p><b>23 A Correct.</b></p> <p>24 Q Do you know what the current state of cash</p> <p>25 is at Sentinel?</p>

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<p style="text-align: right;">213</p> <p>1 <b>A I want to say it is still around 30</b>                  2 <b>million.</b>                  3 Q If we look into the supplemental                  4 schedules, so just flip forward a few pages, and I                  5 want to look actually at Page 9 of that, you will                  6 have to flip the exhibit, it is investment holding                  7 statement of Sentinel Reinsurance. And this goes                  8 back, I think, to some of the questions we have                  9 about what does Sentinel actually hold.                  10 I have a number of questions about these                  11 investments, the first one being if you know when                  12 these were actually transferred to Sentinel and if                  13 they were registered in Sentinel's name. For                  14 example, on the first one, the Aberdeen LN Funding                  15 Ltd. PFD, do you know when that was transferred to                  16 Sentinel?                  17 <b>A There is a column referencing acquisition</b>                  18 <b>date, that would have been the date that Sentinel</b>                  19 <b>acquired those assets, so everything reflecting</b>                  20 <b>8/11/2017 was part of the ATE premium that was</b>                  21 <b>paid in.</b>                  22 Q Got it, okay.                  23 So the next three lines then are all -- it                  24 is a 2014 acquisition date, a 2013, and a 2014 for                  25 Eastland, Greyson and Greenbriar CLO interests, is</p>	<p style="text-align: right;">215</p> <p>1 <b>had from the beginning and when they were being</b>                  2 <b>registered into Sentinel's name two of the</b>                  3 <b>original share certificates were lost so were</b>                  4 <b>unable to be re-registered and somebody from</b>                  5 <b>Highland needed to assist with that process and it</b>                  6 <b>hasn't happened yet.</b>                  7 Q So I guess that was my next question.                  8 Would those -- did those transfers                  9 originate from Highland entities?                  10 <b>A I don't know where they came from.</b>                  11 Q But you said someone from Highland would                  12 have to re-register?                  13 <b>A Someone from Highland needed to help with</b>                  14 <b>the process because I believe they were</b>                  15 <b>investments that they were familiar with and would</b>                  16 <b>have the means to be able to obtain original</b>                  17 <b>certificates so that they could register them in</b>                  18 <b>Sentinel's name.</b>                  19 Q The information about where those -- the                  20 2013 and the three 2014 transfers where those                  21 originated, would Beecher have that information                  22 somewhere or is that outside Beecher's knowledge?                  23 <b>A I believe that is outside Beecher's</b>                  24 <b>knowledge.</b>                  25 Q If you could just confirm on a break the</p>
<p style="text-align: right;">214</p> <p>1 that right?                  2 <b>A Correct.</b>                  3 Q Were those successfully transferred and                  4 registered in Sentinel's name?                  5 <b>A Those are -- I believe two of those are in</b>                  6 <b>Sentinel's name and one is not.</b>                  7 Q Do you know which two are?                  8 <b>A I don't know. There is another one down</b>                  9 <b>below with a 1/7/2014 date. Two of those</b>                  10 <b>investments are in Sentinel's name and two of them</b>                  11 <b>are not.</b>                  12 Q Is that something that you could easily                  13 confirm on a break?                  14 <b>A What is it you need me to confirm?</b>                  15 Q Which ones are registered in Sentinel's                  16 names and which aren't.                  17 <b>A I can.</b>                  18 Q That would be great.                  19 The Valhalla CLO Limited at the bottom,                  20 was that registered to Sentinel successfully?                  21 <b>A I don't believe so.</b>                  22 Q Now, the pre-ATE transfers, the 2014s and                  23 the 20 -- the one 2013, do you know what the                  24 circumstances of those transfers were?                  25 <b>A Yes. Those were investments that Sentinel</b></p>	<p style="text-align: right;">216</p> <p>1 two that were registered and the two that were                  2 not.                  3 <b>A Yes.</b>                  4 Q That would be great.                  5 So the Aberdeen I think we confirmed was                  6 not registered in Sentinel's name, and then                  7 looking at the ATE transfers the next one is the                  8 Greenbriar CLO, again, 8/11/2017, was that                  9 successfully registered in Sentinel's name?                  10 <b>A I don't believe so.</b>                  11 Q How about the two Southforks?                  12 <b>A I believe those were.</b>                  13 Q Those were.                  14 And then the Stratford CLO -- no, sorry,                  15 strike that, that was 2014.                  16 Okay, those were the CLOs.                  17 Looking at the Governance Re limited                  18 promissory note, second from the bottom, does                  19 Beecher have any knowledge about whether and if                  20 that note can be paid on?                  21 <b>A It is our understanding that it can be</b>                  22 <b>paid.</b>                  23 Q Has yet to be paid on?                  24 <b>A It has not been paid off, but our</b>                  25 <b>understanding is that it is collectable.</b></p>

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<p style="text-align: right;">217</p> <p>1 Q You can set that document aside.                  2 Give me just one moment. This is a small                  3 exhibit here.                  4 (Document marked Exhibit 135 for                  5 identification.)                  6 BY MR. BURT:                  7 Q This is Exhibit 135 Bates BC                  8 SEN00000120230. This is just it appears,                  9 Mr. Adamczak, a back and forth that you had with                  10 Allison Borman at Crowe.                  11 <b>A Uh-huh.</b>                  12 Q Do you see that?                  13 <b>A Yes.</b>                  14 Q From June of 2018, so after the ATE. And                  15 the subject is the Sentinel 12/31 BRC valuation                  16 source docs. And Allison writes to you and                  17 Ms. Devins, "I just spoke with Lisa and she                  18 mentioned you'd discussed some of our open items,                  19 one of which I wanted to follow-up on. We do                  20 still need the source docs of information sent to                  21 BRC to value the CLOs as of 12/31."                  22 Let me stop there first of all. Who is                  23 Lisa?                  24 <b>A Lisa worked for the audit firm of</b>                  25 <b>Sentinel, Crowe.</b></p>	<p style="text-align: right;">219</p> <p>1 monthly reports, unless there was anything else                  2 submitted to VRC which we don't already have."                  3 You mentioned State Street before and I                  4 just want to get your testimony about what your                  5 understanding of State Street is.                  6 MR. WELDON: Object.                  7 You mean in reference to --                  8 MR. BURT: In reference to the role it was                  9 playing here with respect to the CLOs.                  10 THE WITNESS: I don't know if it is the                  11 same reference to State Street, but State Street,                  12 I believe, had some custodial relationship with                  13 the CLOs.                  14 BY MR. BURT:                  15 Q With all of them?                  16 <b>A I don't know.</b>                  17 Q You can set that aside.                  18 Now, the policy -- after the policy was                  19 enacted there were two endorsements to the policy                  20 that were made, is that right?                  21 <b>A That is correct.</b>                  22 Q What is your understanding of the reasons                  23 for the endorsements?                  24 <b>A The first was to adjust the premium to</b>                  25 <b>reflect the fair value of assets received.</b></p>
<p style="text-align: right;">218</p> <p>1 Q So she was a colleague of Allison's?                  2 <b>A Correct.</b>                  3 Q And this open item was to get the source                  4 docs that you all had sent to BRC as part of the                  5 CLO valuation, right?                  6 <b>A Correct.</b>                  7 Q Do you recall what source document she was                  8 referring to?                  9 <b>A There were some reports detailing the</b>                  10 <b>underlying loans that were part of the CLOs, so</b>                  11 <b>any details on outstanding balances, defaulted</b>                  12 <b>balances, anything that was maybe payment</b>                  13 <b>schedules, whatever they needed to support their</b>                  14 <b>valuation.</b>                  15 Q And when did VRC perform the valuation of                  16 the CLOs?                  17 <b>A After December 31, 2017, that was for the</b>                  18 <b>12/31 valuations.</b>                  19 Q Do you recall when that valuation came in,                  20 was it springtime, 2018?                  21 <b>A It was sometime between spring to -- yes,</b>                  22 <b>sometime in the spring.</b>                  23 Q And she then says in the next line, "When                  24 we spoke yesterday I think that the only support                  25 pieces needed for this were the State Street 12/31</p>	<p style="text-align: right;">220</p> <p>1 <b>And the second was to adjust the limits in</b>                  2 <b>premium to segregate the risk mitigation fee that</b>                  3 <b>was funded, pre-funded.</b>                  4 Q Why was it necessary to adjust the                  5 premium?                  6 <b>A For the fair value of the assets?</b>                  7 Q Right. Endorsement number one.                  8 <b>A That was a suggestion by the auditors.</b>                  9 Q Did they provide a rationale for that                  10 suggestion?                  11 <b>A They indicated that without adjusting the</b>                  12 <b>premium to match it would require additional</b>                  13 <b>disclosures in the audited financial statements.</b>                  14 Q And was that a problem to provide                  15 additional disclosures?                  16 <b>A It was going to be time consuming and take</b>                  17 <b>away from the content of the financial statements.</b>                  18 Q So the auditor had a suggestion to do                  19 that. Did they provide that suggestion to you?                  20 <b>A They provided it to me. We had a</b>                  21 <b>discussion with the auditors and the directors and</b>                  22 <b>it was ultimately decided to amend the policy to</b>                  23 <b>reflect the actual fair value of the assets</b>                  24 <b>received.</b>                  25 Q Which directors were involved in that?</p>

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<p style="text-align: right;">221</p> <p><b>1 A This was the two independent directors.</b></p> <p><b>2 This is prior to Matt DiOrio.</b></p> <p>3 Q Is this something that you have done</p> <p>4 before on other policies, change the premium to</p> <p>5 reflect assets transferred?</p> <p><b>6 A This is the first situation like this that</b></p> <p><b>7 we have seen where there were assets that were</b></p> <p><b>8 taken in as opposed to cash.</b></p> <p>9 Q And have you ever seen anything like it</p> <p>10 since?</p> <p><b>11 A I have not.</b></p> <p>12 Q I actually -- we have been talking about</p> <p>13 all sorts of investment vehicles. Was it</p> <p>14 difficult to account for these and keep track of</p> <p>15 them and figure out what best to do for accounting</p> <p>16 for them and how they affected everything?</p> <p><b>17 A That is why we chose to hire the</b></p> <p><b>18 independent valuation consultants to help</b></p> <p><b>19 determine and value.</b></p> <p>20 (Document marked Exhibit 136 for</p> <p>21 identification.)</p> <p>22 BY MR. BURT:</p> <p>23 Q We only have one copy of the cover sheet</p> <p>24 that produced as native, this is the same</p> <p>25 document. That will be our official copy.</p>	<p style="text-align: right;">223</p> <p>1 recall this sheet.</p> <p><b>2 A Okay.</b></p> <p>3 Q Do you recall this sheet?</p> <p><b>4 A I don't.</b></p> <p>5 Q Do you have any reason to dispute you did</p> <p>6 not create it?</p> <p><b>7 A No.</b></p> <p>8 Q Looking at -- so it appears here listed as</p> <p>9 a number of Beecher clients and the reviewer and</p> <p>10 responsibility with various information, due</p> <p>11 dates, and then comments on the last column.</p> <p><b>12 A Sure.</b></p> <p>13 Q Right?</p> <p>14 So looking at Sentinel Reinsurance Limited</p> <p>15 the reviewer is listed as you. Do you know what</p> <p>16 reviewer means in this context?</p> <p><b>17 A The person responsible for reviewing the</b></p> <p><b>18 financial statements.</b></p> <p>19 Q And then responsibilities listed is Alli?</p> <p><b>20 A That would be the person preparing</b></p> <p><b>21 financial statements.</b></p> <p>22 Q And in the comments to Sentinel it states,</p> <p>23 "Can't really do financials, lots of crazy</p> <p>24 investments and special project, tons of follow-up</p> <p>25 and when they need something it's needed quickly."</p>
<p style="text-align: right;">222</p> <p>1 Go ahead and look at it, please.</p> <p>2 MR. WELDON: Do you have it?</p> <p>3 MR. BURT: I have it.</p> <p>4 BY MR. BURT:</p> <p>5 Q Go ahead, take your time and take a look</p> <p>6 at it.</p> <p>7 Showing you Exhibit 136, there should be a</p> <p>8 sheet that shows an Excel sheet and then some</p> <p>9 metadata off to the side about when it was created</p> <p>10 and then there should be a clean copy of the Excel</p> <p>11 sheet which is clearer. Is that included there?</p> <p><b>12 A This?</b></p> <p>13 Q Yes.</p> <p>14 That's the sheet that has on the right</p> <p>15 side that's from the document metadata that shows</p> <p>16 the creator, the author, which is listed as you,</p> <p>17 and then the date, the file date 12/5/2017, and a</p> <p>18 time as well, do you see that?</p> <p><b>19 A Sure.</b></p> <p>20 Q And then the Excel sheet is just a clean</p> <p>21 copy of what is -- so it is easier to read. But</p> <p>22 it is the same sheet.</p> <p>23 So this appears to be based on the</p> <p>24 metadata a sheet that you created on December 5,</p> <p>25 2017. Take a look at that and let me know if you</p>	<p style="text-align: right;">224</p> <p>1 Do you recall that at the time?</p> <p><b>2 A That sounds like something I would put,</b></p> <p><b>3 yes.</b></p> <p>4 Q And why would you have put that regarding</p> <p>5 Sentinel's investments?</p> <p><b>6 A At the time this is prior to having any of</b></p> <p><b>7 the valuations so we were still figuring out how</b></p> <p><b>8 to handle those investments.</b></p> <p>9 Q And you called them crazy investments.</p> <p>10 Were they new types of investments?</p> <p>11 MR. WELDON: Objection.</p> <p>12 THE WITNESS: Out of the traditional</p> <p>13 investment portfolios of our captives.</p> <p>14 BY MR. BURT:</p> <p>15 Q Are all of these listed here are they</p> <p>16 captive insurance companies?</p> <p><b>17 A I believe so.</b></p> <p>18 Q You had one other Caymans entity, BHC-LTC</p> <p>19 Insurance Limited, and it's -- you state there it</p> <p>20 is a standard normal account. So that was just a</p> <p>21 straightforward one?</p> <p><b>22 A Correct.</b></p> <p>23 Q No real comparison to what Sentinel is</p> <p>24 doing?</p> <p><b>25 A Correct.</b></p>

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<p style="text-align: right;">225</p> <p>1 Q When the valuations took place did that</p> <p>2 help bring things somewhat in order?</p> <p>3 <b>A Yes.</b></p> <p>4 Q As far as putting the financials together?</p> <p>5 <b>A Yes.</b></p> <p>6 Q Valuation Research Group, Corp., are they</p> <p>7 completely independent from Sentinel and Highland?</p> <p>8 <b>A Yes.</b></p> <p>9 Q And is it correct that Beecher hired them?</p> <p>10 MR. WELDON: Objection.</p> <p>11 THE WITNESS: Sentinel hired them.</p> <p>12 BY MR. BURT:</p> <p>13 Q Sentinel hired them on Beecher's</p> <p>14 recommendation?</p> <p>15 MR. WELDON: Objection.</p> <p>16 THE WITNESS: Correct.</p> <p>17 (Document marked Exhibit 137 for</p> <p>18 identification.)</p> <p>19 BY MR. BURT:</p> <p>20 Q Going back to the endorsements, and we can</p> <p>21 mark this as our next exhibit, showing you</p> <p>22 Exhibit 137 Bates labeled BC SEN000707455, if you</p> <p>23 are ready, Mr. Adamczak, I can direct you to the</p> <p>24 e-mail.</p> <p>25 <b>A Sure.</b></p>	<p style="text-align: right;">227</p> <p>1 recognized. What is the gain that you are</p> <p>2 referring to?</p> <p>3 <b>A I believe on the initial recording of the</b></p> <p>4 <b>policy the premium was assumed to be the stated</b></p> <p>5 <b>25 million so that's what we recorded as premium</b></p> <p>6 <b>collected, and should the investments come in</b></p> <p>7 <b>lower we would have had a loss, should they come</b></p> <p>8 <b>in higher we would have had a gain, so that was</b></p> <p>9 <b>just the recording of the fair value of the</b></p> <p>10 <b>assets.</b></p> <p>11 Q Got it, okay.</p> <p>12 In the balance sheet that shows up as an</p> <p>13 asset.</p> <p>14 Let's say that 25 million of cash had been</p> <p>15 paid for the premium and it was a \$25 million</p> <p>16 policy and it was paid for in cash, there would be</p> <p>17 no need to adjust later on the accounting for that</p> <p>18 premium, right?</p> <p>19 <b>A Correct.</b></p> <p>20 Q So the need to adjust in the financial</p> <p>21 statements comes from the fact that a bunch of</p> <p>22 securities had been transferred of unknown value?</p> <p>23 <b>A Correct.</b></p> <p>24 Q Was there a way to account for them other</p> <p>25 than as premium as just somehow another gain to</p>
<p style="text-align: right;">226</p> <p>1 Q It is the first-in-time e-mail from you</p> <p>2 actually, and I want to just drill down on this,</p> <p>3 the reasons for Endorsement No. 1. So you write</p> <p>4 to J.P. and Matt, cc'ing Alli Devins on June 5,</p> <p>5 2018, "I just spoke with Lisa, senior manager at</p> <p>6 Crowe, regarding the Sentinel audit and the one</p> <p>7 particular area that is causing them issues, it</p> <p>8 relates to the gain that we have recognized on the</p> <p>9 transfer of securities into Sentinel as premium."</p> <p>10 So I want to stop there and really like</p> <p>11 get the benefit of your knowledge about how this</p> <p>12 all works.</p> <p>13 So when those securities are transferred</p> <p>14 in to Sentinel how are they accounted for?</p> <p>15 <b>A We had VRC prepare valuations on each of</b></p> <p>16 <b>the securities that they could and those</b></p> <p>17 <b>valuations were used in the financial statements.</b></p> <p>18 Q And were they listed as assets then?</p> <p>19 <b>A They were listed as assets.</b></p> <p>20 Q Do you know when those VRC valuations were</p> <p>21 done?</p> <p>22 <b>A They were -- they would have been done</b></p> <p>23 <b>sometime at or around year-end and after year-end</b></p> <p>24 <b>for the 12/31 valuations.</b></p> <p>25 Q And you mention a gain that had been</p>	<p style="text-align: right;">228</p> <p>1 Sentinel?</p> <p>2 <b>A That was how we initially recorded them</b></p> <p>3 <b>and it was at the suggestion of the auditors that</b></p> <p>4 <b>be reflected as premium.</b></p> <p>5 Q And where did you originally record them,</p> <p>6 where in the financial statements?</p> <p>7 <b>A As an investment gain.</b></p> <p>8 Q Got it, okay. All right.</p> <p>9 So going back to this e-mail, you then</p> <p>10 state, "The value of securities we have</p> <p>11 transferred in amounted to just over 40 million as</p> <p>12 valued by VRC on CLOs and other sources." So that</p> <p>13 appears that VRC had said, okay, these investments</p> <p>14 are worth \$40 million, around there, is that</p> <p>15 right?</p> <p>16 <b>A At the time, that's correct.</b></p> <p>17 Q And then you state, "The problem is that</p> <p>18 the premium is only 25 million creating a gain on</p> <p>19 the transaction."</p> <p>20 You have used gain twice and I guess I</p> <p>21 want to understand what you meant by that. So any</p> <p>22 payment of premium would be a gain, wouldn't it,</p> <p>23 like that 25 million in cash to pay a 25 million</p> <p>24 premium, that would be a gain to the insurer that</p> <p>25 would be listed as a new asset, a cash asset?</p>



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229	<p>1 <b>A Not true.</b></p> <p>2 Q It is not, okay. How is that wrong?</p> <p>3 <b>A So there is -- with the recording of a</b></p> <p>4 <b>premium on a policy you are also going to have an</b></p> <p>5 <b>offsetting loss to go along with it, and that loss</b></p> <p>6 <b>is reflective in how the actuarial analysis plays</b></p> <p>7 <b>out.</b></p> <p>8 Q So the insurance company on its financials</p> <p>9 records a gain in the payment in and a loss for</p> <p>10 the risk that's been taken on?</p> <p>11 <b>A Correct.</b></p> <p>12 Q So it's pre-booking the risk, in other</p> <p>13 words, for the potential loss?</p> <p>14 <b>A Yes.</b></p> <p>15 Q Did that 40 million valuation was that</p> <p>16 just the CLOs and other sources or did it include</p> <p>17 the cash that was also transferred in?</p> <p>18 <b>A The 40 million would have reflected at</b></p> <p>19 <b>that time the net assets that were received.</b></p> <p>20 Q Inclusive of cash?</p> <p>21 <b>A Inclusive of cash.</b></p> <p>22 Q So the gain that you are referring to</p> <p>23 here, the problem is that the premium was only</p> <p>24 25 million creating a gain. You are referring to</p> <p>25 there would have been no offset for that, like</p>	231	<p>1 both for Highland and for --</p> <p>2 MR. WELDON: Objection.</p> <p>3 THE WITNESS: I can't say.</p> <p>4 BY MR. BURT:</p> <p>5 Q You can't say.</p> <p>6 So sitting here now -- strike that.</p> <p>7 You then say, "Essentially Sentinel has</p> <p>8 been overpaid by approximately 15 million.</p> <p>9 Although there doesn't appear to be anything in</p> <p>10 GAAP preventing the recording of the gain it does</p> <p>11 create a significant amount of question as well as</p> <p>12 a ton of additional disclosures in the audit</p> <p>13 report."</p> <p>14 I get the point that you made that there</p> <p>15 is a bunch of work that would have had to have</p> <p>16 been done, but nothing from -- you say here</p> <p>17 nothing from GAAP or accounting principles would</p> <p>18 preclude recording that as an investment gain, the</p> <p>19 delta between the premium and the valuation,</p> <p>20 right?</p> <p>21 <b>A Whether it was recorded as a gain or</b></p> <p>22 <b>additional premium wouldn't have changed the fact</b></p> <p>23 <b>that there wasn't going to be premium going back</b></p> <p>24 <b>to the insureds.</b></p> <p>25 Q Is that the dispositive point for why you</p>
230	<p>1 there would have been for just the 25 million</p> <p>2 cash?</p> <p>3 <b>A We were talking about an investment gain,</b></p> <p>4 <b>we were talking about premium at that time, so.</b></p> <p>5 Q And then you say because there is no</p> <p>6 return of overpayment of premium it gives rise to</p> <p>7 the question is this an arm's length transaction,</p> <p>8 what did you mean by that?</p> <p>9 <b>A So the policy although stated that the</b></p> <p>10 <b>premium was 25 million the intention with the</b></p> <p>11 <b>transaction since there was no -- there wasn't</b></p> <p>12 <b>sufficient cash to be able to pay the premium all</b></p> <p>13 <b>of those assets were to go into Sentinel.</b></p> <p>14 <b>Should there be an appreciation in value</b></p> <p>15 <b>or a found improvement in the value of the assets</b></p> <p>16 <b>received there would be no return of premium above</b></p> <p>17 <b>the 25 million to the insureds.</b></p> <p>18 Q But isn't the reality that really wasn't</p> <p>19 an arm's length transaction, right, you had</p> <p>20 J.P. Sevilla organizing on both sides?</p> <p>21 MR. WELDON: Objection.</p> <p>22 THE WITNESS: I don't know.</p> <p>23 BY MR. BURT:</p> <p>24 Q But that's the fact, right, you have</p> <p>25 testified about it earlier today, J.P.'s role in</p>	232	<p>1 felt like it needed to be reported as premium?</p> <p>2 <b>A We had the discussion with the auditors</b></p> <p>3 <b>and then with the directors and the directors</b></p> <p>4 <b>chose to have the policy amended.</b></p> <p>5 Q You state in the next paragraph,</p> <p>6 "Alternatively, if we can adjust the premium to</p> <p>7 40 million it would resolve the issue on there,"</p> <p>8 so that appears to be the suggestion the auditors</p> <p>9 made that was adopted?</p> <p>10 <b>A Correct.</b></p> <p>11 Q Mr. Sevilla asks, "How much cash will</p> <p>12 Sentinel have to hold per CIMA if the premium is</p> <p>13 40 million assuming the term is two years."</p> <p>14 Is the term that he's referring to is that</p> <p>15 the term over which the risk is accounted for?</p> <p>16 <b>A Correct.</b></p> <p>17 Q And you respond, "J.P., cash is still fine</p> <p>18 under the proposed option, Sentinel's maintained</p> <p>19 cash is required" -- I think you meant to be at</p> <p>20 least -- "at least be equal to 100% of reserves</p> <p>21 which are not affected by this option."</p> <p>22 Stopping there, what are the reserves that</p> <p>23 you are referring to?</p> <p>24 <b>A That would be the loss reserves per the</b></p> <p>25 <b>actuarial analysis.</b></p>

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<p style="text-align: right;">233</p> <p>1 Q And what does CIMA require specifically?</p> <p>2 A <b>It's not necessarily a CIMA requirement,</b></p> <p>3 <b>but it was a requirement per the investment policy</b></p> <p>4 <b>that Sentinel had sought approval from CIMA. The</b></p> <p>5 <b>investment policy stated that at any time cash</b></p> <p>6 <b>reserves would be held at least equal to the loss</b></p> <p>7 <b>reserves.</b></p> <p>8 Q And the loss reserves were determined how?</p> <p>9 A <b>Actuarially as I stated previously.</b></p> <p>10 Q Was that Jason Stubbs who was determining</p> <p>11 that?</p> <p>12 A <b>That's correct.</b></p> <p>13 Q Was that reflected in his actuarial</p> <p>14 analysis that we looked at earlier?</p> <p>15 A <b>That was the pricing study.</b></p> <p>16 Q So he performed separate work to determine</p> <p>17 the amount of loss reserves that should be kept?</p> <p>18 A <b>Correct. I believe I said that earlier as</b></p> <p>19 <b>well.</b></p> <p>20 Q Okay. Thank you for clarifying.</p> <p>21 Then you state, "Additionally, CIMA's</p> <p>22 surplus requirements are that Sentinel must</p> <p>23 maintain surplus in excess of 125% of the greater</p> <p>24 of, one, minimum capital requirements, 200K; or,</p> <p>25 two, prescribe capital requirements 15% of earned</p>	<p style="text-align: right;">235</p> <p>1 A <b>So at the time that the policy was written</b></p> <p>2 <b>and we were working on accounting for it we had</b></p> <p>3 <b>discussions with J.P. and Isaac regarding the</b></p> <p>4 <b>expected -- what was the term -- the expected risk</b></p> <p>5 <b>period, and it was determined based on the</b></p> <p>6 <b>schedule that was estimated that it would be a</b></p> <p>7 <b>two-year period so the premium was being earned</b></p> <p>8 <b>over that two-year period. And this was</b></p> <p>9 <b>indicating if there was a delay in that should we</b></p> <p>10 <b>extend the policy period and I said that, no, that</b></p> <p>11 <b>wasn't appropriate to do that.</b></p> <p>12 Q And you write here in the next line, "This</p> <p>13 would cause more concern with whether it is an</p> <p>14 arm's length transaction." What did you mean that</p> <p>15 time?</p> <p>16 A <b>That if there was manipulation of the</b></p> <p>17 <b>policy term to extend the risk period that it</b></p> <p>18 <b>could cause concerns of whether it being an arm's</b></p> <p>19 <b>length transaction.</b></p> <p>20 Q At like the CIMA level?</p> <p>21 A <b>At the CIMA level, yes.</b></p> <p>22 Q If you go to the first page here, the</p> <p>23 question is asked by J.P. whether the insureds</p> <p>24 need to sign on the amendment or could it -- I</p> <p>25 think he is referring to the endorsement or could</p>
<p style="text-align: right;">234</p> <p>1 premium. Because earned premium would increase</p> <p>2 there would be a great minimum surplus under this</p> <p>3 option."</p> <p>4 So help me understand what you are saying</p> <p>5 here.</p> <p>6 A <b>CIMA requirements state that capital has</b></p> <p>7 <b>to be maintained at a certain level for each</b></p> <p>8 <b>captive, depending on the class of insurance</b></p> <p>9 <b>licensee.</b></p> <p>10 Q And you state at 12/31/17, "This would</p> <p>11 only increase the surplus requirement by about</p> <p>12 600K, not a concern for Sentinel as the surplus</p> <p>13 would be about 32 million or 30 million in excess</p> <p>14 of the requirement." Is that right?</p> <p>15 A <b>Correct.</b></p> <p>16 Q Looking at your e-mail on the next page,</p> <p>17 June 6, 2018, you respond to J.P. that the</p> <p>18 auditors are comfortable with this and then say,</p> <p>19 "So originally at the time the ATE policy was</p> <p>20 written the trial was to be scheduled in mid 2018</p> <p>21 with everything wrapping up including appeal in</p> <p>22 2019. This fits into the 24-month policy term.</p> <p>23 Now if the projection is to go through end of</p> <p>24 2019/early 2020 I don't think we can change policy</p> <p>25 term." Why was that?</p>	<p style="text-align: right;">236</p> <p>1 it be more of an internal memo, and you reply on</p> <p>2 June 6, "Based on the fact that they signed the</p> <p>3 original policy I would say the insured should</p> <p>4 sign the endorsement. You could run that question</p> <p>5 by legal to see what they say, but I suspect it</p> <p>6 would be the same as my feeling."</p> <p>7 So we know that -- we have talked about</p> <p>8 Beecher brokering for the insureds as part of the</p> <p>9 ATE. Was Beecher brokering as part of the</p> <p>10 endorsement as well for the insureds?</p> <p>11 MR. WELDON: Objection.</p> <p>12 THE WITNESS: I don't believe so, but I</p> <p>13 don't know.</p> <p>14 BY MR. BURT:</p> <p>15 Q Is that something that you could find out</p> <p>16 quickly like you did with the other ones, just</p> <p>17 whether Beecher was representing the insureds on</p> <p>18 the endorsement as well as the broker?</p> <p>19 A <b>I can ask, but I don't know that it will</b></p> <p>20 <b>matter.</b></p> <p>21 Q Well, if you could ask that would be</p> <p>22 great, yes.</p> <p>23 A <b>Okay.</b></p> <p>24 Q So let's go to the endorsement. Let's go</p> <p>25 to the end.</p>

<p style="text-align: right;">237</p> <p>1 (Document marked Exhibit 138 for 2 identification.) 3 BY MR. BURT: 4 Q So handing you what's been marked as 5 Exhibit 138, Bates MD_00000010, it's towards the 6 very end, you will find the two endorsements 7 there, Endorsements 1 and 2. 8 So first of all, do you know when 9 Endorsement 1 actually was signed? 10 <b>A I think it was signed in June, 2018.</b> 11 Q Around the time of your e-mails -- 12 <b>A Yes.</b> 13 Q -- that we just looked at? 14 <b>A Yes.</b> 15 Q So Endorsement 1, it states that the 16 premium is stated in the schedule as adjusted to 17 \$68,362,333.62 to include the total fair value of 18 the received assets consists of cash of 11 million 19 and miscellaneous receivables of \$1,753,000 and an 20 investment portfolio of \$55,525,000 as measured at 21 fair value on the date of the transfer. 22 So in the e-mails we had just looked at we 23 had seen a 40 million all-in figure. How did we 24 go from that figure to the 68 million that's in 25 Endorsement 1?</p>	<p style="text-align: right;">239</p> <p>1 the valuation on multi-strat? 2 <b>A No.</b> 3 Q How did that go, how is that valuation 4 performed? 5 <b>A That fund is audited and carries a net 6 asset value so it is easily determined.</b> 7 Q Whatever portion of ownership interest 8 Sentinel has, is that portion of the assets of the 9 fund? 10 <b>A Yes.</b> 11 MS. REPORTER: What are you saying, 12 valuation on the multi-strat? 13 MR. BURT: He said multi-strategy. We 14 sometimes shorten to multi-strat, S-T-R-A-T. 15 BY MR. BURT: 16 Q Do you refer to it as multi-strat? 17 <b>A Multi-strat, yes.</b> 18 Q Did anyone at the insureds agree with the 19 policy premium could increase by three times 20 without increasing the coverage amount? 21 <b>A I am not aware if that was presented to 22 the insureds.</b> 23 Q Because the coverage amount stayed the 24 same, the 100 million -- 25 <b>A Correct.</b></p>
<p style="text-align: right;">238</p> <p>1 <b>A I believe there was another investment 2 that we were unaware of what it represented and 3 were able to get more information related to the 4 fair value of that, which bumped it up from 5 40 million to the 68 million.</b> 6 Q So that investment alone was worth 7 28 million? 8 <b>A Yes.</b> 9 Q What was that investment? 10 <b>A It was the Highland Multi-Strategy Credit 11 Fund.</b> 12 Q What form was that investment, was that a 13 CLO, was that a promissory note? 14 <b>A That is a limited partnership that 15 Highland managed.</b> 16 Q And Sentinel obtained the interest in? 17 <b>A Correct.</b> 18 Q So when you wrote that e-mail about the 19 40 million -- 20 <b>A That was prior to.</b> 21 Q Prior to that, neither Beecher nor the 22 auditor fully understood or was able to value that 23 multi-strat interest? 24 <b>A Correct.</b> 25 Q Did the valuation company did they perform</p>	<p style="text-align: right;">240</p> <p>1 Q -- in Endorsement 1. 2 <b>A But at the time of the inception of the 3 policy there was a risk that the assets received 4 would increase but there was also a risk that 5 those assets would decrease.</b> 6 Q And what's the significance of that, the 7 risk on both sides? 8 <b>A It's a risk that they were -- that 9 Sentinel was taking when they accepted a basket of 10 unmarketable securities as premium --</b> 11 Q Okay. 12 <b>A -- with only 11 million being in cash.</b> 13 Q Are you mentioning that to make the point 14 that there was no problem with not increasing the 15 coverage amount by a comparative amount with the 16 increase in the premium? 17 <b>A The understanding was that the premium -- 18 sorry, the investments could be worth 19 significantly more than 25 million or they could 20 be significantly less than 25 million.</b> 21 Q But the coverage would be 100,000,000 22 Either Way? 23 <b>A Correct.</b> 24 Q And who was that understanding shared by? 25 <b>A That was based on discussions with J.P.</b></p>

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<p style="text-align: right;">241</p> <p>1 Q Do you know how CIMA -- when CIMA learned</p> <p>2 of Endorsement 1 how CIMA reacted to it?</p> <p>3 <b>A I don't recall how their reaction was.</b></p> <p>4 Q Okay.</p> <p>5 In your pile, the CIMA, the big thing of</p> <p>6 CIMA reports, it is Exhibit 126, so I want to look</p> <p>7 at the page, it is part of the AML report towards</p> <p>8 the back, it ends in Bates 78819, do you see there</p> <p>9 there is AML findings and then the first finding</p> <p>10 is 5.2.1.1?</p> <p>11 <b>A Yes.</b></p> <p>12 Q So the second full paragraph under that</p> <p>13 finding begins with the U.S. dollar 68.3 million,</p> <p>14 do you see where I am?</p> <p>15 <b>A Yes.</b></p> <p>16 Q So it states there, "The U.S. 68.3 million</p> <p>17 stemming from the transaction described above</p> <p>18 increased the licensee's investment portfolio from</p> <p>19 U.S. 12 million as of December 31, 2016, to U.S.</p> <p>20 86 million as of -- as at December 31, 2017.</p> <p>21 Included in the U.S. 86 million is approximately</p> <p>22 U.S. 37 million being funds invested in Highland</p> <p>23 Multi-Strategy Credit Fund Limited," which is what</p> <p>24 you mentioned?</p> <p>25 <b>A Correct.</b></p>	<p style="text-align: right;">243</p> <p>1 premium. The above matters cast significant doubt</p> <p>2 on the economic substance and business purpose of</p> <p>3 the transactions relating to the ATE coverage. Do</p> <p>4 you recall receiving that from CIMA?</p> <p>5 <b>A I do.</b></p> <p>6 Q And what was Beecher's reaction to that?</p> <p>7 <b>A Sorry, what was the question now?</b></p> <p>8 Q My question is what was Beecher's reaction</p> <p>9 when informed by CIMA that there was significant</p> <p>10 doubt on the economic substance and business</p> <p>11 purposes of the transaction relating to the ATE</p> <p>12 coverage?</p> <p>13 <b>A Beecher discussed with the directors and</b></p> <p>14 <b>formulated the response here under management's</b></p> <p>15 <b>comments to explain the process as far as how the</b></p> <p>16 <b>premium was determined and the assets coming in.</b></p> <p>17 Q And did you help draft that?</p> <p>18 <b>A I have reviewed and helped edit the</b></p> <p>19 <b>document.</b></p> <p>20 Q Do you know who was the primary drafter?</p> <p>21 <b>A I think it was a combination of the</b></p> <p>22 <b>directors and Beecher.</b></p> <p>23 Q Which directors in particular?</p> <p>24 <b>A All of them.</b></p> <p>25 Q Do you recall working with Matt DiOrio and</p>
<p style="text-align: right;">242</p> <p>1 Q "A hedge fund affiliated to Highland</p> <p>2 Capital Management, LP."</p> <p>3 "The U.S. 37 million is part of the</p> <p>4 U.S. 55.5 million transferred to the licensee in</p> <p>5 part fulfillment of the premium payment for the</p> <p>6 ATE cover. The audit opinion on the financial</p> <p>7 statements for the year ended December 31, 2017</p> <p>8 was qualified partly on the basis that the</p> <p>9 investment in Highland Multi-Strategy Credit Fund</p> <p>10 Limited could not be valued. Those charged with</p> <p>11 the licensee's governance could not explain the</p> <p>12 basis upon which the investments have been valued</p> <p>13 on or about August 1, 2017 for the purpose of</p> <p>14 premium settlement. Also, they could not explain</p> <p>15 the reason why the information was relied on to</p> <p>16 value the investments for the purpose of premium</p> <p>17 settlement could not be readily provided to the</p> <p>18 auditors upon request considering that the policy</p> <p>19 inception and the financial statements audit were</p> <p>20 only a few months apart."</p> <p>21 Then states, "In addition, those charged</p> <p>22 with governance could not explain where the</p> <p>23 ownership in the U.S. 68.3 million in investments</p> <p>24 and cash vested prior to being transferred to the</p> <p>25 licensee for settlement of the ATE coverage</p>	<p style="text-align: right;">244</p> <p>1 Katie Irving on developing responses to the CIMA</p> <p>2 reports?</p> <p>3 <b>A I did.</b></p> <p>4 Q Did they play a role in developing these</p> <p>5 responses?</p> <p>6 <b>A I believe Matt did.</b></p> <p>7 Q I see the management comments on Page 6</p> <p>8 and 7 of the AML report on Page 8 the authority</p> <p>9 responds, and we have already read part of that</p> <p>10 regarding Jason Stubbs where they noted he was not</p> <p>11 involved in premium pricing but just in</p> <p>12 calculation of loss reserves, and then skipping</p> <p>13 the long paragraph, the second paragraph from the</p> <p>14 bottom, states, "In addition, in any case to amend</p> <p>15 an insurance policy to artificially inflate the</p> <p>16 premium amount to equal the value of the</p> <p>17 investments transferred to the licensee without</p> <p>18 any justifiable business purpose in economic</p> <p>19 substance is at the very least questionable."</p> <p>20 So that was CIMA's ultimate determination</p> <p>21 with regards to Endorsement 1, wasn't it?</p> <p>22 <b>A That is how it would appear, yes.</b></p> <p>23 Q I can't recall, I believe you testified</p> <p>24 you have not done this with any other insurance</p> <p>25 policy in your career working on insurance</p>

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245	<p>1 policies, done such an endorsement?                  2 MR. WELDON: Objection.                  3 THE WITNESS: I think that's correct.                  4 BY MR. BURT:                  5 Q So sitting here today and looking back,                  6 would you agree with CIMA that this was a                  7 questionable thing to do to adjust the premium in                  8 this manner?                  9 MR. WELDON: Objection.                  10 THE WITNESS: I understand the reasons for                  11 why it was done and I don't know what else I can                  12 say on that.                  13 BY MR. BURT:                  14 Q Let's look at Endorsement 2, it's not in                  15 the CIMA report, but I think you have it right                  16 there underneath.                  17 So how long after Endorsement 1 did                  18 Endorsement 2 happen?                  19 <b>A Within a short period of time.</b>                  20 Q Like what does short mean in this context?                  21 <b>A A week, maybe two weeks.</b>                  22 Q And describe what the problem was that was                  23 trying to be addressed in Endorsement No. 2.                  24 <b>A The risk mitigation fees that had been</b>                  25 <b>paid to this point under the view of the auditors</b></p>	247	<p>1 the loss?                  2 <b>A Yes.</b>                  3 Q Endorsement 2 we see that the premium is                  4 reduced to 59,362,000 and that 9 million has been                  5 prepaid by the insured to the insurer to cover                  6 risk mitigation costs which include but are not                  7 limited to legal defense costs and the limited                  8 indemnity is reduced to 91 million in the                  9 aggregate.                  10 So essentially is it correct that                  11 9 million is taken out of what had been booked as                  12 premium and put as risk mitigation or prepaid risk                  13 mitigation?                  14 <b>A Correct.</b>                  15 Q Was that really just an accounting                  16 transaction that happened or was money actually                  17 moved in any accounts?                  18 <b>A There was no money being moved there, that</b>                  19 <b>was just the recording of a liability for that</b>                  20 <b>pre-funded balance.</b>                  21 Q And that -- so that 9 million showed up as                  22 a liability on Sentinel's books?                  23 <b>A Correct.</b>                  24 MR. BURT: So let's do Tab 35.                  25</p>
246	<p>1 <b>indicated that a claim had occurred and if a claim</b>                  2 <b>had occurred the liability would need to be</b>                  3 <b>recorded upfront in its full liability of the</b>                  4 <b>actuarially-determined ultimate loss.</b>                  5 Q Rather than spread out?                  6 <b>A Rather than earning the premium out over</b>                  7 <b>the entire risk period and then accruing that</b>                  8 <b>liability for the reserves over that risk period.</b>                  9 <b>That would have posed a problem with the</b>                  10 <b>investment policy which stipulated that cash had</b>                  11 <b>to be maintained at or equal to the loss reserves,</b>                  12 <b>and that would have run afoul with CIMA.</b>                  13 Q So there wouldn't have been enough cash,                  14 in other words, in the account?                  15 <b>A Correct.</b>                  16 Q If a claim had been made on the policy?                  17 <b>A Correct.</b>                  18 Q That would have immediately brought from                  19 an accounting perspective both the premium and                  20 loss the entire amounts immediately?                  21 <b>A Correct.</b>                  22 Q And is that just an issue of pure                  23 accounting, that is just how you account for these                  24 things if the claim is made you have got to                  25 recognize the premium, you have got to recognize</p>	248	<p>1 (Document marked Exhibit 139 for                  2 identification.)                  3 MR. WELDON: What number is this?                  4 MS. REPORTER: 139.                  5 MR. BURT: Another short one.                  6 BY MR. BURT:                  7 Q Showing you 139 Bates BC SEN0000641688, an                  8 e-mail from Matt DiOrio to you sending an                  9 ATE-related invoice on July 25, 2018, and he asks                  10 you to arrange payment for the invoice and you                  11 reply the same day that "these are no longer                  12 covered under the ATE policy but are merely risk                  13 mitigation fees" and then you are asked "do you                  14 still need Beecher to formally approve them and                  15 can they go directly to Lesley." And Lesley was a                  16 director at that time, right?                  17 <b>A I don't know that she was a director at</b>                  18 <b>that point in time, but she worked for Maples and</b>                  19 <b>interacted with the directors that were there.</b>                  20 Q I see, okay.                  21 And do you recall why this was not -- why                  22 this request for payment was not covered under the                  23 ATE policy but was risk mitigation?                  24 <b>A I do not.</b>                  25 Q And I realize there is not a lot of</p>

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<p style="text-align: right;">249</p> <p>1 context there. But looking up, Mr. DiOrio                  2 actually asks the question "why are these not                  3 covered under the ATE policy," and you respond                  4 "they are the defense costs that we had to pull                  5 out of the policy on account of there being an                  6 audit issue with paying defense costs under the                  7 policy with no claim. If we left them under the                  8 policy it would have required us to earn all the                  9 premium upfront and record the full actuarial                  10 ultimate. This would have triggered cash                  11 deficiencies in Sentinel." So that appears to be                  12 the explanation that you gave.  <b>13 A That's correct.</b>                  14 Q If you file a claim for accounting reasons                  15 you have got to record the premium and the full                  16 actuarial ultimate.  <b>17 A Correct.</b>                  18 Q And if you do that there is not enough                  19 cash so now you are in a cash problem and CIMA                  20 gets triggered in essence?  <b>21 A Correct.</b>                  22 Q Is there a way that this is typically done                  23 where if defense costs are being paid out of the                  24 policy claims are made on the policy?  <b>25 A If there are defense costs there is a</b></p>	<p style="text-align: right;">251</p> <p><b>1 are incurred during the conduct of legal action on</b>  <b>2 behalf of the insured.</b>                  3 Q So that is the definition of own costs.                  4 Where is -- is there another provision that                  5 explains how those are to be treated under the                  6 policy?  <b>7 A That is the only one that I understand of</b>  <b>8 the policy.</b>                  9 Q So here -- and I am not aware of it                  10 showing up anywhere else in the policy, if it does                  11 and you recall if you can just point me to it,                  12 here you are saying there is this definition of                  13 own costs which refers to the cost and expenses of                  14 the representative and other service providers in                  15 the normal course, including related tax, which                  16 are incurred during the conduct of the legal                  17 action on behalf of the insured. So all of those                  18 costs are defined as own costs.                  19 So what is the significance -- tie that                  20 together for me, what is the significance of that                  21 to how you all chose to account and do Endorsement                  22 No. 2?                  23 MR. WELDON: Objection, asked and                  24 answered.                  25</p>
<p style="text-align: right;">250</p> <p><b>1 claim that has been made.</b>                  2 Q And is that the way that it typically                  3 works?  <b>4 A Yes.</b>                  5 Q But here with these defense costs there                  6 was -- claims were not being made, right, on the                  7 policy?  <b>8 A Correct.</b>                  9 Q Have you ever done it this way in any                  10 other policy?  <b>11 A I think the issue here is that these were</b>  <b>12 ongoing expenses that were being paid under that</b>  <b>13 own cost clause in the policy or the risk</b>  <b>14 mitigation fees.</b>                  15 Q So I want to make sure I know what clause                  16 you are talking about. Do you have the policy                  17 handy there?  <b>18 A I do.</b>                  19 Q Can you direct me to the provision you are                  20 thinking of?  <b>21 A 9.1.7.</b>                  22 Q Okay.  <b>23 A Own costs means all costs and expenses of</b>  <b>24 the representative and other service providers in</b>  <b>25 the normal course, including related tax, which</b></p>	<p style="text-align: right;">252</p> <p>1 BY MR. BURT:                  2 Q You can answer.  <b>3 A So the discussions that we had with J.P.</b>  <b>4 under the understanding that all assets were being</b>  <b>5 paid as premium to Sentinel the insureds had no</b>  <b>6 means of being able to pay normal business costs</b>  <b>7 going forward, so they would be covered under the</b>  <b>8 own cost clause which we had broken out as the</b>  <b>9 pre-funded risk mitigation fees.</b>                  10 Q Right, I understand that.                  11 But you also testified when defense -- on                  12 other policies when defense costs are being paid                  13 there's been a claim made on the policy, I think                  14 that's what you said, right?  <b>15 A That is correct.</b>                  16 Q So is it correct that this is the only                  17 instance in which you are aware in which those                  18 costs could be paid without making a claim on the                  19 policy?  <b>20 A These were classified as risk mitigation</b>  <b>21 fees which were differentiated from defense</b>  <b>22 claims, defense claims fees.</b>                  23 Q Right.                  24 But ultimately they were to pay for the                  25 defense of the case, right, that's what these</p>

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1 were?  
**2 A They were -- sure.**  
3 MR. WELDON: Objection.  
4 THE WITNESS: But it's not --  
5 MR. BURT: Chris, you can laugh at this,  
6 it never happened in any other policy, you do an  
7 accounting trick so you don't have to make a  
8 claim. I am trying to understand this. I don't  
9 know what is funny about it, Chris.  
10 MR. WELDON: Well, I think you  
11 misunderstand what he is saying. There was an  
12 accounting auditor that came in and looked at the  
13 policy. His testimony is pretty clear. And  
14 auditor came in and said he had to adjust it  
15 because this isn't going to be covered under the  
16 policy.  
17 MR. BURT: That was Endorsement 1, I  
18 haven't heard anything about an auditor on  
19 Endorsement 2.  
20 THE WITNESS: This was all raised by the  
21 auditors and in terms of how the loss reserves  
22 would end up needing to be recorded on Sentinel's  
23 books as of year-end if there was a claim and it  
24 was made clear to us that the triggering of the  
25 claim would be the judgment against the insureds.

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1 BY MR. BURT:  
2 Q Just so we are absolutely clear, yes or  
3 no, this has never been done on any other policy  
4 you have worked on, correct?  
5 MR. WELDON: Objection.  
6 THE WITNESS: I have not seen it done  
7 before.  
8 MR. BURT: Why don't we go ahead and take  
9 a break.  
10 THE VIDEOGRAPHER: This marks the end of  
11 Disk No. 4 in the deposition of Thomas Adamczak,  
12 we are off the record at 4:16.  
13 (Recess taken.)  
14 THE VIDEOGRAPHER: Here begins Disk No. 5  
15 in the deposition of Thomas Adamczak, we are back  
16 on the record at 4:41.  
17 BY MR. BURT:  
18 Q Mr. Adamczak, we are going to take a  
19 little detour and go back to Schedule A of the  
20 asset purchase agreement to walk through quickly  
21 the various investment instruments just to get for  
22 the record whether they were transferred and  
23 registered at Sentinel.  
**24 A Okay.**  
25 Q Do you have a copy of Schedule A in front

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1 of you?  
**2 A I do.**  
3 Q Terrific.  
4 I think we have gone through the first  
5 three, Aberdeen was not registered at Sentinel and  
6 the two Southforks were, is that right?  
**7 A Correct.**  
8 Q The next is another Aberdeen LN FDG  
9 Limited PFD.  
10 First of all, do you know what difference  
11 between that one is and the first Aberdeen?  
**12 A I don't.**  
13 Q Was this investment transferred to  
14 Sentinel?  
**15 A It is not in Sentinel's name.**  
16 Q The next one is GSC ABS CDO 2006-4U LT CUM  
17 PFD 144A. Is that registered in Sentinel's name?  
**18 A I don't believe it is.**  
19 Q And so to the best of Beecher's knowledge  
20 if they were not transferred and registered at --  
21 to the best of Beecher's knowledge, if not  
22 registered at Sentinel would they still be at  
23 Highland's CDO Opportunity Master Fund, LP?  
24 MR. WELDON: Asked and answered. He  
25 already said he doesn't know where they are before

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1 they came.  
2 BY MR. BURT:  
3 Q You can answer.  
**4 A That's correct.**  
5 Q What your counsel testified to?  
6 MR. WELDON: I wasn't testifying, what his  
7 answer, his answer was --  
8 THE WITNESS: I don't know where they are  
9 held/custodied.  
10 BY MR. BURT:  
11 Q The next one is Greenbriar CLO LTD PFD  
12 144A.  
**13 A Sorry, which one, the Greenbriar?**  
14 Q The Greenbriar CLO LTD PFD 144A.  
**15 A That one was not transferred in.**  
16 Q Next is Highland FINL Partners LP.  
**17 A The 615,733 was.**  
18 Q And below that another Highland FINL  
19 Partners LP NPV?  
**20 A Was not.**  
21 Q Then we have Longstreet CDO I -- I think  
22 it is an I LTD PFD 144A.  
**23 A It is not.**  
24 Q Then Nexpoint C COM USD0.001 (POST REV S)?  
**25 A That one was.**

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<p style="text-align: right;">257</p> <p>1 Q Next is PAM CAP FDG LP 0.001MAY13 144A.</p> <p>2 <b>A That one was not.</b></p> <p>3 Q Then is TOUSA INC 8.0 PFD 144A?</p> <p>4 <b>A This one was not.</b></p> <p>5 Q Next is Valhalla CLO LTD 0.0 01AUG23 144A?</p> <p>6 <b>A That was not.</b></p> <p>7 Q Next is Vertical ABS CDO 2 0.0 09MAY46</p> <p>8 144A?</p> <p>9 <b>A That was not.</b></p> <p>10 Q Just so I am clear, when you say it is</p> <p>11 not --</p> <p>12 <b>A Not transferred into Sentinel.</b></p> <p>13 Q At any time, it was never registered in</p> <p>14 Sentinel's name?</p> <p>15 <b>A Correct.</b></p> <p>16 <b>If I indicate that one was transferred in</b></p> <p>17 <b>it is either in Sentinel now or it was transferred</b></p> <p>18 <b>in and has since paid out and closed or sold.</b></p> <p>19 Q Or been moved?</p> <p>20 <b>A Right.</b></p> <p>21 Q And we will talk in a minute about</p> <p>22 Sebastian Clark and assets that were transferred</p> <p>23 to Sebastian Clark, I think that is one of the</p> <p>24 things you are referring to as far as transferring</p> <p>25 out of Sentinel.</p>	<p style="text-align: right;">259</p> <p>1 Q And then underneath that is CAMBR 5X</p> <p>2 Floating - 12/2045.</p> <p>3 <b>A That was not.</b></p> <p>4 Q And then the cash of 7.779 was</p> <p>5 transferred, correct?</p> <p>6 <b>A All of the cash was transferred in.</b></p> <p>7 Q So that would apply to the next cash under</p> <p>8 Highland CDO Opportunity Fund Limited, correct?</p> <p>9 <b>A Correct.</b></p> <p>10 Q Then we get to Highland CDO holdings,</p> <p>11 company, the first is HFT REAL EST 3.33867 25NOV5</p> <p>12 144A F.</p> <p>13 <b>A That was transferred.</b></p> <p>14 Q Then is Nexpoint C Com USD0.001 (POST REV</p> <p>15 S)?</p> <p>16 <b>A That was transferred in.</b></p> <p>17 Q Then is Nexpoint R Com USD0.001 'WI'?</p> <p>18 <b>A That was transferred in.</b></p> <p>19 Q Next is Stratford CL 3.16956 01NOV21 144A</p> <p>20 F.</p> <p>21 <b>A That was transferred in.</b></p> <p>22 Q Then is Highland Park C4.93867 25NOV5 1</p> <p>23 FRN?</p> <p>24 <b>A That was not transferred in.</b></p> <p>25 Q Then is another promissory note CLO Holdco</p>
<p style="text-align: right;">258</p> <p>1 <b>A Yes, but those are back in Sentinel.</b></p> <p>2 Q I see, okay. We will get to that in a</p> <p>3 moment.</p> <p>4 Then we have Highland Credit Opportunities</p> <p>5 CDO LTD Partnership interest?</p> <p>6 <b>A That is in Sentinel.</b></p> <p>7 Q Next is Nexpoint Multifamily Capital</p> <p>8 Trust?</p> <p>9 <b>A That is.</b></p> <p>10 Q Then we have Nexpoint Real Estate Strat-Z</p> <p>11 Highland Gemini Program (Pollux).</p> <p>12 <b>A I think you just read off two.</b></p> <p>13 Q Did I? You are right I did.</p> <p>14 The next is just Nexpoint Real Estate</p> <p>15 Strat-Z.</p> <p>16 <b>A That one is.</b></p> <p>17 Q Then we get to Highland Gemini Program</p> <p>18 (Pollux) Promissory Note - Highland Capital</p> <p>19 Management.</p> <p>20 <b>A That one is not -- it is a promissory note</b></p> <p>21 <b>so it is not in Sentinel's name, but it had -- I</b></p> <p>22 <b>believe it had paid out interest to Sentinel at</b></p> <p>23 <b>some point.</b></p> <p>24 Q Is it still paying interest to Sentinel?</p> <p>25 <b>A I think it is delinquent.</b></p>	<p style="text-align: right;">260</p> <p>1 limited 12/23/2025?</p> <p>2 <b>A Again, the promissory note so it is not</b></p> <p>3 <b>being transferred in or re-registered in</b></p> <p>4 <b>Sentinel's name, and I believe it had paid</b></p> <p>5 <b>interest but is currently delinquent.</b></p> <p>6 Q And we have cash that was paid.</p> <p>7 <b>A Correct.</b></p> <p>8 Q And then the last is Capital Management</p> <p>9 LP?</p> <p>10 <b>A So that's the dividends receivable from</b></p> <p>11 <b>Highland Capital Management, and I believe that</b></p> <p>12 <b>was collected.</b></p> <p>13 Q All right, almost done.</p> <p>14 The next is Highland Special Opportunities</p> <p>15 Holding Company.</p> <p>16 The first listed there is Delphi Corp. DEL</p> <p>17 7.125 01May29.</p> <p>18 <b>A I believe that one was transferred in.</b></p> <p>19 Q And we have Delphi Corp. DEL 6.55 15JUN06</p> <p>20 USD?</p> <p>21 <b>A I believe that one was transferred in as</b></p> <p>22 <b>well.</b></p> <p>23 Q Longstreet CDO I LTD PFD 144A?</p> <p>24 <b>A That was not transferred in.</b></p> <p>25 Q TOUSA INC 8.0 PFD 144A?</p>



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1 **A That was not transferred in.**  
 2 Q Vertical ABS CDO 2 0.0 09MAY46 144A?  
 3 **A That was not transferred in.**  
 4 Q And then cash that was transferred,  
 5 correct?  
 6 **A Correct.**  
 7 Q And then under Highland Financial Corp.,  
 8 cash that was transferred, correct?  
 9 **A Correct.**  
 10 Q And then there is Capital Management --  
 11 tax refund receivable at Highland Capital  
 12 Management, LP.  
 13 Was that cash transferred or collected?  
 14 **A Only in part. That was a refund from the**  
 15 **IRS that when the refund came in it was in the**  
 16 **name of I am assuming Highland Financial Corp.,**  
 17 **and as such could not be deposited into Sentinel's**  
 18 **account. So Matt DiOrio had opened an account in**  
 19 **that name, deposited the check, and then**  
 20 **transferred the majority of the funds into**  
 21 **Sentinel's account.**  
 22 MR. WELDON: I think you had him testify  
 23 about that check earlier today.  
 24 BY MR. BURT:  
 25 Q Then we have Highland Financial Partners

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1 LP cash of 29,000 that was transferred, correct?  
 2 **A Correct.**  
 3 Q Thank you.  
 4 I don't have a question about  
 5 transferring, just a question on actually the  
 6 entity description itself, under the -- in the  
 7 first big box there for Highlands CDO Opportunity  
 8 Master Fund, the third from the bottom, the  
 9 Highland Gemini program that's listed as Pollux,  
 10 do you know whether that actually came from  
 11 Dugaboy?  
 12 **A I do not, no.**  
 13 MR. BURT: I think I gave the next  
 14 exhibit.  
 15 MR. WELDON: 140.  
 16 MR. BURT: 140.  
 17 (Document marked Exhibit 140 for  
 18 identification.)  
 19 BY MR. BURT:  
 20 Q Showing, Mr. Adamczak, Exhibit 140, which  
 21 is BC SEN0000585041, e-mails between you and  
 22 Mr. Kranz in July of 2018, do you see that?  
 23 **A I do.**  
 24 Q Now, I am going to back now from our  
 25 detour back to Endorsement No. 2, so your e-mail

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1 to Mr. Kranz on July 2 you write, "Pete, I just  
 2 spoke to Lisa. We have a potentially bigger issue  
 3 than the investments. Lisa just informed me they  
 4 feel the ATE premium and ultimate loss should all  
 5 be recorded immediately and not earned pro rata  
 6 over a period." So I will stop there.  
 7 Who is the Lisa that you are referring to?  
 8 **A This is Lisa, the auditor with Crowe.**  
 9 Q And so here Lisa said that the premium and  
 10 ultimate loss should be recorded immediately,  
 11 right?  
 12 **A Based on what we previously discussed if**  
 13 **there was a claim payment it would indicate that**  
 14 **there is a claim and the claim should be recorded**  
 15 **all upfront.**  
 16 Q And you write here, "The primary reason is  
 17 that the loss event is known and, therefore, they  
 18 feel this more like retroactive coverage, similar  
 19 to an LPT or a novation." What is an LPT or a  
 20 novation?  
 21 **A Loss portfolio transfer.**  
 22 Q What does novation refer to?  
 23 **A A transfer of risk off your balance sheet**  
 24 **to somebody else.**  
 25 Q Lisa even went back to Art and discussed

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1 with him and he agreed. Who is Art?  
 2 **A Art is a partner at Crowe.**  
 3 Q They then -- you then say "They are pretty  
 4 sure this" -- I think you meant to say is -- "how  
 5 it should be accounted for unless there is  
 6 something/events that the policy covers that  
 7 is/are unknown other than the value of the loss.  
 8 I know this is going to require us to revise/amend  
 9 the investment policy because we do not have  
 10 nearly enough cash as of year-end. Had this been  
 11 known how it would need to be accounted for we  
 12 would have needed all premium in cash (or at least  
 13 the much larger portion). Cash at year-end is  
 14 only \$11.4 million while the ultimate on the ATE  
 15 policy \$33.4 million."  
 16 Ultimate there being the actuarial loss  
 17 that was being --  
 18 **A The actuarial determined loss projection.**  
 19 Q Is this what triggered what led to  
 20 Endorsement 2?  
 21 **A Correct.**  
 22 Q So you hadn't yet decided -- the idea to  
 23 do the risk mitigation expense to pull out the  
 24 \$9 million --  
 25 **A Correct.**

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<p style="text-align: right;">265</p> <p>1 Q -- as a prepaid balance.</p> <p>2 That was decided after Lisa had raised</p> <p>3 this issue with you?</p> <p>4 <b>A Correct.</b></p> <p>5 Q And you discussed that idea with Lisa?</p> <p>6 <b>A I did.</b></p> <p>7 Q And she signed off on it?</p> <p>8 <b>A The idea of--</b></p> <p>9 Q Of doing a pre-funded 9 million risk</p> <p>10 mitigation prepaid litigation balance.</p> <p>11 <b>A We discussed with internally at Beecher</b></p> <p>12 <b>and with the directors and determined that the</b></p> <p>13 <b>policy -- sorry, the claim -- the triggering event</b></p> <p>14 <b>of the claim would be the judgment, an unfavorable</b></p> <p>15 <b>judgment against the insureds. And because there</b></p> <p>16 <b>was no judgment there could not be a claim so all</b></p> <p>17 <b>of these expenses would be risk mitigation outside</b></p> <p>18 <b>the actual indemnity payment.</b></p> <p>19 Q So Lisa actually wasn't involved in that</p> <p>20 decision it sounds like?</p> <p>21 <b>A Lisa is an auditor for Sentinel, she</b></p> <p>22 <b>wouldn't be making any decisions.</b></p> <p>23 Q Which directors did you discuss that with?</p> <p>24 <b>A This would have been discussed with Andrew</b></p> <p>25 <b>Dean and Lesley Thompson.</b></p>	<p style="text-align: right;">267</p> <p>1 Q What would CIMA -- what is CIMA's remedy</p> <p>2 in that situation where the cash is insufficient</p> <p>3 to meet the loss reserve requirement?</p> <p>4 <b>A You would probably have to have a</b></p> <p>5 <b>corrective action immediately and bringing the</b></p> <p>6 <b>cash balances up in line with what the loss</b></p> <p>7 <b>reserves were.</b></p> <p>8 Q So a lot more cash would have to be</p> <p>9 infused immediately?</p> <p>10 <b>A Absolutely.</b></p> <p>11 Q And that was something it appears the</p> <p>12 directors including Mr. DiOrio wanted to avoid</p> <p>13 having to do?</p> <p>14 MR. WELDON: Objection.</p> <p>15 THE WITNESS: The nature of the</p> <p>16 investments were such that would -- in order to</p> <p>17 sell off they would have ended up recognizing</p> <p>18 substantial losses and they wanted to avoid that.</p> <p>19 MR. BURT: I gave you the wrong exhibit.</p> <p>20 I take that back.</p> <p>21 (Document marked Exhibit 141 for</p> <p>22 identification.)</p> <p>23 BY MR. BURT:</p> <p>24 Q Showing you Exhibit 141 Bates label BC</p> <p>25 SEN0000723353. Are you ready, Mr. Adamczak?</p>
<p style="text-align: right;">266</p> <p>1 Q Was Mr. DiOrio involved in that?</p> <p>2 <b>A Mr. DiOrio had not yet -- actually, I</b></p> <p>3 <b>don't remember when he joined, if he joined and</b></p> <p>4 <b>was a director at that point we would have</b></p> <p>5 <b>involved him in, but I don't remember when he came</b></p> <p>6 <b>in.</b></p> <p>7 Q So if he had -- if he were a director he</p> <p>8 would have joined in that discussion?</p> <p>9 <b>A Absolutely.</b></p> <p>10 Q How about J.P. Sevilla, was he involved in</p> <p>11 that decision making?</p> <p>12 <b>A He may have been. He may have been</b></p> <p>13 <b>involved in the discussion, but I don't recall.</b></p> <p>14 Q Looking back at this exhibit Pete's</p> <p>15 response to you is "this could get us fired by the</p> <p>16 client." Why did he say that, do you know?</p> <p>17 <b>A Just because of the magnitude and the</b></p> <p>18 <b>adjustment that this would require related to --</b></p> <p>19 <b>well, the issue with not having enough cash on</b></p> <p>20 <b>hand as of year-end to satisfy the investment</b></p> <p>21 <b>policy requirement.</b></p> <p>22 Q Could it have unwound the ATE policy if it</p> <p>23 had been accounted for this way and there wasn't</p> <p>24 sufficient cash?</p> <p>25 <b>A I don't believe so.</b></p>	<p style="text-align: right;">268</p> <p>1 <b>A Yes.</b></p> <p>2 Q So at the bottom is an e-mail from you, it</p> <p>3 appears to a number of directors including Lesley</p> <p>4 Thompson Matt DiOrio and Andrew dean and a</p> <p>5 D. Massand, who I believe you mentioned was with</p> <p>6 Highland, right?</p> <p>7 <b>A Correct.</b></p> <p>8 Q Dilip Massand?</p> <p>9 <b>A Dilip Massand.</b></p> <p>10 Q You write here cc'ing J.P. Sevilla, "All,</p> <p>11 mentioned yesterday, the auditors noted an issue</p> <p>12 with defense costs being paid through the policy</p> <p>13 without their actually being a claim (claim</p> <p>14 trigger event is an unfavorable settlement or</p> <p>15 court awarded judgment). To correct, an</p> <p>16 endorsement was prepared to include the pre-funded</p> <p>17 risk mitigation defense costs of an estimated \$9</p> <p>18 million from premium and establish an escrow on</p> <p>19 the balance sheet to pay those costs from. The</p> <p>20 endorsement also reduces the aggregate limit to</p> <p>21 \$91 million from \$100 million."</p> <p>22 Is this when the directors -- when you</p> <p>23 first raised the issues with the directors I guess</p> <p>24 the call that you had? Strike that.</p> <p>25 Did you have a call with the directors the</p>

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<p style="text-align: right;">269</p> <p>1 day before this e-mail to discuss this issue?</p> <p>2 <b>A We would have had a discussion with them.</b></p> <p>3 Q Here you are following up and in the</p> <p>4 e-mail above from you to Lesley Thompson you</p> <p>5 attach the unanimous consent form with respect to</p> <p>6 Endorsement No. 2. Was that the consent form</p> <p>7 needed from the directors?</p> <p>8 <b>A Correct.</b></p> <p>9 Q Is that different than the Endorsement No.</p> <p>10 2 we have been looking at?</p> <p>11 <b>A The unanimous consent form would have been</b></p> <p>12 <b>the formal governance document where the directors</b></p> <p>13 <b>signed off approving the Endorsement 2.</b></p> <p>14 Q And then Lesley responds with a couple of</p> <p>15 questions and the last question, the last bullet</p> <p>16 is the one I want to focus on, and she asks, "Can</p> <p>17 you explain the rationale for changing the limits</p> <p>18 on the policy? The original premium was \$25</p> <p>19 million, changed to \$68 million (to represent the</p> <p>20 fair value of the assets) and now dropped to \$59</p> <p>21 million. If the company was willing to write the</p> <p>22 risk at the original deemed premium level why is</p> <p>23 it now changing? As such I believe the company</p> <p>24 should keep the liability limits at the original</p> <p>25 agreed level."</p>	<p style="text-align: right;">271</p> <p>1 I am really just genuinely trying to</p> <p>2 understand, were the legal defense costs for the</p> <p>3 litigation being paid out of that \$9 million</p> <p>4 pre-funded balance?</p> <p>5 <b>A I am not exactly sure the nature of the</b></p> <p>6 <b>legal fees that that were instructed to be</b></p> <p>7 <b>processed under the risk mitigation fees.</b></p> <p>8 Q Were fees paid to continue to the run the</p> <p>9 insureds since they had transferred all of their</p> <p>10 assets, were there normal operating expenses being</p> <p>11 paid for out of those risk mitigations?</p> <p>12 <b>A Yes.</b></p> <p>13 Q So unrelated to the mitigation, just a</p> <p>14 filing requirement for CDO fund or an expense that</p> <p>15 they incurred in the normal course?</p> <p>16 <b>A Yes.</b></p> <p>17 Q And were those expenses that Highland was</p> <p>18 submitting to Beecher for payment?</p> <p>19 <b>A Yes.</b></p> <p>20 (Document marked Exhibit 142 for</p> <p>21 identification.)</p> <p>22 BY MR. BURT:</p> <p>23 Q Showing you Exhibit 142, this is Bates BC</p> <p>24 SEN0000667053, starting in the first-in-time</p> <p>25 e-mail on the second page, Mr. Adamczak, you send</p>
<p style="text-align: right;">270</p> <p>1 Do you recall that concern from</p> <p>2 Ms. Thompson?</p> <p>3 <b>A I don't recall.</b></p> <p>4 Q Do you recall responding to that, to this</p> <p>5 e-mail?</p> <p>6 <b>A I don't recall.</b></p> <p>7 Q Do you know whether her concern was ever</p> <p>8 resolved?</p> <p>9 MR. WELDON: Objection.</p> <p>10 THE WITNESS: As the directors had</p> <p>11 ultimately agreed and signed off on the</p> <p>12 endorsement and the unanimous consent I believe</p> <p>13 the concern was addressed.</p> <p>14 BY MR. BURT:</p> <p>15 Q To do something like this did all the</p> <p>16 directors have to unanimously agree?</p> <p>17 <b>A Yes.</b></p> <p>18 Q One thing I want to clarify, so the \$9</p> <p>19 million in risk mitigation that is set aside, is</p> <p>20 it -- one use of that money was to pay for legal</p> <p>21 defense costs as part of the UBS litigation for</p> <p>22 the Highland entities, is that right?</p> <p>23 <b>A We were directed to process invoices by</b></p> <p>24 <b>the directors under the risk mitigation fees.</b></p> <p>25 Q So -- that's not precisely my question.</p>	<p style="text-align: right;">272</p> <p>1 an e-mail to Jan Neveril, Damien Austin, Onson</p> <p>2 Mukwedeya, and cc Matt DiOrio and Alli Devins.</p> <p>3 And there you say, Jan and Damien, attached please</p> <p>4 find an invoice for Sentinel to be submitted to</p> <p>5 Maples Paying Agency for disbursement. The</p> <p>6 invoice is for Risk Mitigation fees for ATE</p> <p>7 policy. Please approve and respond to all with</p> <p>8 instructions to disburse funds from the Sentinel</p> <p>9 Reinsurance Account 677670."</p> <p>10 Is that Sentinel Reinsurance account the</p> <p>11 checking account at CIBC?</p> <p>12 <b>A No.</b></p> <p>13 Q What account is that?</p> <p>14 <b>A This is when Maples served as directors,</b></p> <p>15 <b>they had the cash account that they managed.</b></p> <p>16 Q So this was the Maples account?</p> <p>17 <b>A Correct.</b></p> <p>18 Q Understood.</p> <p>19 The Onson Mukwedeya name is new, who is</p> <p>20 he?</p> <p>21 <b>A Somebody at Maples.</b></p> <p>22 Q In response Damien Austin, who I believe</p> <p>23 is a director, is that right?</p> <p>24 <b>A Correct.</b></p> <p>25 Q He responds to you and Matt, "Before I</p>

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<p style="text-align: right;">273</p> <p>1 authorize this for payment I wanted to check with                  2 you how we go about determining that it should be                  3 paid by Sentinel. I see that the invoice is                  4 addressed to HCM and is related to Highland v.                  5 UBS. How is Highland related to Sentinel? I                  6 don't think I have a full organizational chart, do                  7 you have one you can send to me please?" And he                  8 goes on.                  9 Now, my first question about this is why                  10 was it, if you know, that Mr. Austin didn't know                  11 that Highland was related to Sentinel?  <b>12 A This may have been their first exposure to</b>  <b>13 any of the risk mitigation fees.</b>                  14 Q The fact that Highland and Sentinel have                  15 common ownership, that wasn't hidden from                  16 directors, right?  <b>17 A It wasn't hidden, no.</b>  <b>18 And I believe Jan and Damian were new</b>  <b>19 directors at this point as well.</b>                  20 Q I see.                  21 Then you respond to Damian and Jan and                  22 say, "The invoice I previously sent is covered by                  23 the ATE policy as it relates to defense costs on                  24 the insured event."                  25 Does that refresh your recollection about</p>	<p style="text-align: right;">275</p> <p><b>1 the risk mitigation fees.</b>                  2 Q You then write, "I hope this helps. Matt                  3 might be able to provide more specifics on the                  4 relationship or engagement letters if needed, but                  5 there wouldn't be any connection between Sentinel                  6 and the payees other than the fact that these are                  7 to be covered under the ATE policy."                  8 What did you mean when you said there                  9 wasn't any connection between Sentinel and the                  10 payees?  <b>11 A There was no relationship between Sentinel</b>  <b>12 and the entities that were performing the</b>  <b>13 services, the services were not paid or were not</b>  <b>14 provided to Sentinel directly.</b>                  15 Q Now, you just mentioned a moment ago that                  16 the directors had requested that Beecher process                  17 the invoice and assist with making sure the                  18 payments are made. Which directors specifically                  19 have specifically requested that?  <b>20 A All of the invoices that related to the</b>  <b>21 risk mitigation fees came through our contact at</b>  <b>22 Highland.</b>                  23 Q Which was Matt DiOrio?  <b>24 A In this case Matt DiOrio.</b>                  25 Q At other times did they come from</p>
<p style="text-align: right;">274</p> <p>1 whether legal defense costs were paid out of the                  2 pre-funded balance?  <b>3 A So it looks like those legal fees were</b>  <b>4 being paid under the risk mitigation fee.</b>                  5 Q "These defense costs have been pre-funded                  6 9.0 million set aside from ATE premium and are                  7 being tracked separately by us, to date prior to                  8 this invoice we have reimbursed \$5,438,351 of                  9 these 'Risk Mitigation Fees'", do you see that?  <b>10 A I do.</b>                  11 Q In between the Endorsement 2, which was                  12 established I think you said sometime in late June                  13 or early July of 2018, in between that time and                  14 November 20, 2018, over \$5 million had been                  15 reimbursed out of that risk mitigation pool, is                  16 that right?  <b>17 A To date 5 -- yes, 5 million was reimbursed</b>  <b>18 out of the risk mitigation fees.</b>                  19 Q And do you know what the majority of those                  20 funds were being used for, what the expenses were?  <b>21 A I do not.</b>                  22 Q So how much was for legal versus how much                  23 was to run the insureds, you couldn't say?  <b>24 A The directors had requested that we</b>  <b>25 process the invoices and reimburse them through</b></p>	<p style="text-align: right;">276</p> <p>1 J.P. Sevilla?  <b>2 A It would have come from J.P., I believe.</b>  <b>3 I don't recall.</b>                  4 Q You can set that aside. Just give me one                  5 second.                  6 MR. BURT: Mark this as 143.                  7 (Document marked Exhibit 143 for                  8 identification.)                  9 BY MR. BURT:                  10 Q Showing you, Mr. Adamczak, Exhibit 143                  11 Bates labeled UBSPROD020567. Go ahead and take a                  12 look at that and let me know if you recognize the                  13 document.  <b>14 A I do.</b>                  15 Q What do you understand this document to                  16 be?  <b>17 A This document was a sales agreement to</b>  <b>18 transfer certain securities that we were told to</b>  <b>19 be worthless to remove them from the balance sheet</b>  <b>20 of Sentinel.</b>                  21 Q Who told you that they were worthless?  <b>22 A That direction would have come from</b>  <b>23 Matt DiOrio.</b>                  24 Q As part of the valuation services that --                  25 the Valuation Research Corp. had done had they</p>

277	<p>1 determined that those -- these assets were</p> <p>2 worthless?</p> <p>3 <b>A They had not been engaged to perform</b></p> <p>4 <b>valuations on those investments and it was</b></p> <p>5 <b>discussed that if those investments were worthless</b></p> <p>6 <b>there was no point in obtaining a valuation.</b></p> <p>7 Q Were these investments on Schedule A to</p> <p>8 the purchase agreement any of them?</p> <p>9 <b>A Yes, they should all be on that schedule.</b></p> <p>10 Q So Schedule A investments certain of those</p> <p>11 investments were not actually valued by</p> <p>12 Valuation Research Corp.?</p> <p>13 <b>A Correct.</b></p> <p>14 Q Who made the decision which one should be</p> <p>15 valued and which one should not be valued?</p> <p>16 <b>A That was the directors on discussions with</b></p> <p>17 <b>Beecher Carlson.</b></p> <p>18 Q Were you involved in those discussions?</p> <p>19 <b>A From the standpoint of what made sense to</b></p> <p>20 <b>perform a valuation on, yes.</b></p> <p>21 Q Which directors in particular were</p> <p>22 involved in those discussions?</p> <p>23 <b>A Matt DiOrio in particular and then the</b></p> <p>24 <b>other directors were probably informed of it.</b></p> <p>25 Q But weren't involved in the discussions</p>	279	<p>1 the transfer?</p> <p>2 <b>A I am not recalling how that came about.</b></p> <p>3 Q The parties listed are Sentinel Reinsurance</p> <p>4 Ltd., I think that is a typo, and then Sebastian</p> <p>5 Clark, Ltd., which states as an exempted company</p> <p>6 incorporated in the Cayman Islands.</p> <p>7 What did you understand Sebastian Clark to</p> <p>8 be?</p> <p>9 <b>A My understanding is that Sebastian Clark</b></p> <p>10 <b>is a Cayman entity that provides director services</b></p> <p>11 <b>for other Sentinel-related entities.</b></p> <p>12 Q Do you know who owns Sebastian Clark?</p> <p>13 <b>A I do not.</b></p> <p>14 Q Do you know whether Sebastian Clark had</p> <p>15 any assets prior to the asset transfer agreement?</p> <p>16 <b>A I do not.</b></p> <p>17 Q On page -- excuse me, on Schedule 1 of the</p> <p>18 asset purchase agreement it lists that the</p> <p>19 purchase price -- the total purchase price is \$3,</p> <p>20 do you see that?</p> <p>21 <b>A You said Page 1.</b></p> <p>22 Q Schedule 1, it looks like it is Page 5.</p> <p>23 <b>A Yes.</b></p> <p>24 Q Do you recall how that purchase price was</p> <p>25 come to?</p>
278	<p>1 themselves?</p> <p>2 <b>A They may have been involved in the</b></p> <p>3 <b>discussions, but I don't recall.</b></p> <p>4 Q But you do recall Matt DiOrio being</p> <p>5 involved?</p> <p>6 <b>A Definitely.</b></p> <p>7 Q And -- okay.</p> <p>8 So in consultation with Mr. DiOrio the</p> <p>9 decision is made the Valuation Research Corp. do</p> <p>10 some valuations on certain investments but not</p> <p>11 others.</p> <p>12 How does this asset transfer agreement</p> <p>13 come to be, whose idea was it to transfer these</p> <p>14 off the balance sheet?</p> <p>15 <b>A I don't recall.</b></p> <p>16 Q Was that something that Beecher would have</p> <p>17 initiated or was that beyond Beecher's</p> <p>18 responsibilities?</p> <p>19 <b>A It was beyond Beecher's responsibilities.</b></p> <p>20 Q Would it have been a director, perhaps?</p> <p>21 <b>A Perhaps.</b></p> <p>22 Q But specifically you don't recall?</p> <p>23 <b>A I don't recall, no.</b></p> <p>24 Q And who works on this asset transfer</p> <p>25 agreement in putting it together and organizing</p>	280	<p>1 <b>A A nominal value.</b></p> <p>2 Q And who made that decision?</p> <p>3 <b>A I am not sure.</b></p> <p>4 Q It was somebody outside of Beecher?</p> <p>5 <b>A It was not Beecher that determined that</b></p> <p>6 <b>price.</b></p> <p>7 Q If we look at Schedule 2 it lists the</p> <p>8 assets that are being transferred, and two I want</p> <p>9 to look at, the Dugaboy Investment Trust</p> <p>10 Promissory Note acquired 8/11/2017, and it says</p> <p>11 under the Par/Face column \$2,399,996.</p> <p>12 Do you recall if that was the value on the</p> <p>13 Dugaboy promissory note at the time?</p> <p>14 <b>A That was probably the face value at the</b></p> <p>15 <b>time that that security was sold.</b></p> <p>16 Q And Mr. DiOrio had determined that it was</p> <p>17 a worthless asset?</p> <p>18 <b>A It was not paying interest anymore.</b></p> <p>19 Q But the note was still valid, right, it</p> <p>20 hasn't expired or anything like that, it was still</p> <p>21 a valid promissory note?</p> <p>22 <b>A I don't remember what the terms were. It</b></p> <p>23 <b>was probably delinquent at that point.</b></p> <p>24 Q And then in the next row, the CLO Holdco</p> <p>25 Ltd., Promissory Note for a face value of</p>

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<p style="text-align: right;">281</p> <p>1 \$32,801,593, what do you understand about that</p> <p>2 promissory note?</p> <p>3 <b>A The same as the Dugaboy Investment Trust</b></p> <p>4 <b>promissory note.</b></p> <p>5 Q Were these the assets that Beecher</p> <p>6 discussed with Mr. DiOrio in determining what to</p> <p>7 value and what not to value?</p> <p>8 MR. WELDON: Objection.</p> <p>9 THE WITNESS: We discussed with Mr. DiOrio</p> <p>10 the valuation of all investments in the portfolio.</p> <p>11 BY MR. BURT:</p> <p>12 Q Right.</p> <p>13 And certain investments were determined --</p> <p>14 you all determined not to have value, is that</p> <p>15 right?</p> <p>16 MR. WELDON: Objection.</p> <p>17 THE WITNESS: It was not determined by</p> <p>18 Beecher that any investments had no value, that</p> <p>19 was something that was told to us by Matt DiOrio.</p> <p>20 BY MR. BURT:</p> <p>21 Q Did Beecher do anything independent to</p> <p>22 confirm that they were worthless?</p> <p>23 <b>A We had no way of confirming anything.</b></p> <p>24 Q So, no, no documents or information had</p> <p>25 been provided from Sentinel or from any of the</p>	<p style="text-align: right;">283</p> <p>1 <b>directors that were directors of some of the</b></p> <p>2 <b>Sentinel structure entities.</b></p> <p>3 Q But not Sentinel itself?</p> <p>4 <b>A No.</b></p> <p>5 Q Were they directors of Sebastian Clark?</p> <p>6 <b>A I have no idea.</b></p> <p>7 Q Here Mr. Sevilla writes, "Gentlemen, are</p> <p>8 you available to review a matter for approval</p> <p>9 today? The matter relates to certain securities</p> <p>10 held at Sentinel Reinsurance Ltd., a Cayman</p> <p>11 Islands registered captive insurance company, that</p> <p>12 Sentinel currently marks at zero and which</p> <p>13 Sentinel would propose to transfer to Sebastian</p> <p>14 Clark for minimal consideration. My colleague</p> <p>15 Matt DiOrio, copied, is a director of Sentinel and</p> <p>16 will provide more detail in a subsequent e-mail."</p> <p>17 In this timeframe, the end of 2019, is</p> <p>18 that about when Beecher also learned of the</p> <p>19 potential transfer to Sebastian Clark?</p> <p>20 <b>A I don't think we were aware of this until</b></p> <p>21 <b>after it happened.</b></p> <p>22 Q Oh, until after the transfer had been</p> <p>23 finalized?</p> <p>24 <b>A Or at least until after the effective date</b></p> <p>25 <b>of the transfer.</b></p>
<p style="text-align: right;">282</p> <p>1 transferring entities?</p> <p>2 <b>A Sentinel had no documents.</b></p> <p>3 Q Do you know who controls Dugaboy</p> <p>4 Investment?</p> <p>5 <b>A I do not.</b></p> <p>6 Q How about CLO Holdco?</p> <p>7 <b>A I do not.</b></p> <p>8 Q Let's look in conjunction with this,</p> <p>9 Exhibit 144?</p> <p>10 (Document marked Exhibit 144 for</p> <p>11 identification.)</p> <p>12 BY MR. BURT:</p> <p>13 Q Showing you Exhibit 144, Bates BC</p> <p>14 SEN0000638619, which is a series of e-mail and</p> <p>15 then another attachment of the asset transfer</p> <p>16 agreement.</p> <p>17 I'd like to show you the first-in-time</p> <p>18 e-mail from J.P. Sevilla on December 31, 2019.</p> <p>19 And he e-mails here, John Cullinane, David</p> <p>20 Egglisshaw, cc'ing Matt DiOrio and Katie Irving</p> <p>21 regarding Sebastian Clark Ltd. - Urgent.</p> <p>22 Do you know who John Cullane and</p> <p>23 David Egglisshaw were?</p> <p>24 <b>A I do not know them personally. But my</b></p> <p>25 <b>understanding is they were independent outside</b></p>	<p style="text-align: right;">284</p> <p>1 Q And if you look at -- if you just flip one</p> <p>2 page further, the copy of the asset transfer</p> <p>3 agreement, it is dated as of 31, December, 2019,</p> <p>4 which is the same date of J.P. Sevilla's e-mail,</p> <p>5 is that right?</p> <p>6 <b>A Yes.</b></p> <p>7 Q The next e-mail up in the chain</p> <p>8 Matt DiOrio responds to the same individuals and</p> <p>9 says, "These securities mentioned have been marked</p> <p>10 at zero since acquisition in August, 2017. We</p> <p>11 tried to have them valued by a third party but</p> <p>12 could not provide enough information to do so as</p> <p>13 most are crisis era instruments that have been</p> <p>14 worthless for close to a decade. Sentinel needs</p> <p>15 them off the books to avoid a qualified opinion on</p> <p>16 its audit as CIMA has informed us it will no</p> <p>17 longer accept such an opinion. Information for</p> <p>18 the worthless positions is listed below."</p> <p>19 What's a qualified opinion on an audit?</p> <p>20 <b>A It's a type of audit opinion that is not</b></p> <p>21 <b>clean.</b></p> <p>22 Q Meaning what exactly?</p> <p>23 <b>A That its modified for certain items</b></p> <p>24 <b>generally considered to be negative as far as from</b></p> <p>25 <b>the viewpoint of anyone reviewing the financial</b></p>

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285	<p>1 <b>statements.</b></p> <p>2 Q Do you know why having these assets on</p> <p>3 Sentinel's books would have led to a qualified</p> <p>4 opinion?</p> <p>5 <b>A Because the investments could not be</b></p> <p>6 <b>valued whether favorably or unfavorably the</b></p> <p>7 <b>auditors were unable to opine that the assets were</b></p> <p>8 <b>fairly stated and therefore they caused</b></p> <p>9 <b>qualifications to the audit report.</b></p> <p>10 Q And Mr. DiOrio says that "CIMA has</p> <p>11 informed us that it will no longer accept such an</p> <p>12 opinion," was that part of the CIMA review that</p> <p>13 had taken place in 2019 where they had said that?</p> <p>14 <b>A That is correct.</b></p> <p>15 Q If you go to the first page of the e-mail</p> <p>16 chain on the same day David Egglshaw writes back</p> <p>17 to Matt saying, "On behalf of Sebastian Clark Ltd</p> <p>18 we hereby consent to the transfers listed below."</p> <p>19 And then a month later Matt DiOrio sends</p> <p>20 along the signed APA and it says please execute on</p> <p>21 the Sebastian Clark side at your convenience and</p> <p>22 Mr. Cullinane responds with the attached fully</p> <p>23 executed agreement, and then -- which we can see</p> <p>24 here in the attachment on the last page. Do you</p> <p>25 see that?</p>	287
286	<p>1 <b>A Yes.</b></p> <p>2 Q The last e-mail in time in this e-mail</p> <p>3 exchange is to you and Alli Devins on March 19,</p> <p>4 2020, and Matt DiOrio says, "Not sure if I ever</p> <p>5 sent this to you guys. Sale of worthless assets</p> <p>6 agreement."</p> <p>7 Is that the first that you learned of</p> <p>8 Sebastian Clark?</p> <p>9 <b>A It could be.</b></p> <p>10 Q These assets, I believe you testified,</p> <p>11 have been sent back to Sentinel now, is that</p> <p>12 right?</p> <p>13 <b>A That is correct.</b></p> <p>14 Q When did that happen?</p> <p>15 <b>A That happened at some point in later 2021,</b></p> <p>16 <b>I think the effective date may have been November,</b></p> <p>17 <b>2021.</b></p> <p>18 Q Why were they transferred back to</p> <p>19 Sentinel?</p> <p>20 <b>A Based on the discussions that the new</b></p> <p>21 <b>directors had with counsel and others, I am not</b></p> <p>22 <b>sure who, but the determination was that they</b></p> <p>23 <b>would try to recover those assets in anticipation</b></p> <p>24 <b>of the outcome of the discussions with UBS.</b></p> <p>25 Q Are these assets that have been</p>	288
285	<p>1 transferred back from Sebastian Clark do they have</p> <p>2 a value now?</p> <p>3 <b>A Not to my knowledge.</b></p> <p>4 Q They have not been valued by anyone?</p> <p>5 Do you know how they show up --</p> <p>6 MS. REPORTER: I didn't get an answer, you</p> <p>7 shook your head.</p> <p>8 THE WITNESS: Sorry, no, they do not have</p> <p>9 any value assigned to them.</p> <p>10 BY MR. BURT:</p> <p>11 Q And no valuation has been done on them?</p> <p>12 <b>A That is correct.</b></p> <p>13 Q Where do they show up in the financial</p> <p>14 statements?</p> <p>15 <b>A We haven't completed financial statements</b></p> <p>16 <b>for November, 2021 yet.</b></p> <p>17 Q Do you have an idea of where they will</p> <p>18 show up, how they will be accounted for?</p> <p>19 <b>A They will show up in the asset holding</b></p> <p>20 <b>schedule.</b></p> <p>21 Q And will values be assigned to them?</p> <p>22 <b>A They will have a value of 0 assigned to</b></p> <p>23 <b>them unless we know otherwise.</b></p> <p>24 Q Is Beecher trying to obtain a valuation of</p> <p>25 the assets?</p>	287
286	<p>1 <b>A I do not know. That's the call of the</b></p> <p>2 <b>directors whether they obtain any valuations going</b></p> <p>3 <b>forward.</b></p> <p>4 Q Thank you, Mr. Adamczak.</p> <p>5 I wanted to actually -- it's related to</p> <p>6 what the directors can do now, post Mr. DiOrio</p> <p>7 leaving the board and now with the new independent</p> <p>8 directors and now with the Highland entities in</p> <p>9 bankruptcy, we looked at the management services</p> <p>10 agreement of Beecher Carlson back at the beginning</p> <p>11 of the day, and we saw in a number of places that</p> <p>12 Highland Capital was providing direction about</p> <p>13 investments, for example, do you recall that?</p> <p>14 <b>A Yes.</b></p> <p>15 Q And we can look at it, I don't want to put</p> <p>16 words -- make things up here. What exhibit is</p> <p>17 that? Let's look at the management agreement.</p> <p>18 117. Many documents ago.</p> <p>19 We saw that in looking at Exhibit A that</p> <p>20 Highland Capital could request comprehensive</p> <p>21 quarterly financial statements, et cetera, and</p> <p>22 also could facilitate the investment of available</p> <p>23 funds, that Beecher would facilitate the</p> <p>24 investment of available funds in accordance with</p> <p>25 written instructions from Sentinel through</p>	288

<p style="text-align: right;">289</p> <p>1 Highland Capital, right?</p> <p>2 <b>A Correct.</b></p> <p>3 Q Is that still how the management agreement</p> <p>4 works with Highland Capital now in bankruptcy and</p> <p>5 now a trustee overseeing it?</p> <p>6 <b>A The captive management agreement has not</b></p> <p>7 <b>been amended to this date.</b></p> <p>8 Q Does Beecher have any correspondence with</p> <p>9 the trustee overseeing Highland Capital?</p> <p>10 <b>A Beecher Carlson has no correspondence with</b></p> <p>11 <b>anyone from Highland Capital.</b></p> <p>12 Q If the trustee were to provide, for</p> <p>13 example, written instructions about the investment</p> <p>14 of available funds, would Beecher be obligated to</p> <p>15 do that, that the trustee --</p> <p>16 <b>A Beecher would have to send that on to the</b></p> <p>17 <b>directors and it would be ultimately up to the</b></p> <p>18 <b>directors to determine how investments should be</b></p> <p>19 <b>handled.</b></p> <p>20 Q Was that the case prior to the bankruptcy</p> <p>21 as well, would requests like that from Highland</p> <p>22 Capital have to get passed on to directors?</p> <p>23 <b>A That's correct.</b></p> <p>24 Q How about something like paying on the</p> <p>25 policy, if the trustee were to come and say on</p>	<p style="text-align: right;">291</p> <p>1 unanimous written resolutions since 27 October</p> <p>2 2014 and following a brief discussion it was</p> <p>3 resolved that the board of directors meeting</p> <p>4 minutes of 4th of August 2016 and 28 December 2017</p> <p>5 be and are hereby approved.</p> <p>6 So my question on that is why in this</p> <p>7 meeting in December of 2018 were four years worth</p> <p>8 of minutes and resolutions discussed and approved?</p> <p>9 <b>A It's actually two years, and there was</b></p> <p>10 <b>probably no formal approval in the December, 2017</b></p> <p>11 <b>meeting of the prior year August 4, 2016 meeting</b></p> <p>12 <b>minutes, so this was a catch-up approval.</b></p> <p>13 <b>It's not uncommon to formally approve the</b></p> <p>14 <b>board minutes at the following meeting, the prior</b></p> <p>15 <b>meeting minutes.</b></p> <p>16 Q I was getting the four-year number from</p> <p>17 this line that the meeting minutes and unanimous</p> <p>18 written resolution since 27 October 2014, so the</p> <p>19 time between 27 October 2014 and December 17,</p> <p>20 2018. So -- maybe that's just referring to the</p> <p>21 unanimous written resolutions.</p> <p>22 But do you know why those hadn't been</p> <p>23 discussed over a period of four years with the</p> <p>24 board?</p> <p>25 MR. WELDON: Objection.</p>
<p style="text-align: right;">290</p> <p>1 behalf of Highland Capital I want you to pay on</p> <p>2 the policy, what would Beecher do, would they have</p> <p>3 to run that by the directors or could Beecher --</p> <p>4 <b>A As Beecher doesn't make any payments</b></p> <p>5 <b>themselves everything has to go through the</b></p> <p>6 <b>directors for final approval.</b></p> <p>7 Q Another way back in time exhibit,</p> <p>8 Exhibit 116, if we can pull that up, this was the</p> <p>9 e-mail that attached advisory -- excuse me, the</p> <p>10 board minutes and the advisory committee</p> <p>11 discussions. The front of it is an e-mail from</p> <p>12 Clayton price to CIMA.</p> <p>13 The first attachment there, and we looked</p> <p>14 briefly at it, but I do have a few questions about</p> <p>15 it, the board of directors minutes, you see that</p> <p>16 these are minutes of a meeting held on the 17th of</p> <p>17 December, 2018?</p> <p>18 <b>A Correct.</b></p> <p>19 Q And here it appears that Damien Austin and</p> <p>20 Jan Neveril are appointed to be chairman and</p> <p>21 secretary of the board, is that right?</p> <p>22 <b>A That is correct.</b></p> <p>23 Q Under No. 3, prior meeting minutes and</p> <p>24 resolutions, it states that the directors reviewed</p> <p>25 the prior board of directors meeting minutes and</p>	<p style="text-align: right;">292</p> <p>1 THE WITNESS: I don't know that they</p> <p>2 weren't discussed with the board, but there were</p> <p>3 new directors at this point. This is the first</p> <p>4 meeting that Jan, Damian, Matt, and Dilip had all</p> <p>5 attended so it would have made sense to present</p> <p>6 some of the former resolutions to review and have</p> <p>7 -- so they could have the background on.</p> <p>8 BY MR. BURT:</p> <p>9 Q On the next page there is a litigation</p> <p>10 update under 4A, and it states the chairman</p> <p>11 requested that all parties advise if they are</p> <p>12 aware of any litigation matters which may impact</p> <p>13 the company. All the participants confirmed that</p> <p>14 they were not aware of any litigation that</p> <p>15 involved the company.</p> <p>16 Was this just referring to specific</p> <p>17 litigation involving Sentinel itself?</p> <p>18 <b>A I would assume that to be true.</b></p> <p>19 Q Right.</p> <p>20 Because obviously the UBS litigation</p> <p>21 involving the ATE policy was ongoing at that time?</p> <p>22 <b>A Right. But Sentinel was not named in any</b></p> <p>23 <b>of that litigation.</b></p> <p>24 Q Under 8, acts of directors, states the</p> <p>25 directors having been apprised of the business</p>



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<p style="text-align: right;">293</p> <p>1 transactions and affairs of the company since the</p> <p>2 last meeting of the directors on the 4th of August</p> <p>3 2016 accordingly who's resolved that all acts of</p> <p>4 the directors and agents of the company taken on</p> <p>5 behalf of the company since 4 August 2016 being</p> <p>6 hereby and are hereby approved and ratified.</p> <p>7 So here it states that the directors</p> <p>8 hadn't met since the 4th of August, 2016 which is</p> <p>9 inconsistent with what it says on the first page</p> <p>10 that there was an 8 December 2017 meeting. Do you</p> <p>11 know what was going on there?</p> <p>12 <b>A I do not know or recall what the</b></p> <p>13 <b>December 8, 2017 meeting reviewed. It may have</b></p> <p>14 <b>been a brief meeting that may not have covered all</b></p> <p>15 <b>of the items and had the catchall resolution to</b></p> <p>16 <b>approve all prior acts since the last meeting.</b></p> <p>17 Q Did Beecher write the minutes for the</p> <p>18 meetings?</p> <p>19 <b>A Beecher as part of its captive management</b></p> <p>20 <b>role would typically take minutes for the meetings</b></p> <p>21 <b>and draft and then send those minutes to directors</b></p> <p>22 <b>for review and commentary.</b></p> <p>23 Q On the first page in attendance</p> <p>24 J.P. Sevilla and Katie Irving for SAS Asset</p> <p>25 Recovery are in attendance. Do you know why they</p>	<p style="text-align: right;">295</p> <p>1 debt that is owed by a creditor?</p> <p>2 <b>A Not to my knowledge.</b></p> <p>3 MR. BURT: Christian, we are getting</p> <p>4 really close, let us take five minutes to organize</p> <p>5 things.</p> <p>6 MR. WELDON: Yes.</p> <p>7 MR. BURT: If we can.</p> <p>8 THE VIDEOGRAPHER: We are going off the</p> <p>9 record, the time is 5:42.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: We are on the record,</p> <p>12 the time is 5:53.</p> <p>13 BY MR. BURT:</p> <p>14 Q Mr. Adamczak, we are just about done here,</p> <p>15 a few final mop-up questions.</p> <p>16 Looking at Exhibit 140 -- 134, I wasn't</p> <p>17 even close, 134, Page 9 of the investment holding</p> <p>18 statement for Sentinel Reinsurance from</p> <p>19 November 30, 2020, we had looked earlier in the</p> <p>20 day that there were four investments that were</p> <p>21 prior to the 2017 ATE transfers and those are</p> <p>22 listed there, the Eastland, there was a</p> <p>23 Greenbriar, there was a Greyson CLO, and then the</p> <p>24 Stratford CLO, is that right?</p> <p>25 <b>A That's correct.</b></p>
<p style="text-align: right;">294</p> <p>1 are in attendance?</p> <p>2 <b>A As members of Highland and knowledgeable</b></p> <p>3 <b>members of the activities centering around</b></p> <p>4 <b>Sentinel.</b></p> <p>5 Q They would attend board meetings?</p> <p>6 <b>A Correct.</b></p> <p>7 Q They didn't have a vote?</p> <p>8 <b>A No.</b></p> <p>9 Q Is that right?</p> <p>10 <b>A No.</b></p> <p>11 Q What did they do at the board meetings, if</p> <p>12 you recall?</p> <p>13 <b>A I don't, unless it was specifically</b></p> <p>14 <b>identified in the minutes. They could have just</b></p> <p>15 <b>been observing.</b></p> <p>16 Q Going back to Sentinel as it exists today,</p> <p>17 do you know who the creditors of Sentinel are if</p> <p>18 it has any?</p> <p>19 <b>A In what way?</b></p> <p>20 Q So entities that have loaned Sentinel</p> <p>21 money, for example, if there were to be a</p> <p>22 liquidation of Sentinel would there be various</p> <p>23 organizations that are owed money by Sentinel?</p> <p>24 <b>A Not to my knowledge.</b></p> <p>25 Q In other words, Sentinel hasn't issued any</p>	<p style="text-align: right;">296</p> <p>1 Q And I believe you were able during a break</p> <p>2 to confirm some information about those transfers,</p> <p>3 is that right?</p> <p>4 <b>A That is correct.</b></p> <p>5 Q What were you able to learn?</p> <p>6 <b>A The Eastland and Greyson CLOs are not</b></p> <p>7 <b>transferred into Sentinel's name and the other two</b></p> <p>8 <b>are.</b></p> <p>9 Q And is it correct that just as with the</p> <p>10 Schedule A assets those pre-ATE transfers Beecher</p> <p>11 don't have any insight into where -- who the</p> <p>12 transferor was, who those came from?</p> <p>13 <b>A Correct.</b></p> <p>14 Q You mentioned earlier in the day that I</p> <p>15 believe I asked you about whether the current</p> <p>16 assets of Sentinel are sufficient to cover a</p> <p>17 potential payment on the ATE policy, and I believe</p> <p>18 you testified that, yes, they are, is that</p> <p>19 correct?</p> <p>20 <b>A That's correct.</b></p> <p>21 Q And I am wondering if you could explain</p> <p>22 how you know that, how the assets have been</p> <p>23 valued.</p> <p>24 <b>A As of what date are we talking about?</b></p> <p>25 Q As of today, so the latest valuation of</p>

297	<p>1 those assets.</p> <p>2 <b>A The latest valuation that we have on any</b></p> <p>3 <b>of the investments was as of December 31, 2020.</b></p> <p>4 Q 2020, so two years ago -- a year and a</p> <p>5 half ago?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Is the 2021 those statements are being</p> <p>8 worked on now?</p> <p>9 <b>A The directors have not concluded whether</b></p> <p>10 <b>they want to obtain valuations as of December 31,</b></p> <p>11 <b>2021.</b></p> <p>12 Q Do you know why?</p> <p>13 <b>A I do not. They have been -- they have</b></p> <p>14 <b>been having discussions with the audit firm and</b></p> <p>15 <b>the auditors did not require it as they were</b></p> <p>16 <b>likely disclaiming an opinion anyway.</b></p> <p>17 Q So as of the end of December, 2020 when</p> <p>18 they were valued, what valuations were done on the</p> <p>19 assets at that time?</p> <p>20 <b>A The same valuations that they had done on</b></p> <p>21 <b>the investments in prior years.</b></p> <p>22 Q Done by the same service providers?</p> <p>23 <b>A Valuation Research Corp.</b></p> <p>24 Q And that valuation at the end of 2020</p> <p>25 yielded an amount sufficient to satisfy the entire</p>	299	<p>1 <b>Sentinel.</b></p> <p>2 Q We have talked today about very clear</p> <p>3 testimony about all of the assets of the insureds</p> <p>4 were transferred over to pay the premium.</p> <p>5 Did anyone at Highland ever say why</p> <p>6 Highland decided to transfer all of those assets?</p> <p>7 MR. WELDON: Objection.</p> <p>8 THE WITNESS: It was our understanding</p> <p>9 they did not have the cash to be able to pay the</p> <p>10 premium so in lieu of receipt of premium in cash</p> <p>11 they informed us that all of the assets would be</p> <p>12 transferred.</p> <p>13 BY MR. BURT:</p> <p>14 Q Right.</p> <p>15 And that's -- I guess that's where the</p> <p>16 rubber hits the road, because as we have gone</p> <p>17 through the amount of premium was a little bit in</p> <p>18 flux and it was later amended in Endorsement 1 to</p> <p>19 match the assets transferred, and so that decision</p> <p>20 to transfer all the assets, did they ever say why</p> <p>21 Highland wanted to transfer all of the insured's</p> <p>22 assets?</p> <p>23 <b>A I don't recall.</b></p> <p>24 Q You don't recall any discussions, for</p> <p>25 example, with J.P. Sevilla about that?</p>
298	<p>1 premium, is that right?</p> <p>2 <b>A Say that again?</b></p> <p>3 Q That was a poor -- very poorly worded</p> <p>4 question.</p> <p>5 The valuation at that time, in December</p> <p>6 of 2020, yielded an asset value at Sentinel that</p> <p>7 was sufficient to cover the ATE policy?</p> <p>8 <b>A Correct.</b></p> <p>9 Q So \$91 million?</p> <p>10 <b>A Correct.</b></p> <p>11 Q And how are those assets held, do you know</p> <p>12 in what forms?</p> <p>13 <b>A There is CLOs, there is promissory notes,</b></p> <p>14 <b>there is limited partnerships, basically whatever</b></p> <p>15 <b>is left of the investments that weren't previously</b></p> <p>16 <b>sold.</b></p> <p>17 Q And there is cash still?</p> <p>18 <b>A And there is still cash.</b></p> <p>19 Q And the SeaOne investment is still there,</p> <p>20 for example?</p> <p>21 <b>A The SeaOne investment is owned by</b></p> <p>22 <b>SS Holdings, which is a subsidiary of Sentinel.</b></p> <p>23 Q And is it counted towards the assets of</p> <p>24 Sentinel?</p> <p>25 <b>A It is in the consolidated financials for</b></p>	300	<p>1 <b>A The only discussions that I recall were</b></p> <p>2 <b>that there was going to be a risk in taking these</b></p> <p>3 <b>investments so there had to be some reward for</b></p> <p>4 <b>taking on that risk and that reward was in the</b></p> <p>5 <b>form of a potential windfall should the</b></p> <p>6 <b>investments prove to be worth more than nothing.</b></p> <p>7 Q And that's what Mr. Sevilla told you?</p> <p>8 <b>A I don't remember if that was specifically</b></p> <p>9 <b>his words, but that was our understanding.</b></p> <p>10 Q And that was Beecher's understanding?</p> <p>11 <b>A That was Beecher's understanding.</b></p> <p>12 Q And is it fair to say that Beecher was not</p> <p>13 involved in the decision to transfer all the</p> <p>14 assets, that was made by Highland, right?</p> <p>15 <b>A Beecher was not involved in that decision.</b></p> <p>16 Q And all of the reasons for transferring</p> <p>17 those assets were not -- Beecher was not made</p> <p>18 privy to, is that right?</p> <p>19 <b>A Beecher was not aware that there was any</b></p> <p>20 <b>information that was withheld from them.</b></p> <p>21 Q Now, is Beecher aware that through the</p> <p>22 trustee now that CDO Fund has made a claim on the</p> <p>23 policy?</p> <p>24 <b>A That's correct.</b></p> <p>25 Q And when did Beecher become aware of that?</p>

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<p style="text-align: right;">301</p> <p>1 <b>A When the demand came through in early</b>                  2 <b>2021.</b>                  3 Q Has Beecher had conversations with the                  4 directors about that?                  5 <b>A We have had limited conversations with the</b>                  6 <b>directors regarding it.</b>                  7 Q What have those conversations been?                  8 <b>A That there had been no resolution in the</b>                  9 <b>discussions, the settlement discussions or</b>                  10 <b>negotiations, with UBS.</b>                  11 Q And did the directors tell Beecher that                  12 that was a reason to not pay on the policy                  13 pursuant to the demand?                  14 <b>A They haven't given us a reason why there</b>                  15 <b>has been no payment on the policy.</b>                  16 Q Does Beecher take a position one way or                  17 another on whether the policy should be paid?                  18 <b>A Beecher is contracted with Sentinel to</b>                  19 <b>provide the management services and financials.</b>                  20 <b>We are available to be consulted with should there</b>                  21 <b>need, we have had no consultation requests from</b>                  22 <b>the directors.</b>                  23 Q So Beecher -- is it fair to say that                  24 Beecher is not aware of any reason why the claim                  25 has not been paid to date?</p>	<p style="text-align: right;">303</p> <p>1 BY MR. BURT:                  2 Q Well, that contradicts what you testified                  3 to earlier where you said they were the ones                  4 ultimately calling the shots as ultimate                  5 beneficial owners.                  6 MR. WELDON: Objection, misstates earlier                  7 testimony.                  8 THE WITNESS: I don't remember what I                  9 said.                  10 BY MR. BURT:                  11 Q But you were testifying truthfully                  12 earlier, right?                  13 MR. WELDON: Objection.                  14 THE WITNESS: I have been testifying                  15 truthfully the entire time.                  16 BY MR. BURT:                  17 Q Do you know what Peak Ventures is?                  18 <b>A I have never heard of Peak Ventures.</b>                  19 Q Referring to Dilip Massand, do you happen                  20 to know why he resigned from the board?                  21 <b>A We were not informed of the reasons why he</b>                  22 <b>resigned.</b>                  23 Q Did that resignation come suddenly?                  24 <b>A It was sudden.</b>                  25 Q And no one explained why?</p>
<p style="text-align: right;">302</p> <p>1 MR. WELDON: Objection.                  2 THE WITNESS: Beecher is not aware of any                  3 reasons why the claim has not been paid to date.                  4 BY MR. BURT:                  5 Q We have seen some documents today that                  6 reference Sentinel's management. Do you know who                  7 those -- whose referred to as Sentinel management                  8 or the officers of Sentinel that would refer to?                  9 <b>A In what way?</b>                  10 Q So we talked about the directors, right --                  11 <b>A Yes.</b>                  12 Q -- on one hand, and there has been other                  13 references to the management at Sentinel.                  14 Have you ever heard that term that                  15 Sentinel has management?                  16 <b>A Yes. But I would take it to mean that the</b>                  17 <b>management refers to those decision makers.</b>                  18 Q Being whom?                  19 <b>A The directors of Sentinel.</b>                  20 Q And ultimately Dondero and Ellington?                  21 MR. WELDON: Objection.                  22 THE WITNESS: I have not been requested by                  23 them to make any or to direct any payments so I                  24 can't say that they are the ones calling any                  25 shots.</p>	<p style="text-align: right;">304</p> <p>1 <b>A I believe the explanation that we had was</b>                  2 <b>that he was no longer affiliated with Highland</b>                  3 <b>Capital.</b>                  4 MR. BURT: One final document, this is the                  5 final one and the shortest one.                  6 (Document marked Exhibit 145 for                  7 identification.)                  8 BY MR. BURT:                  9 Q So this is an e-mail from Clayton Price to                  10 you, Mr. Adamczak, in the end of April last year,                  11 2021. And the subject is Interesting to now learn                  12 that Matt had been planning to also resign from                  13 Sentinel's board. Then he states, "And they                  14 previously appointed counsel other than Dylan at                  15 Carey Olsen... my instinct tell me Matt likely                  16 knew/knows more about this demand now being                  17 served." Do you recall this e-mail?                  18 <b>A I do.</b>                  19 Q What was the context of this e-mail?                  20 <b>A This was at the time that the then current</b>                  21 <b>directors were asked to resign from Sentinel.</b>                  22 Q And why was it interesting to learn that                  23 Matt had been planning to resign?                  24 <b>A Because through previous discussions that</b>                  25 <b>we had with him he had given us no indication that</b></p>

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<p style="text-align: right;">305</p> <p><b>1 he was going to be resigning until that point.</b></p> <p>2 Q Do you know who asked the directors to</p> <p>3 resign?</p> <p><b>4 A I do not.</b></p> <p>5 Q What did you make of Clayton price's line</p> <p>6 that his instincts tells me Matt likely knows more</p> <p>7 about the demand for payment on the claim now</p> <p>8 being served?</p> <p><b>9 A Say that again?</b></p> <p>10 Q What did you take from Mr. Price's</p> <p>11 statement that his instincts told him Matt knew</p> <p>12 more about the demand for claim payment that was</p> <p>13 being served?</p> <p><b>14 A I would just be speculating if I --</b></p> <p>15 Q Did you share those instincts that Matt</p> <p>16 knew more than he was letting on?</p> <p><b>17 A Yes.</b></p> <p>18 Q Why is that?</p> <p><b>19 A Because it just seemed peculiar.</b></p> <p>20 Q What seemed peculiar?</p> <p><b>21 A That he was resigning.</b></p> <p>22 Q Last set of questions, in preparing for</p> <p>23 this deposition did you have any contact with</p> <p>24 Sentinel's counsel?</p> <p><b>25 A No.</b></p>	<p style="text-align: right;">307</p> <p>1 MR. WELDON: And I understand your</p> <p>2 request. I have only a couple questions. If you</p> <p>3 are done -- I asked Mr. Feinstein, I don't think</p> <p>4 he has any, I am not aware of anyone else so I am</p> <p>5 going to ask questions.</p> <p>6 EXAMINATION</p> <p>7 BY MR. WELDON:</p> <p>8 Q If you could look at Exhibit 137, I think</p> <p>9 they are in order. And then 128 is the other one</p> <p>10 I will need. If you guys want so you know what I</p> <p>11 am looking at. We are going to do 137 first.</p> <p>12 You testified about UBO, can you tell me</p> <p>13 what that term means again?</p> <p><b>14 A Ultimate beneficial owner.</b></p> <p>15 Q And you understood that UBOs in the</p> <p>16 corporate structure diagram to be who on those</p> <p>17 two?</p> <p><b>18 A James Dondero and Scott Ellington.</b></p> <p>19 Q Have you ever had any discussions with</p> <p>20 Dondero or Ellington?</p> <p><b>21 A Me personally, no.</b></p> <p>22 Q Are you aware of any document that you</p> <p>23 have seen today or do you have a document where</p> <p>24 you have seen that Dondero or Ellington made any</p> <p>25 decisions about anything relative to Sentinel</p>
<p style="text-align: right;">306</p> <p>1 Q So that would be counsel at Foley Lardner</p> <p>2 or Collas Crill?</p> <p><b>3 A Correct.</b></p> <p>4 Q How about with any of the former Highland</p> <p>5 employees, Matt DiOrio?</p> <p><b>6 A No.</b></p> <p>7 Q Or J.P. Sevilla?</p> <p><b>8 A No.</b></p> <p>9 Q Just worked with Mr. Weldon here to</p> <p>10 prepare?</p> <p><b>11 A That's correct.</b></p> <p>12 MR. BURT: Chris, I think there are still</p> <p>13 a few documents that weren't produced to us over</p> <p>14 on the redaction, waiting to get.</p> <p>15 MS. GEORGE: There is at least 30</p> <p>16 invoices, not including --</p> <p>17 MR. WELDON: I know they are being worked</p> <p>18 on, just follow-up on them.</p> <p>19 MR. BURT: We will follow-up on them. And</p> <p>20 for that reason though I am just going to need to</p> <p>21 hold the deposition open pending --</p> <p>22 MR. WELDON: I don't agree it is open I</p> <p>23 think we are close to the seven hours, but I</p> <p>24 understand your position.</p> <p>25 MR. BURT: Okay.</p>	<p style="text-align: right;">308</p> <p>1 directly that you saw on a decision making basis?</p> <p><b>2 A I have not.</b></p> <p>3 Q On one -- on Exhibit 137, if you look at</p> <p>4 the top, you see Matt DiOrio's e-mail there.</p> <p><b>5 A Yes.</b></p> <p>6 Q It says sasmtg.com, and you explained why</p> <p>7 you understood that e-mail to be utilized in that</p> <p>8 fashion.</p> <p>9 Do you know who Matt -- aside from being</p> <p>10 an internal director, which you testified about</p> <p>11 with Sentinel, do you know who Matt DiOrio</p> <p>12 specifically worked for and got paid by relative</p> <p>13 to his work?</p> <p><b>14 A Not with certainty, no.</b></p> <p>15 Q In regards to all the testimony you</p> <p>16 provided today are you aware of Matt DiOrio acting</p> <p>17 as anything but an internal director on his</p> <p>18 direction to you?</p> <p><b>19 A On his direction to us, it was in his</b></p> <p><b>20 capacity as an internal director.</b></p> <p>21 Q Because we have used the term coming from</p> <p>22 Highland Capital, do you have any direct knowledge</p> <p>23 on how information got from Highland Capital to</p> <p>24 Matt DiOrio specifically?</p> <p><b>25 A I do not.</b></p>

<p style="text-align: right;">309</p> <p>1 Q I want to look at Exhibit 128.</p> <p>2 We talked about these scenarios that Jason</p> <p>3 Stubbs had put together.</p> <p>4 <b>A Yes.</b></p> <p>5 Q And there were scenarios in these</p> <p>6 scenarios -- in these three -- there were</p> <p>7 situations in these three scenarios in which</p> <p>8 Sentinel took the premium places policy they would</p> <p>9 have a favorable outcome in the premium they took</p> <p>10 and a beneficial benefit to the company, is that</p> <p>11 correct?</p> <p>12 <b>A That's correct. In each of the scenarios</b></p> <p>13 <b>there were two options that would have resulted in</b></p> <p>14 <b>very little payout or no payment.</b></p> <p>15 Q So in that regard, only that regard, I am</p> <p>16 not talking about any other aspect of it, was the</p> <p>17 policy any different than any other policy when</p> <p>18 you get scenarios when you have this actuary done</p> <p>19 in regards to how that policy was going to respond</p> <p>20 and whether it was a policy that should be placed.</p> <p>21 <b>A No. This is similar to many policies that</b></p> <p>22 <b>we have seen in the past.</b></p> <p>23 Q Was there any action that Beecher took in</p> <p>24 regards to what it has done for Sentinel</p> <p>25 throughout its time as the captive manager that</p>	<p style="text-align: right;">311</p> <p>1 Q Do you know what the basis of that</p> <p>2 restraining order is?</p> <p>3 <b>A I do not.</b></p> <p>4 Q But there was some clarification on what</p> <p>5 could be paid?</p> <p>6 <b>A Correct.</b></p> <p>7 Q Is that correct?</p> <p>8 <b>A Correct.</b></p> <p>9 Q And you looked -- is it fair to say you</p> <p>10 looked to the directors, the current directors of</p> <p>11 Sentinel, to understand their interpretation of</p> <p>12 that clarification?</p> <p>13 <b>A The current directors are aware of that</b></p> <p>14 <b>restraining order and would direct us to pay</b></p> <p>15 <b>invoices or to process invoices so that they could</b></p> <p>16 <b>release them as deemed appropriate.</b></p> <p>17 Q Okay.</p> <p>18 MR. WELDON: I don't have any other</p> <p>19 questions at this point.</p> <p>20 MR. BURT: Just a little redirect.</p> <p>21</p> <p>22 FURTHER EXAMINATION</p> <p>23 BY MR. BURT:</p> <p>24 Q Your counsel, Mr. Adamczak, just asked you</p> <p>25 a few questions about the UBOs, the ultimate</p>
<p style="text-align: right;">310</p> <p>1 wasn't at the direction of the directors?</p> <p>2 <b>A No. Beecher did not have the capacity to</b></p> <p>3 <b>be able to do that. Everything was approved and</b></p> <p>4 <b>directed by the directors, whether independent or</b></p> <p>5 <b>internal.</b></p> <p>6 Q When you talk about internal, the internal</p> <p>7 directors that you dealt with over the time was</p> <p>8 DiOrio?</p> <p>9 <b>A Matt DiOrio and Dilip Massand.</b></p> <p>10 Q J.P. was not an internal director to your</p> <p>11 knowledge?</p> <p>12 <b>A J.P. was never a director of Sentinel.</b></p> <p>13 Q That report that CIMA did and asked for a</p> <p>14 number of things that were needed to be done by</p> <p>15 Sentinel, are you aware of anything that hadn't</p> <p>16 been met at CIMA's request following that</p> <p>17 inspection report?</p> <p>18 <b>A No.</b></p> <p>19 <b>Sentinel followed through with all of</b></p> <p>20 <b>their requests compliant with every piece of</b></p> <p>21 <b>documentation so that they could continue with a</b></p> <p>22 <b>clean bill of health to continue operating.</b></p> <p>23 Q And there is that order, that restraining</p> <p>24 order that came out?</p> <p>25 <b>A Yes.</b></p>	<p style="text-align: right;">312</p> <p>1 beneficial owners of Sentinel. Do you recall</p> <p>2 those questions?</p> <p>3 <b>A Yes.</b></p> <p>4 Q I am going to read to you from the</p> <p>5 transcript from earlier today at Pages 17, line --</p> <p>6 Page 17, Line 14 through Page 18 Line 1, quote --</p> <p>7 MR. WELDON: Let me just get it up, give</p> <p>8 me a second. What is the line?</p> <p>9 MR. BURT: Page 17, Line 14.</p> <p>10 BY MR. BURT:</p> <p>11 Q I did a search in the realtime, you can</p> <p>12 scroll up.</p> <p>13 MR. WELDON: Go ahead.</p> <p>14 BY MR. BURT:</p> <p>15 Q "Q You stated a moment ago that the</p> <p>16 ultimate -- the role of an ultimate beneficial</p> <p>17 owner is that they are the person who ultimately</p> <p>18 calls the shots for the captive. Is that true</p> <p>19 with respect to Mr. Dondero and Ellington and</p> <p>20 Sentinel that they are the ones ultimately calling</p> <p>21 the shots for Sentinel?"</p> <p>22 "MR. Weldon: Objection."</p> <p>23 "MR. BURT: You can answer."</p> <p>24 "MR. WELDON: You may answer."</p> <p>25 "THE WITNESS: To the best of our</p>

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1 knowledge that is correct."  
 2 That was the question that you were asked  
 3 and that was the answer that you gave earlier  
 4 today, isn't that right?  
 5 **A That's correct.**  
 6 Q And you also said that you hadn't seen any  
 7 documents where Messrs Dondero and Ellington were  
 8 making decisions.  
 9 I would like to pull up Exhibit 116 again  
 10 and go to the second attachment, which is the  
 11 Sentinel Advisory Committee discussions signed by  
 12 Mr. Ellington, recording member, do you see that?  
 13 **A I do.**  
 14 Q Do you recall seeing this document earlier  
 15 today?  
 16 **A I do.**  
 17 Q And do you recall testifying that these  
 18 committee discussions were never provided to  
 19 Beecher?  
 20 **A That is correct.**  
 21 MR. BURT: That's all I have.  
 22 MR. WELDON: I am done.  
 23 THE VIDEOGRAPHER: This marks Day 1 of the  
 24 deposition of Thomas Adamczak, we are going off  
 25 the record at 6:19 p.m.

314

1 (End of videotaped proceedings.)  
 2 MS. REPORTER: You are getting a rough  
 3 draft and five-day delivery.  
 4 MR. BURT: Yes.  
 5 MR. WELDON: And we will read and sign,  
 6 right?  
 7 MS. REPORTER: Do you get a rough draft as  
 8 well?  
 9 MR. WELDON: They are paying.  
 10 MR. BURT: I just don't know.  
 11 MS. REPORTER: My office will contact  
 12 you.  
 13 (WHICH WERE ALL OF THE PROCEEDINGS HAD OR  
 14 TAKEN PLACE IN THE ABOVE-ENTITLED MATTER.)  
 15  
 16  
 17  
 18  
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 22  
 23  
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315

1 STATE OF ILLINOIS)  
 ) SS.  
 2 COUNTY OF DUPAGE )  
 3 I, STEPHANIE A. BATTAGLIA, CSR and  
 4 Notary Public in and for the County of DuPage and  
 5 State of Illinois, do hereby certify that on  
 6 April 12, 2022, at 9:06 a.m., at 156 College  
 7 Street, Suite 301, Burlington, Vermont the  
 8 deponent THOMAS ADAMCZAK, 30(b)(6) personally  
 9 appeared before me.  
 10 I further certify that the said THOMAS  
 11 ADAMCZAK, 30(b)(6) was by me first duly sworn to  
 12 testify and that the foregoing is a true record of  
 13 the testimony given by the witness.  
 14 I further certify that the deposition was  
 15 terminated at 6:19 p.m.  
 16 I further certify that I am not counsel  
 17 for nor related to any of the parties herein, nor  
 18 am I interested in the outcome hereof.  
 19 In witness whereof, I have hereunto set  
 20 my hand and seal of office this of April,  
 21 2022.  
 22  
 23  
 24 Notary Public  
 25 CSR No. 084-003337 - Expiration Date: 5/31/2023





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# Transcript of Clifford E. Stoops, II

**Date:** April 27, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Clifford E. Stoops, II  
Conducted on April 27, 2021

1	3
1 IN THE UNITED STATES BANKRUPTCY COURT	1 A P P E A R A N C E S
2 FOR THE NORTHERN DISTRICT OF TEXAS	2 ON BEHALF OF PLAINTIFFS UBS SECURITIES LLC
3 DALLAS DIVISION	3 AND UBS AG LONDON BRANCH:
4 -----x	4 SHANNON E. MCLAUGHLIN, ESQ.
5 In re : Chapter 11	5 LATHAM & WATKINS LLP
6 HIGHLAND CAPITAL : Case No. 19-34054-SGJ11	6 885 Third Avenue
7 MANAGEMENT, L.P., :	7 New York, New York 10022-4834
8 Debtor. :	8 212.906.1200
9 -----x	9
10 UBS SECURITIES LLC AND : Adversary Proceeding	10 ANDREW CLUBOK, ESQ.
11 UBS AG LONDON BRANCH : No. 21-03020-SGJ	11 SARAH TOMKOWIAK, ESQ.
12 Plaintiffs, :	12 LATHAM & WATKINS LLP
13 v. :	13 555 Eleventh Street, NW
14 HIGHLAND CAPITAL :	14 Suite 1000
15 MANAGEMENT, L.P., :	15 Washington, D.C. 20004-1304
16 Defendant. :	16 202.637.2200
17 -----x	17
18	18 ON BEHALF OF DEFENDANT
19 VIDEOTAPED DEPOSITION OF CLIFFORD E. STOOPS, II	19 HIGHLAND CAPITAL MANAGEMENT, L.P.:
20 Conducted Virtually	20 ROBERT J. FEINSTEIN, ESQ.
21 Tuesday, April 27, 2021	21 GREGORY V. DEMO, ESQ.
22 10:14 a.m. EDT	22 PACHULSKI STANG ZIEHL & JONES LLP
23 Job No.: 368733	23 780 Third Avenue, 34th Floor
24 Pages: 1 - 83	24 New York, New York 10017-2024
25 Reported by: Monique Vouthouris, CCR, RPR, CRR	25 212.561.7700
2	4
1	1 A P P E A R A N C E S C O N T I N U E D
2	2 ON BEHALF OF THE WITNESS CLIFFORD E. STOOPS, II:
3	3 ROBERT M. THORNTON, ESQ.
4	4 KILGORE & KILGORE PLLC
5	5 3109 Carlisle Street
6 REMOTE VIDEOTAPED deposition of CLIFFORD E.	6 Dallas, Texas 75204
7 STOOPS, II, pursuant to subpoena, before Monique	7 214.969.9099
8 Vouthouris, CCR, RPR, CRR, Notary Public in and for	8
9 the States of New Jersey and New York.	9
10	10 ALSO PRESENT:
11 Witness Location:	11 CHESTER WONG, Planet Depos Videographer
12 Dallas, Texas	12 SARAH LOILER, Planet Depos Technician
13	13
14	14
15	15
16	16
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24	24
25	25



Transcript of Clifford E. Stoops, II  
Conducted on April 27, 2021

5		7	
1	C O N T E N T S	1	access them on breaks. But if Mr. Thornton is in the
2	EXAMINATION OF CLIFFORD E. STOOPS, II	2	breakout room, that's why he's -- the audio is coming
3	By Ms. McLaughlin	3	from Mr. Thornton's end. That's why the witness can't
4		4	hear us.
5		5	MR. CLUBOK: Yeah, I did the same thing by
6		6	mistake, too, but I came back. Someone needs to tell
7	E X H I B I T S	7	Bob probably he needs to leave the breakout room and
8	(Attached to transcript.)	8	return to -- uh-oh, we lost --
9	DEPOSITION EXHIBITS	9	THE TECHNICIAN: It's because he joined as
10	Exhibit 1 Email October 26, 2017 from Isaac	10	well.
11	Leventon to Chris Dunn with	11	MR. CLUBOK: Okay. Can someone join and
12	attachment.	12	tell them they need to just click on "leave the
13	Exhibit 2 Purchase Agreement August 7,	13	breakout room" and come back to the meeting.
14	2017.	14	THE COURT REPORTER: Let's go off the
15	Exhibit 3 Email chain September 12, 2018,	15	record.
16	with attachment.	16	THE VIDEOGRAPHER: Sure. We are going off
17	Exhibit 4 Email chain August 11, 2017,	17	the record. The time is 10:15 a.m.
18	HCMUBS000563 and 564.	18	(Recess 10:15 a.m. - 10:17 a.m.)
19	Exhibit 5 Email chain August 11, 2017,	19	THE VIDEOGRAPHER: All right. Would all
20	HCMUBS000567 and 568.	20	parties present in this videoconference please voice
21	Exhibit 6 Email chain August 11, 2017,	21	identify themselves and state whom they represent.
22	HCMUBS000642 through 644.	22	MS. McLAUGHLIN: My name is Shannon
23	Exhibit 7 Email chain December 1, 2017.	23	McLaughlin, I'm with Latham & Watkins LLP, and I'm
24		24	here today with Sarah Tomkowiak and Andrew Clubok. We
25		25	represent UBS Securities and UBS AG London Branch.
6		8	
1	P R O C E E D I N G S	1	MR. FEINSTEIN: My name is Robert Feinstein,
2		2	Pachulski Stang Ziehl & Jones, LLP. We are counsel
3	THE VIDEOGRAPHER: Here begins Media Number	3	for the Debtor and the Defendant in this adversary,
4	1 of the remote videotaped deposition of Clifford	4	Highland Capital Management, L.P., and with me is my
5	Stoops in the matter of UBS Securities, LLC, et al.	5	colleague Gregory Demo.
6	versus Highland Capital Management, L.P., in the	6	MR. THORNTON: And I'm Robert Thornton.
7	United States Bankruptcy Court for the Northern	7	I'll be here as a representative of the witness,
8	District of Texas, Dallas Division, Case Number	8	Clifford Stoops.
9	19-34054-SGJ11.	9	THE VIDEOGRAPHER: All right. The court
10	Today's date is 27th of April 2021. The	10	reporter today is Monique Vouthouris on behalf of
11	time on the video monitor is 10:14 a.m. The	11	Planet Depos. Would the reporter please swear in the
12	videographer for today is Chester Wong, on behalf of	12	witness.
13	Planet Depos. All participants of this video	13	CLIFFORD E. STOOPS, II
14	deposition are attending remotely.	14	being first duly sworn or affirmed by the Notary,
15	Would all parties present in this	15	testifies as follows:
16	videoconference please voice identify themselves and	16	EXAMINATION
17	state whom they represent.	17	BY MS. McLAUGHLIN:
18	MS. McLAUGHLIN: My name is Shannon	18	Q Good morning, Mr. Stoops. Can you still
19	McLaughlin, I represent UBS Securities and UBS AG	19	hear me okay?
20	London Branch, and I'm joined today by Sarah Tomkowiak	20	A Yes.
21	and --	21	Q Perfect. Now, prior to today you and I have
22	THE TECHNICIAN: I'm sorry to interrupt. I	22	never spoken. Is that right?
23	think the witness is having a problem hearing us. I	23	A Correct.
24	believe the problem is that Mr. Thornton joined the	24	Q And while we're doing this virtually, I'm
25	breakout room. They were opened so that people can	25	going to do my best to speak loudly, but please let me

<p style="text-align: right;">9</p> <p>1 know if at any point you can't hear me. 2 Are you aware of anything today that would 3 prevent you from testifying competently and 4 truthfully? 5 <b>A No.</b> 6 Q We're going to start with some brief 7 background about your employment history. Is it 8 correct that you began working at Highland Financial 9 Partners, L.P. in 2006? 10 <b>A Technically it was Highland Capital</b> 11 <b>Management working on Highland Financial Partners.</b> 12 Q Thank you. 13 <b>A So not an employee of Highland Financial</b> 14 <b>Partners, but that was the fund and fund complex I was</b> 15 <b>working on as an employee of Highland Capital</b> 16 <b>Management. But the date is correct.</b> 17 Q Thank you. I appreciate that. Your work 18 with Highland Financial Partners, did that also 19 involve work with Highland Financial Partners 20 subsidiaries, such as Highland Special Opportunities 21 Holding Company, Highland CDO Holding Company and 22 Highland Financial Corp.? 23 <b>A Yes.</b> 24 Q In 2012 is it correct that you moved to 25 Highland Capital Management, L.P. in a more general</p>	<p style="text-align: right;">11</p> <p>1 Q At the time that you were employed at 2 Highland, were you also -- did you also have 3 responsibilities with Highland CDO Opportunity Master 4 Fund LP? 5 <b>A Yes.</b> 6 Q And you also had responsibilities with 7 NexPoint Real Estate Strategies Fund. Is that 8 correct? 9 <b>A Yes.</b> 10 Q Did you receive separate compensation for 11 your role with these various entities? 12 <b>A No.</b> 13 Q So your checks issued only from Highland 14 Capital? 15 <b>A Yes.</b> 16 Q If one of Highland's affiliated or managed 17 funds had paid you directly, would you have considered 18 that to be unusual? 19 <b>A Yes.</b> 20 Q Since leaving Highland in April 2020, you've 21 worked at a publicly traded company. Is that right? 22 <b>A Yes.</b> 23 Q And your present employer is not managed by 24 Highland Capital. Is that true? 25 <b>A No, it is not. Yes, it's true.</b></p>
<p style="text-align: right;">10</p> <p>1 sense? 2 <b>A Technically it was 2009, but in 2012 I</b> 3 <b>received a title change around that move.</b> 4 Q And did your title become chief accounting 5 officer? 6 <b>A Yes.</b> 7 Q While you were at Highland Capital, you also 8 had responsibilities with other funds that were 9 managed by Highland. Is that true? 10 <b>A Yes.</b> 11 Q Those responsibilities included with 12 Highland Financial Partners and its subsidiaries? 13 <b>A Yes.</b> 14 Q And did you keep those responsibilities with 15 Highland Financial until the time you left Highland in 16 April 2020? 17 <b>A Yes.</b> 18 Q While an employee of Highland, were you also 19 involved with the Highland institutional funds as 20 their head of accounting -- fund accounting? Excuse 21 me. 22 <b>A And by "institutional," for clarification,</b> 23 <b>you're asking about the hedge funds, so to speak?</b> 24 Q Um-hmm, yes. 25 <b>A Yes, yes, that's correct.</b></p>	<p style="text-align: right;">12</p> <p>1 Q Excellent. Thank you. Your present 2 employer is not owned or controlled by Mr. Dondero? 3 <b>A No.</b> 4 Q Your present employer is also not owned or 5 controlled by Mr. Ellington? 6 <b>A No.</b> 7 Q And since leaving Highland Capital in April 8 2020, you haven't had any communications with 9 Mr. Dondero or Mr. Ellington. Is that correct? 10 <b>A Correct. I have not had any communications</b> 11 <b>with either.</b> 12 Q We'll talk a little bit about Sentinel 13 Reinsurance Limited now. Are you familiar with an 14 entity called Sentinel Reinsurance Limited? 15 <b>A Roughly.</b> 16 Q When did you -- 17 <b>A On a limited basis.</b> 18 Q When did you get this limited understanding 19 of Sentinel? 20 <b>A Generally I recall it being somewhere</b> 21 <b>around, my first introduction to it being around</b> 22 <b>August of 2017.</b> 23 Q When -- in August of 2017, what did you 24 learn about Sentinel that caused you to become aware 25 of it?</p>

13

1 **A I was informed that Sentinel would be a**  
2 **party to a transaction involving a legal insurance**  
3 **policy and they would be the insurance provider for**  
4 **this policy that was to be issued to Highland**  
5 **Financial Partners and its subsidiaries and to CDO**  
6 **Fund and its subsidiaries relating to an outstanding**  
7 **legal matter.**  
8 Q And who did this conversation happen with?  
9 Who informed you of this?  
10 **A I was informed by JP Sevilla and also**  
11 **present was, I recall to some degree, Rick Swadley was**  
12 **also present.**  
13 Q And how did this conversation come about?  
14 **A I don't recall the specifics, meaning I**  
15 **don't think it was like a scheduled meeting. I think**  
16 **it was an ad hoc meeting that occurred at some point**  
17 **during the day in which JP came up and asked to speak**  
18 **with me, and to some degree Rick got incorporated into**  
19 **the conversation. And it occurred in a conference**  
20 **room just off of where my groups operated.**  
21 Q And so it was Mr. Sevilla that initiated the  
22 conversation --  
23 **A Yes.**  
24 Q Do you remember about how long this meeting  
25 took place for?

14

1 **A I thought it was around -- I recall it being**  
2 **somewhere around like two hours. Several hours.**  
3 Q Several hours?  
4 **A Yes.**  
5 Q During that conversation what did  
6 Mr. Sevilla inform you of?  
7 **A That in the matter relating to Highland**  
8 **Financial Partners and CDO Fund and UBS, that we**  
9 **collectively, meaning the Highland side, were nearing**  
10 **an agreement or legal resolution that would involve a**  
11 **large monetary payment in settlement for that legal**  
12 **resolution. And I don't recall specifically if it was**  
13 **a judgment or if it was a settlement or some**  
14 **combination.**  
15 **But I just recall specifically it was an air**  
16 **-- had an air of finality to it, that it would bring**  
17 **to close all of the outstanding legal matters and it**  
18 **was a large -- a large number. And to effect that, we**  
19 **would have to basically use the assets in both HFP and**  
20 **its subsidiaries and the CDO Fund and its subsidiaries**  
21 **to effectively pay for that insurance policy.**  
22 Q All right. There's a lot there, so we're  
23 going to break it down into smaller pieces.  
24 **A Sure.**  
25 Q The legal action that you're talking about,

15

1 are you referring to a litigation that UBS initiated  
2 against Highland and some of its affiliated funds in  
3 the New York State courts?  
4 **A I'm not sure of the venue being New York,**  
5 **but, yes, generally yes to everything else.**  
6 Q Do you recall that litigation starting in  
7 approximately 2009?  
8 **A Yes. Yes.**  
9 Q And in August 2017 in your conversation with  
10 Mr. Sevilla, is this the first time you had heard  
11 about a legal liability insurance policy being brought  
12 up?  
13 **A Yes. To my recollection. If there are any**  
14 **documents indicating otherwise, I'd love to see them.**  
15 **But, yes, to my recollection, that was the first time**  
16 **I had ever heard of it.**  
17 Q Okay. And do you remember what  
18 Mr. Sevilla's role was in 2017?  
19 **A Like formal -- like formal title, lawyer,**  
20 **legal counsel. He might have been assistant general**  
21 **counsel, AGC, something along those lines. But sort**  
22 **of to break that down, he was an, you know, an active**  
23 **lawyer, in-house legal counsel for Highland Capital.**  
24 Q And what about -- I think you had mentioned  
25 Rick Swadley. Does that (inaudible) --

16

1 **A Rick Swadley's role was I think director of**  
2 **tax, tax compliance.**  
3 Q And during this conversation you mentioned  
4 that they were discussing something with urgency or a  
5 finality about it. Did you understand -- or what did  
6 you understand to be the final piece or what was the  
7 finality?  
8 **A Well, it was the -- the -- ultimately, it**  
9 **would be the execution of that -- whatever legal**  
10 **agreement, the settlement. I'll just -- for lack of a**  
11 **better phrase or specificity here, let's assume it was**  
12 **a settlement discussion. That was the end goal as**  
13 **explained to me. And so the sense of urgency around**  
14 **it was it was a large number and the two funds had**  
15 **extremely illiquid assets that, you know, maybe for**  
16 **whatever reason UBS wasn't interested in those, it**  
17 **wanted cash on the barrel.**  
18 **So to get the cash needed to get UBS to**  
19 **sign, we had to translate those assets, you know,**  
20 **somehow, for lack of a better -- translate those**  
21 **assets into a cash equivalent that met the**  
22 **expectations of UBS. And so the urgency was around**  
23 **how do you do that. And that's what -- when it was**  
24 **explained to us the need for the insurance policy,**  
25 **that the insurance company would receive these assets**

<p style="text-align: right;">17</p> <p>1 and in return would issue this insurance policy 2 against which it agreed to pay any sort of final 3 settlement agreement, you know, presumably in cash, 4 directly to UBS. 5 And so the urgency was around, you know, 6 effecting the transfer of the assets to the insurance 7 company so they had them in hand and were willing to 8 issue the insurance policy for UBS to get comfortable 9 with it. 10 Q There's a lot there again, so we're going 11 to -- 12 A Sure. 13 Q -- try to get some of the smaller pieces. 14 You've mentioned that there were -- there 15 were going to be some asset transfers. Is that 16 correct? 17 A Yes. 18 Q Why would Mr. Sevilla have approached you 19 about asset transfers? 20 A In my position I was responsible for the 21 accounting, you know, the books and records, plus the 22 operations. And so given the sort of mixed bag of 23 assets, the transfer of the assets wouldn't be as 24 straightforward as, you know, one might presume, and 25 it would have been up to my team, my groups to sort of</p>	<p style="text-align: right;">19</p> <p>1 correct? 2 A Yes. 3 Q And Mr. Sevilla began talking about this 4 transfer. What -- what assets did he want you to 5 transfer? 6 A All of them, all of them in HFP and all of 7 them in CDO Fund. 8 Q Did he also want you to transfer any assets 9 from Highland CDO Opportunity Master Fund? 10 A When I say CDO Fund, that's generally what 11 I'm referencing. CDO Fund complex had -- again, I 12 acknowledge, I think you're saying Highland CDO Holdco 13 under HFP, and it sounds very much like CDO Fund. But 14 when I say CDO Fund, I'm referencing the CDO 15 Opportunity Master Fund and its subsidiaries. So the 16 answer to your question is yes. 17 Q Okay. I'm going to try to use HFP Funds and 18 CDO Funds to collectively mean what you just said, 19 Highland Financial and subsidiary -- Highland CDO 20 Master Fund and its subsidiaries. 21 A Understood. 22 Q Okay. And Mr. Sevilla asked you to transfer 23 the funds -- or transfer the assets from HFP Funds and 24 the CDO Funds to which entity? 25 A During that conversation it was just sort of</p>
<p style="text-align: right;">18</p> <p>1 effect those transfers in their different capacities 2 or in their different, you know -- in their different 3 states in which they existed, you know, whether it be 4 an LP interest or cash or DTC-held securities, et 5 cetera. 6 Q You mentioned that you were responsible for 7 accounting. Which entity were you responsible for the 8 accounting of? 9 A So if you look at Highland as a whole, you 10 could separate it between two different groups. You 11 have Highland and related advisors, what we sort of 12 loosely called the management company. And then you 13 have the investment vehicles. Those are the vehicles 14 in which investors put their money and the assets are 15 managed. 16 I generally was responsible for the books 17 and records for most but not all of the investment 18 vehicles managed by Highland and several of its 19 advisors. I was not responsible for the accounting 20 for Highland as a management company, nor the 21 operations of Highland as a management company. 22 Q And in August 2017 when Mr. Sevilla 23 approached you, he was coming to you because you had 24 responsibility for the accounting of Highland 25 Financial Partners and its subsidiaries. Is that</p>	<p style="text-align: right;">20</p> <p>1 loosely described as Sentinel. In other words, we 2 would be transferring these assets from the two funds, 3 HFP and CDO Fund, to Sentinel. We didn't necessarily 4 get into the actual here's the name of the company, 5 here's the, you know, instructions, et cetera. We 6 discussed that later. But generally Sentinel, the 7 insurance company, who would be issuing the policy. 8 Q And how was that transaction supposed to 9 work? 10 A The transfer of the assets or the insurance 11 policy? 12 Q Do you have knowledge of both? 13 A I have knowledge of the transfer of assets. 14 The Sentinel policy I just have a very, very limited 15 knowledge of based on what was explained to me in that 16 conversation in the conference room. 17 Q What was explained to you in the conference 18 room about the insurance policy? We can start there. 19 A That we would -- that we were in discussions 20 with UBS at the time regarding a settlement or legal 21 resolution. It would involve a large monetary 22 payment. But for whatever reason, the assets held by 23 the two relevant funds wouldn't work in this due to 24 the illiquid nature, in their current form wouldn't 25 work due to the illiquid nature of the assets, so we</p>

<p style="text-align: right;">21</p> <p>1 had to come up with some way to monetize them, and we 2 didn't think we had time, and so this insurance policy 3 was the best solution. 4 And the intent was to transfer the assets to 5 the insurance company Sentinel. Sentinel would then 6 under some sort of, you know, arrangement -- I 7 wouldn't really -- the transfer would be governed by 8 some arrangement, and then Sentinel would issue a 9 policy in the names of the two funds. And then when 10 this legal resolution was finalized, Sentinel would 11 pay up to a hundred million dollars to UBS with 12 respect to this legal resolution. That's my 13 understanding of the policy and kind of the way it 14 worked. 15 And so then my part in it was my team, 16 various teams, actually both accounting and 17 operations, would facilitate the various transfers of 18 the different types of assets. And so during that 19 two-hour discussion -- I think it was during that 20 discussion, I seem to recall that -- we had a rough 21 list of the assets and we kind of walked through what 22 it would take to effect the transfer of each of the 23 assets. It wasn't -- the way you transfer one 24 wouldn't necessarily transfer all of them, so we had 25 to group them in different buckets and figure out the</p>	<p style="text-align: right;">23</p> <p>1 deposition you're taking and the questions you're 2 asking. 3 So to be clear, Highland is not going to 4 assert the attorney-client privilege to preclude 5 inquiry into the matters that I think are summarized 6 in paragraphs 5 through 11 of a motion that the 7 company recently filed in the bankruptcy to approve 8 its settlement with UBS outlining facts relevant to 9 the Sentinel insurance policy and so forth. That's at 10 docket number 2199. This is not a blanket waiver of 11 the privilege. It is transactional, if you will, as 12 to those transactions that are summarized in those 13 paragraphs, and that's the extent of the waiver and 14 non-assertion of the privilege. Thank you. 15 MS. McLAUGHLIN: Thank you, Mr. Feinstein. 16 Could we please turn to the last page of 17 Exhibit 1. 18 BY MS. McLAUGHLIN: 19 Q Now, Mr. Stoops, do you see at the top here 20 where it lists Sentinel Reinsurance Limited as the 21 insurer signed by Andrew Dean? 22 A Yes. 23 Q And below that it lists insureds and then 24 has three entities all signed by Jim Dondero on behalf 25 of Highland CDO Opportunity Master Fund, L.P.,</p>
<p style="text-align: right;">22</p> <p>1 best way to transfer the assets. 2 And so we spent a material amount of time in 3 that discussion covering that component of it and the 4 estimated amount of time it would take to potentially, 5 you know, finalize all the transfers. 6 MS. McLAUGHLIN: And if we can put Exhibit 1 7 on the screen, please. 8 (Deposition Exhibit 1, Email October 26, 9 2017 from Isaac Leventon to Chris Dunn with 10 attachment, marked for identification.) 11 MS. McLAUGHLIN: Thank you. 12 Q Exhibit 1 is a 19-page document. It's an 13 email from Isaac Leventon dated October 26th, 2017, 14 attaching what's entitled a Legal Liability Insurance 15 Policy. Do you see the document on your screen, 16 Mr. Stoops? 17 A Yes. 18 MS. McLAUGHLIN: Can we please go to page 2. 19 MR. FEINSTEIN: Excuse me. Shannon, before 20 you pose the next question -- it's Robert Feinstein, 21 for the record, counsel for Highland. The -- 22 Mr. Leventon is an in-house lawyer. Mr. Sevilla is as 23 well. I thought this would be an appropriate point to 24 put on the record Highland's view as to the 25 applicability of the attorney-client privilege to the</p>	<p style="text-align: right;">24</p> <p>1 Highland CDO Holding Company and Highland Special 2 Opportunities Holdings Company. Do you see that as 3 well? 4 A Yes. 5 Q And are these the parties that you 6 understood to be -- excuse me. 7 Are these the entities that you understood 8 to be parties in the transaction Mr. Sevilla described 9 to you in August 2017? 10 A Yes. 11 Q Have you ever seen this policy at the time 12 you were discussing it with Mr. Sevilla? 13 A I don't recall it. I don't. But, again, if 14 you've got a document that indicates I did, I'd be 15 happy to see it. I don't recall specifically seeing 16 the policy, no. But I may have just passing in an 17 email, but I don't recall specifically seeing it, no. 18 Q Do you now understand that this is the 19 policy Mr. Sevilla was referring to at that time? 20 A It -- yeah, I mean, it generally appears to 21 be and capture the salient terms that were sort of 22 discussed orally with me at the time, you know, in the 23 conference room, yes. 24 Q And do you know who Andrew Dean is? 25 A No. That's -- no. To my knowledge, I have</p>

25

1 **no previous experience with him in any capacity.**  
2 MS. McLAUGHLIN: Can we please go one page  
3 prior to this, to page 18.  
4 Q It looks here towards the bottom of the page  
5 do you see where it lists the indemnity limit of \$100  
6 million?  
7 A Yes.  
8 Q Do you also see it lists a premium of \$25  
9 million?  
10 A Yes.  
11 Q Now, do you know how either figure was  
12 determined?  
13 A No.  
14 Q Do you know whether this premium was paid?  
15 A No, I -- no. No. I was -- I think this was  
16 kind of part of our understanding how the mechanics  
17 would work on everything during the lengthy  
18 discussion. But we really -- I don't recall  
19 specifically getting into the premium aspect of it.  
20 I -- I -- honestly, I don't recall the 25 million in  
21 the original discussion. I don't know if it was  
22 present, we just didn't really cover it, or if it  
23 developed later for some reason. I don't recall.  
24 We simply talked about it in terms of here  
25 are the assets and in return we're getting a \$100

26

1 million policy. Now, clearly the \$25 million  
2 component, you know, developed at some point. I just  
3 don't recall spending a lot of time on it during the  
4 original discussion.  
5 Q Had Mr. Sevilla's instructions been to  
6 transfer all the assets at the relevant funds?  
7 A Yes, that was -- that's my recollection,  
8 yes.  
9 Q And in that instruction Mr. Sevilla wanted  
10 all funds or all assets transferred regardless of the  
11 value of those assets?  
12 A That's right, yes.  
13 Q Do you know, based on your conversation with  
14 Mr. Sevilla, if UBS knew about this insurance policy?  
15 A I can't say specifically about the policy  
16 itself. It was my understanding -- you know, it's two  
17 steps. The first is you have to reach the settlement  
18 and then you have the payment where the policy comes  
19 in.  
20 I mean, I think during the conversations it  
21 was very clear to us, or at least made very clear to  
22 us, that UBS was actively involved in the negotiations  
23 because at the time it was -- the only rotating item  
24 was the bid and the ask. The difference between what  
25 we were offering and what UBS was asking was material

27

1 but narrowing. And so there was enough, I guess,  
2 support there for somebody to conclude that we were  
3 near resolution and to effect it we would need this  
4 policy.  
5 But your question was do I have knowledge of  
6 UBS being aware of the policy, no, I don't have  
7 specific knowledge of that. But it was represented to  
8 us that there were negotiations in which UBS was an  
9 active participant.  
10 Q And it was Mr. Sevilla that made  
11 representations that UBS was an active participant at  
12 this time?  
13 A Yes.  
14 MS. McLAUGHLIN: We can take Exhibit 1 down,  
15 please. Could we please put Exhibit 2 up instead.  
16 (Deposition Exhibit 2, Purchase Agreement  
17 August 7, 2017, marked for identification.)  
18 Q Okay. Exhibit 2 is a seven-page document,  
19 it's entitled "Purchase Agreement," and it's dated as  
20 of August 7th, 2017. Do you see Exhibit 2 on your  
21 screen?  
22 A Yes.  
23 Q And this purchase agreement lists Sentinel  
24 Reinsurance Limited as the purchaser. Do you see  
25 that?

28

1 A Yes.  
2 Q And it also lists three Highland entities as  
3 the sellers: Highland CDO Opportunity Master Fund,  
4 L.P., Highland CDO Holding Company and Highland  
5 Special Opportunities Holding Company. Do you see  
6 that?  
7 A Yes.  
8 Q Prior to preparing for this deposition, had  
9 you seen this agreement before?  
10 A I don't recall it. I don't recall it. No,  
11 I don't recall. But, again, that doesn't mean somehow  
12 maybe I got it sent to me by email. I don't recall  
13 seeing this specifically.  
14 MS. McLAUGHLIN: And if we could please turn  
15 to the last two pages, page 6 and 7. Starting at page  
16 6. Obviously you can't put both up.  
17 Q This is a page titled "Schedule A" with a  
18 list of assets. Mr. Stoops, you can still see this on  
19 your screen?  
20 A Yes.  
21 Q The assets listed here are broken out by  
22 different entities starting with Highland CDO  
23 Opportunity Master Fund L.P., correct?  
24 A Yes.  
25 Q Do you have an understanding as to what the

29

1 third column is? It's titled "Traded Shares/Par."  
2 **A Yes, I do.**  
3 Q And what do you understand that column to  
4 be?  
5 **A Well, so when you have -- when you have**  
6 **securities such as stock, then you have shares, traded**  
7 **shares. When you have bonds, you talk about it in**  
8 **terms of par; that's effectively the face value. When**  
9 **you have CLO equity, they typically -- it's not one**  
10 **for one as you would a bond, but they typically use**  
11 **the same concept for CLO equity, the par concept for**  
12 **CLO equity for reference, and that's what this is.**  
13 **So "traded shares" refers to the number of**  
14 **shares held in your certificated interest in a**  
15 **vehicle; "par" represents in the terms, context of**  
16 **bonds, the face value of original issuance, and for**  
17 **CLO equity effectively the same, face value of**  
18 **original issuance of your interest in the vehicle.**  
19 Q Do you have an understanding as to who would  
20 have determined these numbers put into that column?  
21 Would that have been something your department put  
22 together or a different department?  
23 **A I can't say specifically, not having seen**  
24 **this before. But let me say it was readily available**  
25 **on the intranet at Highland for anybody to use.**

30

1 Q And the assets that are listed on this page,  
2 do you recognize any of the assets listed here?  
3 **A Many, if not most or all, yes.**  
4 Q Where do you recognize them from?  
5 **A Well, this Aberdeen, Southfork, those are**  
6 **all CLOs that Highland managed. Highland was the**  
7 **advisor for these. The GSC, I don't recall that.**  
8 **Greenbriar, Highland Financial Partners. Longstreet**  
9 **was external. NexPoint is internal. PAM Cap is**  
10 **internal, CLO or CDO. So it's just kind of a mixed**  
11 **bag. And then others we sort of recognize just over**  
12 **the years having to do the accounting for these**  
13 **entities. These were the assets held by these**  
14 **entities for a number of years. They didn't change,**  
15 **so you would kind of see them over and over again.**  
16 Q And are the assets listed here similar to  
17 the assets Mr. Sevilla was talking to you about in  
18 that meeting in August 2017?  
19 **A I can't say specifically they were the**  
20 **exact, but, yes, this is probably consistent with what**  
21 **I would have expected to be the subject of that**  
22 **conversation. This appears to be the listing -- as I**  
23 **said, I think we broke out a list of assets to kind of**  
24 **walk through how they would be settled, and this**  
25 **likely would have been consistent with what was -- we**

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1 **were talking about.**  
2 Q Okay. And your understanding was that the  
3 assets would be transferred to pay UBS. Is that  
4 correct?  
5 **A In the sequence of events, the assets would**  
6 **be transferred to pay for a policy, a settlement**  
7 **policy that would then pay UBS in cash if a settlement**  
8 **or legal judgment were reached. There was that last**  
9 **contingency in there.**  
10 Q And do you know whose idea it was to  
11 transfer the assets to Sentinel and then to UBS if a  
12 settlement were reached?  
13 **A Meaning whose idea was it to take out the**  
14 **policy? Is that what -- is that your question?**  
15 Q Yes. Thank you.  
16 **A Yeah, I don't know. That preceded me, and I**  
17 **wasn't involved in those conversations.**  
18 Q Okay.  
19 **A Meaning by the time I was sitting in that**  
20 **conference room discussing it, the idea of the policy**  
21 **was well in motion at that point, and I don't know the**  
22 **origins of it at all.**  
23 Q And you've mentioned that Mr. Sevilla,  
24 yourself and Mr. Swadley discussed how to transfer the  
25 assets or the mechanics of it being the baskets were

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1 all a different kind. Is that -- is that correct?  
2 **A Well, to his credit, Rick probably wouldn't**  
3 **have been involved in the transfer of the assets.**  
4 **That would have been primarily JP and me, JP Sevilla**  
5 **and me. Rick was more interested in the what happens**  
6 **next, the sort of tax implications. But, yes, we --**  
7 **JP Sevilla and I discussed the how to effect the**  
8 **transfer of each of the different groups of assets on**  
9 **the list.**  
10 Q So in your understanding, how much money was  
11 to be transferred?  
12 **A Meaning the overall value of the assets?**  
13 Q Yes. Yes.  
14 **A Yes. Yes.**  
15 Q Sorry. What was your understanding of the  
16 overall value of the assets to be transferred?  
17 **A So I think -- and that's why this one is a**  
18 **little odd to me. I would have expected, quite**  
19 **frankly -- is this the -- is this the original format**  
20 **of the Schedule A? It wasn't changed in any way?**  
21 Q I can't answer that. I have no idea.  
22 **A Okay, fair enough. I would expect market**  
23 **value to be on there as well; price and market value**  
24 **to be on there as well. And, you know, collectively,**  
25 **I've seen the number about 105 thrown around, 105**

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1 million, and so clearly you're talking about a policy  
2 of 105 -- I mean, a transfer of assets worth 105  
3 million versus a policy of a hundred million. There's  
4 a slight difference there. And the way it was  
5 explained to us was due to the illiquid nature of it,  
6 of the assets, the overall asset pool and the time  
7 required to liquidate it, there was some concern of  
8 would we actually achieve the upper boundaries of the  
9 potential settlement number. And in the interest of  
10 time, this was the best solution.  
11 Additionally, there would also be expenses  
12 to be paid -- legal expenses, administrative expenses,  
13 et cetera -- around this, and that these assets would  
14 be used to pay whatever ancillary expenses, you know,  
15 remained going forward. Because that was one of my  
16 concerns was, you know -- one of my responsibilities  
17 at HFP was from time to time if I was presented with a  
18 bill to pay -- legal expenses, tax prep fees,  
19 whatever -- I used, you know, whatever cash was in the  
20 account to pay for it. And as represented to me, we  
21 would be transferring all of the assets, how would I  
22 pay expenses going forward in any capacity, you know,  
23 in whatever they are, the nature.  
24 And it was represented to me that Sentinel  
25 would be paying those expenses going forward, and I

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1 was like BDO -- BDO is an accounting firm -- tax prep  
2 fees, yes, that would be paid by them. You know, they  
3 had offshore governance, they had directors, the CDO  
4 Holdco and HSC had offshore directors. Yes, that  
5 would be paid by them.  
6 So going forward I had no responsibilities  
7 to pay any expenses out of HFP and because there won't  
8 be any cash, yes, that's correct.  
9 So that's kind of -- that was the -- getting  
10 back to your question of what was my understanding of  
11 the value of the assets, that was the justification  
12 for the differential between the \$105 million fair  
13 value of the assets versus the potential outlay the  
14 insurance company would incur with respect to the  
15 issuance of this policy.  
16 Q And I think you said it in there, but just  
17 to make sure that we understand, in August 2017 you  
18 understood that these transfers were for a market  
19 value of approximately \$105 million. Is that correct?  
20 A That's generally my recollection, yes. I  
21 don't remember the precise number, but it was in that  
22 neighborhood, yes.  
23 Q Okay. And you also understand that \$105  
24 million is greater than \$25 million. Is that right?  
25 A Yes.

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1 Q We didn't start beginning -- begin to  
2 discuss some of the transfers themselves. Do you know  
3 if any of the assets listed on page 6 of this  
4 agreement were ever transferred to Sentinel?  
5 A It was my understanding -- are you limiting  
6 the scope of your question to only page 6 or are you  
7 also including page 7?  
8 Q I started with page 6 only because it's on  
9 the screen. However --  
10 A Sure.  
11 Q -- you have a binder in front of you with  
12 the document in it, and so we can do page 6 and page 7  
13 at the same time.  
14 A It was my understanding that all assets on  
15 both page 6 and 7 were to be transferred.  
16 Q Do you know if in fact all assets on pages 6  
17 and 7 were transferred?  
18 A I've learned recently in just very recent  
19 discussions, as early as today, that no, apparently  
20 not all assets were transferred, which was news to me.  
21 Q But the goal was to transfer all assets,  
22 right?  
23 A That's right. That's right. That's again  
24 illustrated by my concern about how are we going to  
25 pay expenses for these funds going forward if there

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1 were no assets left, and, you know, that was, again,  
2 we had, like, the two-hour conversation, that was part  
3 of it; Sentinel will pay all expenses for the funds  
4 going forward, okay.  
5 Q When this transaction was complete, your  
6 concern was that there'd be no funds at any of the HFP  
7 entities or the CDO entities. Is that correct?  
8 A That's correct, yes.  
9 Q So the assets then were pooled from those  
10 entities collectively. Is that correct?  
11 A They ultimately would have been pooled at  
12 Sentinel. They weren't pooled at Highland. We  
13 wouldn't have commingled them at Highland. But  
14 theoretically Sentinel pooled them and commingled  
15 them.  
16 Q And there are several entities listed on  
17 pages 6 and 7. We've got Highland CDO Opportunity  
18 Master Fund, Highland CDO Opportunity Fund, Limited on  
19 page 6. And then if we can go to page 7, it shows  
20 several more: Highland CDO Holdings Company, Highland  
21 Special Opportunities Holding Company, Highland  
22 Financial Corp. and Highland Financial Partners.  
23 So that's six total entities. Is that  
24 correct?  
25 A That's what's listed here, agreed, yes.



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1 Q But the purchase agreement itself, if you  
2 look on page 1, was only entered into by three  
3 Highland entities. Is that true?  
4 A I'm -- not being involved in the purchase  
5 agreement, I -- I couldn't tell you ultimately who was  
6 a party to it. I don't believe I was involved. I  
7 don't recall seeing it.  
8 Q If we could go to page 1, please.  
9 The nice thing about these agreements is  
10 that they give you some of the answers.  
11 A Sure.  
12 Q So here up top in that first paragraph, this  
13 agreement only lists those three entities: Highland  
14 CDO Opportunity Master Fund, L.P., Highland CDO  
15 Holding Company and Highland Special Opportunities  
16 Holdings Company. Is that right --  
17 A Yeah. That's right.  
18 Q -- three --  
19 A Yes. That's right.  
20 Q And so is it correct that the entities of --  
21 excuse me, starting over.  
22 Is it correct that the assets of all the CDO  
23 Fund and HFP entities were put together under this  
24 purchase agreement even if the entity was not a party  
25 to the agreement?

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1 A Yes, it appears assets from entities in the  
2 HFP -- in the HFP complex were included in the  
3 agreement, while the entities themselves were not  
4 listed on page 1, yes, I agree.  
5 MS. McLAUGHLIN: We can take Exhibit 2 down,  
6 please.  
7 (Deposition Exhibit 3, Email chain September  
8 12, 2018, with attachment, marked for identification.)  
9 Q We'll briefly look at Exhibit 3. And  
10 Exhibit 3 is a six-page document. It starts with an  
11 email from Shawn Raver dated September 12th, 2018.  
12 And if you look on page 2, it attaches a document  
13 entitled -- or a memo entitled "Tax Consequences of  
14 Sentinel Acquisition of HFP/CDO Opportunity Assets."  
15 Do you see Exhibit 3 on the screen?  
16 A Yes.  
17 Q And before you began preparing for this  
18 deposition, had you ever seen this memo before?  
19 A To my recollection, no, I don't recall  
20 seeing it. But, again, if you've got a document  
21 indicating something to the contrary, I would be happy  
22 to look at it to see if it reminds me. But I don't  
23 recall seeing this previously.  
24 Q Do you recall who Shawn Raver was?  
25 A Yes.

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1 Q And who was Shawn Raver?  
2 A So the tax department basically had two  
3 functions. You had tax compliance, which is the  
4 preparation of tax returns, and that was Rick  
5 Swadley's sort of jurisdiction. It also had sort of a  
6 tax research or positions team and much smaller, and  
7 that was headed by Mark Patrick, a tax attorney, and  
8 Shawn Raver. Shawn Raver basically rolled up to him.  
9 You know, he was -- he was the -- he was in that  
10 group; Shawn Raver was in that group and reported to  
11 Mark Patrick.  
12 I'm only sort of hesitant in one sense.  
13 Shawn Raver, I don't think was an employee of  
14 Highland. I think he was like a contractor, 1099, who  
15 was there for like five years or something in that  
16 capacity. So that's why I'm hesitant to describe it.  
17 But technically he reported to Mark. He had a desk  
18 there. But I don't think he was an employee of  
19 Highland per se; I think he was an external  
20 contractor.  
21 Q Okay. On page 3 here, on the bottom of page  
22 3, do you see where it says, "The aggregate purchase  
23 price"? This is in the last paragraph. "The  
24 aggregate purchase price paid by Sentinel for the  
25 Assets was 25 million"?

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1 A Yes.  
2 Q "The aggregate fair market value of the  
3 assets on the date of the Transaction was  
4 \$105,647,679."  
5 A Yes.  
6 Q And do you know how that full market value  
7 was determined?  
8 A The 105 million?  
9 Q Yes.  
10 A So Highland had a separate valuation team  
11 that was responsible for at least, on a monthly basis,  
12 coming up with or determining the value of all assets,  
13 quote/unquote, in the system, and so these assets were  
14 in the system and so they would have derived a value  
15 for them. So --  
16 Q Were you involved? Sorry, I didn't mean to  
17 cut you off.  
18 A No, I was not involved.  
19 Q Okay. On page 4 of this memo -- if we can  
20 flip one more -- it mentions here, "The IRS may  
21 attempt to characterize the transaction as a 'sham.'  
22 The focus of this argument would be on the fact the  
23 Seller Entities sold assets with a fair market value  
24 of 105,647,679 for a purchase price of 25 million.  
25 And this was done solely to fund the \$25 million

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1 premium required by the Policy. The obvious question  
2 would be why sell all the assets if all was required  
3 was 25 million."  
4 Do you see those sentences in the bottom  
5 paragraph?  
6 **A I do. I do.**  
7 Q Do you know if people thought this  
8 transaction was a sham?  
9 **A I don't know --**  
10 MR. FEINSTEIN: Before you answer, please --  
11 it's Robert Feinstein again. I just want to note,  
12 again, that the author of this memo is an attorney. I  
13 understand he might have been an independent  
14 contractor or whatever, but he was an attorney, and  
15 I'm going to make the same observation again about not  
16 asserting the privilege as to the memo and your  
17 question, but thought it was appropriate, at least, to  
18 note that this gentleman was an attorney. Thank you.  
19 Q Mr. Stoops, do you know if people thought  
20 the transaction was a sham?  
21 **A This is the first time I've seen it even**  
22 **sort of discussed in that potential context.**  
23 **But I'll also note for the record that a**  
24 **sham transaction is an IRS phrase, and so I don't know**  
25 **that if you talk about it outside of the context of**

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1 **IRS discussions that many people would have used the**  
2 **phrase "sham." But whatever -- no, I'm not aware of**  
3 **any actual discussions around it. I don't recall any.**  
4 Q Okay. Thank you.  
5 MS. McLAUGHLIN: We can take Exhibit 3 down,  
6 please.  
7 Q We're going to turn to a few documents that  
8 discuss some of the transfers in more detail. We'll  
9 start with Exhibit 4.  
10 (Deposition Exhibit 4, Email chain August  
11 11, 2017, HCMUBS000563 and 564, marked for  
12 identification.)  
13 Q And Exhibit 4 is an email with the top email  
14 dated Friday, August 11th, 2017 from David Willmore to  
15 Carter Chism, Katie Irving, JP Sevilla and Isaac  
16 Leventon, and then copying you and several other  
17 people. Do you see Exhibit 4?  
18 **A Yes.**  
19 Q And do you recognize this email?  
20 **A I don't recall it specifically, but I -- you**  
21 **know, I don't recall it specifically, but, you know,**  
22 **I'm -- I understand it.**  
23 Q Any reason to doubt that you received this  
24 email on August 11th?  
25 **A No, no reason to doubt that.**

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1 Q There's a few people listed on here. Katie  
2 Irving is listed. Do you know -- do you know what  
3 Katie Irving's role was?  
4 **A I couldn't tell you specifically. She**  
5 **was -- from my description, she was in the legal**  
6 **department but was not a lawyer. I thought she came**  
7 **from Big Four accounting, and we just sort of viewed**  
8 **her as litigation support.**  
9 Q And I'm going to ask you about several other  
10 individuals, too.  
11 **A Sure.**  
12 Q If you know their title, that's great, but,  
13 otherwise, just a general description of what you  
14 understood their role to be is --  
15 **A Sure.**  
16 Q Katie Irving, do you know who she reported  
17 to in the legal department? Or the legal services  
18 department you might have said.  
19 **A I can't say definitively, but it was my**  
20 **understanding I think she reported to Scott Ellington**  
21 **directly.**  
22 Q And Carter Chism is also on this email. Do  
23 you know what his role was?  
24 **A He was -- I believe at the time his role was**  
25 **director -- or title was director of operations.**

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1 Q And what department did Mr. Chism work in,  
2 if you know?  
3 **A Settlement. He reported directly to me.**  
4 Q Okay. And if we're looking -- well, we'll  
5 start there's a few more names here. David Willmore,  
6 do you know what his role was?  
7 **A At the time senior manager for in fund**  
8 **accounting. Translated, he did -- handled the books**  
9 **and records for the hedge funds, and he was the group**  
10 **leader, and he reported directly to me.**  
11 Q I see you're catching on to these questions,  
12 the second part that comes after.  
13 Who is Chris Dunn, if you know?  
14 **A Chris Dunn was sort of a junior accountant**  
15 **at the time in the fund accounting team, and he would**  
16 **have reported directly to David Willmore.**  
17 Q And that leaves three people left. I think  
18 we've got JP Sevilla listed here?  
19 **A In-house legal -- I'm sorry. Go ahead.**  
20 Q Please. After you.  
21 **A JP Sevilla, my understanding, in-house legal**  
22 **counsel, a lawyer, reporting, it's my understanding,**  
23 **to Scott Ellington.**  
24 Q And did you have an understanding about  
25 Isaac Leventon's role at the time?

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1 **A Also in-house legal counsel, presumably**  
2 **assistant general counsel, reporting to Scott**  
3 **Ellington.**  
4 Q And the last name I believe is Thomas  
5 Surgent. Do you understand what his role was?  
6 **A Chief compliance officer for Highland, also**  
7 **reporting to Tom -- I mean to Scott Ellington.**  
8 Q Was it --  
9 **A He was also -- I'm sorry, I don't mean to**  
10 **cut you off but I need to modify it. I think he had**  
11 **two titles. He was maybe also assistant general**  
12 **counsel or something like that, and he had kind of a**  
13 **dual role, a split role. He was CCO, plus this sort**  
14 **of assistant general counsel or deputy. Maybe that**  
15 **was it. Maybe that was it. Deputy general counsel,**  
16 **something like that, something elevated higher than**  
17 **the assistant general counsel that Isaac had, but**  
18 **lower than Scott's title of, you know, whatever,**  
19 **general counsel or chief legal; yeah, I think general**  
20 **counsel.**  
21 **So I think Scott -- I mean Thomas was deputy**  
22 **general counsel, something like that, and CCO.**  
23 Q Thank you.  
24 We'll start at the bottom email, which is  
25 the earliest in time, from Kate Irving to Carter

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1 Chism. Do you see where Ms. Irving wrote, "Sentinel  
2 wiring instructions for cash arising from transaction  
3 are below"?  
4 **A Yes.**  
5 Q The transaction here is the one that you  
6 were made aware of in August 2017 in the conference  
7 room with Mr. Sevilla. Is that right?  
8 **A Presumably, yes, it would have been in this**  
9 **context.**  
10 Q And what allows you to make that  
11 presumption?  
12 **A Well, it says on the subject line "Sentinel**  
13 **wiring info." It was around that time frame, and she**  
14 **says, "Sentinel wiring instructions from cash arising**  
15 **from transaction" -- "from transaction," you know, the**  
16 **transfer, "are below."**  
17 Q And in the next email, Mr. Chism responds,  
18 and as he does, he copies in several additional people  
19 to the email. Do you recall why Thomas Surgent,  
20 yourself, Frank Waterhouse, David Willmore and Chris  
21 Dunn, Isaac Leventon were all added to this email?  
22 **A I seem to recall it was on my instruction.**  
23 Q I'm sorry, what do you mean by that, it was  
24 on your instruction?  
25 **A Well, we had just sat in a conference**

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1 **room -- rephrase. That's the "why." The "what" is I**  
2 **seem to recall instructing Carter to reply to this**  
3 **email with these people on there so that everybody was**  
4 **aware of what we were being instructed to do.**  
5 **And you see Thomas Surgent, he represents**  
6 **the compliance group. You see Frank Waterhouse, he**  
7 **was my boss. And then obviously David and Chris**  
8 **because they would have been handling the cash**  
9 **transactions. And then you also see -- that's a good**  
10 **point. I don't recall why Isaac would have been**  
11 **added. Clearly, to some degree, he had some**  
12 **involvement. I don't recall what. But clearly, to**  
13 **some degree, he was added for some reason, presumably**  
14 **because he had some level of involvement. Maybe**  
15 **because it was HFP. I can only speculate on why Isaac**  
16 **was added.**  
17 Q I think I heard you say that you had asked  
18 Mr. Chism to copy these people on the email. Is that  
19 right?  
20 **A Correct.**  
21 Q Why did you want this variety of people  
22 copied on the email?  
23 **A Just the magnitude of it. Again, I wasn't**  
24 **familiar with this sort of policy. It involved**  
25 **legal -- outstanding legal matter, and it involved the**

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1 **transfer of these assets, and so it was let's just**  
2 **make sure everybody is aware of this. It was moving**  
3 **that quickly, right. And it was, hey, get started on**  
4 **this, we need to start making this happen, so let's**  
5 **just everybody know that this is what's going on.**  
6 **Sort of a fail-safe, if you will, just a backup, just**  
7 **so that everybody knows what's being asked of us.**  
8 **And as you can see, Carter used some very**  
9 **specific language to make it very clear.**  
10 Q Mr. Chism in this email had written, "Please  
11 confirm this serves as instruction to wire cash from  
12 all HFP Funds and all CDO Funds to the account listed  
13 in the instructions below."  
14 **A Um-hmm.**  
15 Q Do you see the middle email there?  
16 **A I do.**  
17 Q And who was Mr. Chism asking for this  
18 confirmation from?  
19 **A Presumably Katie, JP or Isaac, any**  
20 **combination of those three.**  
21 Q He was asking for confirmation from the  
22 legal department. Is that right?  
23 **A That's correct, yes.**  
24 Q Looking at the top email, one more up,  
25 Mr. Willmore responded and said, "FYI, I've entered

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1 wires to move all of CDO Fund's cash to Sentinel." Do  
2 you see that spot?  
3 **A I do.**  
4 Q This indicated to you that Mr. Willmore had  
5 completed the steps to move all cash assets from CDO  
6 Funds to Sentinel, right?  
7 **A Not quite. So Highland had a proprietary**  
8 **wire system where an accountant would go in and enter**  
9 **the wire to go, and then that wire would then be**  
10 **approved, and then those instructions would then go to**  
11 **the bank. So think of this as, like, step one of**  
12 **three or four. And all David is saying is, I've**  
13 **entered the wires into our system.**  
14 Q And do you recall who they would be approved  
15 by when entered into that system?  
16 **A I don't, I don't recall. It was over 7**  
17 **million. I think at the time maybe only Frank had the**  
18 **ability to approve wires that large. That's -- it**  
19 **should be in the system. Anybody should be able to go**  
20 **look at it. But I don't recall it specifically.**  
21 Q A wire over 7 million, though, was --  
22 **A No, no, technically -- technically -- I**  
23 **mixed my words. I think the threshold was 5 million.**  
24 **So because this one was 7 million, I think that was**  
25 **the threshold and Frank would have to go -- Frank**

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1 **would have to be the one to approve it.**  
2 Q And did Frank have to seek approval from  
3 anyone else, if you recall?  
4 **A I don't know. Frank would have done that on**  
5 **his own.**  
6 Q In the next line here Mr. Willmore wrote  
7 there were two wires, one for approximately 7.8  
8 million and he lists the second number of  
9 approximately 2.3 million?  
10 **A Um-hmm.**  
11 Q Do you see that line?  
12 **A I do.**  
13 Q These two wires were pursuant to the  
14 purchase agreement. Is that correct? As you now  
15 understand, these two wires were pursuant to the  
16 purchase agreement?  
17 **A Presumably, yes.**  
18 Q I know you have a binder of exhibits there.  
19 So in the binder you look at Exhibit 2.  
20 **A Yeah, unfortunately, it's in a different**  
21 **order. If you could help me reference it, I could**  
22 **find it.**  
23 THE TECHNICIAN: Would you like me to pull  
24 Exhibit 2 back up?  
25 **A Or if someone can just tell me what it looks**

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1 **like, I can find it.**  
2 Q We're looking at Schedule A on page 6.  
3 **A This was the PSA?**  
4 Q Yes, the PSA.  
5 **A If you'll give me a minute.**  
6 THE TECHNICIAN: Ms. McLaughlin, would you  
7 like me to pull it up?  
8 THE WITNESS: No, thank you. I'll be there  
9 in 30 seconds, so...  
10 MR. THORNTON: I've written Exhibit 2 on the  
11 back of the divider page.  
12 **A Okay. I've got it. I've got it. I've got**  
13 **it in front of me.**  
14 Q And on page 6 --  
15 **A It's the same numbers, yes.**  
16 Q Sorry?  
17 **A I answered your -- but you need to put the**  
18 **question on the record. So, I'm sorry, I cut you off.**  
19 **Go ahead and finish your question.**  
20 Q On page 6 do you see a transfer of a cash  
21 amount for approximately \$7.8 million listed?  
22 **A I don't see a transfer. I see a listing of**  
23 **a cash balance for that amount.**  
24 Q Thank you. And the cash transfer -- let me  
25 get the words right here with you. The cash amount

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1 listed under Highland CDO Opportunity Master Fund is  
2 roughly the same as what's listed in Mr. Willmore's  
3 email in Exhibit 4?  
4 **A Yes, agreed, roughly the same.**  
5 Q 40 cents?  
6 **A Right, agreed.**  
7 Q The other number in Mr. Willmore's email, he  
8 listed that 2.4 million, 2.3 million, approximate  
9 number.  
10 **A Um-hmm.**  
11 Q Do you see a cash asset on Schedule A in  
12 Exhibit 4 that matches that wire transfer?  
13 **A Roughly. Immaterial difference, yes. 20**  
14 **cents difference, but yes.**  
15 Q And so looking at both of those, does this  
16 confirm for you that the transfers of cash, or the  
17 wires of cash that Mr. Willmore is referencing were  
18 pursuant to the asset purchase agreement?  
19 **A Yes, I think that's a very reasonable**  
20 **conclusion, yes.**  
21 MS. McLAUGHLIN: We can take Exhibit 4 down  
22 and put Exhibit 5 instead, please.  
23 (Deposition Exhibit 5, Email chain August  
24 11, 2017, HCMUBS000567 and 568, marked for  
25 identification.)

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1 Q And Exhibit 5 is another August 11th, 2017  
2 email. This one, this time it's from you to Katie  
3 Irving, JP Sevilla, Isaac Leventon and copying the  
4 same set of other people who were listed on Exhibit 4.  
5 Do you see Exhibit 5 on your screen as well?  
6 A Yes.  
7 Q And do you remember sending this email?  
8 A Not specifically.  
9 Q Any reason to doubt that you sent this  
10 email?  
11 A No.  
12 Q The top email is you responding to David  
13 Willmore and the wire transfers -- sorry, excuse me.  
14 This top email is you responding to Mr. Chism's  
15 request for confirmation of assets to be transferred  
16 or wire transferred?  
17 A Um-hmm.  
18 Q You write here, "All cash has been sent."  
19 Is that you confirming that all the cash from HFP and  
20 CDO Fund entities had been sent to Sentinel?  
21 A Yes, I think that's what it's confirming.  
22 Q At this point, then, they've already been  
23 approved in the internal --  
24 A That's right. That's right.  
25 Q And we looked at the two wires in

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1 Mr. Willmore's email already, but it seems here that  
2 you're referencing additional cash wires as well. Is  
3 that right?  
4 A Yes.  
5 Q Do you have a general sense of what other  
6 cash wires had been executed?  
7 A Going back to your Schedule A, it would be  
8 in Exhibit 6, I think it would be the cash balances  
9 listed for the HFP entities.  
10 Q Are you looking at Exhibit 2, I think, the  
11 asset purchase agreement? You mentioned Exhibit 6 --  
12 A I see schedule -- I see Schedule A at the  
13 top. It's the list of assets.  
14 Q Oh, got it. Schedule A of Exhibit 2.  
15 You're looking at the HFP entities on page 7?  
16 A Yes. Yes.  
17 Q You also mention in your email working on  
18 DTC securities?  
19 A Correct.  
20 Q What were DTC securities?  
21 A Depository Trust Company. It's basically  
22 electronic transfers. So, you know, any sort of  
23 publicly traded securities, traded DTC. So you can go  
24 in and just flip them from one DTC account to another.  
25 So think of just publicly traded traded

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1 electronically.  
2 Q And was this a reference to the -- to some  
3 of the securities listed on Schedule A of the purchase  
4 agreement?  
5 A Yes.  
6 Q And why were you working on it?  
7 A Because the settlement instructions would  
8 have been different; they would have been settled to a  
9 different account.  
10 Q And by working on DTC securities, you meant  
11 working on getting them transferred to Sentinel. Is  
12 that right?  
13 A That's right. That's right.  
14 Q And who directed you to work on this?  
15 A Well, it would have been involved in the  
16 original -- it would have been a part of the original  
17 conversation with JP. So, in other words, part of  
18 a -- material part of our conversation, I recall we  
19 got a list similar to this and we went through and  
20 we're like, okay, these are physicals, these are DTC,  
21 this is just cash. And so we were kind of bucketing  
22 them.  
23 And you're seeing on your screen here the  
24 different buckets. Cash is pretty easy; we just  
25 covered that. DTC would have been -- we would have

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1 sent instructions to the brokers and just changed them  
2 from one DTC account to another, and then what was  
3 left would be the physical, the investments that are  
4 in sort of what we call physical form.  
5 And so this is just a way of saying we've  
6 covered one grouping, we're working on the second  
7 grouping, and for the third grouping we're still  
8 waiting for legal to provide us with how you want to  
9 do this, where do you want us to deliver them. We  
10 would have to instruct -- we would have to instruct  
11 our custodian to deliver physicals to another  
12 custodian.  
13 Q And do you know if legal did provide those  
14 delivery instructions?  
15 A Presumably. I can't recall specifically who  
16 or when or what they were, but presumably, yes.  
17 Q Do you recall who in legal would have given  
18 that instruction?  
19 A I -- I can't say definitively. I can  
20 only -- I can only speculate.  
21 Q Well, it's been a number of years, so --  
22 A It has been.  
23 Q -- it's understandable. What would you have  
24 done once you had the delivery instructions?  
25 A For DTC or physicals?

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1 Q For the physicals.  
2 A Yeah, so realistically this also would have  
3 been covered by Carter's team as well. This was kind  
4 of standard. You know, Highland was a CLO manager who  
5 both managed CLOs but also purchased them. And it  
6 wasn't uncommon for certain CLO interests, especially  
7 equities, to be -- the certificated interest to be in  
8 the form of physical securities.  
9 And so if you were sort of breaking it up or  
10 selling them whole or partial, you would have to  
11 inform the custodian bank holding them that we want  
12 them transferred in the name of this entity to this  
13 new custodian. And so they would have to  
14 re-certificate the interest in the new beneficiary's  
15 name and then transfer the physicals to that custodial  
16 bank.  
17 Q And did --  
18 A So, in other words, simply put, cash could  
19 go in an hour or two. DTC securities could go in a  
20 couple of hours. Physicals likely would have taken  
21 one to two to three weeks to get them all covered.  
22 Q And you knew to transfer the physicals  
23 because of your conversation with Mr. Sevilla as well.  
24 Is that right?  
25 A That's right. That's right.

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1 Q I think you had mentioned earlier that there  
2 was 105 million market value of the assets and they  
3 needed to be discounted for being illiquid. Was that  
4 your understanding?  
5 A That was the explanation provided to me.  
6 Q Is cash a liquid asset?  
7 A Let me make sure I heard you correctly. Are  
8 you asking is cash "a liquid" or are you saying is  
9 cash "illiquid"?  
10 Q Well, the former. To make it very clear,  
11 would cash be a liquid or --  
12 A Let me describe it. Cash is considered very  
13 liquid. It's the most liquid form of asset you can  
14 have, basically.  
15 Q And so on Schedule A in Exhibit 2, when  
16 there's a cash transfer of approximately \$7.8 million,  
17 would that need to be discounted for being illiquid?  
18 A No.  
19 Q And the cash transfer of approximately \$2.3  
20 million, would that need to be discounted for being  
21 illiquid?  
22 A Presumably, no. No.  
23 Q And the same is true for any cash assets  
24 listed on page 7 of Schedule A, they would not need to  
25 be discounted for being illiquid. Is that correct?

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1 A That's correct.  
2 MS. McLAUGHLIN: We can take Exhibit 5 down,  
3 please.  
4 Q If the goal is to make the fund's assets  
5 liquid, why did they need to transfer cash to  
6 Sentinel?  
7 A Any answer I give you would be purely  
8 speculation. I wasn't involved in any component of  
9 the negotiations or discussions around the decision of  
10 that. I could speculate if you want me to, but it  
11 would be entirely speculation.  
12 MR. THORNTON: Let's don't speculate.  
13 Q You can't think of a good reason why you  
14 would need to transfer cash to Sentinel if the goal  
15 was to make the funds more liquid, can you?  
16 A The good reason would be as a partial  
17 payment on the premium. But obviously there's a  
18 deficit in there, a difference in there, between the  
19 apparent 25 million or hundred million, whichever  
20 number you want to focus on, and the cash balance.  
21 And I say that because honestly I don't  
22 recall at the time the significance of that 25  
23 million. We were just sort of viewing it as 105 for a  
24 hundred. But, you know, I get the math now clearly.  
25 And the differential between whatever the total

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1 cash -- aggregate cash value is in that premium was  
2 presumably going to be made up by the perceived  
3 liquidation value of the remaining assets.  
4 Q Is it correct, then, if I'm understanding  
5 this right, everything listed on Schedule A that is  
6 not cash value needed to make up the differential  
7 between the value of the cash and the \$25 million?  
8 A That's me speculating, that's entirely me  
9 speculating. As represented to me, there were going  
10 to be expenses to be paid. So maybe a part of the  
11 understanding was they also needed excess cash to pay,  
12 you know, whatever fees or expenses they were  
13 expecting to incur. I just simply don't know.  
14 I can tell you what was represented to me,  
15 which was all of this is with respect to the payment  
16 and application of that policy, and we didn't really  
17 get into a -- we didn't really get into extensively,  
18 well, how are you coming up with the net present value  
19 of that or represent this or -- that was -- that was  
20 an obligation of the dealmakers, you know, the people  
21 responsible for negotiating the principal terms of the  
22 agreement.  
23 Q And so you were just accepting the  
24 information that was presented to you by Mr. Sevilla  
25 in that August meeting. Is that right?

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1 **A That's right, with some follow-up questions**  
2 **on -- on understanding it better and clarification.**  
3 **But, yes, I was acting on the legal instruction from**  
4 **counsel. I was acting on instructions from legal**  
5 **counsel.**  
6 Q And the instructions from legal counsel was  
7 to transfer all of the assets of CDO Funds and HFP  
8 Funds to Sentinel so they would be left with no  
9 assets?  
10 **A Yes.**  
11 Q Were the HFP Funds and CDO Funds to be left  
12 with liability still?  
13 **A As I understood it, the only remaining**  
14 **liability would be that owed to UBS. All operational**  
15 **liabilities, i.e., fees and expenses for tax prep,**  
16 **corporate governance, would be paid by Sentinel. So**  
17 **in theory the only thing left on the books would be --**  
18 **would be the obligation owed to UBS.**  
19 Q Is it typical in a transaction to have all  
20 the liability kept on an entity's books or the  
21 liability to UBS kept on an entity's books but all the  
22 assets transferred away?  
23 **A Please bear in mind this was my first**  
24 **experience with a transaction like this, so I'm**  
25 **certainly in no position to tell you what's typical in**

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1 **these types of transactions.**  
2 **It's a -- it's a reasonable question and**  
3 **one -- that's where we spent more of our time also**  
4 **exploring, trying to understand it. We were trying to**  
5 **understand would I have a policy on my books. In**  
6 **other words, do I transfer these assets and I get a**  
7 **\$50 million policy, you know, the payout, \$50 million,**  
8 **I get a receivable.**  
9 And that's when it was explained to us:  
10 you'll never see that cash at HFP. Well, why not?  
11 Well, the way it's going to work operationally is the  
12 cash will go from Sentinel directly to UBS after an  
13 agreement has been, you know, executed. So, in other  
14 words, it won't go to HFP and HFP paid them. It will  
15 be assumed by that.  
16 So even if you had an asset -- even if you  
17 had an asset like a receivable, you effectively wind  
18 up impairing it because you'll never realize that  
19 asset, and so the net result is the same. In other  
20 words, because you're never going to see that cash,  
21 you wouldn't show a \$50 million receivable, because  
22 you're never going to see it. So the net result is no  
23 assets and just the liability.  
24 And the reason for that is under GAAP you  
25 can only remove a liability I think under -- it's been

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1 a while, but under two conditions; you have a legal  
2 court order absolving, you know, absolving the entity  
3 of the liability, or you have a settlement agreement  
4 between the two parties in which the person to which  
5 the liability is owed releases, you know, the other  
6 party for the liability. Only in those two conditions  
7 do you do that, do you remove the liability.  
8 So given the fact that we didn't have a  
9 settlement agreement that had been signed, we couldn't  
10 at the time remove the liability. So, in other words,  
11 the different steps of the transaction governed and  
12 influenced the accounting results being presented.  
13 Q And a decision to move approximately \$105  
14 million in value would have been a decision that  
15 involved everyone throughout Highland Capital at the  
16 highest levels. Is that correct?  
17 **A Presumably, yes. Given the magnitude of the**  
18 **decision, the implications and the size of the**  
19 **transaction, yes.**  
20 Q And the \$105 million value is the value  
21 presented to you by Mr. Sevilla. Is that how you got  
22 that number?  
23 **A I don't recall specifically. I don't recall**  
24 **specifically. It may have been -- it may have been**  
25 **we -- we pulled it up out of the system. Like I said,**

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1 **the assets owned by each of the entities was readily**  
2 **available to anybody and everybody at Highland, and so**  
3 **we may have just pulled it up right then and there**  
4 **on-screen or had someone print it out and give it to**  
5 **us and we just looked at it. I don't recall that**  
6 **specifically but...**  
7 Q You don't have any idea, then, if normal  
8 processes were followed to ensure an accurate  
9 valuation, you wouldn't have that information?  
10 **A My assumption would be that the valuation**  
11 **would have followed the normal process. So if that**  
12 **was the value assigned to them and I was asked to, you**  
13 **know, testify, I would say, yes, I'm guessing they**  
14 **followed the normal valuation process. I don't have**  
15 **any reason to believe they didn't follow the normal**  
16 **valuation process. Not to my recollection, no.**  
17 Q But it's just a guess, correct? You're not  
18 positive --  
19 **A Yes.**  
20 Q -- that they did follow --  
21 (Simultaneously speaking.)  
22 **A Yes, I -- it is speculation.**  
23 Q And would the highest levels of management  
24 at Highland include Mr. Dondero?  
25 **A I can't say definitively. I was never in --**

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1 **that I recall, in a discussion with Jim in which I**  
2 **heard his approval or whatever. But, presumably, yes,**  
3 **it would include him. You know, the fact that he**  
4 **signed several of the documents, at some point**  
5 **presumably someone had to explain it to him.**  
6 Q And you mentioned that Mr. Dondero signed  
7 several of the documents. If we look at the insurance  
8 policy at Exhibit 1, that is the 19-page document, and  
9 I believe the signatures are on the last page, page  
10 19.  
11 **A Right.**  
12 THE TECHNICIAN: Would you like me to pull  
13 that up, Ms. McLaughlin?  
14 MS. McLAUGHLIN: No, thank you.  
15 Q So you see where Jim Dondero signed on  
16 behalf --  
17 **A Yes.**  
18 Q -- of the three entities on the insurance  
19 policy?  
20 **A Yes.**  
21 Q And we've already looked at, I believe,  
22 Exhibit 2, the purchase agreement to see that it was  
23 Jim Dondero who signed on behalf of all six Highland  
24 entities there as well?  
25 **A Yes.**

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1 Q Do you know if Mr. Dondero typically signed  
2 things without reading them or understanding them?  
3 **A I didn't witness him signing everything,**  
4 **but, no, for the most part he was pretty particular**  
5 **about going through things, especially of this**  
6 **magnitude. There might be kind of routine matters**  
7 **that he might not have. But of items of particular**  
8 **importance, he, in my opinion, would have been pretty**  
9 **specific and particular about the execution of those**  
10 **agreements.**  
11 Q And what are you basing your opinion on?  
12 **A I just -- involvement in other matters of a**  
13 **material nature. In other words, I have experience**  
14 **with him with other matters in which we would**  
15 **routinely go down to his conference room and sit in**  
16 **his conference room and discuss it in detail for some**  
17 **time.**  
18 Q Mr. Dondero was also the portfolio manager  
19 of many of the Highland funds. Is that correct?  
20 **A That's correct.**  
21 Q And as a portfolio manager, would it have  
22 been typical to be involved in the decision making to  
23 transfer all of the assets out of a fund?  
24 **A That would be my expectation.**  
25 Q At the time in August 2017, were you aware

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1 who held the ownership interest in Sentinel?  
2 **A No.**  
3 Q Have you recently come to learn who held --  
4 who holds the ownership interest in Sentinel?  
5 **A I recently, i.e., Saturday of -- this past**  
6 **Saturday read in some sort of filing a suggestion that**  
7 **it appears Dondero and Ellington through a series of**  
8 **offshore complex, offshore entities, owns a 70/30**  
9 **split on that. Anyways, that's, I think -- I'm**  
10 **summarizing what it said in the finding -- or in the**  
11 **filing.**  
12 Q Were you surprised to read that Dondero and  
13 Ellington may hold 100 percent of the Sentinel  
14 ownership --  
15 **A Yes. Yes.**  
16 Q What was surprising about that to you?  
17 **A I guess kind of generally through my normal**  
18 **operations, you sort of learned who owned what or what**  
19 **we were doing, and that never really surfaced for me**  
20 **that I recall, where it was, hey, this is their**  
21 **entity, as suggested in that filing I read on**  
22 **Saturday. So that was -- it seemed to be new**  
23 **information to me.**  
24 **And then obviously -- obviously then**  
25 **connecting it back to this transaction in the context**

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1 **of, you know, the subpoena I received and what I was**  
2 **reading, that's when it really sort of became a little**  
3 **bit more sort of surprising, if you will.**  
4 Q You mentioned earlier that all trades or  
5 sales have to go into a system for approval?  
6 **A The OMS, order management system.**  
7 Q And what details about a transaction would  
8 go into the order management system for a related  
9 party, if you know?  
10 **A Well, it's been a while, but it wouldn't**  
11 **necessarily per se be, hey, this is what we're in**  
12 **because it's a related party. The way it would work**  
13 **is you have the -- can you still see me okay?**  
14 **You have the same trade details in which,**  
15 **like, you have buyers, seller, seller, quantity,**  
16 **price, trade date, et cetera, and then that**  
17 **constituted an order. And so that system was**  
18 **monitored by compliance in which they had the ability**  
19 **to tag affiliated entities. And so to the extent**  
20 **there was an affiliated entity involved, it should**  
21 **have raised a red flag that only compliance could have**  
22 **cleared.**  
23 Q And that was a Highland policy that  
24 compliance would have had to clear the flag if one was  
25 raised?



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1 A That's right, and only compliance. Nobody  
2 in my group or anybody outside of compliance, to my  
3 understanding, had the ability to clear those.  
4 Q And a transaction where Dondero and  
5 Ellington owned 100 percent of the interests in an  
6 entity receiving assets, that would have had to be  
7 flagged in this OMS system, to be clear?  
8 A Well, that would have been dependent on if  
9 at the time it went through the OMS Sentinel was known  
10 to be an affiliate and someone had already flagged it  
11 as an affiliate. If no one had flagged it at the  
12 time, it would have just moved through the normal way.  
13 Q And would you have had any reason to know if  
14 a transaction was flagged to be a related party  
15 transaction, would that have been --  
16 A It wouldn't have necessarily been a big  
17 flashing light on my screen, but presumably it would  
18 have impacted Carter's team, settlement, and maybe  
19 Carter would have mentioned it to me. But if it got  
20 cleared very quickly, meaning someone from compliance  
21 cleared it -- in other words, it would have only come  
22 up in the context of if we weren't able to settle any  
23 of the transactions we were trying to. Carter likely  
24 would have come to me and said, hey, we're sitting on  
25 our hands because we're waiting for compliance;

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1 apparently, this is an affiliate, and we're waiting  
2 for compliance to clear it or instruct otherwise.  
3 I don't recall any of that happening.  
4 Q And that could be because compliance cleared  
5 it very quickly and there was no reason for you to  
6 know?  
7 A Or it wasn't flagged as an affiliate at the  
8 time the transaction went through, or, I mean, there's  
9 a presumption on my part that someone entered it in  
10 the OMS. The first step in this would be let's nail  
11 down was it entered in the OMS. I just -- I simply  
12 don't recall.  
13 Trades were entered in the OMS outside of my  
14 group. They would have been entered by the front  
15 office, the PM, somebody, and then that's how they hit  
16 our screens.  
17 But just to reiterate, if it wasn't in the  
18 OMS, clearly it wouldn't have tripped a flag, or if  
19 the counterparty, Sentinel, hadn't been flagged as an  
20 affiliate, it wouldn't have tripped it, and it would  
21 have just sailed through, or someone could have  
22 cleared it very quickly and it sailed through.  
23 Q Okay. And only compliance could have  
24 cleared it you said?  
25 A That's my understanding, that's right.

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1 That's right.  
2 MS. McLAUGHLIN: We'll take a look at  
3 Exhibit 6, please.  
4 (Deposition Exhibit 6, Email chain August  
5 11, 2017, HCMUBS000642 through 644, marked for  
6 identification.)  
7 Q Mr. Stoops, are you aware of any assets that  
8 were transferred to Sentinel other than the ones we've  
9 been looking at on Schedule A of the purchase  
10 agreement?  
11 A I'm -- it's two -- it seems potentially two  
12 different questions, so I'm trying to make sure I  
13 answer both. I'm not aware of any other assets on  
14 that Schedule A, but I can't -- I don't know for sure  
15 which one of these these pertain to. I'd have to  
16 cross-index it. But I don't know specifically which  
17 ones these pertain to.  
18 Q What do you mean by these ones?  
19 A Whatever you're showing me -- you're showing  
20 me a DTC or you're showing me application account  
21 which needed to transfer the shares. It appears to be  
22 setting up a DST account for some assets and I just --  
23 I don't know which assets.  
24 Q Aside from this document, ignoring the  
25 Exhibit 6 on the screen --

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1 A Okay.  
2 Q -- aside from anything in Exhibit 6, are you  
3 just generally aware of any assets that were  
4 transferred to Sentinel other than those listed on  
5 Schedule A?  
6 A No, no. It was my understanding that that  
7 was to be the full list, that that was it.  
8 Q And could there have been other assets that  
9 were transferred that you were unaware of at the time?  
10 A Sure. I guess, yeah. I guess so.  
11 Q Now looking at the screen -- I apologize I  
12 put it up too soon, but here on the screen we've got  
13 Exhibit 6, which is an email chain dated August 11th,  
14 2017 from Samantha Bennetzen. Do you see Exhibit 6?  
15 A I do see Exhibit 6.  
16 Q And you were not on this email, so you may  
17 very well not be aware of this email or what's  
18 included. But just to look at some of the content,  
19 we're looking at this top email where it lists an  
20 application for the NRESF account. Do you know what  
21 the "NRESF account" would mean?  
22 A So it appears they're looking to -- if it's  
23 DST, I think DST was where we maintained our closed-in  
24 fund shares, and it appears someone is asking to set  
25 up a new account for the NexPoint Real Estate

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1 **Strategies Fund to transfer those shares into it once**  
2 **this new application has been set up. But it isn't --**  
3 **it isn't apparent in whose name this new account**  
4 **should be transferred, you know, the beneficiary**  
5 **account name.**  
6 Q Okay. If we scroll down the document.  
7 Thank you.  
8 Just for context, this chain started on  
9 August 11th. And we'll go up a little bit higher.  
10 That's good, thank you.  
11 Here Katie Irving writes to Brian Fuentes,  
12 and she is talking about "appreciate your assistance  
13 in getting Sentinel set up with DST account to take  
14 transfer of CDO Fund NRSZX shares." Do you see that,  
15 that sentence?  
16 A **Yes.**  
17 Q And in response to Katie -- if we can scroll  
18 slightly up -- in response to Katie, Katie then sends  
19 a follow-up, "as discussed, wiring instructions for  
20 cash distributions are below."  
21 A **Um-hmm.**  
22 Q And lists a Sentinel Reinsurance Limited  
23 account. Do you see that?  
24 A **I do.**  
25 Q Is it possible that this is the account

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1 she's still talking about or that's still being  
2 discussed at the top of this email chain?  
3 A **Yes.**  
4 Q And can we go back to the top of the email  
5 chain. Based on the rest of this document, does it  
6 look like these shares that are being transferred are  
7 being sent to Sentinel? Is that a fair conclusion?  
8 A **It's a fair conclusion.**  
9 Q And we have account number and then a bunch  
10 of numbers listed for Highland CDO Opportunity Fund  
11 Limited. Do you see on Schedule A of the purchase  
12 agreement any shares transferred from Highland CDO  
13 Opportunity Fund Limited?  
14 A **Yeah, it says NexPoint C Com.**  
15 Q That's for Highland CDO Opportunity Fund  
16 Limited?  
17 A **Right, right, right. At the top, but I'm**  
18 **looking at the share names, the description. Yes, I**  
19 **see Highland CDO Opportunity Fund at the top, but I'm**  
20 **now trying to match it up with the shares they might**  
21 **have been trying to transfer, and all I see**  
22 **potentially one -- no. Here. Yes. Okay. No, here**  
23 **it is. Yes. Okay, I see it. NRES, sure, NRESZ,**  
24 **sure, it's on here.**  
25 Q And where you're looking on Schedule A, is

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1 it NRES, is that how you pronounce it?  
2 A **That's how we refer to it, sure, NRES.**  
3 Q The NexPoint Real Estate Strat - Z --  
4 A **Yes.**  
5 Q -- NRES asset that is listed on Schedule A,  
6 what entity is that asset listed under?  
7 A **Highland CDO Opportunity Master Fund.**  
8 Q On Exhibit 6, though, this email is  
9 discussing transferring shares from Highland CDO  
10 Opportunity Fund Limited. That would be a different  
11 entity, correct?  
12 A **I -- I -- I can't say for sure. To me I**  
13 **think this is just typed incorrectly. But I guess,**  
14 **yeah, presumably it could be a different one.**  
15 Q Because on Schedule A there are no shares or  
16 securities listed under Highland CDO Opportunity Fund  
17 Limited. Is that right?  
18 A **That's right. That's right.**  
19 MS. McLAUGHLIN: Okay. We can take Exhibit  
20 6 down, please.  
21 And, Mr. Stoops, unless you're really hoping  
22 to stay on the record a little bit longer, we propose  
23 that we just take a short break so that we can go  
24 through some notes and come back and conclude  
25 afterwards. So does five minutes work?

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1 THE WITNESS: Fine with me.  
2 THE VIDEOGRAPHER: We are going off the  
3 record. The time is 12 o'clock p.m.  
4 (Recess 12:00 p.m. - 12:18 p.m.)  
5 THE VIDEOGRAPHER: We are back on the  
6 record. The time is 12:18 p.m.  
7 BY MS. McLAUGHLIN:  
8 Q Mr. Stoops, I think earlier today you were  
9 saying how you were not aware in August 2017 whether  
10 Sentinel was an affiliated entity with Highland  
11 Capital. Is that correct?  
12 A **Yes.**  
13 MS. McLAUGHLIN: If we could, please, put up  
14 a new exhibit. I believe it's marked as Exhibit 7.  
15 (Deposition Exhibit 7, Email chain December  
16 1, 2017, marked for identification.)  
17 Q Yes. Exhibit 7 is an email chain with the  
18 top email dated December 1st, 2017 from Scott  
19 Ellington. Do you see Exhibit 7 on your screen,  
20 Mr. Stoops?  
21 A **Yes, I do.**  
22 Q And we can scroll down a little bit.  
23 You're not on the first or second email, but  
24 you are on the third email on this page from Taylor  
25 Colbert.

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1 Can we scroll back up, please. Right there  
2 is good. Thank you.  
3 Mr. Stoops, what role did Taylor Colbert  
4 have, if you know?  
5 **A So Taylor was a financial analyst, financial**  
6 **fund accountant, same thing, just under different**  
7 **reference, but same thing, a fund accountant who**  
8 **reported directly to David Willmore, who reported**  
9 **directly to me. And in his capacity he handled the**  
10 **sort of monthly financial reporting obligations for**  
11 **certain hedge funds.**  
12 Q And the subject of this email was a Multi  
13 Strat Cash Projection, correct?  
14 **A Yes.**  
15 Q And Taylor writes here, "As discussed,  
16 please see the updated file with Sentinel being  
17 presented as an affiliated investor." Did I read that  
18 right?  
19 **A Yes, you did.**  
20 Q And you understand Taylor to be saying  
21 Sentinel and Multi Strat were affiliates. Is that  
22 correct?  
23 **A Yes, that appears what he's saying here.**  
24 Q And do you have any understanding as to why  
25 Taylor was updating the file?

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1 **A I don't specifically recall. I can sort of**  
2 **guess by the flow of the email, but I don't**  
3 **specifically recall.**  
4 Q And after this update, Sentinel was listed  
5 in the cash projection as an affiliated investor,  
6 correct?  
7 **A Yes.**  
8 MS. McLAUGHLIN: We can take Exhibit 7 down,  
9 please.  
10 Q Just a few more questions about the  
11 conversation you had with Mr. Sevilla back in August  
12 2017. After your initial conversation, did you have  
13 any follow-up discussions with Mr. Sevilla about what  
14 he was asking you to do?  
15 **A I don't recall anything specific. But I do**  
16 **know there were follow-up conversations, and it was**  
17 **probably more about updates or clarification.**  
18 Q Updates --  
19 **A For example -- for example, in one of my**  
20 **emails we brought up as an exhibit earlier, I said**  
21 **we're still waiting on delivery instructions for**  
22 **physicals. So it would have been something along**  
23 **those lines, we need to anticipate getting those to**  
24 **us, or something along those lines.**  
25 Q And under the transaction that Mr. Sevilla

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1 describes to you in August 2017, all the assets from  
2 HFP and its subsidiaries were transferred to Sentinel  
3 regardless which entity they were held at. Is that  
4 right?  
5 **A Yes, that's my recollection, yes.**  
6 Q And so is the same thing true for CDO Funds  
7 affiliates as well, assets were transferred from CDO  
8 Fund -- the CDO Fund family regardless of which entity  
9 they were held at?  
10 **A Yes, that's my recollection, that -- it's my**  
11 **recollection those were the instructions, yes, and the**  
12 **intent.**  
13 Q And we mentioned a few times the UBS  
14 litigation that's been ongoing since about 2019. I  
15 believe you -- excuse me. I'll restart.  
16 Were you aware throughout the UBS litigation  
17 that UBS had been making information requests to  
18 Highland for financial information of HFP and its  
19 subsidiaries?  
20 **A So, forgive me, but just to be clear, I**  
21 **think you said ongoing since 2019. I'm thinking you**  
22 **meant 2009, agreed?**  
23 Q Agreed.  
24 **A Okay. Okay.**  
25 Q Since 2009 --

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1 (Simultaneously speaking.)  
2 **A Yes, yes, yes.**  
3 Q -- since 2009 --  
4 **A Sure.**  
5 Q -- have you been aware of financial  
6 information requests from UBS?  
7 **A Yes. There were from time to time requests**  
8 **for certain documents from UBS related to that matter.**  
9 Q And were you ever entrusted with the  
10 responsibility of responding to those requests?  
11 **A As in sending them to UBS?**  
12 Q Collecting them or sending them. Just at  
13 Highland, was it part of your role to have  
14 responsibility for --  
15 **A It sort of varied. From time to time I**  
16 **might get involved, but then in others not at all. It**  
17 **just sort of really varied on what the legal team had**  
18 **available to it at the time. So it sort of --**  
19 Q And your --  
20 **A Go ahead.**  
21 Q Oh. And your responsibilities with UBS's  
22 document requests were limited to helping the legal  
23 team find certain documents. Is that correct?  
24 **A Generally, yes. Yes.**  
25 Q You were not the person responsible for


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1 final collection or production of any documents to  
2 UBS. Is that correct?  
3 **A No. I would have turned everything over to**  
4 **our legal team.**  
5 Q And do you also recall that Isaac Leventon  
6 was the person on the legal team that had the ultimate  
7 responsibility for productions at that time?  
8 **A That was my understanding, yes.**  
9 Q All right. Mr. Stoops, we have, I think,  
10 four questions here or five questions here left for  
11 you.  
12 You're testifying today pursuant to a  
13 subpoena. Is that correct?  
14 **A Yes.**  
15 Q Would you have shown up without a subpoena?  
16 **A I don't know. I hadn't thought about it. I**  
17 **couldn't say for sure.**  
18 Q And you're represented by counsel today,  
19 right?  
20 **A Yes.**  
21 Q Who is paying for your counsel?  
22 **A Me.**  
23 Q Did anyone else offer to pay or reimburse  
24 your legal fees?  
25 **A No.**

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1 Q You also received a subpoena to produce  
2 documents, right?  
3 **A Yes. Yes.**  
4 Q And you don't have any documents to produce  
5 to UBS in response to that subpoena?  
6 **A Based on my search, no, I don't believe I**  
7 **do.**  
8 Q And you conducted a search?  
9 **A I did.**  
10 MR. McLAUGHLIN: Well, with that,  
11 Mr. Stoops, thank you very much. We appreciate your  
12 time, and that's all we have today.  
13 THE WITNESS: Thank you very much.  
14 MR. THORNTON: Thank you.  
15 MS. McLAUGHLIN: Bob, you didn't have  
16 questions, did you?  
17 MR. THORNTON: No, no questions.  
18 MS. McLAUGHLIN: I believe we can go off the  
19 record, then.  
20 THE VIDEOGRAPHER: We are going off the  
21 record. The time is 12:27 p.m.  
22 (Time noted: 12:27 p.m.)  
23  
24 \*\*\*\*\*  
25

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1 CERTIFICATE  
2  
3 I, MONIQUE VOUTHOURIS, a Notary Public and  
4 Certified Court Reporter of the State of New Jersey,  
5 License No. X100834, do hereby certify that prior to  
6 the commencement of the examination CLIFFORD E.  
7 STOOPS, II, was duly sworn by me to testify the truth,  
8 the whole truth, and nothing but the truth.  
9  
10 I DO FURTHER CERTIFY that the foregoing is a true  
11 and accurate transcript of the testimony as taken  
12 stenographically by and before me at the time, place,  
13 and on the date hereinbefore set forth.  
14  
15 I DO FURTHER CERTIFY that I am neither a relative  
16 nor employee nor attorney nor counsel of any of the  
17 parties to this action, and that I am neither a  
18 relative nor employee of such attorney or counsel, and  
19 that I am not financially interested in the action.  
20   
21 \_\_\_\_\_  
22 Notary Public of the State of New Jersey  
23 My Commission expires April 8, 2024  
24  
25 Dated: May 5, 2021



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# Transcript of Jeremy Ringheimer

**Date:** April 30, 2021

**Case:** UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of Jeremy Ringheimer  
 Conducted on April 30, 2021

<p style="text-align: center;">1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 -----x</p> <p>4 In re : Chapter 11</p> <p>5 HIGHLAND CAPITAL MANAGEMENT, : Case No.</p> <p>6 L.P., : 19-34054-SGJ11</p> <p>7 Debtor. :</p> <p>8 UBS SECURITIES LLC AND UBS AG : Adversary Proceeding</p> <p>9 LONDON BRANCH, : No. 21-03020-sgj</p> <p>10 Plaintiffs, :</p> <p>11 vs. :</p> <p>12 HIGHLAND CAPITAL MANAGEMENT, :</p> <p>13 L.P., :</p> <p>14 Defendant. :</p> <p>15 -----x</p> <p>16</p> <p>17 VIDEOTAPED DEPOSITION OF JEREMY RINGHEIMER</p> <p>18 CONDUCTED VIRTUALLY</p> <p>19 Friday, April 30, 2021</p> <p>20 7:40 a.m. PST</p> <p>21</p> <p>22</p> <p>23 Job No.: 368757</p> <p>24 Pages: 1 - 55</p> <p>25 Reported By: Charlotte Lacey, RPR, CSR No. 14224</p>	<p style="text-align: center;">3</p> <p style="text-align: center;">A P P E A R A N C E S</p> <p>1 ON BEHALF OF UBS SECURITIES LLC:</p> <p>2</p> <p>3 ROBERT E. ALLEN, ESQUIRE</p> <p>4 SARAH A. TOMKOWIAK, ESQUIRE</p> <p>5 KATHRYN K. GEORGE, ESQUIRE</p> <p>6 LATHAM &amp; WATKINS, LLP</p> <p>7 10250 Constellation Boulevard, Suite 1100</p> <p>8 Los Angeles, California 90067</p> <p>9 (424) 653-5563</p> <p>10</p> <p>11 ON BEHALF OF DEFENDANT HIGHLAND CAPITAL MANAGEMENT,</p> <p>12 L.P.:</p> <p>13 ROBERT FEINSTEIN, ESQUIRE</p> <p>14 GREGORY V. DEMO, ESQUIRE</p> <p>15 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>16 780 3rd Avenue, 34th Floor</p> <p>17 New York, New York 10017</p> <p>18 (212) 561-7700</p> <p>19</p> <p>20 ALSO PRESENT:</p> <p>21 Rick Spector, Videographer</p> <p>22 Ian Rowe, AV Technician</p> <p>23</p> <p>24</p> <p>25</p>																																																																											
<p style="text-align: center;">2</p> <p>1 VIDEOTAPED DEPOSITION OF JEREMY RINGHEIMER,</p> <p>2 CONDUCTED VIRTUALLY.</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Pursuant to notice, before Charlotte Lacey,</p> <p>7 Certified Shorthand Reporter in and for the State of</p> <p>8 California.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <table border="0"> <tr> <td>1</td> <td>WITNESS</td> <td style="text-align: right;">PAGE</td> </tr> <tr> <td>2</td> <td>JEREMY RINGHEIMER</td> <td></td> </tr> <tr> <td>3</td> <td>Examination by Mr. Allen</td> <td style="text-align: right;">7</td> </tr> <tr> <td>4</td> <td></td> <td></td> </tr> <tr> <td>5</td> <td></td> <td></td> </tr> <tr> <td>6</td> <td></td> <td></td> </tr> <tr> <td>7</td> <td></td> <td></td> </tr> <tr> <td>8</td> <td></td> <td></td> </tr> <tr> <td>9</td> <td style="text-align: center;">I N D E X O F E X H I B I T S</td> <td></td> </tr> <tr> <td>10</td> <td>EXHIBITS DESCRIPTION PAGE</td> <td></td> </tr> <tr> <td>11</td> <td>Exhibit 1 E-mail from Isaac Leventon dated 10/26/2017; attachment, Legal Liability Insurance Policy</td> <td style="text-align: right;">38</td> </tr> <tr> <td>12</td> <td></td> <td></td> </tr> <tr> <td>13</td> <td></td> <td></td> </tr> <tr> <td>14</td> <td>Exhibit 2 Purchase agreement dated 8/7/2017</td> <td style="text-align: right;">39</td> </tr> <tr> <td>15</td> <td>Exhibit 3 E-mail from Shawn Raver dated 9/12/2018; attachment, Memorandum</td> <td style="text-align: right;">44</td> </tr> <tr> <td>16</td> <td></td> <td></td> </tr> <tr> <td>17</td> <td>Exhibit 8 E-mail chain, top e-mail from Jeremy Ringheimer dated 8/11/2017, Bates number HCMUBS000516 through 517</td> <td style="text-align: right;">22</td> </tr> <tr> <td>18</td> <td></td> <td></td> </tr> <tr> <td>19</td> <td></td> <td></td> </tr> <tr> <td>20</td> <td>Exhibit 9 E-mail chain, top e-mail from Clifford Stoops dated 8/11/2017, Bates number HCMUBS000574 through 576</td> <td style="text-align: right;">29</td> </tr> <tr> <td>21</td> <td></td> <td></td> </tr> <tr> <td>22</td> <td></td> <td></td> </tr> <tr> <td>23</td> <td></td> <td></td> </tr> <tr> <td>24</td> <td>Exhibit 10 E-mail from Alli Devins dated 5/22/2019; attachments, letters</td> <td style="text-align: right;">47</td> </tr> <tr> <td>25</td> <td></td> <td></td> </tr> </table>	1	WITNESS	PAGE	2	JEREMY RINGHEIMER		3	Examination by Mr. Allen	7	4			5			6			7			8			9	I N D E X O F E X H I B I T S		10	EXHIBITS DESCRIPTION PAGE		11	Exhibit 1 E-mail from Isaac Leventon dated 10/26/2017; attachment, Legal Liability Insurance Policy	38	12			13			14	Exhibit 2 Purchase agreement dated 8/7/2017	39	15	Exhibit 3 E-mail from Shawn Raver dated 9/12/2018; attachment, Memorandum	44	16			17	Exhibit 8 E-mail chain, top e-mail from Jeremy Ringheimer dated 8/11/2017, Bates number HCMUBS000516 through 517	22	18			19			20	Exhibit 9 E-mail chain, top e-mail from Clifford Stoops dated 8/11/2017, Bates number HCMUBS000574 through 576	29	21			22			23			24	Exhibit 10 E-mail from Alli Devins dated 5/22/2019; attachments, letters	47	25		
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Transcript of Jeremy Ringheimer  
Conducted on April 30, 2021

<p>5</p> <p>1 Exhibit 12 Letter from Highland Capital 52 2 Management to Crowe Cayman Ltd. 3 Dated 5/31/2019 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>7</p> <p>1 defendant in the adversary proceeding and the debtor, 2 Highland Capital Management. With me is my colleague 3 Greg Demo. 4 THE VIDEOGRAPHER: The court reporter today is 5 Charlotte Lacey, representing Planet Depos. 6 Would the reporter please swear in the 7 witness. 8 THE REPORTER: Will counsel please stipulate 9 that in lieu of formally swearing in the witness, the 10 reporter will instead ask the witness to acknowledge 11 that their testimony will be true under the penalties of 12 perjury, that counsel will not object to the 13 admissibility of the transcript based on proceeding in 14 this way, and that the witness has verified that he is, 15 in fact, Jeremy Ringheimer. 16 MR. ALLEN: Agreed. 17 MR. FEINSTEIN: Agreed. 18 THE REPORTER: Mr. Ringheimer, do you hereby 19 acknowledge that your testimony will be true under the 20 penalties of perjury? 21 THE WITNESS: Yes. 22 THE REPORTER: Thank you. 23 Proceed, Counsel. 24 EXAMINATION 25 BY MR. ALLEN:</p>
<p>6</p> <p>1 PROCEEDINGS 2 THE VIDEOGRAPHER: Good morning. This is the 3 beginning of media file number 1 in the video deposition 4 of Jeremy Ringheimer in the matter of in re Highland 5 Capital Management L.P. as debtor, specifically UBS 6 Securities LLC, UBS AG, London branch, as plaintiffs, 7 versus Highland Capital Management, L.P., as defendant, 8 Case Number 19-34054-SGJ11 and adversary proceeding 9 2103020-SGJ before the United States Bankruptcy Court 10 for the Northern District of Texas, Dallas Division. 11 Today is Friday, April 30, 2021, and the time 12 on the video monitor is 7:41 in the morning, Pacific 13 Daylight Time. 14 The videographer today is Rick Spector, 15 representing Planet Depos. 16 This video deposition is taking place 17 virtually. 18 Would counsel please voice identify themselves 19 and state whom they represent. 20 MR. ALLEN: This is Robert Allen on behalf of 21 Latham &amp; Watkins, counsel for UBS. I'm joined today by 22 Sarah Tomkowiak and Katie George also of Latham &amp; 23 Watkins. 24 MR. FEINSTEIN: This is Robert Feinstein, 25 Pachulski Stang Ziehl &amp; Jones. We are counsel to the</p>	<p>8</p> <p>1 Q Can you hear me okay? 2 A Yes. 3 Q Excellent. Mr. Ringheimer, go ahead and 4 please state your full name for the record and spell it 5 as well. 6 A <b>Jeremy Ringheimer, J-e-r-e-m-y</b> 7 <b>R-i-n-g-h-e-i-m-e-r.</b> 8 Q Thank you. Good morning. My name is Robert 9 Allen. I think you just heard the introductions. I'm 10 going to be joined as well by Sarah Tomkowiak and Katie 11 George of Latham &amp; Watkins. 12 Mr. Ringheimer, my first question, have you 13 ever been deposed before? 14 A No. 15 Q Do you understand today that you are 16 testifying here under oath? 17 A Yes. 18 Q And you understand that your testimony has the 19 same force and effect as if you were in court in front 20 of a judge or jury? 21 A Yes. 22 Q Just a couple quick ground rules to make sure 23 this goes smoothly. Please go ahead and speak as 24 clearly as possible and not too quickly, I'll try to do 25 the same, so the court reporter can accurately take down</p>

9  
1 our testimony today. And I'm going to assume that you  
2 understand any questions that I ask unless you tell me  
3 others; is that fair?  
4 **A Fair.**  
5 Q Is there any reason, sitting here today, you  
6 can think of that would prevent you from giving truthful  
7 and accurate testimony?  
8 **A No.**  
9 Q And you are testifying today pursuant to a  
10 subpoena, correct?  
11 **A Correct.**  
12 Q You also received a subpoena to produce  
13 documents; is that correct?  
14 **A Also correct.**  
15 Q And you conducted a search for any relevant  
16 documents you might have?  
17 **A I have no documents.**  
18 Q Got it. And have you spoken to any current or  
19 former employees of Highland Capital Management about  
20 this litigation?  
21 **A I mentioned it to one, yes.**  
22 Q And who is that?  
23 **A Vishal Patel.**  
24 Q Vishal -- and who is Vishal Patel?  
25 **A He is now the director of operations at HCMLP.**

10  
1 **He was my number two when we were there, and we were**  
2 **friends outside of work. So we didn't really discuss**  
3 **it. We just mentioned that, yes, I got a subpoena.**  
4 Q Understood. Other than Mr. Patel, did you  
5 discuss the litigation with anyone else at Highland  
6 Capital Management?  
7 **A No.**  
8 Q Other than myself, Ms. George, and  
9 Ms. Tomkowiak in connection with your deposition, have  
10 you spoken with anyone else about this deposition?  
11 **A I talked to Greg Demo for very briefly about**  
12 **an NDA -- an existing NDA that I have signed with**  
13 **Highland Capital Management.**  
14 Q And other than Mr. Demo, was there anyone else  
15 that you spoke with?  
16 **A No.**  
17 Q We'll get into a little bit of employment  
18 background. Where are you currently employed?  
19 **A At Park Walk LLP.**  
20 Q And what does Park Walk do?  
21 **A It's a brokerage firm. We buy and sell**  
22 **securities. Yeah, we buy and sell distressed debt and**  
23 **distressed equity and distressed bonds.**  
24 Q Thank you. And what is your job title at Park  
25 Walk?

11  
1 **A I'm the director of operations.**  
2 Q What are the duties and responsibilities that  
3 you have in that position?  
4 **A Basically, I settle all their trades, any**  
5 **operation and functions that they have, reporting,**  
6 **whatnot.**  
7 Q And approximately when did you begin working  
8 at Park Walk?  
9 **A I started I think -- I think it's September of**  
10 **last year.**  
11 Q Prior to joining Park Walk, you worked for  
12 Highland Capital Management, correct?  
13 **A I did for six years.**  
14 Q Do you recall approximately when you began  
15 working for Highland?  
16 **A So it would have been somewhere in February of**  
17 **2014.**  
18 Q And what was your job title at Highland?  
19 **A When I was hired originally, I was brought in**  
20 **as a senior analyst, specifically focusing on trade**  
21 **settlement of -- of debt. And then I was the -- I was**  
22 **promoted to operation -- manager of operations. Still**  
23 **doing the same function, just I had a few people**  
24 **reporting to me, and my team settled debt trades.**  
25 Q And can you provide with -- I guess, a

12  
1 slightly more detailed description, what your duties and  
2 responsibilities entailed --  
3 **A Right, so --**  
4 Q -- as senior analyst first?  
5 **A Yeah. So, you know, I'm sure you're aware**  
6 **Highland trades in many different products; debt,**  
7 **equities, bonds, swaps, you know, stuff like that. So**  
8 **we would allocate all the debt trades into Bloomberg**  
9 **from Bloomberg Bay, flow down into the accounting**  
10 **system, which is Wall Street Office. Then we settle all**  
11 **of the trades in something called ClearPar.**  
12 **That was -- that was our primary duties. But**  
13 **then we also do functions like position reconciliation,**  
14 **cash reporting, you know, so where cash is on a trade**  
15 **basis for all of your funds. You know, that's the --**  
16 **that's the bulk of it.**  
17 Q And after you were promoted, how did those  
18 responsibilities change?  
19 **A They didn't. I was basically doing the same**  
20 **thing before. It's just it was more of a, you know,**  
21 **compensation promotion and title change. And then the**  
22 **two -- the two junior analysts were reporting to me**  
23 **instead of the director of operations.**  
24 Q And to whom did you report as a senior  
25 analyst?



<p>13</p> <p>1 <b>A Carter Chism.</b></p> <p>2 Q And who did Mr. Chism report to?</p> <p>3 <b>A Clifford Stoops.</b></p> <p>4 Q And did the chain of reporting change at all</p> <p>5 after the title change?</p> <p>6 <b>A No.</b></p> <p>7 Q Did you hold any other job titles while you</p> <p>8 worked at Highland?</p> <p>9 <b>A No.</b></p> <p>10 Q And you left in approximately September 2020?</p> <p>11 <b>A No. I left at the end of the year -- at the</b></p> <p>12 <b>beginning of 2020.</b></p> <p>13 Q Is Highland related in any way to your new</p> <p>14 employer, Park Walk?</p> <p>15 <b>A They are not.</b></p> <p>16 Q Do you know whether Highland does any work</p> <p>17 with Park Walk?</p> <p>18 <b>A They do not.</b></p> <p>19 Q So while you worked at Highland Capital</p> <p>20 Management, did you have responsibilities with any other</p> <p>21 funds that were managed by Highland?</p> <p>22 <b>A Can you be more specific.</b></p> <p>23 Q So you mentioned earlier that you, you know,</p> <p>24 settled bids on behalf of Highland?</p> <p>25 <b>A Uh-huh.</b></p>	<p>15</p> <p>1 Highland-affiliated entities?</p> <p>2 <b>A So I guess -- I guess NexPoint is affiliated</b></p> <p>3 <b>with Highland. And we would -- we would settle their</b></p> <p>4 <b>trades when they would make them.</b></p> <p>5 Q So I know there are a lot of Highland</p> <p>6 entities, but are you familiar with Highland CDO</p> <p>7 Opportunity Master Fund LP? It's commonly referred to</p> <p>8 as CDO fund?</p> <p>9 <b>A So there are several funds that are named CDO,</b></p> <p>10 <b>and it's been four years or -- you know, however long</b></p> <p>11 <b>it's been since I left, a couple of years, and then, you</b></p> <p>12 <b>know, four years since this. But I -- I don't recognize</b></p> <p>13 <b>the name, but I have heard CDO a lot. It's not a --</b></p> <p>14 <b>it's not a commonly -- it's not a commonly traded fund.</b></p> <p>15 <b>And it doesn't -- it -- I don't remember it trading</b></p> <p>16 <b>debt. So I didn't touch it very -- hardly at all</b></p> <p>17 <b>probably.</b></p> <p>18 Q And what is your basis for saying that it was</p> <p>19 not a commonly traded fund?</p> <p>20 <b>A So at the end of every day, we -- the</b></p> <p>21 <b>operations team allocates trades and -- you know, like I</b></p> <p>22 <b>previously mentioned, from Bloomberg into Wall Street</b></p> <p>23 <b>Office and another system called Geneva. And then we</b></p> <p>24 <b>reconcile the trade blotter, and then this is sent out</b></p> <p>25 <b>to everybody saying that the blotter has been</b></p>
<p>14</p> <p>1 Q Would -- were you also acting in your capacity</p> <p>2 as either analyst or in your operations capacity on</p> <p>3 behalf of Highland Capital Management, or did you work</p> <p>4 on behalf of any other Highland entity?</p> <p>5 <b>A Are you -- are you talking about, like,</b></p> <p>6 <b>specifically front -- like different funds or</b></p> <p>7 <b>different -- are you --</b></p> <p>8 Q Yeah, specifically different funds.</p> <p>9 <b>A So I think to answer your question would be</b></p> <p>10 <b>that NexPoint funds do not fall under the umbrella of</b></p> <p>11 <b>HCMLP, so to answer your question would be, yes, we</b></p> <p>12 <b>settled trades for all NexPoint funds as well.</b></p> <p>13 Q Got it. And so within the Highland umbrella,</p> <p>14 did you handle trades on behalf of any subsidiary</p> <p>15 companies?</p> <p>16 <b>A So Highland trades for Next Bank, but we do</b></p> <p>17 <b>not settle the trades. We would allocate the trades</b></p> <p>18 <b>into their account in Wall Street Office, and then they</b></p> <p>19 <b>have their own settlement team, and they move their</b></p> <p>20 <b>office in. But HCMLP's job would be -- they would make</b></p> <p>21 <b>trades for them, and we would allocate for them -- my</b></p> <p>22 <b>team would allocate them from Bloomberg into Wall Street</b></p> <p>23 <b>Office, and then they take it from there. So that -- it</b></p> <p>24 <b>was allocation -- trade allocation for Next Bank.</b></p> <p>25 Q So did you do any work on behalf of any</p>	<p>16</p> <p>1 <b>reconciled, so all trades are in. And I don't -- didn't</b></p> <p>2 <b>remember seeing that fund make trades.</b></p> <p>3 Q Would you feel confident more generally</p> <p>4 identifying which funds were commonly traded out of and</p> <p>5 which were not?</p> <p>6 <b>A So the funds that I dealt with that -- that</b></p> <p>7 <b>traded debt would be Highland/iBoxx. So that's a --</b></p> <p>8 <b>that's a retail ETF. Highland Floating Rate</b></p> <p>9 <b>Opportunities Fund. Pension Denmark. Let's see,</b></p> <p>10 <b>Highland Global Allocation Fund. Those are just --</b></p> <p>11 <b>those were some of the big ones.</b></p> <p>12 Q So I guess the slightly more specific question</p> <p>13 would be, given the volume that came across your desk,</p> <p>14 do you feel confident identifying, you know, which were</p> <p>15 high-volume funds versus which were not?</p> <p>16 <b>A So the ones that I mentioned were the high</b></p> <p>17 <b>volume for debt. Now, there are also several funds</b></p> <p>18 <b>that, you know, would be trading equity, and the equity</b></p> <p>19 <b>team would be allocating those. So my team, they</b></p> <p>20 <b>allocate. So the equity team allocates trades</b></p> <p>21 <b>at 3 o'clock every day, 'cause that's when they -- they</b></p> <p>22 <b>drop, the market closes, and then when they're done,</b></p> <p>23 <b>that's when my team would go in there and allocate debt</b></p> <p>24 <b>trades. So equity at 3. We would normally be about 4.</b></p> <p>25 Q And who would your counterpart be on the</p>

17

1 equities side?

2 **A Vishal Patel.**

3 Q And we're going to go through a couple other

4 entities. I understand it's been a while. Do you

5 recognize the name Highland Special Opportunities

6 Holdings Company?

7 **A I don't offhand but -- I don't.**

8 Q What about Highland Financial Partners L.P.?

9 **A I recognize that one because I think that our**

10 **team would pay -- I think that we might have paid, like,**

11 **an audit invoice for them from time to time.**

12 Q Do you recall whether or not you did any work

13 in your capacity as either senior analyst or in your

14 manager of operations role on behalf of HFP?

15 **A I don't.**

16 Q Are you aware, Mr. Ringheimer, of litigation

17 between UBS and Highland Capital Management?

18 **A I am.**

19 Q And what is your understanding of that

20 litigation?

21 **A That it is over the transfer of assets from a**

22 **few funds to -- to -- for an insurance policy.**

23 Q And are you aware of any other litigation

24 between UBS and Highland Capital Management?

25 **A I'm not.**

18

1 Q Are you familiar with an entity called

2 Sentinel Reinsurance Ltd.?

3 **A Only the name.**

4 Q And how did you become familiar with the name

5 of the company?

6 **A That's where these assets were transferred to.**

7 Q So slightly more specific question, how did

8 you learn about or how did you first come across --

9 sorry. I'll fix the question.

10 When did you first become aware of Sentinel

11 Reinsurance?

12 **A When we transferred these. I had never heard**

13 **of it before that.**

14 Q And when you say "we transferred these," who

15 is "we"?

16 **A Highland Capital.**

17 Q And do you recall approximately when the

18 transfer was?

19 **A I do not.**

20 Q And do you recall what in particular was

21 transferred by Highland?

22 **A It was primarily CLOs, I believe. CLO bonds**

23 **more specifically.**

24 Q Okay. And what is your basis for that?

25 **A The list that you sent me.**

19

1 Q The list that -- so what -- what list in

2 particular are you referring to?

3 **A It was in one of the attachments, the PDFs.**

4 **The document that has --**

5 Q And so --

6 **A The assets that were transferred.**

7 Q So we'll go through some --

8 **A Until then, I hadn't remembered what was**

9 **transferred.**

10 Q Got it.

11 So, you know, prior to, you know, your

12 preparation for this deposition --

13 **A Right. Right.**

14 Q -- did you have any recollection as to what

15 was transferred to Sentinel?

16 **A No. No.**

17 Q And sitting here today, are you aware whether

18 Sentinel is an affiliate of Highland Capital Management?

19 **A I became aware of that yesterday.**

20 Q So would be -- prior to, you know, your

21 preparation for this deposition or in connection to this

22 litigation, did you know that Sentinel is an affiliated

23 company?

24 **A No.**

25 Q Do you know anyone that worked at Sentinel?

20

1 **A I do not.**

2 Q Did you ever recall communicating with anyone

3 at Sentinel while you were at Highland?

4 **A No. I believe the only communication I had**

5 **was with an auditor that was auditing their -- their**

6 **whatever -- their company.**

7 Q And what is your understanding of how the

8 Sentinel is connected to Highland?

9 **A I don't have an understanding of it.**

10 Q Other than -- you had testified earlier that

11 there were some transfers sent from Highland to

12 Sentinel. Is that the full extent of your understanding

13 of the relationship between those companies?

14 **A That's correct.**

15 Q Are you aware of any connection between

16 Sentinel and Mr. James Dondero?

17 **A I became aware of that yesterday.**

18 Q And what is your understanding of that

19 relationship?

20 **A I believe he owns the entity.**

21 Q And are you aware of any connection between

22 Scott Ellington and Sentinel?

23 **A He is -- I believe he owns it as well.**

24 Q Are you aware of any connection between

25 Sentinel and Matthew DiOrio?

21

1 **A I do not. Well, I know that he was -- he was**  
2 **one of the primary people that was involved in -- in the**  
3 **transfer with the -- preparing documents for it I think.**  
4 Q And do you recall what that involvement was?  
5 **A I do not.**  
6 Q Do you have a general understanding of the  
7 services that Sentinel provides?  
8 **A I do not other than this insurance policy.**  
9 **And I'm not really sure what -- the details of that as**  
10 **well.**  
11 Q Have you ever heard of Sentinel RE Holdings  
12 Limited or SS Holdings Limited?  
13 **A No.**  
14 Q Do you have any knowledge of the officers and  
15 directors at Sentinel at any time?  
16 **A No.**  
17 Q Do you know who, if anyone, made decisions on  
18 behalf of Sentinel?  
19 **A I do not.**  
20 Q And are you aware of any transactions that  
21 Sentinel was involved in?  
22 **A No.**  
23 Q Other than the transfers to Sentinel from  
24 Highland.  
25 **A Right. Yep.**

22

1 Q Let's go ahead and take a quick break, about  
2 five minutes or so, and then we can pop back on the  
3 record.  
4 **A Sounds good.**  
5 THE VIDEOGRAPHER: It's 8 o'clock Pacific  
6 Daylight Time. We are going off the record.  
7 (A recess ensued from 8:00 a.m. to 8:06 a.m.)  
8 THE VIDEOGRAPHER: It's 8:06 Pacific Daylight  
9 Time. We are back on the record.  
10 MR. ALLEN: All right.  
11 Madam Court Reporter, could you please bring  
12 up Deposition Exhibit 8 for the witness.  
13 AV TECHNICIAN: Please stand by.  
14 (Deposition Exhibit 8 was marked for  
15 identification.)  
16 AV TECHNICIAN: The document should now be on  
17 screen.  
18 MR. ALLEN: Thank you. Could you zoom in  
19 slightly to about 100 percent.  
20 Excellent.  
21 BY MR. ALLEN:  
22 Q Mr. Ringheimer, can you see the document on  
23 your screen?  
24 **A I can.**  
25 Q And can you read the document?

23

1 **A I can.**  
2 Q Go ahead and take a quick moment to  
3 familiarize yourself with the contents of the page  
4 that's visible right now.  
5 **A Uh-huh.**  
6 Q So this is an e-mail chain with the top e-mail  
7 dated Friday August 11th, 2017, and it appears to be  
8 sent from you to a James Palmer. Can you confirm that  
9 the e-mail at the top, JRingheimer@HighlandCapital.com,  
10 is your e-mail address?  
11 **A Yes.**  
12 Q Do you recall sending this e-mail to  
13 Mr. Palmer?  
14 **A I don't.**  
15 Q Do you have any reason to believe you did not  
16 actually send this e-mail?  
17 **A I do not.**  
18 Q Let's move to the first e-mail at the bottom  
19 of this PDF. So this is an e-mail from Katie Irving to  
20 Carter Chism. I believe you testified earlier that  
21 Mr. Chism was in your reporting structure?  
22 **A That's correct.**  
23 Q So Ms. Irving writes here --  
24 **A He was my supervisor.**  
25 Q I'm sorry. What was that?

24

1 **A He -- yeah, he was my supervisor. That's**  
2 **correct.**  
3 Q Okay. And Ms. Irving writes here, "Sentinel  
4 wiring instructions for cash arising from transaction  
5 are below. Thank you."  
6 Do you see that?  
7 **A I do.**  
8 Q And the reference here at the bottom says  
9 "Sentinel Reinsurance Ltd."  
10 Do you see that?  
11 **A I do.**  
12 Q Is it fair to say this is an e-mail exchange  
13 about a transfer of funds from Highland to Sentinel?  
14 **A That is correct.**  
15 Q And in the e-mail immediately above this, from  
16 Mr. Chism, he writes, "Please confirm this serves as  
17 instruction to wire cash from all HFP funds and all CDO  
18 funds to the account listed in the instructions below."  
19 Do you see that?  
20 **A I do.**  
21 Q You referred earlier to "transfer made from  
22 Highland to Sentinel."  
23 Is this the transfer that you were referring  
24 to?  
25 **A I have no reason to believe it's not.**

25

1 Q Do you recall a transfer from Highland to  
2 Sentinel around August 11, 2017?  
3 A I do.  
4 Q And what is your basis for recalling?  
5 A The fact that that is -- that I have twins and  
6 that's their birthday, and I was trying to leave early  
7 that day, and because I did not get to leave early that  
8 day because of this.  
9 Q I'm sorry to hear that. So that -- just so  
10 we're clear, your testimony is working on these  
11 transfers kept you from getting home for your children's  
12 birthday?  
13 A That is correct. Because Carter left early  
14 that day. He had a planned vacation. And so that's why  
15 I'm guessing that -- at the top of the e-mail, that  
16 Cliff sent that to me.  
17 Q And can you tell from this e-mail who  
18 Mr. Chism is seeking confirmation from?  
19 A I would think all of them. So if you look at  
20 that e-mail, everybody that's listed at the top, so  
21 Irving, JP, Isaac, they're all in legal. Then you have  
22 Thomas Surgent is compliance. Frank Waterhouse is the  
23 CFO. David Willmore is the accounting manager. And  
24 Chris Dunn is a senior accountant.  
25 So I think he's wanting everybody to know that

26

1 he is sending this money.  
2 Q And what do you understand Mr. Chism to mean  
3 by "all HFP funds"?  
4 A I don't understand that. It's been four  
5 years.  
6 Q So presumably if they were HFP funds, he's  
7 asking for cash from all of them?  
8 A I -- I couldn't -- I couldn't guess on that.  
9 I don't know. I don't remember.  
10 Q That's fine. Is your answer the same with  
11 respect to CDO funds? Do you have an understanding of  
12 what he means by "all CDO funds"?  
13 A Yeah. No, I don't.  
14 Q To the extent that this is a transfer of all  
15 of the funds of a particular entity, would you say it  
16 was common while you were at Highland for Highland to  
17 transfer all of the assets out of a Highland entity?  
18 A I don't believe I -- so I have seen funds wind  
19 down before, but I don't believe I have seen another  
20 transfer like this before.  
21 Q On the second e-mail from the top, if we could  
22 go up a page. Carter -- sorry. Go -- other direction.  
23 Thank you.  
24 Second e-mail from the top is from Clifford  
25 Stoops, and he's forwarding the below e-mail exchange to

27

1 you, correct?  
2 A Correct.  
3 Q And what was your involvement with this  
4 transfer?  
5 A So if you're going to wire money to anybody at  
6 Highland, the way it works is, on the intranet, there's  
7 a wire system, and you have to go and enter the wire,  
8 and then an authorized signatory has to go into that  
9 system and sign it.  
10 Now, I don't know who entered it, and I don't  
11 know who signed it. The only people I believe who could  
12 have signed it would be James Palmer, Clifford Stoops,  
13 Carter Chism, and possibly David Willmore and maybe  
14 Frank Waterhouse. So I don't know who signed it or set  
15 it up, but in order to send a wire, you need to have the  
16 vendor -- or you need to have the wire instructions  
17 confirmed to set it up and just as a general vendor in  
18 the system. And I would have had to set it up, just  
19 that vendor, not a wire, but just those wiring  
20 instructions.  
21 Q Great. So just to sort of clean that up  
22 slightly. So you did not send the wire, correct?  
23 A I could not have signed it. No, I was not an  
24 authorized signatory at that time.  
25 Q And you did not set up -- or sorry. You did

28

1 not sign for the wire, correct?  
2 A No.  
3 Q But you did set up the vendor?  
4 A The wiring instructions on the -- on the -- on  
5 our vendor list, yes.  
6 Q And which vendor was this for?  
7 A The below. So that would have been the --  
8 that would have been the support to set that up.  
9 Q Got it. And so when you say "the below,"  
10 you're referring to the instructions in the bottom  
11 e-mail?  
12 A Right. So you have your account number and  
13 your ABA, and there's a few other things in there that  
14 you need to send a cash wire.  
15 Q Got it. And those are for Sentinel  
16 Reinsurance?  
17 A Yes.  
18 Q Do you recall why you forwarded this e-mail to  
19 James Palmer?  
20 A I do not. But it would have either been  
21 because -- it would have been for him to sign it because  
22 Carter was gone for the day or the fact that he sat  
23 behind me, and he wanted to know what was going on with  
24 this because he is the accounting manager.  
25 Q And --

29

1 A **But I don't know.**  
2 Q I'm sorry. I didn't mean to cut you off  
3 there.  
4 A **No, you're fine. But, yeah, I don't know why.**  
5 **I don't recall.**  
6 Q And you testified earlier that you had been  
7 asked to stay late to help with this transfer. Do you  
8 recall who asked you to stay late?  
9 A **So by "stay late," I guess I should be more**  
10 **specific than that. I still -- I still worked a normal**  
11 **day -- right? -- but I was wanting to leave at, like,**  
12 **lunch that day. So you can see on the time stamp of the**  
13 **last e-mail, that was, what, 2 o'clock.**  
14 Q Do you recall what the urgency was for  
15 executing the transfer that day?  
16 A **I do not.**  
17 Q No one communicated to you why it was urgent?  
18 A **If they did, I don't remember.**  
19 MR. ALLEN: Madam Reporter, could we please  
20 bring up Deposition Exhibit 9?  
21 AV TECHNICIAN: Please stand by.  
22 MR. ALLEN: Thank you.  
23 (Deposition Exhibit 9 was marked for  
24 identification.)  
25 MR. ALLEN: And if we could pull that up again

30

1 to maybe 125.  
2 Q All right. Can you see the exhibit,  
3 Mr. Ringheimer?  
4 A **I can.**  
5 Q And -- and you can read it well enough?  
6 A **I can.**  
7 Q Okay. So this is another e-mail from  
8 August 11, 2017. And it flows from the same initial  
9 e-mail from Ms. Irving on the last exhibit. And if you  
10 look at the "cc" line, the second line from the bottom,  
11 you appear to be copied here again, correct?  
12 A **Yes.**  
13 MR. ALLEN: So if we scroll down, I think, to  
14 the fourth e-mail from the top. Right there. So the --  
15 exactly. Perfect. Thank you.  
16 Q From Mr. Stoops, this is the top of the next  
17 page, he writes "All cash has been sent. Working on DTC  
18 securities. Still waiting on delivery instructions for  
19 physicals from legal."  
20 So do you have any reason to believe that the  
21 cash was not transferred to Sentinel?  
22 A **I do not.**  
23 Q And what do you understand Mr. Stoops to mean  
24 here by "DTC securities"?  
25 A **So that would have been all of the CLO bonds.**

31

1 **Anything that's -- anything that's held DTC, right?**  
2 **With physicals, you have, like, an actual physical**  
3 **certificate, and, generally, those are held in a vault**  
4 **in New York. And then as you trade physicals, if -- if**  
5 **it's for the amount of your -- of your cert, then it's**  
6 **transferred, or they chop them up. And that's kind of**  
7 **how physical settlement works.**  
8 Q Do you know in which vaults the physical  
9 certificates would have been held for this transaction?  
10 A **I do not.**  
11 Q And do you know which DTC securities this  
12 refers to?  
13 A **I do not.**  
14 Q Would you have been provided a list of the DTC  
15 securities?  
16 A **Yes, and to my recollection is they would have**  
17 **all been held in the custody accounts for any -- for**  
18 **these funds at BNY, and BNY should be able to provide**  
19 **you a list of any DTC securities that were transferred.**  
20 Q And when you say BNY what are you referring  
21 to?  
22 A **Bank of New York Mellon.**  
23 Q And would you have been provided a list of the  
24 physical certificates for this transfer?  
25 A **So I really didn't have -- I had never -- I**

32

1 **had never settled physicals really the whole time I was**  
2 **there. So my knowledge of physicals is extremely**  
3 **limited.**  
4 Q Who would have been responsible at the time  
5 for settling physical certificates?  
6 A **My guess would be both Carter and -- and/or**  
7 **Vishal.**  
8 Q And do you recall whether you settled the  
9 physical certificates for this transfer?  
10 A **I do not.**  
11 Q And do you have any reason to -- or I -- let  
12 me move to a different part of the document, actually.  
13 MR. ALLEN: So can we pull up the e-mail at  
14 the very top of this document, please?  
15 Q And so Mr. Stoops writes "We have now provided  
16 the list of securities not eligible for DTC  
17 settlement"--  
18 A **Uh-huh.**  
19 Q -- "and instructions for physical delivery to  
20 BNY for all funds. Will update the group on Monday."  
21 Mr. Ringheimer, do you ever recall receiving  
22 an update from Mr. Stoops?  
23 A **I don't.**  
24 Q Do you recall following up on these transfers?  
25 A **I don't remember, no. Sorry.**

33

1 Q And, Mr. Ringheimer, do you have any reason to  
2 believe that the DTCs securities and physical  
3 certificates were not ultimately settled?  
4 **A I do not, no.**  
5 Q Were you aware of any obstacles to  
6 transferring any of the assets to Sentinel?  
7 **A No.**  
8 Q Do you have any idea what happened to these  
9 assets once they were transferred to Sentinel?  
10 **A I do not.**  
11 Q And are you aware of any other assets  
12 transferred to Sentinel?  
13 **A I am not.**  
14 Q Are you aware of any assets transferred to  
15 Sentinel from any entity other than the HFP or CDO funds  
16 referred to here?  
17 **A I am not aware.**  
18 Q And did you have any understanding at the  
19 time, in August 2017, what the purpose of these  
20 transfers was?  
21 **A I believe it was -- so I -- somebody, I don't**  
22 **remember who, told me it was for an insurance policy,**  
23 **but I didn't -- I didn't know any details about it.**  
24 Q Were you ever provided a copy of that  
25 insurance policy?

34

1 **A No.**  
2 Q And no one told you what that insurance policy  
3 was for?  
4 **A No. And in my -- in my role as a -- as a**  
5 **operations person, I generally wouldn't have anything**  
6 **like that shown or discussed with me.**  
7 Q Other than, I suppose, the entity name,  
8 Sentinel Reinsurance, did you have any reason to believe  
9 the insurance policy was with Sentinel?  
10 **A I didn't know. I didn't -- like I said, I**  
11 **didn't have any details on it.**  
12 Q And for a transfer of this size, who would  
13 typically initiate a transfer?  
14 **A Well, so I would think that -- I would think**  
15 **that these would have been made as actual trades. So**  
16 **they would have been booked in the OMS in Bloomberg, but**  
17 **I don't know if that actually happened or not. And if**  
18 **they were booked in the OMS, compliance would have had**  
19 **to sign off on that. And regardless whether they**  
20 **were -- they were booked in the OMS or not, compliance**  
21 **would still have to sign off on that. But I wouldn't**  
22 **have been in those discussions. That would have been**  
23 **with Cliff Stoops and Frank Waterhouse.**  
24 Q Okay. Was there anyone else that would have  
25 had to sign off on these transfers?

35

1 **A I would say, other than compliance, probably**  
2 **Jim Dondero.**  
3 Q Do you know whether the legal team would have  
4 to sign off on this?  
5 **A I do not.**  
6 Q And --  
7 **A But they were -- I know they were heavily**  
8 **involved. I can see all their names on the e-mail.**  
9 Q So it's your understanding that the people  
10 included on this e-mail would need -- would have needed  
11 to approve this transaction?  
12 **A Yeah. I'm not sure. Like I said, it's been**  
13 **so long. I mean, I -- I can assume that, but I -- I**  
14 **don't know.**  
15 Q Was the operations team typically informed of  
16 the purpose behind a particular transfer?  
17 **A No.**  
18 Q Do you know when it would have been?  
19 **A Well, so like you said, you know, this is --**  
20 **this is kind of a rare occurrence, so I don't really**  
21 **know.**  
22 Q So who would typically know -- outside of  
23 operations, who would typically know what the purpose of  
24 a transfer was?  
25 **A I would say probably legal and compliance.**

36

1 Q And when you say "legal," who are you  
2 referring to?  
3 **A Just anyone in the legal department.**  
4 Q And specifically with respect to this e-mail,  
5 can you identify who from legal is present?  
6 **A So Isaac Leventon is legal. Thomas Surgent is**  
7 **compliance. Katie Irving is legal. Let me see. Jay**  
8 **Sevilla is legal -- JP Sevilla is legal. And I think**  
9 **that's all I see. Yeah.**  
10 Q And, Mr. Ringheimer, you mentioned you had  
11 some understanding that this may have related to an  
12 insurance agreement. Did anyone ever tell you whether  
13 the transfer related to any other agreement?  
14 **MR. FEINSTEIN: Let me -- this is Rob**  
15 **Feinstein. Let me just interject at this point with one**  
16 **comment. Since counsel just went through the fact that**  
17 **there were a number of in-house lawyers on this e-mail**  
18 **who may have been involved in the transaction, and to**  
19 **the extent that that question calls for revealing things**  
20 **that were said by in-house lawyers, we want to be clear**  
21 **on behalf of the debtor, slash, defendant that, as to**  
22 **those facts and circumstances that are disclosed in the**  
23 **debtor's filed motion to approve settlement with UBS,**  
24 **and specifically, I believe, it's paragraphs 5 to 11,**  
25 **where it describes the Sentinel transaction insurance**

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1 policy, et cetera, we are not asserting the privilege as  
2 to discussions with counsel regarding those specific  
3 transactions, but maintaining the privilege otherwise in  
4 all respects. Thank you.  
5 MR. ALLEN: Thank you, Counsel.  
6 Q So I'll rephrase the question. So,  
7 Mr. Ringheimer, was it your understanding that these  
8 transfers related to any other agreement between  
9 Highland and Sentinel?  
10 **A Not that I'm aware of.**  
11 Q Did anyone ever inform you that there was a  
12 purchase agreement between Highland and Sentinel?  
13 **A They did not.**  
14 Q And you've never seen a copy of any purchase  
15 agreement between Highland and Sentinel related to this  
16 transaction?  
17 **A Not until yesterday.**  
18 Q So other than in connection with this  
19 deposition, certainly -- in 2017, I guess is sort of a  
20 clearer question, no one shared with you a purchase  
21 agreement?  
22 **A No. No.**  
23 MR. ALLEN: And, Madam Reporter, could we  
24 please bring up Deposition Exhibit 1.  
25 AV TECHNICIAN: Please stand by.

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1 (Deposition Exhibit 1 was marked for  
2 identification.)  
3 AV TECHNICIAN: The document should now be on  
4 screen.  
5 MR. ALLEN: Thank you very much.  
6 Can you zoom in a little bit more?  
7 Thank you very much.  
8 Q Mr. Ringheimer, can you see the exhibit?  
9 **A I can.**  
10 Q The exhibit appears to be an -- this is a  
11 19-page PDF document. It consists of an e-mail, on the  
12 first page, from Isaac Leventon, and the attached  
13 document begins on page 2, I believe.  
14 MR. ALLEN: Can you scroll down to page 2?  
15 Q This is a legal liability insurance policy.  
16 MR. ALLEN: Could you please scroll down to, I  
17 believe it's page 17 of the PDF? Sorry. Page 18 of the  
18 PDF. Thank you very much.  
19 Q So the insurer here is listed as Sentinel  
20 Reinsurance, and the insured are Highland CDO  
21 Opportunity Master Fund LLP, Highland CDO Holding  
22 Company, and Highland Special Opportunities Holding  
23 Company.  
24 Mr. Ringheimer, in 2017, when these transfers  
25 were happening, were you ever shown this document?

39

1 **A I don't believe I was, no.**  
2 Q You didn't have any understanding at the time  
3 that this policy existed?  
4 **A No.**  
5 Q Did anyone at Highland Capital Management ever  
6 inform you that this policy existed?  
7 **A I don't believe they did.**  
8 Q And specifically with regard to Sentinel --  
9 I'll -- I'll strike that question, actually.  
10 MR. ALLEN: If we can scroll up, I think, two  
11 pages. All right. Go down one more page.  
12 Q So we see Mr. Dondero is signing on behalf of  
13 the Highland entities.  
14 MR. ALLEN: And if we scroll down -- I guess,  
15 can you scroll to the very last page?  
16 Q Here's the executed signature page. So the  
17 signature for Sentinel Reinsurance is from a Mr. Andrew  
18 Dean. Mr. Ringheimer, do you know who Andrew Dean is?  
19 **A I do not.**  
20 MR. ALLEN: Madam Reporter, can you please  
21 bring up Deposition Exhibit 2?  
22 AV TECHNICIAN: Stand by.  
23 (Deposition Exhibit 2 was marked for  
24 identification.)  
25 MR. ALLEN: And if we can pull into about

40

1 125 percent, please.  
2 Q Mr. Ringheimer, this is a seven-page document  
3 entitled "Purchase Agreement" and dated August 7, 2017.  
4 Do you see this exhibit?  
5 **A I do.**  
6 Q And in the very first paragraph, Sentinel  
7 Reinsurance is listed as the purchaser, and CDO --  
8 Highland CDO Opportunity Master Fund LP, Highland CDO  
9 Holding Company, and Highland Special Opportunities  
10 Holding Company are listed as the sellers, correct?  
11 **A I see that.**  
12 Q At the time of these transfers,  
13 Mr. Ringheimer, were you aware of the existence of this  
14 purchase agreement?  
15 **A I was not.**  
16 Q And no one shared with you this purchase  
17 agreement at the time?  
18 **A I don't believe they did, no.**  
19 Q Has anyone from Highland Capital Management  
20 ever shared this purchase agreement with you?  
21 **A No.**  
22 Q And if we can look at this first recital here  
23 underneath the recitals.  
24 So here it notes that in -- if you look at  
25 number 1, under "Payment of Premium," it says "Purchaser

<p style="text-align: right;">41</p> <p>1 agrees to accept the assets listed in schedule A hereto 2 as 100 percent payment of the premium, including any as 3 yet unpaid or contingent financial proceeds or other 4 benefits related thereto." 5 MR. ALLEN: If we could go back -- actually, 6 could we scroll all the way down here first to 7 schedule A. 8 Thank you very much. 9 Q So again this is, you know, signed by Mr. Dean 10 on behalf of Sentinel and Mr. Dondero on behalf of the 11 Highland entities. 12 So this schedule A that's on the screen right 13 now, can you see schedule A, Mr. Ringheimer? 14 <b>A I do.</b> 15 Q Are you familiar with any of the assets listed 16 in schedule A? 17 <b>A I've seen the names of a lot of those CLOs</b> 18 <b>before.</b> 19 Q And -- 20 <b>A They're all Highland-created CLOs, a lot of</b> 21 <b>those are.</b> 22 Q Thank you. Do you recall whether these assets 23 were included in the transfers to Sentinel? 24 <b>A I don't know. If they're on that list, I'm</b> 25 <b>not sure.</b></p>	<p style="text-align: right;">43</p> <p>1 back to page 18 of the PDF. Thank you very much. 2 Q And then one quick question before I forget, 3 Mr. Ringheimer. Do you have any idea who specifically 4 on the valuation team might have known what the value of 5 those assets was in 2017? 6 <b>A I do not. But Dave Klos was over that team.</b> 7 Q Thank you. 8 MR. ALLEN: And if we can scroll down a little 9 bit here, so date of transmit at the top of the page, 10 please. Sorry. Scroll the other direction. Thank you. 11 Oh. Sorry. Go up a little bit. Up a tiny bit more. 12 Thank you very much. 13 Q Okay. This is a legal liability insurance 14 policy, and the legal action that it's referring to here 15 is UBS Securities LLC and UBS AG London branch versus 16 Highland Capital Management L.P., Highland Special 17 Opportunities Holding Company, Highland Financial 18 Partners L.P., Highland CDO Opportunity Master 19 Fund L.P., Highland Credit Opportunities CDO L.P., and 20 Strand Advisors, Incorporated. 21 Mr. Ringheimer, do you have any understanding 22 of what this legal action is? 23 <b>A I do not.</b> 24 Q And if you look down where it says "limit of 25 indemnity," the policy limit appears to be \$100 million,</p>
<p style="text-align: right;">42</p> <p>1 Q Do you have any understanding of what the 2 value of these assets was back in 2017? 3 <b>A I do not. I don't know if these -- if -- I</b> 4 <b>don't know if these -- that's traded shares, but I don't</b> 5 <b>know where they're marked at and if they're factored, so</b> 6 <b>I couldn't tell you.</b> 7 Q Do you -- do you know who would know that 8 information? 9 <b>A Either the CLO team at Highland or valuation</b> 10 <b>team at Highland.</b> 11 Q Is it your understanding that either of those 12 teams would have had an understanding of the value of 13 those assets specifically in August 2017? 14 <b>A I think that's fair.</b> 15 Q Do you have any idea what happened to the 16 assets listed in schedule A after August 2017? 17 <b>A I do not.</b> 18 Q Do you have any idea where these assets might 19 be today? 20 <b>A I do not.</b> 21 Q Do you have any reason to believe that these 22 assets were not transferred to Sentinel? 23 <b>A I -- I do not.</b> 24 MR. ALLEN: Can we go ahead and bring back up 25 Deposition Exhibit 1, please. And then if we could go</p>	<p style="text-align: right;">44</p> <p>1 correct? 2 <b>A Okay.</b> 3 Q And under "premium," the premium appears to 4 be \$25 million. Do you see that? 5 <b>A I see that. I do.</b> 6 Q So, you know, we -- we just looked at the 7 purchase agreement which contemplates a transfer of the 8 assets in schedule A in satisfaction of the premium of 9 this policy, correct? 10 <b>A Yes.</b> 11 Q And just to confirm, you don't have an 12 understanding of what the value of the assets in 13 schedule A was as of August 2017, correct? 14 <b>A I do not.</b> 15 Q Does -- is your recollection refreshed by 16 either this 25 million number or the \$100 million 17 number? 18 <b>A I don't believe I've ever seen the \$25 million</b> 19 <b>number. And I don't -- I'm not sure on the hundred</b> 20 <b>either.</b> 21 MR. ALLEN: Madam Reporter, can you please 22 bring up Deposition Exhibit 3. 23 AV TECHNICIAN: Please stand by. 24 (Deposition Exhibit 3 was marked for 25 identification.)</p>



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1 AV TECHNICIAN: The exhibit should now be on  
2 screen.  
3 MR. ALLEN: Thank you very much.  
4 Q Mr. Ringheimer, can you see the exhibit?  
5 A I do.  
6 Q And you can read the exhibit well enough?  
7 A Yes.  
8 Q So this is a six-page document consisting of  
9 an e-mail from a Shawn Raver and an attached document  
10 entitled "Tax Consequences of Sentinel Acquisition of  
11 HFP/CDO Opportunity Assets."  
12 MR. ALLEN: We can scroll down to confirm  
13 that, to the second page.  
14 Thank you.  
15 Q Mr. Ringheimer -- or rather, I'll pause for a  
16 moment.  
17 MR. ALLEN: I know there was an instruction  
18 earlier regarding privilege, Counsel --  
19 MR. FEINSTEIN: Yeah. I was going to  
20 reiterate that at this point that Mr. Raver is an  
21 attorney, and that we're taking the same position with  
22 respect to this memo insofar as it falls within the  
23 scope of the transactions that were described in the  
24 debtor's settlement motion with UBS.  
25 So you can proceed, Counsel.

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1 MR. ALLEN: Thank you, Counsel.  
2 Q So, Mr. Ringheimer, prior to your preparation  
3 for this deposition, have you ever seen this tax  
4 memorandum?  
5 A No.  
6 Q And it was not shared with you in 2017?  
7 A No.  
8 MR. ALLEN: If we can turn to document  
9 page 2 -- I think we're on page 2 actually. Can we go  
10 to the beginning of the last paragraph on the page?  
11 Thank you very much.  
12 Oh, I'm sorry. Can we scroll down one more  
13 page. I'm looking for a page with the document, not the  
14 PDF. It's my mistake.  
15 And then the final paragraph on this page,  
16 please. Excellent.  
17 Q So where it says "The aggregate purchase price  
18 paid by Sentinel for the assets was \$25 million. The  
19 aggregate fair market value of the assets on the date of  
20 the transaction was \$105 million."  
21 Do you see that, Mr. Ringheimer?  
22 A I do.  
23 Q Mr. Ringheimer, do you recall being told at  
24 the time of these transfers that the assets were  
25 worth \$105 million?

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1 A I do not.  
2 Q Do you recall ever seeing this \$105,647,679  
3 number before?  
4 A I don't think so. But like I said, it's been  
5 four years.  
6 Q Understandable.  
7 MR. ALLEN: Madam Reporter, can you go ahead  
8 and bring up Deposition Exhibit 10, please.  
9 AV TECHNICIAN: Please stand by.  
10 (Deposition Exhibit 10 was marked for  
11 identification.)  
12 AV TECHNICIAN: Exhibit 10 should be on  
13 screen.  
14 MR. ALLEN: And I think we're just about at  
15 the hour mark at this point. Let's take another quick  
16 five-minute break.  
17 If you could please put us into breakout  
18 rooms.  
19 THE VIDEOGRAPHER: It's 8:43 Pacific Daylight  
20 Time. We are going off the record.  
21 MR. ALLEN: Thank you.  
22 (A recess ensued from 8:43 a.m. to 8:50 a.m.)  
23 THE VIDEOGRAPHER: It's 8:50 Pacific Daylight  
24 Time. We are back on the record.  
25 MR. ALLEN: So I believe we have Deposition

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1 Exhibit 10 up. I've not -- oh. There we go.  
2 BY MR. ALLEN:  
3 Q Mr. Ringheimer, can you see the exhibit on  
4 your screen?  
5 A I see it.  
6 Q This is a May 22nd, 2019, e-mail from an Alli  
7 Devins at Beecher Carlson to a Matt DiOrio, and,  
8 Mr. Ringheimer, in the "cc" line, I believe you are  
9 copied. Do you see that?  
10 A I do.  
11 Q And do you recall receiving this e-mail in  
12 May 2019?  
13 A Vaguely.  
14 Q And I'll direct your attention to the second  
15 page -- or sorry -- the -- the final page of this PDF.  
16 MR. ALLEN: If we could scroll down to page 3,  
17 please.  
18 Q So this e-mail attachment appears to be a  
19 draft response letter which Ms. Devins indicates  
20 auditors are expecting -- appears, based on the bottom,  
21 that this is expected to come from you.  
22 Do you recognize this draft letter?  
23 A I do.  
24 Q And, Mr. Ringheimer, do you recall what the  
25 purpose of this letter was?

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1 A I believe I was told that it was -- I think it  
2 was confirming -- I thought it was confirming that we  
3 sent it, but I don't really remember the specifics of  
4 it. To -- and it was confirming to the auditors because  
5 they are -- they were being audited. And so in our  
6 group, it's fairly -- it's very common that everybody,  
7 all the counterparties, when they go through their  
8 audits, they reach out to you about specific trades and,  
9 you know, quantity and price and things, whether they're  
10 settled or unsettled. And, you know, me and my two  
11 analysts that reported to me, we would, you know,  
12 confirm that to counterparties.  
13 So this was -- this was very common in our  
14 duties.  
15 Q So you were confirming the existence and  
16 ownership of the securities listed here?  
17 A Right.  
18 Q And to the extent that there are securities  
19 listed here as being associated with Sentinel  
20 Reinsurance that were in schedule A to the exhibit we  
21 looked at earlier, is it your understanding that this  
22 would confirm that those assets were ultimately  
23 transferred to Sentinel?  
24 A It appears to be, yes.  
25 Q And to the extent there are any assets listed

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1 here that do not appear on schedule A, is it your  
2 understanding that you would not have been involved in  
3 any transfer of those assets?  
4 A No.  
5 Q Do you know why you were responsible for  
6 confirming the information --  
7 A Sorry. When you say transfer -- sorry. When  
8 you say transfer, do you mean Highland to Sentinel or  
9 from Sentinel to somewhere else?  
10 Q To Sentinel from any source.  
11 A Okay. I would say it would be my  
12 understanding that these were transferred. But it  
13 could -- there could be others. I just -- I don't know.  
14 Q And do you recall, Mr. Ringheimer, why you  
15 were the person responsible for confirming this  
16 information?  
17 A So this is a couple -- this is fast-forward  
18 two years from the original transfer, I believe, right?  
19 Q Correct.  
20 A And so Carter had left the team, and he went  
21 to another firm.  
22 When was this at the top of the e-mail? What  
23 month was this? Can you --  
24 Q May 22nd, 2019.  
25 A Right. And so Carter left toward the end of

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1 March I believe. And so I had been on the job for like  
2 maybe a month.  
3 And so Mr. DiOrio, in the e-mail, these  
4 e-mails went -- a couple of these went around, and then  
5 he swung by my desk with that document and had some  
6 support, and I confirmed it.  
7 Q And do you recall what that support was?  
8 A I don't.  
9 Q But it was your understanding that the support  
10 he provided to you confirmed the information in this  
11 chart?  
12 A Yeah. Yeah.  
13 Q Would you have ordinarily undertaken that  
14 investigation on your own?  
15 A Sorry. Can you go more specific on that?  
16 Q Sure. So in -- normally in confirming  
17 information such as the information in this chart, would  
18 you investigate the accuracy of this information  
19 yourself, or would you rely on that information being  
20 provided to you by someone else?  
21 A Both.  
22 Q And in this instance, you relied on  
23 information provided to you by Mr. DiOrio?  
24 A I don't recall.  
25 Q But you do recall Mr. DiOrio providing you

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1 some support for this information?  
2 A Right. Right.  
3 Q Do you work with Mr. DiOrio regularly? Sorry.  
4 Did you work with Mr. DiOrio regularly?  
5 A This was the only time.  
6 Q And you ultimately signed a version of this  
7 letter, correct?  
8 A Correct.  
9 MR. ALLEN: Madam Reporter, could you please  
10 bring up Deposition Exhibit 12.  
11 AV TECHNICIAN: Please stand by.  
12 (Deposition Exhibit 12 was marked for  
13 identification.)  
14 MR. ALLEN: And if we could scroll down just a  
15 little bit to the signature line, please. Excellent.  
16 Q Mr. Ringheimer, this document appears to bear  
17 your signature. Is this the signed version of that  
18 draft response letter?  
19 A It looks like it, yes.  
20 Q And, Mr. Ringheimer, were there any other  
21 instances after the transfers in 2017 in which you were  
22 asked to review or identify assets held by Sentinel?  
23 A No. So Carter would have been probably the  
24 year before, and Vishal Patel would have been the year  
25 after.


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1 Q Do you recall the last time anyone at Highland  
2 informed you of any assets held by Sentinel Reinsurance?  
3 A **No. I believe this was the last -- the last**  
4 **time that I had had any -- anything that I had heard of**  
5 **for this.**  
6 Q All right.  
7 MR. ALLEN: Let's go off the record one more  
8 time. I think we're going to be done, but I'm going to  
9 take a quick look at my notes.  
10 THE VIDEOGRAPHER: It's 8:58 Pacific Daylight  
11 Time. We are going off the record.  
12 (A recess ensued from 8:58 a.m. to 9:04 a.m.)  
13 THE VIDEOGRAPHER: It's 9:04 Pacific Daylight  
14 Time. We are back on the record.  
15 BY MR. ALLEN:  
16 Q Mr. Ringheimer, I just have one last question  
17 about that audit letter in 2019. Was that audit letter  
18 the last time you heard anything about Sentinel while  
19 you were at Highland?  
20 A **I believe it was.**  
21 MR. ALLEN: I don't have any further  
22 questions. Thank you very much.  
23 THE VIDEOGRAPHER: Any cross?  
24 MR. FEINSTEIN: It wouldn't be cross, but the  
25 debtor has no questions.

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1 THE VIDEOGRAPHER: Very well then.  
2 I believe this will conclude the deposition of  
3 Jeremy Ringheimer. It is 9:05 Pacific Daylight Time.  
4 We are going off the record.  
5 (The deposition concluded at 9:05 a.m.)  
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1 CERTIFICATE OF SHORTHAND REPORTER  
2  
3 I, Charlotte Lacey, the officer before whom the  
4 foregoing deposition was taken, do hereby certify that  
5 the foregoing transcript is a true and correct record of  
6 the testimony given; that said testimony was taken by me  
7 stenographically and thereafter reduced to typewriting  
8 under my direction; that reading and signing was not  
9 requested; and that I am neither counsel for, related  
10 to, nor employed by any of the parties to this case and  
11 have no interest, financial or otherwise, in its  
12 outcome.  
13  
14 IN WITNESS WHEREOF, I have hereunto subscribed my  
15 hand this 10th of May, 2021.  
16  
17   
18 \_\_\_\_\_  
19 Charlotte Lacey, RPR, CSR #14224  
20  
21  
22  
23  
24  
25

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*Counsel for Highland Capital Management, L.P.*

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

In re:

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

Debtor.

UBS SECURITIES LLC AND UBS AG LONDON  
BRANCH,

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adv. Proc. No. 21-03020  
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§  
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§  
§

<sup>1</sup> The Debtor's last four digits of its taxpayer identification number are (8357). The headquarters and service address for the above-captioned Debtor is 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**HIGHLAND’S SECOND AMENDED RESPONSES AND  
OBJECTIONS TO UBS’S INTERROGATORIES**

Highland Capital Management, L.P., the reorganized debtor<sup>2</sup> (“Highland” or, as may be temporally required, the “Debtor”) hereby submits its second amended responses and objections (the “Amended Responses”) to *UBS’s Interrogatories to Defendant Highland Capital Management, L.P.* (the “Interrogatories”)<sup>3</sup> served by UBS Securities LLC and UBS AG London Branch (together “UBS”) in the above-captioned adversary proceeding (the “Adversary Proceeding”). Highland’s Amended Responses are made pursuant to Federal Rules of Civil Procedure (“FRCP”) 26, 33, and 34 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

**GENERAL OBJECTIONS**

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. Highland’s management was replaced on January 20, 2020, and the majority of its employees were terminated in February 2021. The Responses contained herein are based upon information actually known and ascertained using reasonable efforts by Highland’s current management and employees and may not include information known or in the possession of Highland’s former management and employees.

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<sup>2</sup> On February 22, 2021, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, as modified (the “Plan”). The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

<sup>3</sup> Capitalized terms not defined herein shall have the meanings set forth in the Interrogatories.

2. Highland objects to the Interrogatories to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity.

3. Highland objects to the Interrogatories to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily available to UBS from another source or for which the burden of obtaining such information is not substantially greater for UBS than it is for the Debtor.

4. Highland objects to the Interrogatories to the extent they call for legal conclusions and/or legal analyses.

5. Highland objects to the Interrogatories to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

6. All specific responses to the Interrogatories are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

7. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

**OBJECTIONS AND RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:**

For each request in UBS's Requests for Admission to Defendant Highland Capital Management, L.P. that You did not admit, explain Your reasoning.

**RESPONSE TO INTERROGATORY NO. 1:**

Highland objects to Interrogatory No. 1 on the grounds that it calls for a legal analysis or legal conclusion, and is overly broad and unduly burdensome. *See* Fed. R. Civ. P. 26(b)(1).

**INTERROGATORY NO. 2:**

State, with specificity, the basis for Your belief prior to February 2021 that the Funds and HFP were "ghost funds" that had no material assets.

**RESPONSE TO INTERROGATORY NO. 2:**

Highland objects to Interrogatory No. 2 on the ground that it is vague to the extent it asks for a "belief." Subject to the General Objections and this specific objection, Highland states that it does not have a current "belief" regarding "ghost funds," and the matter is subject to an ongoing investigation in this Adversary Proceeding. Highland further states that it has previously produced documents in which former officers of Highland refer to the Funds and HFP as "ghost funds."

**INTERROGATORY NO. 3:**

State, with specificity, the basis for Your representation to UBS in October 2020 that productions were "substantially complete" in response to UBS's discovery requests for Asset Information.

**RESPONSE TO INTERROGATORY NO. 3:**

Highland objects to Interrogatory No. 3 on the ground that it is not relevant to the parties' claims or defenses. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and this specific objection, Highland states that its former in-house counsel represented to Highland's outside counsel that productions were "substantially complete" in response to UBS's discovery requests for Asset Information.

**INTERROGATORY NO. 4:**

Identify the face and market value of each asset listed on Schedule A of the Purchase Agreement on an annual basis from 2017 to the present.

**RESPONSE TO INTERROGATORY NO. 4:**

Highland objects to Interrogatory No. 4 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that it has previously provided a tax memo and a valuation of the assets listed on Schedule A as of 2017 to UBS, but has not conducted valuations for years after 2017, and will not conduct such a valuation on the basis that it would impose burdens beyond the scope of the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 36(a)(4).

**INTERROGATORY NO. 5:**

Identify each of Your current or former employees with knowledge of the face and market values of any asset listed on Schedule A of the Purchase Agreement from July 2017 to the present.

**RESPONSE TO INTERROGATORY NO. 5:**

Highland objects to Interrogatory No. 5 on the ground that the Highland cannot speak on behalf of “former” employees. Subject to the General Objections and this specific objection, the Debtor identifies the following “current” employee:

David Klos

**INTERROGATORY NO. 6:**

Identify each member of Your valuation team from July 2017 to the present.

**RESPONSE TO INTERROGATORY NO. 6:**

In response to Interrogatory No. 6, Highland identifies, to the best of its knowledge, the following individuals:



Sean Fox

James Mills

Michael Beispiel

Brendan Flaherty

David Klos

**INTERROGATORY NO. 7:**

Identify each of Your current or former employees with knowledge of the Insurance Policy, Purchase Agreement, or August 2017 Transfers as of January 1, 2021.

**RESPONSE TO INTERROGATORY NO. 7:**

In response to Interrogatory No. 7, Highland identifies, to the best of its knowledge, the following individuals:

Matthew DiOrio

Isaac Leventon

Scott Ellington

Katie (Irving) Lucas

Stephanie Vitiello

Jean Paul Sevilla

Thomas Surgent

**INTERROGATORY NO. 8:**

Identify any assets listed on Schedule A of the Purchase Agreement that were not successfully transferred to Sentinel and the current location of any such assets.

**RESPONSE TO INTERROGATORY NO. 8:**

Highland objects to Interrogatory No. 8 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case to the extent it asks for the “current location of any such assets.” *See* Fed. R. Civ. P. 26(b)(1).

**INTERROGATORY NO. 9:**

Identify any asset currently held by CDO Fund, including the value and location of each asset and account information if applicable.

**RESPONSE TO INTERROGATORY NO. 9:**

Highland objects to Interrogatory No. 9 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that is has not performed a full accounting of CDO Fund’s assets. Highland has produced documents to UBS including bank account statements. Additionally, Highland states that approximately \$6 million in cash is in CDO Funds’ custody in an account with the Bank of New York, the majority of which was received during August 2021 on account of the Greenbriar securities. Greenbriar and Aberdeen are still registered in the name of CDO Fund, but the ownership of each of those assets is disputed. Highland makes no representation regarding the ownership of those assets held by CDO Fund, and the location of the Greenbriar and Aberdeen securities is unknown.

**INTERROGATORY NO. 10:**

Identify all cash distributions made to CDO Fund on account of its CLO interests from August 2017 though the present, including the date, amount, and transferor of each such distribution and the details of any subsequent dissipation of such distributions.

**RESPONSE TO INTERROGATORY NO. 10:**

Highland objects to Interrogatory No. 10 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland has produced documents to UBS

including bank account statements. Additionally, Highland states that there were no distributions to CDO Fund on account of any its CLO interests from August 2017 through the present except as reflected in those bank account statements.

**INTERROGATORY NO. 11:**

Identify any asset or cash transfers from You or an entity You own, manage, or control, including but not limited to CDO Fund, to Sentinel from October 16, 2019 through the present.

**RESPONSE TO INTERROGATORY NO. 11:**

Highland objects to Interrogatory No. 11 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that it has previously produced documents reflecting transfers made by the Funds, HFP, and others to Sentinel, but Highland, as the manager of certain CLOs, has no information regarding the beneficial owners of the securities issued by the CLOs.

**INTERROGATORY NO. 12:**

Identify any and all asset sales, transfers, or transactions from the Funds to any other entity or individual from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 12:**

Highland objects to Interrogatory No. 12 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

**INTERROGATORY NO. 13:**

Identify any and all asset sales, transfers, or transactions from HFP to any other entity or individual from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 13:**

Highland objects to Interrogatory No. 13 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1).

**INTERROGATORY NO. 14:**

Identify all asset sales, transfers, or transactions between Sentinel Reinsurance, Ltd. and You or any of Your affiliated entities, including but not limited to the Funds and/or Multi-Strat, from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 14:**

Highland objects to Interrogatory No. 14 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that it has previously produced documents showing that the Funds transferred assets to pay for the Insurance Policy.

**INTERROGATORY NO. 15:**

Identify all asset sales, transfers, or transactions between Sentinel Re Holdings, Ltd. and You or any of Your affiliated entities, including but not limited to the Funds, from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 15:**

Highland objects to Interrogatory No. 15 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that it previously produced documents reflecting (a) that the Funds, HFP, and others transferred assets to Sentinel ostensibly to pay for the Insurance Policy, and (b) a transfer of limited partnership interests in Multi-Strat to Sentinel in 2015, and is unaware of any other asset sales, transfers, or transactions except as reflected in those documents.

**INTERROGATORY NO. 16:**

Identify all asset sales, transfers, or transactions between SS Holdings Ltd. and You or any of Your affiliated entities, including but not limited to the Funds, from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 16:**

Highland objects to Interrogatory No. 16 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland further states that it does not possess knowledge or information responsive to this Interrogatory.

**INTERROGATORY NO. 17:**

Identify all investors in Multi-Strat with outstanding redemptions, including the date each redemption was submitted and the amount of each such redemption.

**RESPONSE TO INTERROGATORY NO. 17:**

In response to Interrogatory No. 17, Highland refers UBS to **Exhibit A**, attached hereto.

**INTERROGATORY NO. 18:**

Identify each governing document relating to Multi-Strat's obligation to pay outstanding redemptions.

**RESPONSE TO INTERROGATORY NO. 18:**

Highland objects to Interrogatory No. 18 on the ground that information responsive to this Interrogatory is in UBS's custody and control. Subject to the General Objections and this specific objection, Highland identifies, to the best of its knowledge, the following governing documents:

*Series A Shares Supplement to Confidential Private Offering Memorandum of Highland Multi Strategy Credit Fund, Ltd.*

*Confidential Private Placement Memorandum Series B, Series C and Series D Limited Partner Interests in Highland Multi Strategy Credit Fund, Ltd.*

*Confidential Private Offering Memorandum Series B, Series C and Series D Shares of Highland Multi Strategy Credit Fund, Ltd.*

*Third Amended and Restated Investment Management Agreement, dated November 1, 2013*

*Fourth Amended and Restated Limited Partnership Agreement, dated November 1, 2014*

*Amended and Restated Memorandum and Articles of Incorporation of Highland Multi Strategy Credit Fund, Ltd.*

*Certificate of Incorporation on Change of Name*

*Certificate of Amendment, dated August 27, 2014*

*Limited Liability Company Agreement of Highland Credit Opportunities CDO GP, L.L.C.*

*Agreement of Limited Partnership of Highland Credit Opportunities CDO GP, L.L.C.*

*Amendment to Certificate of Limited Partnership, dated August 27, 2014*

*Highland Multi Strategy Credit Fund, L.P. Fourth Amended and Restated Limited Partnership Agreement, dated November 1, 2014*

*Highland Multi Strategy Credit Fund, L.P. Incumbency Certificate, dated January 9, 2020*

*Memorandum and Articles of Association of Highland Credit Opportunities CDO Asset Holdings GP, LTD.*

*Written Resolutions of the Sole Director of the Company, dated April 29, 2009*

*Amended and Restated Memorandum and Articles of Association of Highland Multi Strategy Credit Fund, LTD.*

**INTERROGATORY NO. 19:**

Identify whether any redemption payments have been made by Multi-Strat to Sentinel from 2009 through the present.

**RESPONSE TO INTERROGATORY NO. 19:**

In response to Interrogatory No. 19, Highland states that, to the best of its knowledge, there was a redemption payment of \$683,931.55 in December 2016 regarding the interests that Sentinel held prior to 2017. Highland further states that there is an ongoing investigation regarding this matter in the Adversary Proceeding.

**INTERROGATORY NO. 20:**

State, with specificity, any formal or informal policies and/or procedures governing Multi- Strat redemptions, including regarding the timing for making redemption payments.

**RESPONSE TO INTERROGATORY NO. 20:**

Highland objects to Interrogatory No. 20 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland, to the best of its knowledge, refers UBS to its Response to Interrogatory No. 18.

**INTERROGATORY NO. 21:**

State, with specificity, any remedies a redeeming investor could pursue against Multi-Strat if redemptions payments are delayed or withheld.

**RESPONSE TO INTERROGATORY NO. 21:**

Highland objects to Interrogatory No. 21 on the grounds that it calls for a legal analysis or legal conclusion. Highland further objects to this Interrogatory on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland, to the best of its knowledge, refers UBS to its Response to Interrogatory No. 18.

**INTERROGATORY NO. 22:**

Identify Sentinel's interests in Multi-Strat and the circumstances surrounding Sentinel's acquisitions of those interests.

**RESPONSE TO INTERROGATORY NO. 22:**

In response to Interrogatory No. 22, Highland, identifies, to the best of its knowledge, the following agreements surrounding Sentinel's interests in Multi-Strat: (i) *Purchase Agreement*, as between Sentinel, and each of Highland CDO Opportunity Master Fund, L.P., Highland CDO Holding Company, and Highland Special Opportunities Holdings Company, dated August 7, 2017, (ii) *Purchase and Sale Agreement*, as between the Debtor and Sentinel, dated 15, 2017, (iii) *Agreement*, as between Starck, Ltd. and Sentinel, dated December 30, 2015.

**INTERROGATORY NO. 23:**

Identify all interests held by CDO Fund in Survios, Inc. prior to August 15, 2017, including when and how CDO Fund acquired such interest.

**RESPONSE TO INTERROGATORY NO. 23:**

Highland objects to Interrogatory No. 23 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland identifies, to the best of its knowledge, the following interest held by CDO Fund in response to Interrogatory No. 23:

Series C investment of preferred shares, with approximately \$3 million of cash invested on or about November 4, 2016; 411, 714 shares at \$7.2866 per share.

**INTERROGATORY NO. 24:**

Identify all direct or indirect beneficial owners of Survios, Inc.

**RESPONSE TO INTERROGATORY NO. 24:**

Highland objects to Interrogatory No. 24 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject to the General Objections and these specific objections, Highland states that it does not possess knowledge or information responsive to this Interrogatory.

**INTERROGATORY NO. 25:**

Identify all interests in BB Highland Floating Rate fund held by CDO Fund from February 2009 through the present, including the circumstances for CDO Fund's acquisition and disposition of such interests.

**RESPONSE TO INTERROGATORY NO. 25:**

Highland objects to Interrogatory No. 25 on the grounds that it is overly broad, unduly burdensome, and not proportional to the needs of the case. *See* Fed. R. Civ. P. 26(b)(1). Subject



to the General Objections and these specific objections, Highland identifies, to the best of its knowledge, the following interests in response to this Interrogatory:

\$5 million cash subscription in August 2014.

*[REMAINDER OF PAGE INTENTIONALLY BLANK]*

Dated: November 30, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

Jeffrey N. Pomerantz (CA Bar No. 143717)  
Robert J. Feinstein (NY Bar No. 1767805)  
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-and-

**HAYWARD PLLC**

*/s/ Zachery Z. Annable*

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*Counsel for Highland Capital Management, L.P.*

VERIFICATION

STATE OF NEW YORK §  
  §  
COUNTY OF NEW YORK §

Before me, the undersigned notary, on this day personally appeared James P. Seery, Jr., the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

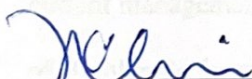
“My name is James P. Seery, Jr. I am capable of making this Verification. I have read the foregoing document. Subject in all respects to the general objections contained the answers to UBS’s Interrogatories to Defendant Highland Capital Management, L.P. (the “Answers”), the facts stated in the Answers, are based upon information actually known and ascertained using reasonable efforts by Highland’s current management and employees and may not include information known or in the possession of Highland’s former management and employees.”

HIGHLAND CAPITAL MANAGEMENT, L.P.

By: 

Title: Chief Executive Officer

SWORN TO AND SUBSCRIBED before me this  
30 day of November, 2021

  
\_\_\_\_\_  
Naomi Chisum  
NOTARY PUBLIC



PACHULSKI STANG ZIEHL & JONES LLP  
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Robert J. Feinstein (NY Bar No. 1767805) (*admitted pro hac vice*)  
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*Counsel for Highland Capital Management, L.P.*

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

In re:

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

Debtor.

UBS SECURITIES LLC AND UBS AG LONDON  
BRANCH,

Plaintiff,

v.

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Defendant.

§  
§ Chapter 11  
§  
§ Case No. 19-34054-sgj11  
§  
§  
§  
§ Adv. Proc. No. 21-03020  
§  
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§  
§  
§  
§

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

**HIGHLAND’S AMENDED RESPONSES AND OBJECTIONS TO UBS’S  
REQUESTS FOR ADMISSION**

Highland Capital Management, L.P., the reorganized debtor<sup>2</sup> (“Highland” or, as may be temporally required, the “Debtor”) hereby submits its amended responses and objections (the “Amended Responses”) to *UBS’s Requests for Admission to Defendant Highland Capital Management, L.P.* (the “Requests”)<sup>3</sup> served by UBS Securities LLC and UBS AG London Branch (together “UBS”) in the above-captioned adversary proceeding (the “Adversary Proceeding”). The Debtor’s Amended Responses to the Requests are made pursuant to Federal Rules of Civil Procedure (“FRCP”) 26, 33, and 34 as made applicable in bankruptcy cases pursuant to Federal Rules of Bankruptcy Procedure 7026, 7033, and 7034.

**GENERAL OBJECTIONS**

Unless otherwise specified, the following general objections and caveats are applicable to each and every Response and are incorporated into each Response as though set forth in full:

1. The Responses contained herein are based upon information presently known and ascertained by the Highland.
2. Highland objects to the Requests to the extent they seek information or documents that are protected from discovery by the attorney-client privilege, the attorney work product doctrine or any other privilege or immunity. The inadvertent disclosure or production of any document that is protected from discovery by any privilege or immunity shall not constitute a

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<sup>2</sup> On February 22, 2021, the Bankruptcy Court entered the *Order (i) Confirming the Fifth Amended Plan of Reorganization (as Modified) and (ii) Granting Related Relief* [Docket No. 1943] (the “Confirmation Order”) which confirmed the *Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.*, as modified (the “Plan”). The Plan went Effective (as defined in the Plan) on August 11, 2021, and Highland is the Reorganized Debtor (as defined in the Plan) since the Effective Date. *See Notice of Occurrence of Effective Date of Confirmed Fifth Amended Plan of Reorganization of Highland Capital Management, L.P.* [Docket No. 2700].

<sup>3</sup> Capitalized terms not defined herein shall have the meanings set forth in the Requests.

waiver of any such privilege or immunity. All references in these objections and responses to the Debtor's agreement to produce documents shall be construed to mean non-privileged documents.

3. Highland objects to the Requests to the extent they request information that is not reasonably or readily available to it, in its possession, custody or control, or is more readily available to UBS from another source or for which the burden of obtaining such information is not substantially greater for UBS than it is for Highland.

4. Highland objects to the Requests to the extent they call for legal conclusions and/or legal analyses.

5. All specific responses to the Requests are provided without waiver of, and with express reservation of (a) all objections as to competency, relevancy, materiality, and admissibility of the responses and the subject matter thereof as evidence for any purpose in any further proceedings in this matter; (b) all privileges, including the attorney-client privilege and work product doctrine; (c) the right to object to the use of such responses, or the subject matter thereof, on any ground in any further proceeding in this action; and (d) the right to object on any ground at any time to a demand or request for further responses to these or any other discovery requests or other discovery proceedings.

6. Highland objects to the Requests to the extent they seek to expand on or conflict with Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and/or the Local Rules of the Bankruptcy Court for the Northern District of Texas.

7. These General Objections and Responses shall be deemed to be incorporated by reference into the Specific Responses and Objections set forth below.

**RESPONSES TO REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 1:**

Admit that You did not inform UBS of the existence of the Insurance Policy prior to mid-February 2021.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Admit.

**REQUEST FOR ADMISSION NO. 2:**

Admit that You did not inform UBS of the existence of the Purchase Agreement prior to mid-February 2021.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Admit.

**REQUEST FOR ADMISSION NO. 3:**

Admit that You did not inform UBS of the August 2017 Transfers prior to mid-February 2021.

**RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

Admit.

**REQUEST FOR ADMISSION NO. 4:**

Admit that Your post-petition management did not discover the events underlying the Insurance Policy, Purchase Agreement, or August 2017 Transfers until early 2021.

**RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

Admit.

**REQUEST FOR ADMISSION NO. 5:**

Admit that “USP 1” in the Sentinel and SAS Structure Charts is Scott Ellington.

**RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

In response to Request for Admission No. 5, Highland states that based on certain discovery, including documents produced or deposition testimony, Highland believes this

statement to be true, but Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 6:**

Admit that “USP 2” in the Sentinel and SAS Structure Charts is James Dondero.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

In response to Request for Admission No. 6, Highland states that based on certain discovery, including documents produced or deposition testimony, Highland believes this statement to be true, but Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 7:**

Admit that You transferred or attempted to transfer the below assets from CDO Fund to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
KY009A1KXYH6	ABERDEEN LN FDG LTD PFD	12,000,000.00
KY84427P2029	SOUTHFORK CLO LTD CUM PFD 144A	10,000.00
KYG829101032	SOUTHFORK CLO LTD PFD	9,000.00
US00306M3007	ABERDEEN LN FDG LTD PFD	5,000.00
US3624682098	GSC ABS CDO 2006-4U LT CUM PFD 144A	16,000.00
US39364P2011	GREENBRIAR CLO LTD PFD 144A	16,250.00
US43009L2034	HIGHLAND FINL PARTNERS LP	615,733.00
US43009L9898	HIGHLAND FINL PARTNERS LP NPV	3,000,000.00
US5431742056	LONGSTREET CDO I LTD PFD 144A	3,000.00
US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	100.00
US69763NAD30	PAM CAP FDG LP 0.0 01MAY13 144A	48,500,000.00
	FRN	42,868,390.80
US8729623038	TOUSA INC 8.0 PFD 144A	1,337.00
US91914QAA40	VALHALLA CLO LTD 0.0 01AUG23	6,000,000.00
	144A	6,000,000.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	6,000,000.00
	144A	6,000,000.00
N/A	HIGHLAND CREDIT OPPORTUNITIES CDO LTD. PARTNERSHIP INTEREST	24,313.00



	\$2,157,088 PROMISSORY NOTE (GOVERNANCE RE, LTD. AS MAKER) AND CASH OF \$539,272 – RE: NEXPOINT MULTIFAMILY CAPITAL TRUST INTEREST	269,636.00
N/A	NEXPOINT REAL ESTATE STRAT – Z	97,257.00
N/A	HIGHLAND GEMINI PROGRAM (POLLUX)	65,314.00
N/A	\$2,399,996 PROMISSORY NOTE (THE DUGABOY INVESTMENT TRUST AS MAKER) AND CASE OF \$599,999 – RE: SURVIOS INTEREST	2,999,995.00
BCC0MVTX4	CAMBR 5X FLOATING – 12/2045	19,350,000.00
N/A	CASH	\$7,779,722.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Admit, based on information uncovered to date regarding actions of Highland’s prior management.

**REQUEST FOR ADMISSION NO. 8:**

Admit that You transferred or attempted to transfer the below assets from Highland CDO Opportunity Fund, Ltd. to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
N/A	CASH	\$2,349,436.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

Admit, based on information uncovered to date regarding actions of Highland’s prior management.

**REQUEST FOR ADMISSION NO. 9:**

Admit that You transferred or attempted to transfer the below assets from Highland CDO Holdings Company to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
US404185AD22	HFT REAL EST 3.33867 25NOV51	750,000.00
	144A F	750,000.00

US65340G2057	NEXPOINT C COM USD0.001 (POST REV S)	165,395.00
US65341D1028	NEXPOINT R COM USD0.001 'WT'	220,527.00
US86280AAE73	STRATFORD CL 3.16956 01NOV21	300,000.00
	144A F	300,000.00
USG44392AF82	HIGHLAND PARK C 4.93867	17,000,000.00
	25NOV51 FRN	24,076,296.18
N/A	PROMISSORY NOTE – CLO HOLDCO, LTD. AS MAKER – 12/23/2025	\$32,801,593.00
N/A	CASH	\$539,641.00
N/A	DIVIDENDS RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	\$136,598.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Admit, based on information uncovered to date regarding actions of Highland's prior management.

**REQUEST FOR ADMISSION NO. 10:**

Admit that You transferred or attempted to transfer the below assets from SOHC to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
US247126AC93	DELPHI CORP DEL 7.125 01MAY29	1,500,000.00
US247126AD76	DELPHI CORP DEL 6.55 15JUN06 USD	3,000,000.00
	LONGSTREET CDO I LTD PFD 144A	1,570.00
US8729623038	TOUSA INC 8.0 PFD 144A	5,349.00
US925331AA89	VERTICAL ABS CDO 2 0.0 09MAY46	5,000,000.00
	144A	5,000,000.00
N/A	CASH	\$295,136.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Admit, based on information uncovered to date regarding actions of Highland's prior management.

**REQUEST FOR ADMISSION NO. 11:**

Admit that You transferred or attempted to transfer the below assets from Highland Financial Corp. to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
N/A	CASH	\$80,144.00
N/A	TAX REFUND RECEIVABLE – HIGHLAND CAPITAL MANAGEMENT, LP	\$477,637.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Admit, based on information uncovered to date regarding actions of Highland's prior management.

**REQUEST FOR ADMISSION NO. 12:**

Admit that You transferred or attempted to transfer the below assets from HFP to Sentinel in August 2017 to satisfy the premium payment on the purported Insurance Policy.

ISIN	Description	Traded Shares or Par Value
N/A	CASH	\$29,252.00

**RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

Admit, based on information uncovered to date regarding actions of Highland's prior management.

**REQUEST FOR ADMISSION NO. 13:**

Admit that the cash amounts listed in Schedule A of the Purchase Agreement were transferred to a Bank of New York account held by Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

The Debtor denies Request for Admission No. 13. On information and belief, no amounts were transferred to an account at Bank of New York. Highland admits, based on information uncovered to date regarding actions of Highland's prior management, that cash amounts were transferred to, or intended to be transferred to, a Sentinel account.

**REQUEST FOR ADMISSION NO. 14:**

Admit that assets held by entities that were not defendants in the State Court Action were transferred as part of the premium payment on the purported Insurance Policy.

**RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

Admit, based on information uncovered to date regarding actions of Highland's prior management.

**REQUEST FOR ADMISSION NO. 15:**

Admit that as of mid-2018, You estimated the market value of the assets transferred to Sentinel in the August 2017 Transfers as more than \$105 million at the time of their transfer.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

In response to Request for Admission No. 15, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Subject to the General Objections and the foregoing, Highland further states that it produced documents substantially contemporaneous with the August 2017 Transfers that reflect the valuation of \$105 million according to authors of those documents. Highland has subsequently attempted to produce more recent valuations of those assets in question that reflect a lesser valuation of those assets, and such valuations were also provided to UBS.

**REQUEST FOR ADMISSION NO. 16:**

Admit that the market value You calculated in mid-2018 for the assets transferred to Sentinel in the August 2017 Transfers was greater than the Insurance Policy premium.

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Highland objects to Request for Admission No. 16 on the basis that it has not conducted a valuation of the assets transferred to Sentinel in the August 2017 Transfers and will not conduct such a valuation on the ground that it would impose obligations on Highland that go beyond the scope of those imposed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 36(a)(4). Subject to the General Objections and these specific objections, Highland admits that the market

value of the assets transferred to Sentinel in the August 2017 Transfers was greater than the Insurance Policy Premium.

**REQUEST FOR ADMISSION NO. 17:**

Admit that the market value You calculated in mid-2018 for the assets transferred to Sentinel in the August 2017 Transfers was greater than the limit of indemnity coverage provided for in the Insurance Policy.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

In Response to Request for Admission No. 17, In Response to Request for Admission No. 16, Highland objects on the basis that it has not conducted a valuation of the assets transferred to Sentinel in the August 2017 Transfers, and will not conduct such a valuation on the ground that it would impose obligations on Highland that go beyond the scope of those imposed by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 36(a)(4). Subject to the General Objections and these specific objections, Highland admits that the market value of the assets transferred to Sentinel in the August 2017 Transfers was greater than the Insurance Policy Premium.

**REQUEST FOR ADMISSION NO. 18:**

Admit that, at all times since August 2017 through the present, You have exercised control over CDO Fund.

**RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

Admit.

**REQUEST FOR ADMISSION NO. 19:**

Admit that, at all times in and since August 2017, Highland CDO Holdings Company has been a wholly-owned subsidiary of HFP.

**RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

Admit.

**REQUEST FOR ADMISSION NO. 20:**

Admit that, at all times in and since August 2017, Highland Financial Corp. has been a wholly-owned subsidiary of HFP.

**RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

Admit.

**REQUEST FOR ADMISSION NO. 21:**

Admit that CDO Fund currently holds approximately 16,250 preference shares in Greenbriar CLO Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

The Debtor denies Request for Admission No. 21 on the ground that, upon information and belief, as Highland previously advised UBS, there appears to have been an effort to transfer these preference shares to Sentinel as a partial payment for the insurance policy premiums that failed, and the shares were lost. The Debtor admits that CDO Fund is, indirectly, the holder of record of 16,250 preference shares in Greenbriar CLO Ltd.

**REQUEST FOR ADMISSION NO. 22:**

Admit that CDO Fund never completed the transfer of the Greenbriar CLO Ltd. preference shares contemplated by the Purchase Agreement.

**RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

Admit.

**REQUEST FOR ADMISSION NO. 23:**

Admit that CDO Fund currently holds approximately 5,000 shares in Aberdeen Loan Funding Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

In response to Request for Admission No. 23, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Highland will supplement this Response if and when additional information is received.

**REQUEST FOR ADMISSION NO. 24:**

Admit that CDO Fund currently holds approximately 4,000 shares in Eastland CLO Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

In response to Request for Admission No. 24, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Highland will supplement this Response if and when additional information is received.

**REQUEST FOR ADMISSION NO. 25:**

Admit that CDO Fund currently holds approximately 5,000 shares in Grayson CLO Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

In response to Request for Admission No. 25, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Highland will supplement this Response if and when additional information is received.

**REQUEST FOR ADMISSION NO. 26:**

Admit that CDO Fund currently holds shares in Valhalla CLO Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

In response to Request for Admission No. 26, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Highland will supplement this Response if and when additional information is received.

**REQUEST FOR ADMISSION NO. 27:**

Admit that CDO Fund currently holds a promissory note issued by Governance Re Ltd.

**RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

In response to Request for Admission No. 27, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4). Highland will supplement this Response if and when additional information is received.

**REQUEST FOR ADMISSION NO. 28:**

Admit that CDO Fund did not make a claim on the Insurance Policy until March 2021.

**RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

Admit.

**REQUEST FOR ADMISSION NO. 29:**

Admit that SOHC has not made a claim on the Insurance Policy.

**RESPONSE TO REQUEST FOR ADMISSION NO. 29:**

Admit.

**REQUEST FOR ADMISSION NO. 30:**

Admit that Highland CDO Holdings Company has not made a claim on the Insurance Policy.

**RESPONSE TO REQUEST FOR ADMISSION NO. 30:**

Admit.

**REQUEST FOR ADMISSION NO. 31:**

Admit that between June and October 2020, UBS made no less than ten formal and informal requests to You seeking Asset Information.

**RESPONSE TO REQUEST FOR ADMISSION NO. 31:**



In response to Request for Admission No. 31, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny the Request. *See* Fed. R. Civ. P. 36(a)(4). Highland admits that it received a series of formal and informal discovery requests from UBS between June and October 2020.

**REQUEST FOR ADMISSION NO. 32:**

Admit that You tasked Your legal department, and Isaac Leventon and Scott Ellington in particular, with collecting documents in response to UBS's discovery requests for Asset Information.

**RESPONSE TO REQUEST FOR ADMISSION NO. 32:**

Admit.

**REQUEST FOR ADMISSION NO. 33:**

Admit that by October 2020, You represented to UBS that documents responsive to UBS's discovery requests for Asset Information were limited or did not exist and Your production of Asset Information was substantially complete.

**RESPONSE TO REQUEST FOR ADMISSION NO. 33:**

Highland objects to Request for Admission No. 33 on the ground that it is not relevant to the parties' claim or defenses. *See* Fed. R. Civ. P. 36(a)(4). Subject to the General Objections and this specific objection, Highland admits that it represented to UBS that discovery was substantially complete based on representations made to Highland by former in-house counsel.

**REQUEST FOR ADMISSION NO. 34:**

Admit that the Insurance Policy pertains to the Asset Information.

**RESPONSE TO REQUEST FOR ADMISSION NO. 34:**

Admit.

**REQUEST FOR ADMISSION NO. 35:**

Admit that the August 2017 Transfers pertain to the Asset Information.

**RESPONSE TO REQUEST FOR ADMISSION NO. 35:**

Admit.

**REQUEST FOR ADMISSION NO. 36:**

Admit that the Purchase Agreement pertains to the Asset Information.

**RESPONSE TO REQUEST FOR ADMISSION NO. 36:**

Admit.

**REQUEST FOR ADMISSION NO. 37:**

Admit that approximately \$10,665.64 in November 2017 cash distributions to CDO Fund on Aberdeen Loan Funding were claimed by and transferred to Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 37:**

In response to Request for Admission No. 37, Highland states that based on certain discovery, including documents produced or deposition testimony, Highland believes this statement to be true, but Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 38:**

Admit that approximately \$88,099.94 in November 2017 cash distributions to CDO Fund on Greenbriar CLO, Ltd. were claimed by and transferred to Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 38:**

In response to Request for Admission No. 38, Highland states that based on certain discovery, including documents produced or deposition testimony, Highland believes this statement to be true, but Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 39:**

Admit that approximately \$1,408.77 in February 2018 cash distributions to CDO Fund on Valhalla CLO Ltd. were claimed by and transferred to Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 39:**

In response to Request for Admission No. 39, Highland states that it does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 40:**

Admit that approximately \$1,408.77 in February 2019 cash distributions to CDO Fund on Valhalla CLO Ltd. were claimed by and transferred to Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 40:**

In response to Request for Admission No. 40, Highland states that based on certain discovery, including documents produced or deposition testimony, Highland believes this statement to be true, but Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

**REQUEST FOR ADMISSION NO. 41:**

Admit that pursuant to Section 5 of the May Settlement Agreement, Multi-Strat was restricted from making any distributions or redemption payments to any of Multi-Strat's limited partners, general partners, shareholders, or other equity holders absent Your mutual agreement with UBS or court order.

**RESPONSE TO REQUEST FOR ADMISSION NO. 41:**

Highland objects to Request for Admission No. 41 on the grounds that it calls for a legal conclusion or legal analysis and the document speaks for itself. Subject to the General Objections and these specific objections, Highland admits this Request.

**REQUEST FOR ADMISSION NO. 42:**

Admit that Section 5 of the May Settlement Agreement is no longer in effect to restrict Multi-Strat from making any distributions or redemption payments to any of Multi-Strat's limited partners, general partners, shareholders, or other equity holders.

**RESPONSE TO REQUEST FOR ADMISSION NO. 42:**

Highland objects to Request for Admission No. 42 on the grounds that it calls for a legal conclusion and the document speaks for itself.

**REQUEST FOR ADMISSION NO. 43:**

Admit that the temporary restraining order issued in this adversary proceeding [Adv. Dkt. No. 21] is currently the only limitation on Your ability to make distributions or redemption payments from Multi-Strat to Sentinel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 43:**

Highland objects to Request for Admission No. 43 on the ground that it calls for a legal conclusion or legal analysis. Subject to the General Objections and this specific objection, Highland states that it is not aware of any other limitations, contractual or otherwise, on its ability to make distributions or redemption payments from Multi-Strat to Sentinel, other than practical limitations, such as liquidity constraints.

**REQUEST FOR ADMISSION NO. 44:**

Admit that in or around April 2018, You transferred approximately \$196,000 to Sentinel as the purported assignee of CDO Fund's interest in the BB Highland Floating Rate fund.

**RESPONSE TO REQUEST FOR ADMISSION NO. 44:**

In response to Request for Admission No. 44, Highland states while certain discovery, including documents produced or deposition testimony, reflects that this transfer may have occurred, Highland does not possess knowledge or information sufficient to conclusively admit or deny this Request. *See* Fed. R. Civ. P. 36(a)(4).

Dated: September 3, 2021

**PACHULSKI STANG ZIEHL & JONES LLP**

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*/s/ Zachery Z. Annable*

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