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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., ¹ | § | 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. | § | |
| ----- | | |

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



UBS’S AMENDED 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:

| Ex. No. | Exhibit | Offered | Admitted |
|---------|---|---------|----------|
| 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 | [Omitted] | | |
| 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 Amended Responses and Objections to UBS's Requests for Admission, dated September 3, 2021 | | |
| 36 | [Omitted] | | |
| 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 | Decision, Order, and Judgment after Phase II Damages Inquest, entered by the N.Y. Court on July 29, 2022 [NY Dkt. No. 777] | | |
| 44 | Letter from Highland Financial Partners, L.P to Investors, dated January 27, 2009, as produced by Highland at UBSPROD5028123 | | |
| 45 | Letter from Highland to Highland CDO Opportunity Fund Investors, dated February 4, 2009, as produced by Highland at UBSPROD5052903 | | |
| 46 | Email from Scott Ellington to Isaac Leventon and JP Sevilla on December 1, 2017, with subject "Fwd: PRIVILEGED FW: Multi Strat Cash Projections" attaching Multi-Strat cash projection and distribution allocation, as produced by Highland at UBSPROD020562 | | |
| 47 | Unanimous Written Resolutions of the Board of Directors of Sentinel, dated April 23, 2020, as produced by Beecher at native SEN0000015082 | | |
| 48 | Unanimous Written Resolutions of the Board of Directors of Sentinel, dated January 11, 2021, as produced by Beecher at native SEN0000031379 | | |
| 49 | Email from Beecher to Matt DiOrio, among others, on June 24, 2021, with subject "Sentinel Expenses for Approval," as produced by Beecher at BC SEN0000074289 | | |
| 50 | Transcript of the Deposition of James Seery, dated August 5, 2022 | | |

| Ex. No. | Exhibit | Offered | Admitted |
|---------|--|---------|----------|
| 51 | Transcript of the Deposition of Katie Lucas Irving, dated November 15, 2021 | | |
| 52 | Expert Report of Louis G. Dudney, dated March 8, 2013, as filed under seal as Exhibit 24 to the <i>Appendix to Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Branch and UBS Securities LLC</i> [Dkt. No. 1211] | | |
| 53 | HFP Termination, Settlement and Release Agreement, dated March 20, 2009, as filed under seal as Exhibit 25 to the <i>Appendix to Redeemer Committee of the Highland Crusader Fund and the Crusader Funds' Brief in Support of Motion for Partial Summary Judgment and Joinder in the Debtor's Motion for Partial Summary Judgment on Proof of Claim Nos. 190 and 191 of UBS AG, London Brance and UBS Securities LLC</i> [Dkt. No. 1211] | | |
| 54 | All exhibits identified by or offered by any other party at the hearing | | |
| 55 | All exhibits necessary for impeachment and/or rebuttal purposes | | |
| 56 | 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 8th day of August 2022.

Respectfully submitted,

LATHAM & WATKINS LLP

By /s/ Andrew Clubok

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

CERTIFICATE OF SERVICE

I, Andrew Clubok, certify that *UBS's Amended 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 8, 2022.

/s/ Andrew Clubok



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Transcript of James Dondero

Date: May 10, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Phone: 888.433.3767

Email: 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 & 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 & 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 SCHAFAER 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

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1 C O N T E N T S

2

3 EXAMINATION OF JAMES DONDERO PAGE

4 By Mr. Clubok 8

5

6

7 E X H I B I T S

8 (Confidential- Not Attached to the Transcript)

9 DEPOSITION EXHIBIT PAGE

10 Exhibit 23 Subpoena 63

11 Exhibit 24 E-mail dated May 6, 2021 66

12 Exhibit 25 Revised unaudited financial 127

13 statements

14 Exhibit 26 One-page Document identifying 163

15 entities connected to Sentinel

16 Exhibit 27 E-mail chain 172

17 Exhibit 28 E-mail 184

18 Exhibit 29 Document Bates stamped 204

19 HCMUBS005324

20 Exhibit 30 Document Bates numbered 5322 211

21 Exhibit 31 Letter from McKool Smith dated 231

22 October 19, 2018

23

24

25

6

1 REMOTE TECH: Thank you to everyone for

2 attending this proceeding remotely, which we

3 anticipate will run smoothly. Please remember to

4 speak slowly and do your best not to talk over one

5 another.

6 Please be aware we are recording this

7 proceeding for backup purposes. Any

8 off-the-record discussions should be had away from

9 the computer. Please remember to mute your mic

10 for those conversations.

11 Please have your video enabled to help

12 the reporter identify who is speaking. If you are

13 unable to connect with video and are connecting

14 via phone, please identify yourself each time

15 before speaking.

16 I apologize in advance for any

17 technical-related interruptions. Thank you.

18 THE VIDEOGRAPHER: Here begins Tape

19 Number 1 in the videotaped deposition of James

20 Dondero in the matter of UBS Securities LLC, et

21 al. versus Highland Capital Management LP in the

22 U.S. Bankruptcy Court, Northern District of Texas,

23 Dallas Division; Case Number 19-34054-SGJ11.

24 Today's date is May 10th, 2021. The

25 time on the video monitor is 11:05 a.m. Eastern.

7

1 The videographer today is Drew Halton,

2 representing Planet Depos. All participants are

3 attending remotely.

4 Would counsel please voice identify

5 themselves and state whom they represent.

6 MR. CLUBOK: On behalf of UBS, it is

7 Andrew Clubok, Sarah Tomkowiak and Kathryn George,

8 all from Latham & Watkins LLP.

9 MR. FEINSTEIN: On behalf of the

10 defendant, Highland Capital Management, I'm Robert

11 Feinstein from Pachulski, Stang, Ziehl & Jones.

12 With me are my colleagues, Jeffrey Pomerantz, John

13 Morris and Gregory Demo.

14 MR. TAYLOR: Clay Taylor on behalf of

15 Jim Dondero, appearing pursuant to a subpoena

16 issued to a third-party.

17 Just for purposes of a clean record, I

18 believe the case number that was identified was

19 the main bankruptcy case number rather than the

20 adversary number, and that probably needs to be

21 corrected.

22 THE VIDEOGRAPHER: Sir, if you have

23 that available, would you mind reading that into

24 the record now?

25 MR. TAYLOR: Certainly.

8

1 THE VIDEOGRAPHER: Thank you.

2 MR. TAYLOR: One second, please. Just

3 pulling it up.

4 MR. CLUBOK: I believe it is Number

5 21-03020-SGJ.

6 MR. TAYLOR: Thank you, Andy.

7 THE VIDEOGRAPHER: The court reporter

8 today is Adrienne Mignano, representing Planet

9 Depos.

10 Would the reporter please swear in the

11 witness.

12 Whereupon,

13 JAMES DONDERO,

14 being first duly sworn or affirmed to testify to

15 the truth, the whole truth, and nothing but the

16 truth, was examined and testified as follows:

17 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

18 BY MR. CLUBOK:

19 Q Good morning, Mr. Dondero.

20 A Good morning.

21 Q Mr. Dondero, you have been deposed

22 before, correct?

23 A Yes.

24 Q Many times, right?

25 A Yes.

| | |
|--|---|
| <p>9</p> <p>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</p> | <p>11</p> <p>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</p> |
| <p>10</p> <p>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?</p> | <p>12</p> <p>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.</p> |

| | |
|---|---|
| <p>13</p> <p>1 A I wouldn't use the word "control."</p> <p>2 Q Okay. And I think I said the wrong</p> <p>3 name. I think it is technically called Sentinel</p> <p>4 Reinsurance. Is that the name of the entity?</p> <p>5 A I don't know the official name. It's</p> <p>6 Sentinel something.</p> <p>7 Q Okay. And what does Sentinel</p> <p>8 Reinsurance do?</p> <p>9 A It's an offshore Cayman-based</p> <p>10 reinsurance company.</p> <p>11 Q What does that mean?</p> <p>12 A As far as I understand, it does some</p> <p>13 insurance, it does some reinsurance and it -- I</p> <p>14 believe it is conforming and it is in compliance</p> <p>15 with regulations regarding qualification as a</p> <p>16 Cayman reinsurer and it invests its capital and</p> <p>17 its premiums.</p> <p>18 Q You own part of Sentinel Reinsurance,</p> <p>19 correct?</p> <p>20 A I believe I'm a beneficial holder of a</p> <p>21 majority of it.</p> <p>22 Q Okay. You're the beneficial holder of</p> <p>23 the majority of Sentinel Reinsurance, correct?</p> <p>24 A Yes.</p> <p>25 Q And you have been since its founding,</p> | <p>15</p> <p>1 Q Was it more than \$1 million?</p> <p>2 A Probably, but I don't --</p> <p>3 Q Was it more than \$10 million?</p> <p>4 A I don't know.</p> <p>5 Q Was it more than \$100 million?</p> <p>6 MR. TAYLOR: Andy, I'm going to ask</p> <p>7 that you move on. It's been asked and answered</p> <p>8 four times now.</p> <p>9 A I really don't know, Andy.</p> <p>10 Q Was it more than \$1 billion?</p> <p>11 A It was less than \$1 billion, I'm sure,</p> <p>12 but I don't know how much it was.</p> <p>13 Q Okay. Was it less than \$500 million?</p> <p>14 MR. TAYLOR: Objection.</p> <p>15 A Yes.</p> <p>16 Q Okay. Was it less than \$100 million?</p> <p>17 A I don't know.</p> <p>18 Q Okay. Was it less than \$250 million?</p> <p>19 MR. TAYLOR: Objection.</p> <p>20 A Was it less than -- yes.</p> <p>21 Q Okay. Was it less than 200 million?</p> <p>22 A Yes.</p> <p>23 Q Was it less than 150 million?</p> <p>24 A Yes.</p> <p>25 Q Okay. Was it less than 125 million?</p> |
| <p>14</p> <p>1 correct?</p> <p>2 A I believe so.</p> <p>3 Q And, in fact, you are the beneficial</p> <p>4 holder of approximately 70 percent of the economic</p> <p>5 interest in Sentinel Reinsurance, correct?</p> <p>6 A I believe that's approximately correct.</p> <p>7 Q And the other beneficial holder of</p> <p>8 Sentinel Reinsurance is Scott Ellington, right?</p> <p>9 A I believe so.</p> <p>10 Q And you and Scott Ellington are the</p> <p>11 only two beneficial holders of the economic</p> <p>12 interest in Sentinel Reinsurance, correct?</p> <p>13 A I -- I don't know. I believe so, but I</p> <p>14 don't know.</p> <p>15 Q And that's been the case since the</p> <p>16 founding of Sentinel Reinsurance, to the best of</p> <p>17 your knowledge, correct?</p> <p>18 A To the best of my knowledge.</p> <p>19 Q Did you invest any money in Sentinel</p> <p>20 Reinsurance, invest any capital?</p> <p>21 A I believe so.</p> <p>22 Q Roughly how much?</p> <p>23 A I don't know.</p> <p>24 Q Roughly.</p> <p>25 A I don't know. I don't remember.</p> | <p>16</p> <p>1 A Yes.</p> <p>2 Q Was it more than 50 million?</p> <p>3 A I don't know.</p> <p>4 Q Was it more than 1 million?</p> <p>5 A I don't know, Andy.</p> <p>6 Q Okay. So fair to say -- I thought you</p> <p>7 said it was probably more than a million, you</p> <p>8 thought.</p> <p>9 MR. TAYLOR: Objection. Asked and</p> <p>10 answered.</p> <p>11 A Yes.</p> <p>12 Q Okay. So is there -- so do you have</p> <p>13 any ability to narrow the amount of capital you</p> <p>14 invested in Sentinel Reinsurance in a range that</p> <p>15 is smaller than from 1 to \$125 million?</p> <p>16 A From 1 to 100 would be the range. And</p> <p>17 I don't have a basis for knowing more specifically</p> <p>18 than that.</p> <p>19 Q And you have no idea within that range</p> <p>20 whether it was closer to 1 million or closer to</p> <p>21 100. It's just somewhere in that range and you</p> <p>22 have no further information. Is that your</p> <p>23 testimony?</p> <p>24 A Yes.</p> <p>25 Q When did you put the capital into</p> |

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 A No.</p> | <p>23</p> <p>1 SkyBridge and NexBank and NextPoint. 2 Q Have you spoken with Katie Irving at 3 all in 2021? 4 A I have not. I believe she is on 5 maternity leave, still. 6 Q Have you -- when you spoke with 7 Mr. Sevilla, did you talk in any way about 8 Sentinel Reinsurance? 9 A No. 10 Q When was the last time you spoke to 11 anybody about Sentinel Reinsurance other than your 12 lawyers? 13 A I haven't. I know -- I haven't and I 14 have purposely not tried to refamiliarize myself 15 with anything there. 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 A I can't remember specifically. It</p> |
| <p>22</p> <p>1 Q Have you communicated directly or 2 indirectly with Isaac Leventon about anything in 3 2021? 4 A No. 5 Q Have you communicated with J.P. Sevilla 6 in 2021 about anything? 7 A Yes. J.P Sevilla is actively engaged 8 in a lot of Highland- and NextPoint-related 9 activities. Or not Highland, I'm sorry. A lot of 10 NextPoint-related activities and SkyBridge-related 11 activities. 12 Q Does Mr. Sevilla have an office in the 13 same building you're in now? 14 A Yes. Not in the same floor, but in the 15 same building. 16 Q And when was the last time you spoke 17 with Mr. Sevilla? 18 A Last week. 19 Q How about Matt DiOrio? Do you speak 20 with him at all? 21 A Infrequently. I think I have spoken to 22 him once this year. 23 Q When was that? 24 A When we first moved here early March to 25 set up the shared services agreement between</p> | <p>24</p> <p>1 would have been -- it would have been Scott 2 Ellington. And I -- it would have been sometime 3 last year. And it really would have been in the 4 context of we were trying to get a Cayman bank 5 going, and there was going to be -- there was 6 going to be some involvement, I think, from 7 Sentinel and Matt, but we didn't get the bank off 8 the ground last year. 9 Q Is this post bankruptcy? 10 A I don't know. It was either post 11 bankruptcy or shortly before. 12 Q Did you ever speak with Jim Seery about 13 Sentinel Reinsurance? 14 A No, I did not. 15 Q Did you ever speak with John Dubel 16 about Sentinel Reinsurance? 17 A No, I did not. 18 Q Did you ever speak with Judge Nelms 19 about Sentinel Reinsurance? 20 A No, I did not. 21 Q Did you tell any of the lawyers at the 22 Pachulski law firm anything about Sentinel 23 Reinsurance? 24 A No, I did not. 25 Q Have you ever told anyone at UBS</p> |

25

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.**

26

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?

27

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**

28

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.**

29

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**

30

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

32

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?

33

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**

35

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.**

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| <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> |

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| <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 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. 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 A I don't know. 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 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. 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 A Yes. 25 Q And you were the sole director of --</p> |
| <p style="text-align: right;">46</p> <p>1 establishing the policy, correct? 2 A Did I get -- I'm sorry, did I get legal 3 advice from Scott Ellington regarding -- 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 A I mean, I think he's always wearing 9 multiple legal hats. 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 A Yes, and with regard to Highland also. 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 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. 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 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. 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 A Generally. 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 A I believe so. 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 A I believe so. 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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| <p style="text-align: right;">53</p> <p>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</p> | <p style="text-align: right;">55</p> <p>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</p> |
| <p style="text-align: right;">54</p> <p>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</p> | <p style="text-align: right;">56</p> <p>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.</p> |

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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

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| <p style="text-align: right;">61</p> <p>1 UBS or Barclays or from Citibank or from 2 regulators or from tax authorities, you know, we 3 thought they were all normal course of business 4 that would be resolved for not material amounts of 5 money, correct.</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>11 A All of the above. And I think that was 12 Ellington's view also, and that's why it made 13 sense to transition an otherwise dead entity via 14 the insurance policy.</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>21 A I mean, like I said, there wasn't -- it 22 wasn't a specific concern regarding UBS. It was 23 to handle the transition of an otherwise dead 24 entity that was illiquid that still had operating 25 issues without a board and without any management</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>1 team and without any way to pay anybody. It was a 2 way to transition all issues, but it wasn't 3 anything specific to UBS that I recall at the 4 time.</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>10 A Okay.</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>14 A Correct.</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>18 A Yes, that's correct.</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>23 A Correct.</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>23 A Yes.</p> <p>24 Q And have you seen that subpoena before 25 today?</p> |

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| <p style="text-align: right;">65</p> <p>1 A I believe so.</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 A I think it was stapled to -- wasn't it</p> <p>12 part of everything else that was sent over? But</p> <p>13 this is what covers discovery requests, right?</p> <p>14 Q Correct.</p> <p>15 A Yeah.</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 A Yes.</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 A Yes.</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 A Yes.</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 A Yes.</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 A Yes.</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 A That is correct.</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

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| <p style="text-align: right;">85</p> <p>1 get compliance approval, correct?</p> <p>2 A Yes.</p> <p>3 Q And is that a policy that Scott</p> <p>4 Ellington knows about?</p> <p>5 A Yes.</p> <p>6 Q Is that a policy that Thomas Surgent</p> <p>7 knows about?</p> <p>8 A Yes. It's an industry -- it's a</p> <p>9 post-2008 Sarbanes or Dodd-Frank mandate. Chief</p> <p>10 compliance officers have the personal liability of</p> <p>11 a C-suite executive starting in '08 in financial</p> <p>12 firms.</p> <p>13 Q I see. So if Thomas Surgent did not --</p> <p>14 MR. CLUBOK: Strike that.</p> <p>15 Q If Thomas Surgent -- well, you had to</p> <p>16 get Thomas Surgent's approval because you, Jim</p> <p>17 Dondero, had beneficial ownership interest on both</p> <p>18 sides of the transaction, correct?</p> <p>19 A Not because of -- more of control, not</p> <p>20 benefi- -- beneficial ownership on the Sentinel</p> <p>21 side. You have control on both sides, but, yes,</p> <p>22 it was appropriate to get compliance approval,</p> <p>23 which I'm certain we did. I can't imagine -- I</p> <p>24 can't imagine there is any transaction where, any</p> <p>25 transaction over the last 15 years that would</p> | <p style="text-align: right;">87</p> <p>1 Q How would Mr. Surgent have learned that</p> <p>2 Sentinel Reinsurance was an affiliated entity?</p> <p>3 A He would have known as part of Scott</p> <p>4 Ellington's presentation to him proposing the</p> <p>5 transaction.</p> <p>6 Q What presentation are you talking</p> <p>7 about?</p> <p>8 A Compliance builds -- they definitely</p> <p>9 have folders and documentation on any transaction</p> <p>10 that they -- especially any significant</p> <p>11 transaction that they approve. They have to keep</p> <p>12 written documentation for the regulators.</p> <p>13 Q Sorry, but have you seen a presentation</p> <p>14 that Scott Ellington prepared to describe the</p> <p>15 transaction that he would have shared with</p> <p>16 Mr. Surgent?</p> <p>17 A I have not seen it.</p> <p>18 Q Have you seen any presentation that</p> <p>19 Scott Ellington ever prepared related to this</p> <p>20 transaction?</p> <p>21 A I have not.</p> <p>22 Q Did Mr. Ellington -- did -- were you</p> <p>23 ever --</p> <p>24 MR. CLUBOK: Strike that.</p> <p>25 Q How often do people use PowerPoints</p> |
| <p style="text-align: right;">86</p> <p>1 involve affiliated entities that did not have</p> <p>2 compliance approval.</p> <p>3 Q And in this situation Sentinel Re</p> <p>4 insurance would have been an affiliated entity,</p> <p>5 using the phrase the way you just used it,</p> <p>6 correct?</p> <p>7 A Yes.</p> <p>8 Q And HFP and its subsidiaries would have</p> <p>9 been affiliated entities, using the phrase the way</p> <p>10 you just described it, correct?</p> <p>11 A Yes.</p> <p>12 Q Is it your responsibility to ensure</p> <p>13 that compliance measures are adhered to?</p> <p>14 A Yes. I mean, it's every professional</p> <p>15 in the organization's responsibility, as part of</p> <p>16 the annual compliance review, to run appropriate</p> <p>17 things through compliance. But I would say under</p> <p>18 an abundance of caution, the organization is</p> <p>19 pretty well trained that anything that's close</p> <p>20 goes through compliance.</p> <p>21 Q Okay. But you never spoke with</p> <p>22 Mr. Surgent directly about this transaction,</p> <p>23 correct?</p> <p>24 A Correct. Scott Ellington was the</p> <p>25 person on this transaction.</p> | <p style="text-align: right;">88</p> <p>1 with you back in this time period to describe</p> <p>2 transactions or make it easier to follow them?</p> <p>3 A Often.</p> <p>4 Q Why?</p> <p>5 A I mean, just often. I mean, there's</p> <p>6 process for investment underwriting, there's</p> <p>7 process for trade execution, there's process for</p> <p>8 investment monitoring and tracking. Most of those</p> <p>9 are documentation, you know, based. And there is</p> <p>10 process and procedures around compliance also, and</p> <p>11 those are generally documentation based also.</p> <p>12 Q Would you have received a presentation</p> <p>13 for every major transaction that one of the</p> <p>14 affiliated entities did during this time period?</p> <p>15 A Not on the compliance side. I'm not</p> <p>16 directly involved in compliance. On most -- on</p> <p>17 most significant investments, generally I would be</p> <p>18 in an investment committee or be aware or be</p> <p>19 presented with something, yes.</p> <p>20 Q And so it would be highly unusual for</p> <p>21 you not to be presented with a PowerPoint, or the</p> <p>22 like, sort of presentation if there was a</p> <p>23 significant transaction being contemplated with</p> <p>24 one of the affiliated entities at that time,</p> <p>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

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| <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?

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| <p>109</p> <p>1 A That would all be at Highland.</p> <p>2 Q Where?</p> <p>3 A We keep detailed valuation records</p> <p>4 going back 20 years.</p> <p>5 Q In what system?</p> <p>6 A I don't know.</p> <p>7 Q Who would know?</p> <p>8 A I don't think Highland could be</p> <p>9 compliant as a registered investment advisor and</p> <p>10 not be able to produce those to you.</p> <p>11 Q Who would be able to most easily get</p> <p>12 those documents, if they are still there, if you</p> <p>13 know?</p> <p>14 A DSI is functioning as the back office</p> <p>15 of Highland, as far as I understand it.</p> <p>16 Q And there would have been fair market</p> <p>17 values for each of the assets that were</p> <p>18 transferred to pay for the insurance policy?</p> <p>19 A Yes.</p> <p>20 Q And we could rely on those fair market</p> <p>21 values in the Highland books if we wanted to know</p> <p>22 the fair market value of the assets that were</p> <p>23 transferred?</p> <p>24 A I believe so.</p> <p>25 Q So when you -- getting back to what you</p> | <p>111</p> <p>1 liability with respect to other entities other</p> <p>2 than UBS, Barclays, Citibank that we have not</p> <p>3 specifically mentioned?</p> <p>4 A Yeah, or tax authorities or -- yes. I</p> <p>5 mean, that just -- that was part and parcel of it,</p> <p>6 but, again, the terms of the payouts and the -- I</p> <p>7 have no knowledge of. And I don't know if they</p> <p>8 are specifically addressed or ignored. I don't</p> <p>9 know how UBS is handled in the policy. I do not</p> <p>10 have detailed knowledge on the specifics.</p> <p>11 Q When was the last time you thought</p> <p>12 about the policy before you got the -- before you</p> <p>13 heard about this adversary proceeding?</p> <p>14 A I hadn't thought about it at all. I</p> <p>15 wasn't even sure the New York action applied,</p> <p>16 honestly.</p> <p>17 Q Other than legal liability for either</p> <p>18 attorneys' fees or bad outcomes of litigation, you</p> <p>19 have repeatedly used a phrase about "liquidity for</p> <p>20 transition." I'm trying to understand,</p> <p>21 specifically under what circumstances did you</p> <p>22 think Sentinel Re would ever pay money to handle</p> <p>23 something that was not lawyer fees or legal</p> <p>24 liability under this policy?</p> <p>25 A Well, lawyers' fees, essentially, you</p> |
| <p>110</p> <p>1 knew at the time, you approved this transaction.</p> <p>2 A Right.</p> <p>3 Q Did you believe that you were</p> <p>4 purchasing liability insurance for all known and</p> <p>5 unknown claims of Highland Financial Partner and</p> <p>6 its subsidiaries?</p> <p>7 MR. TAYLOR: Objection to the form of</p> <p>8 the question.</p> <p>9 A I didn't have specific knowledge beyond</p> <p>10 that it was a transition policy to cover -- to</p> <p>11 provide the liquidity and the management necessary</p> <p>12 to deal with the conflicts and then probably net</p> <p>13 of those amounts to provide some amounts of</p> <p>14 liability insurance given certain circumstances or</p> <p>15 certain events.</p> <p>16 Q Did you believe that you were buying</p> <p>17 liability insurance with respect to the Barclays</p> <p>18 claims that were known or unknown at the time?</p> <p>19 A Generally, yes.</p> <p>20 Q Did you believe you were buying legal</p> <p>21 liability insurance with respect to the Citibank</p> <p>22 claims against HFP and its subsidiaries that were</p> <p>23 known or unknown at the time?</p> <p>24 A Generally, yes.</p> <p>25 Q Did you believe you were buying legal</p> | <p>112</p> <p>1 know, any other operating or regulatory costs or</p> <p>2 defenses, and then bona fide settlements and then,</p> <p>3 you know, but -- Andy, I know you know the</p> <p>4 insurance world. Bona fide settlements are --</p> <p>5 bona fide settlements are getting paid on a</p> <p>6 more -- that's a whole industry subset of its own,</p> <p>7 you know.</p> <p>8 Q We'll come back to that. What do you</p> <p>9 mean by "operating or regulatory costs"? What</p> <p>10 does that mean?</p> <p>11 A If there's any regulatory costs for</p> <p>12 operating in the Caymans, if there is any, like I</p> <p>13 said, tax questions on -- or challenges on the</p> <p>14 worthlessness deduction when HFP was unwound, I --</p> <p>15 you know, all those kinds of things.</p> <p>16 Q You believe that this policy you're</p> <p>17 buying would pay for costs associated with</p> <p>18 challenges to the worthless tax deduction that you</p> <p>19 took when HFP was declared insolvent?</p> <p>20 A Again, I believe there was a transition</p> <p>21 policy. That's how it was presented to me.</p> <p>22 Q Are you saying that you believe the</p> <p>23 policy that you approved buying, that we have been</p> <p>24 discussing today, was expected to pay costs</p> <p>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**

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1 **that.**

2 Q Is the DAF -- the DAF is a

3 donor-advised fund?

4 A Yes.

5 Q And it's a charitable fund that you

6 established?

7 A Yes.

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 A I believe there is a note in there from

21 the DAF of 32 millionish, but I don't remember how

22 it got there.

23 Q And did the DAF have enough money to

24 pay that \$32 million?

25 A It doesn't have the liquidity, but it

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1 has more than 100 million in assets at this point.

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 A I do not know.

6 Q Who owns the \$32 million note now?

7 A I do not know.

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 A I believe so.

15 Q And you understand that it was

16 transferred to Sentinel Reinsurance as part of the

17 insurance policy, correct?

18 A It would make sense that that would

19 have been part of the illiquid securities or

20 illiquid asset bucket.

21 Q And you know it has been transferred

22 since, right?

23 A I don't have -- I don't have the

24 specific knowledge to be helpful here, Andy. I

25 don't know.

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1 Q Well, do you know who the DAF owes that

2 \$32 million to today?

3 A No, I do not.

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 A I do not. I'm willing to be refreshed,

8 but I don't know. I don't remember.

9 Q Who is responsible for making payments

10 on behalf of the DAF of that \$32 million note?

11 A The -- I don't know, the DAF trustee, I

12 guess.

13 Q Who is the DAF trustee?

14 A Grant Scott.

15 Q And does Grant Scott have full

16 authority to pay off that \$32 million note?

17 A I believe ultimately.

18 Q Do you have any say in the matter?

19 A I think we're investment advisor for

20 the DAF.

21 Q Who is "we" in that sentence?

22 A I believe -- that's a good question.

23 Probably Sky -- probably SkyBridge, I'm guessing,

24 has a shared services asset management agreement

25 with the DAF, replacing what used to be done by

120

1 Highland.

2 Q When was that?

3 A That started when everybody moved --

4 well, Seery terminated all the agreements, I

5 think, at the end of February. When everybody

6 moved over here at the end of February or March,

7 the bank and the DAF and other entities redid

8 their shared services agreements with SkyBridge.

9 Q And you control SkyBridge, correct?

10 A No, I do not.

11 Q What ownership do you have in

12 SkyBridge?

13 A I believe at the moment it's zero and

14 we're trying to figure out how best to construct

15 the ownership there.

16 Q Who owns SkyBridge?

17 A The employees at the moment.

18 Q Which employees?

19 A I don't know. We're doing an

20 organizational restructure analysis of how that

21 entity should be held. And I haven't seen the

22 final recommendation yet.

23 Q Who is controlling SkyBridge today?

24 A I -- I don't know. I don't know how

25 much of it is -- it's some combination of Frank

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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 just -- I can't say for sure Ellington represented 2 both HFP and Sentinel. I can't say for sure. 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 A Yes -- or, yeah, it would be on the 7 asset side I would get queried periodically on 8 what to invest in. 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 A Sure. 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 A Yes. 22 Q And the first one is an asset called 23 "Grayson CLO LTD 144A." Do you see that? 24 A Yes. 25 Q Do you know what that asset is, Grayson</p> | <p>147</p> <p>1 fall in arrears when the economy weakens and cash 2 is diverted, but generally they pay -- generally 3 they pay flows or dividends. 4 Q Is the Grayson CLO Limited 144A, is 5 that a collection of corporate loans or 6 securitized corporate loans? 7 A Yes. 8 Q And what does the 144A refer to, do you 9 know? 10 A 144A private placement. 11 Q What does that mean to you? 12 A That it's a private placement. It's 13 not a public bond. It's issued under the 144A 14 private placement exemption the SEC has. 15 Q Do you know how much cash over time 16 Sentinel Reinsurance collected with respect to 17 this asset? 18 A No idea. 19 Q Do you know how much they paid for this 20 asset? 21 A No idea. 22 Q Do you know where they got this asset? 23 A No idea. 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 A I think that was an old CLO that we did 3 in the early 2000 period, and -- yes, that's what 4 it looks like. 5 Q And it said as of that date it had a 6 value of \$1.7 million. Do you see that? 7 A Yep. 8 Q And it had a -- do you know if that 9 asset was ever monetized? 10 A I have no idea. 11 Q Do you know if Sentinel Reinsurance 12 still holds that asset today? 13 A I have no idea. 14 Q Do you have any idea if it was ever 15 sold? 16 A No. 17 Q Would an asset like that generate cash? 18 A It would depend on the year. 19 Generally, yes. 20 Q Do you know if any cash has been 21 generated in connection with the Grayson CLO 22 Limited 144A asset? 23 A Over its life, for sure, but at any 24 given year or any given moment, I don't know. 25 They generally pay quarterly, but sometimes they</p> | <p>148</p> <p>1 value of 1.4. Do you see that? 2 A Yes. 3 Q Do you know anything about that asset? 4 A No. I would say for all four listed, I 5 would give you the exact same answers. And I 6 don't know where they came from. They generally 7 produce cash flow, but I don't know in any given 8 particular year, and I couldn't even begin to 9 estimate how much cash over its life, and I don't 10 know where it came from. 11 Q You have heard of the Greenbriar CLO 12 Limited asset recently, haven't you? You've 13 discussed that recently? 14 A Was that the asset that Seery promised 15 to help give to UBS? Was that that asset? 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 A Yes. Yeah, that is -- it may not be 23 that Greenbriar, I mean, or it may not be that 24 piece, because I think the piece you guys were 25 talking about was larger, but it's essentially the</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 don't remember. 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 That's right. And so think about it. 13 It was, you know, multiple people giving multiple 14 tidbits. I don't want to -- I don't want to 15 speculate or jump to a conclusion. I'll think 16 about it some more, but I can't remember or 17 attribute it exactly to one person at this moment. 18 Q You said there were people who speak to 19 Thomas Surgent still. Who are they? 20 A Well, I mean, it's most -- most 21 everybody in senior management still speaks to him 22 so ... 23 Q Who? 24 A I mean, just most everybody in senior 25 management still --</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 Correct. 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 That's -- that's what I was beginning 9 to realize as I was saying it, that I might be 10 overlying too much of my -- too much of my own 11 views or too much of other people's just general 12 views or just too much -- I might be reading into 13 too much or connecting too many dots. So I don't 14 want to go any further down that conjecture. 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 -- speak to him. 3 You know, you can look up the org 4 chart, Andy. I'm not -- I don't want to speculate 5 or point to anybody in particular at this point. 6 You know, and really, really part of the reason, 7 too, as I was thinking before -- before I would 8 speculate or attribute it to one person, I was 9 going through it in my mind, like, okay, how much 10 of it is my perception, maybe being a little 11 sensitive to everything he's been through, and 12 then how much of it is did someone truly say, and 13 then how much did maybe somebody else put their 14 own spin on it. 15 And I just don't want -- I don't want 16 to go down the -- 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 That's correct. It would be best to 22 talk to him about it. And, you know, you can -- 23 it would be best to talk to him. 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 Yes. 4 Q What does that mean? 5 A I've never seen this -- I've never seen 6 this page before. Or I've never seen this paper 7 before. 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 I don't know. 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 I'm trying to -- what documents have I 18 seen? And I'm willing to be refreshed on that. 19 Yeah, I'm willing to be refreshed on that. 20 Q You are aware, as you sit here today, 21 that Sentinel Reinsurance is a redeemer in Multi 22 Strat, correct? 23 A Okay, I'm willing to be refreshed. 24 That sounds -- that sounds plausible, potentially 25 familiar. If -- do you have a redeemer listing</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

| | |
|--|---|
| <p>177</p> <p>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.</p> | <p>179</p> <p>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,</p> |
| <p>178</p> <p>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</p> | <p>180</p> <p>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</p> |

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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

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1 attachment called UBS_ATE.PDF.
2 Do you see that?
3 A Yes.
4 Q And Mr. Leventon said -- first of all,
5 who is Chris Dunn?
6 A I believe he is one of the accountants
7 who used to work at Highland.
8 Q Okay. And does he work with you now?
9 A I don't believe so. I don't recognize
10 that name.
11 Q And Mr. Leventon says to Mr. Dunn --
12 "Subject: UBS - PRIVILEGED." Do you see that?
13 A Yes.
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 A Yes.
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 A No. No, I have not.
25 Q Okay. So I'm going to show you the

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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 A Yes.
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 A Yep.
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.

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1 Do you see that?
2 A Yes.
3 Q And that's your signature, correct?
4 A Yeah, or my assistant's, it looks like.
5 It is either my signature or my assistant's.
6 Q Well, it's an authorized signature by
7 you, correct?
8 A Yes.
9 Q And that's on behalf of one of the
10 insureds, Highland CDO Opportunity Master Fund,
11 LP, correct?
12 A Yeah. Do you want me to read the
13 signature lines? You'll need to zoom in for me.
14 But whoever it's signed for, it's signed for, I
15 guess.
16 Q Okay. And it's also signed on behalf
17 of Highland CDO Hold Company, correct?
18 A Highland CDO Holding Company, yes.
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 A I don't know what the involvement is of
23 the different entities, if they're all the insured
24 or they're just somehow -- somehow involved in the
25 agreement, but yes, I'm signing for those various

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1 different funds.
2 Q Well, so you sign this document on
3 behalf of Highland CDO Opportunity Master Fund,
4 LP, correct?
5 A Yes.
6 Q And you sign this document on behalf of
7 Highland CDO Holding Company, correct?
8 A Yes.
9 Q And you sign on behalf of Highland
10 Special Opportunities Holding Company, correct?
11 A Yes.
12 Q And you were the sole director of SOHC
13 at the time, right?
14 A I -- I -- probably. I don't know.
15 Q And you were the sole director of
16 Highland CDO Holding Company at the time, correct?
17 A I don't know.
18 Q Do you know -- can you name another
19 director of Highland CDO Holding Company?
20 A No.
21 Q And you were -- it says you were
22 president. Is that president of Highland CDO
23 Opportunity Master Fund, LP?
24 A I don't know.
25 Q Or is it president of Strand Advisors?

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|--|--|
| <p>197</p> <p>1 A I don't know.</p> <p>2 Q Were you president of Strand Advisors</p> <p>3 at that time?</p> <p>4 A Yes, I would have been. Yeah, if it</p> <p>5 had a president, yes.</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 A I assume so.</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 A I assume so.</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 A I believe so.</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 A I believe so.</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 A I believe so.</p> | <p>199</p> <p>1 when making the decision to sign on SOHC's behalf?</p> <p>2 A I don't know. I don't remember.</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 A I don't know. I don't remember.</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 A I don't know. I don't remember.</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 A I think I testified I believe it was</p> <p>16 dormant.</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 A Like I said, I don't know. My belief</p> <p>22 was it was dormant.</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 A I believe so.</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 A I believe so.</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 A No.</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 A I -- fiduciary -- as a registered</p> <p>18 investment advisor, I assume -- I assume we did.</p> <p>19 I don't know -- to the extent the fund doesn't</p> <p>20 exist anymore, I -- I don't know the answer. Let</p> <p>21 me just say that.</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>200</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 A I -- I do not -- I do not believe or</p> <p>9 recall believing that I had any fiduciary</p> <p>10 responsibility to UBS.</p> <p>11 Q With respect to its status as a</p> <p>12 creditor or potential creditor of SOHC, correct?</p> <p>13 A Yes.</p> <p>14 Q And the same answer for Highland CDO</p> <p>15 Opportunity Master Fund?</p> <p>16 A Yes.</p> <p>17 Q Same answer for Highland Financial</p> <p>18 Partners?</p> <p>19 A Yes.</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 A No, I don't know that.</p> |

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| <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 A I don't know the specifics of the 6 award, but generally I know there is a significant 7 award. 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 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. 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 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.</p> | <p>203</p> <p>1 is in favor of UBS? 2 A I have not. 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 A I believe so. 13 Q That was done just within the last week 14 or so? 15 A I believe so. 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 A I -- I don't recall. 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 A I don't know.</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 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. 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 A I don't know the specifics. I don't 13 know the specific counterparties. 14 Q Do you know? So is that a no to my 15 question? 16 A Yes. I don't know. 17 Q Have you made any effort to consider 18 whether or not SOHC owes any money currently to 19 UBS? 20 A I have not. 21 Q Have you made any effort to consider 22 whether currently CDO Fund owes any money to UBS? 23 A I have not. 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**

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| <p style="text-align: right;">209</p> <p>1 remember doing a single activity between 2017 and 2 today on behalf of SOHC. 3 Q Who directed SOHC's litigation strategy 4 in 2018 and 2019? 5 A I believe Scott Ellington. 6 Q Who was ultimately responsible for 7 SOHC, as far as you knew, during those years? 8 A Ultimately Scott Ellington through 9 Sentinel. 10 Q You're saying Sentinel was responsible 11 for SOHC starting in August 2017 going forward? 12 A My general understanding is that the 13 Sentinel policy took over the transition 14 responsibilities for SOHC, meaning the legal 15 strategies or any other legal issues that cropped 16 up or any tax issues. So if you're talking about 17 the period between the policy and today, I would 18 have guessed that Sentinel was handling them. 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 A That would have been Scott Ellington. 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 A I did not hear of any. 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 A Until the -- I had never -- you asked 3 me this earlier today. I had never heard of other 4 UBS settlement offers until the August of '19 5 settlement. 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 A I don't know. Because I haven't read 10 the insurance policy, I don't know where 11 responsibilities begin and end between SOHC and 12 Sentinel. 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 A So -- 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 A Uh-huh. 3 Q Is that a yes? 4 A Yes. I see that. 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 A Yes. 9 Q Have you seen a copy of this letter 10 before today? 11 A Yes. 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> |

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| <p>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 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. 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 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. 19 Q Well, do you know that CDO Fund is one 20 of the defendants in the New York litigation? 21 A Is it one of the entities that was 22 found guilty or owing money? 23 Q Yes. 24 A Okay. I didn't know that. So we 25 need -- we needed to look into that.</p> | <p>215</p> <p>1 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. 4 Q I don't know. It would have to be 5 Ltd.? 6 A See, I wasn't sure that any of these 7 impacted Bermuda. 8 Q Well, in -- okay. 9 How is CDO Opportunity Master Fund 10 connected to CDO Fund that says Ltd. on it? 11 A I have no idea. 12 Q Previously you said that you didn't 13 remember signing the insurance policy, correct? 14 A Correct. 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 A No, not really. 19 Q But you authorized your signature on 20 this policy, correct? 21 A Correct. 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>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 A I don't believe so. 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 A I don't know. 10 Q When was the last time you did -- you 11 took any actions with respect to CDO Fund? 12 A Not that I can remember at this moment. 13 None that I can remember at this moment. 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 A I don't know. Soon, I would imagine. 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 A I'm sorry, my eyes are so bad, but</p> | <p>216</p> <p>1 CDO Holding Company, but also on behalf of 2 Highland CDO Opportunity Master Fund, LP, correct? 3 A Again, I delegated and entrusted it to 4 Scott Ellington and his team. 5 Q So is that a yes? 6 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. 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 A It appears so, yes. 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 A Yes.</p> |

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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

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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.

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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

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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

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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.

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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?
6 A **Yeah, like I said, to provide**
7 **transition and windup for the HFP funds and**
8 **subsidiaries.**
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?
15 MR. TAYLOR: Objection to the form of
16 the question.
17 A **I don't have other knowledge of other**
18 **cases addressed by this insurance.**
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?
25 A **Yep.**

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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.
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."

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1 Do you see that?
2 A **Yes.**
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 --
7 A **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.**
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.
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

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1 insurance provided the premium and other charges
2 are paid." And the premium is \$25 million,
3 correct?
4 A **That's what it said on the schedule,**
5 **yes.**
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."
22 Do you see that?
23 A **Yes.**
24 Q And when it talks about the legal
25 action, that's a -- "legal action" is a bold

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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 A Yep.</p> <p>2 Q Is that your signature?</p> <p>3 A Yep.</p> <p>4 Q And did you have authority to sign on</p> <p>5 behalf of those entities that are listed there</p> <p>6 under "Seller"?</p> <p>7 A I believe so.</p> <p>8 Q And same thing with -- is that also</p> <p>9 your signature for Highland CDO Opportunity Fund,</p> <p>10 Limited and Highland CDO Holding Company on this</p> <p>11 same document?</p> <p>12 A Yes.</p> <p>13 Q And you had authority to sign on behalf</p> <p>14 of those entities as well?</p> <p>15 A I believe so.</p> <p>16 Q And then it's also got Highland Special</p> <p>17 Opportunities Holding Company. Same thing? You</p> <p>18 had authority to sign on behalf of that entity at</p> <p>19 the time?</p> <p>20 A I believe so.</p> <p>21 Q And then it continues with some other</p> <p>22 entities on this document, including Highland</p> <p>23 Financial Corp. Do you see that?</p> <p>24 A Yep.</p> <p>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</p> <p>2 Master Fund, LP; Highland CDO Holding Company and</p> <p>3 Highland Special Opportunities Holding Company</p> <p>4 (together, 'Sellers')."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Now, that's what it says up there. And</p> <p>8 then it says that "Sellers are each a party in a</p> <p>9 lawsuit styled UBS Securities LLC and UBS AG,</p> <p>10 London Branch versus Highland Capital Management,"</p> <p>11 et cetera. And that's defined as the "Lawsuit."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q And it says, "Whereas, Sellers desire</p> <p>15 to purchase a Legal Liability Insurance Policy</p> <p>16 relating to Sellers' potential liability in the</p> <p>17 Lawsuit" -- capital L, Lawsuit -- "in form</p> <p>18 substantially as set forth in Exhibit A hereto</p> <p>19 (the 'Policy')."</p> <p>20 Do you see that?</p> <p>21 A Yep.</p> <p>22 Q Now, does that mention anything about</p> <p>23 any other litigation?</p> <p>24 A No.</p> <p>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?</p> <p>2 A I believe so.</p> <p>3 Q And same thing with Highland Financial</p> <p>4 Partnership, or HFP?</p> <p>5 A I believe so.</p> <p>6 Q So you signed on behalf of all these</p> <p>7 different entities as the seller for this purchase</p> <p>8 agreement. Do you see that?</p> <p>9 A Yes.</p> <p>10 Q And then the purchaser was an entity --</p> <p>11 was Sentinel Reinsurance. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And it was signed by Andrew Dean,</p> <p>14 right?</p> <p>15 A Yes.</p> <p>16 Q Did you ever talk to Andrew Dean about</p> <p>17 this agreement?</p> <p>18 A No.</p> <p>19 Q Have you ever met Andrew Dean?</p> <p>20 A I don't believe so.</p> <p>21 Q Have you ever spoken with Andrew Dean?</p> <p>22 A Not that I can recall.</p> <p>23 Q Going back to the beginning, this</p> <p>24 purchase agreement was dated August 7th, 2017, and</p> <p>25 it was "entered into by and among Sentinel</p> | <p style="text-align: right;">244</p> <p>1 transition services of any kind?</p> <p>2 A No.</p> <p>3 Q Does it mention anything about dealing</p> <p>4 with regulators or dealing with the IRS or dealing</p> <p>5 with taxes or anything else like that?</p> <p>6 A No.</p> <p>7 Q The only reason given for purchasing</p> <p>8 the legal liability insurance policy is related to</p> <p>9 the Highland affiliated entities' potential</p> <p>10 liability in the UBS lawsuit, correct?</p> <p>11 A Yes.</p> <p>12 Q And the purchaser under this agreement</p> <p>13 is an insurance company that is able to provide</p> <p>14 the sellers insurance coverage pursuant to the</p> <p>15 terms of the requested policy. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And the policy you understand is the</p> <p>18 one we have been talking about today, correct?</p> <p>19 A Yes.</p> <p>20 Q And then it talks about a payment of</p> <p>21 premium, and it says the "Purchaser," which is</p> <p>22 Sentinel Reinsurance, "agrees to accept the assets</p> <p>23 listed in Schedule A as 100 percent payment of the</p> <p>24 Premium" -- capital P -- "including any as yet</p> <p>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

250

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 Tosa 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

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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 **A I don't remember.**
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 **A Yes.**
18 Q Do you know what that's worth?
19 **A Nope. No, I do not.**
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 **A Yes.**
25 Q Now, you know what the cash was worth.

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1 The cash was worth \$599,999, correct?
2 **A Yes.**
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 **A I don't know.**
8 Q You don't know if cash is liquid?
9 **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.**
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 **A Yes, I see that.**
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

255

1 100 percent payment of the Premium," which was
2 \$25 million, correct?
3 **A Yes.**
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 **A Yes.**
9 Q And part of that was \$599,000 in cash
10 from Highland CDO Opportunity Master Fund, right?
11 **A Yes.**
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 **A Yes.**
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 **A Yes.**
20 Q So -- and Dugaboy -- do you know if
21 Dugaboy is not going to make good on that note?
22 **A I don't know.**
23 Q Has Dugaboy made good on that note?
24 **A I don't know.**
25 Q Do you have any basis to believe that

256

1 they have some excuse for not making good on that
2 note, as you sit here today?
3 **A I do not.**
4 Q So you would expect that 2.4 million to
5 be worth \$2.4 million?
6 **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.**
9 Q Okay. What's Cambridge 5 times
10 FLOATING?
11 **A I do not know.**
12 Q No idea what that asset refers to?
13 **A It's not one of our old CLOs. I don't
14 know what it is.**
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 **A Yep. Sure.**
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 **A Yes.**
24 Q And that 8.4 million is completely
25 liquid, right?

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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 up 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?

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1 **A I don't know.**
2 Q Well, do you think in good faith, under
3 oath, that you paid your lawyers something like
4 \$30 million for the UBS litigation?
5 **A I'm saying, Andy, I have no idea. I**
6 **think there's been -- I think we've over the years**
7 **had three or four different law firms working on**
8 **UBS. I don't know what they totaled.**
9 Q Okay. Let's continue with what was
10 transferred for the insurance policy pursuant to
11 Schedule A.
12 We now have an entity called "Highland
13 CDO Holdings Company." Do you see that?
14 **A Uh-huh.**
15 Q Is that a yes?
16 **A Yes.**
17 Q And did that entity -- that's a
18 subsidiary of Highland Financial Partners?
19 **A I don't know.**
20 Q Was -- okay.
21 Well, you see that there's a number of
22 assets transferred. Fair to say you have no idea
23 about the value of "HFT Real Estate," the first
24 asset?
25 **A Correct.**

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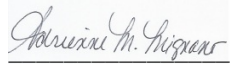
1 Q Or the second asset -- the NexPoint
2 assets, you have no idea what the value of those
3 were at the time of this transfer?
4 **A Correct.**
5 Q Same with the -- how about the Highland
6 Park C 4.93867 asset?
7 **A Correct.**
8 Q What about the 25 November 51 -- or
9 25NOV51 FRN? Do you know what that was worth?
10 **A No.**
11 Q How about a promissory note from CLO
12 Holdco of \$32 million? Do you know what that is
13 all about?
14 **A Nope.**
15 Q Do you know if that is a note that CLO
16 Holdco is capable of paying off?
17 **A I don't know. I don't know who CLO**
18 **Holdco is. Is that the Bermuda entity that we**
19 **were talking about earlier? I don't know.**
20 Q Oh, you know what, my colleague has
21 noted to me that I missed another cash asset of
22 539,000 that's right here. So let's just make
23 sure we've totaled up all the cash that was
24 transferred. It looks like it was 2.3 million,
25 plus 7.7, is a little over 10 million, plus about

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1 600,000, plus another \$539,000, for a total of
2 over \$11 million just on the first page of
3 Schedule A, correct?
4 **A Yes.**
5 Q And then on the second page we can see
6 there is another 539,000 of cash that's being
7 transferred from Highland CDO Holdings Company,
8 right?
9 **A Yep.**
10 Q And then there is another \$300,000 in
11 cash from Highland Special Opportunities Holding
12 Company, right?
13 **A Yes.**
14 Q And there is another \$80,000 in cash
15 from Highland Financial Corp.?
16 **A Yep.**
17 Q And a tax fund receivable?
18 **A Yep.**
19 THE WITNESS: Hey, Andy, I'm going to
20 have to put a break on this. I'm getting tired.
21 We can revisit tomorrow but --
22 MR. CLUBOK: Okay. You want to revisit
23 tomorrow, huh?
24 Let's go off the record.
25 THE VIDEOGRAPHER: Off record. 8:35.

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1 (A recess was taken.)
2 THE VIDEOGRAPHER: On record, 8:40.
3 MR. CLUBOK: At Mr. Dondero's request,
4 we have agreed to continue the deposition
5 Wednesday morning at 8:30 Central Time, sharp.
6 Mr. Taylor has an appointment he has got to leave
7 for at about 10:15, but we only have a little less
8 than an hour and a half left on the record of my
9 time, and however much time Mr. Taylor has used,
10 so we should be able to get that done.
11 But we're agreeing that we're going to
12 start on the nose at 8:30, meaning people will be
13 in their seats a few minutes before with all the
14 technical issues resolved so that we can get
15 started right at 8:30, correct?
16 MR. TAYLOR: I fully intend on being in
17 my seat then. I can't promise everything, but
18 yes.
19 MR. CLUBOK: And that's correct,
20 Mr. Dondero?
21 THE WITNESS: Yes, I'll be there.
22 MR. CLUBOK: And you understand that
23 you will not speak to anybody about the substance
24 of this deposition between now and then,
25 correct --

| | |
|--|--|
| <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 | A Yes. |
| 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 | A Yes. |
| 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

301

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,

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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**

305

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

306

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**

307

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?

308

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?

309

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

310

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?

313

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.**

314

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

315

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

316

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?

317

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

318

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.**

319

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?

320

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."

321

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

322

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

323

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.**

324

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 A I don't know.
 7 Q You had an economic interest in it,
 8 though, right?
 9 A I don't know.
 10 Q Do you have any idea who has ever owned
 11 Highland CDO Opportunity Master Fund?
 12 A In -- I don't -- Highland? I don't
 13 know. I don't know.
 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 A I don't know.
 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 A Not necessarily. But, typically, it
 25 did, but I don't know.

325

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 A Yep.
 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 A Yes.
 12 Q Did you have authority to act on both
 13 sides of this transaction at the time?
 14 A I believe so.
 15 Q Who gave you that authority?
 16 A Who gave me that -- I believe I'm an --
 17 MR. CLUBOK: Strike that.
 18 Q Did --
 19 A I believe I am an authorized signatory
 20 or officer of both those entities, I believe.
 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?

326

1 A Again, all trades that involve
 2 affiliates go through compliance. This one would
 3 have been easy because they were publicly listed
 4 shares at a price on the exchange on the day of
 5 transfer. There wouldn't have been controversy
 6 regarding the propriety of the amounts.
 7 Q Okay. By the way, is -- was Sentinel
 8 Reinsurance an advisory fund or an advisory client
 9 of Highland Capital Management?
 10 A I don't know.
 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 A Yes.
 17 Q Why is that?
 18 A Because it was an affiliate of me.
 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 A Yes.
 25 Q Okay. The last attachment -- or the

327

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 A Yes.
 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 A Yes.
 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 A Yes.
 15 Q Did you ever direct the trustee of
 16 Dugaboy to do anything?
 17 A No.
 18 Q Do you know whether -- and that -- who
 19 was the Dugaboy Investment trustee at the time?
 20 A I don't know. It would have been
 21 either Grant Scott or my sister. More recently
 22 it's been my sister, but I don't know at this
 23 point in time.
 24 Q Is your sister currently the trustee of
 25 Dugaboy Investment Trust?

328

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

329

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

330

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.

331

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

332

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

333

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?

334

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.**

335

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

338

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 Touse, 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

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| <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 14 15 16 Videotaped Deposition of 17 JEAN PAUL SEVILLA 18 Dallas, Texas 19 Wednesday, July 21, 2021 20 9:40 a.m. 21 22 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 & 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 8 9 Shannon E. McLaughlin LATHAM & WATKINS LLP 885 Third Avenue 10 New York, New York 10022-4834 (212) 906-4612 shannon.mclaughlin@lw.com 11 12 ON BEHALF OF DEFENDANT 13 HIGHLAND CAPITAL MANAGEMENT, L.P.:</p> <p>14 Robert J. Feinstein (Via Zoom) PACHULSKI STANG ZIEHL & JONES LLP 15 780 Third Avenue, 34th Floor New York, New York 10017-2024 16 (212) 561-7700 rfeinstein@pszjlaw.com 17 18 ON BEHALF OF THE WITNESS:</p> <p>19 Frances A. Smith ROSS & SMITH, PC 20 700 N. Pearl Street, Suite 1610 Dallas, Texas 75201 21 (214) 377-7879 frances.smith@judithwross.com 22 23 Debra A. Dandeneau BAKER & MCKENZIE, LLP 452 Fifth Avenue 24 New York, New York 10018 (212) 626-4875 debra.dandeneau@bakermckenzie.com 25</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
 Conducted on July 21, 2021

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| 4 | NUMBER | DESCRIPTION | 4 | NUMBER | DESCRIPTION |
| 5 | Exhibit 46 | Notice of Transfer of Claim Other Than for Security | 5 | Exhibit 63 | Subpoena to Testify at a Deposition in a Bankruptcy Case (or Adversary Proceeding) |
| 6 | Exhibit 47 | 04/19/2017 E-mail, Isaac Leventon to JP Sevilla, with Attachment HCMUBS005251 - HCMUBS005268 | 6 | Exhibit 64 | Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding) |
| 7 | Exhibit 48 | PowerPoint Presentation: Settlement Analysis HCMUBS005304 - HCMUBS005321 | 7 | Exhibit 65 | Confidentiality Agreement |
| 8 | Exhibit 49 | 11/29/2012 through 12/10/2012 E-mail Chain, with Attachments UBSPROD4837276 - UBSPROD4837350 | 8 | Exhibit 66 | 05/06/2016 through 05/07/2016 E-mail Chain JS_000001 - JS_000003 |
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| 11 | Exhibit 52 | 09/20/2017 E-mail Chain, with Attachments HCMUBS002221 - HCMUBS002242 | 11 | | |
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| PROCEEDINGS | |
|--|---|
| THE VIDEOGRAPHER: Here begins disk No. 1 in the videotaped deposition of Jean Paul Sevilla. This is regarding the Highland Capital Management, LP. This is in the matter of UBS Securities LLC and UBS AG London Branch versus Highland Capital Management, LP in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, filed as Case No. 19-34054-SGJ11. Today's date is Wednesday, July 21st, 2021. Our time on the video monitor is 9:40 a.m. Videographer today is Brian Krieger representing PlanetDepos. This video deposition is taking place at Butler Snow, 2911 Turtle Creek Boulevard, Suite 1400 in Dallas, Texas. Would counsel please voice identify themselves and whom they represent. | MS. SMITH: Frances Smith with Ross & Smith on behalf of JP Sevilla. |
| MS. DANDENEAU: Debra Dandeneau from the firm of Baker McKenzie here on behalf of Jean Paul Sevilla. | MS. TOMKOWIAK: Sarah Tomkowiak and Shannon McLaughlin on behalf of -- of Latham & Watkins on behalf of UBS. |

MR. FEINSTEIN: Via Zoom, Robert Feinstein, Pachulski Stang Ziehl & Jones, counsel for defendant Highland Capital Management, LP.

THE VIDEOGRAPHER: The court reporter today is Micheal Johnson also representing PlanetDepos. If the court reporter would please swear in the witness.

JEAN PAUL SEVILLA, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION

BY MS. TOMKOWIAK:

Q Good morning, Mr. Sevilla.

A **Good morning.**

Q Have you ever been deposed before?

A **I have.**

Q Okay. So we will skip a lot of the ground rules and we'll get right into it. I will just ask that if you do not answer -- if you don't understand my question, please ask me to clarify. Otherwise, I'm going to assume that you do understand my question. Is that fair?

A **Yes.**

Q Okay. And you understand that you're

testifying today here under oath?

A **Yes.**

Q How many times have you been deposed?

A **Three or four.**

Q And generally speaking, what types of matters?

A **Both commercial litigation. One -- both commercial litigation cases.**

Q Okay. Are you an attorney?

A **Yes.**

Q What type of law do you practice?

A **Corporate, transactional for the most part.**

Q Where are you barred?

A **New York, Texas and California.**

Q Where did you obtain your law degree?

A **University of North Carolina at Chapel Hill.**

Q And when did you get your JD?

A **2007.**

Q Do you have any other professional licenses?

A **I don't believe so.**

Q And you have a bachelor's degree, correct?

A **Yes.**

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| <p>13</p> <p>1 Q From the United States Naval Academy?</p> <p>2 A Correct.</p> <p>3 Q Did you serve in the Navy?</p> <p>4 A Yes.</p> <p>5 Q Approximately when did your service end?</p> <p>6 A 2006.</p> <p>7 Q Were you honorably discharged?</p> <p>8 A Yes.</p> <p>9 Q Where are you currently employed?</p> <p>10 A Skyview Group.</p> <p>11 Q What does Skyview Group do?</p> <p>12 A Skyview Group is a -- effectively a</p> <p>13 consultancy, but a back and middle office services</p> <p>14 provider to financial services firms, banks -- and</p> <p>15 banks in the financial services industry.</p> <p>16 Q What does it mean to provide back and</p> <p>17 middle services?</p> <p>18 A So Skyview provides accounting support,</p> <p>19 recruiting, HR, IT. I'm sure I'm forgetting some,</p> <p>20 but generally that sort of back and middle office</p> <p>21 functionality that you would find at a financial</p> <p>22 services firm.</p> <p>23 Q When did you start at Skyview?</p> <p>24 A March 1st of this year.</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 Early this year. I don't know exactly</p> <p>3 when.</p> <p>4 Q Do you know who owns Skyview?</p> <p>5 A Yes.</p> <p>6 Q Who?</p> <p>7 A Scott Ellington.</p> <p>8 Q Anyone else?</p> <p>9 A No.</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 Yes.</p> <p>13 Q And who is that?</p> <p>14 A It's a long list.</p> <p>15 Q Go for it.</p> <p>16 A Just start hitting names?</p> <p>17 Q Yeah.</p> <p>18 A Brian Collins, Frank Waterhouse, Will</p> <p>19 Mabry, Matt DiOrio, Stephanie Vitiello, Isaac</p> <p>20 Leventon, Brad McKay. The employee count is north</p> <p>21 of 30 and most of those -- most, if not all, were</p> <p>22 ex-Highland employees, so it's a substantial</p> <p>23 percentage of my coworkers are ex-Highland people.</p> <p>24 Q Were they all recruited by Mr. Ellington?</p> <p>25 A I wouldn't characterize it that way.</p> |
| <p>14</p> <p>1 A Managing director.</p> <p>2 Q Who hired you at Skyview?</p> <p>3 A I don't know if it was an individual</p> <p>4 per se. Mr. Ellington owns Skyview, so I would</p> <p>5 say it's his decision to employ me ultimately.</p> <p>6 Q And by Mr. Ellington, you're referring to</p> <p>7 Scott Ellington?</p> <p>8 A Yes.</p> <p>9 Q As managing director, what are your duties</p> <p>10 and responsibilities, generally speaking?</p> <p>11 A Fairly varied at this point. I support</p> <p>12 our clients' private equity investments, I work on</p> <p>13 internal Skyview matters as the business is being</p> <p>14 sort of built up. It's a fairly new enterprise.</p> <p>15 And then tasks that can come from our clients,</p> <p>16 ranging from, you know, questions related to</p> <p>17 potentially compliance questions or things of that</p> <p>18 ilk.</p> <p>19 Q Are you in the legal department?</p> <p>20 A I guess technically. Yeah. Yes.</p> <p>21 Q Who do you report to?</p> <p>22 A Mr. Ellington.</p> <p>23 Q And what's his title?</p> <p>24 A President, I believe.</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 They were hired by Skyview, so by</p> <p>4 extension, if you want to say it that way, I guess</p> <p>5 that's fair.</p> <p>6 Q Does Ms. Katie Lucas work there?</p> <p>7 A Yes. She is on leave, though. She has</p> <p>8 not worked on anything, as far as I know, though.</p> <p>9 Does she work there? I think she's technically an</p> <p>10 employee, but she's not actively doing stuff, as</p> <p>11 far as I know.</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 What do you mean by affiliated?</p> <p>16 BY MS. TOMKOWIAK:</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 He doesn't own it. He doesn't work there.</p> <p>22 I think he's in control of entities that are</p> <p>23 Skyview clients, currently.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q What do you mean by control?</p> |

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| <p>17</p> <p>1 A For example, he's the president of 2 NexPoint Advisors and NexPoint Advisors is a 3 client. 4 Q Let me put it this way. Does Mr. Dondero 5 have any financial interest in Skyview? 6 A He does not. 7 Q Who sets your salary? 8 A Mr. Ellington. 9 Q And is Skyview your only source of income 10 currently? 11 A Yes. No, it is not. 12 Q What other source of income do you have? 13 A Well, actually it is. I'm on -- I still 14 serve on several portfolio company boards and I'm 15 correcting myself because those board fees are 16 going back to the funds that own the equity 17 interest, so my original answer stands. My only 18 source of income is Skyview. 19 Q Okay. And how much do you make? 20 A There's a deferred component. My base is 21 275,000 and my annual bonus thus far for this 22 year, I believe I've been paid 350,000. 23 Q Who decides whether and how much you get 24 for a bonus? 25 A It's a new company, so I'm not sure going</p> | <p>19</p> <p>1 A Sure. I was hired into the legal group. 2 My title was corporate counsel. I reported to 3 Thomas Surgent. And you asked for the 4 progression; is that right? 5 Q Yes. And I'm happy if you'd like to step 6 through it myself, but if you -- 7 A Yeah, yeah. About a year in, my duties 8 expanded and so my title was changed to assistant 9 general counsel from corporate counsel. That 10 would have been in 2013. 11 Q Did you still report to Mr. Surgent at 12 that time? 13 A Yes. Assistant general counsel was a 14 title that I would then have until the end of my 15 time at Highland. But I would say in 2018, in 16 addition to my duties in the legal group and sort 17 of consistent with my duties within the legal 18 group, portions of the private equity business 19 were transferred to legal, but I started working 20 more on the portfolio companies within the private 21 equity business, culminating in, I guess the 22 beginning of 2020, where my title changed to 23 cohead of private equity and assistant general 24 counsel all within the legal group. 25 Q Did you report to Thomas Surgent for that</p> |
| <p>18</p> <p>1 forward, but I would say the president of the 2 company decided. 3 Q That's Mr. Ellington? 4 A Yes. 5 Q And how does that salary compare to your 6 salary at Highland Capital Management? If I say 7 HCM, is that -- 8 A Sure. 9 Q How is your salary compared to your salary 10 at HCM? 11 A Consistent with what I was paid at HCM. 12 Q So let's turn to HCM. During what period 13 of time were you employed by HCM? 14 A From 2012 through 2021. 15 Q How did you come to start working for HCM? 16 A Can you be a little more specific? 17 Q Sure. Did you apply? Did someone reach 18 out to you? How did you get that job? 19 A It was through a headhunter. 20 Q Through a headhunter? 21 A Yes. 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 A I believe I reported to him for most of 3 the time. There may have been a period in maybe 4 2018 that I didn't. But at the end of my tenure, 5 I reported to him and certainly during the first 6 several years at Highland, I reported to him as 7 well. 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 A If you could tell me what you mean by it. 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 A I don't remember there being a dotted line 19 as it relates to me. But practically speaking, I 20 would work with Mr. Ellington directly, 21 irrespective of whether I was Mr. Surgent's direct 22 report, as well as Mr. Dondero from time to time. 23 Q Did anyone report to you? 24 A At different times in -- at Highland, yes. 25 Q And to the best of your recollection, who</p> |

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| <p>21</p> <p>1 reported to you?</p> <p>2 A Cameron Baynard, Sean Fox. I think those</p> <p>3 would have been my only direct reports.</p> <p>4 Q And generally speaking, what were your</p> <p>5 duties as associate general counsel?</p> <p>6 A Assistant general counsel.</p> <p>7 Q I'm sorry, assistant general counsel. I</p> <p>8 apologize.</p> <p>9 A It's okay. Generally anything in the</p> <p>10 legal group that required assistance. It could be</p> <p>11 corporate matters relating to fund -- fund</p> <p>12 documents or launching new funds, it could have</p> <p>13 been managing some litigation, but kind of a wide</p> <p>14 range of sort of a mishmash of both kind of legal</p> <p>15 and sometimes nonlegal workflows and tasks.</p> <p>16 Q When did you leave HCM?</p> <p>17 A I believe my last day was February 28th of</p> <p>18 2021.</p> <p>19 Q Why did you leave?</p> <p>20 A I was terminated.</p> <p>21 Q Okay. Who terminated you?</p> <p>22 A Mr. Seery.</p> <p>23 Q While you were employed, you mentioned</p> <p>24 working with portfolio companies. Did you work</p> <p>25 with specific Highland funds?</p> | <p>23</p> <p>1 Q And when I say Highland, I mean HCM.</p> <p>2 A Yes. Understood.</p> <p>3 Q So you didn't divide up your time spent</p> <p>4 working for different Highland entities or funds?</p> <p>5 A What do you mean by that?</p> <p>6 Q And that was vague. You didn't, like,</p> <p>7 write down your time or somehow submit an invoice</p> <p>8 or something like that?</p> <p>9 A No.</p> <p>10 Q Okay. Were you paid by HCM on an hourly</p> <p>11 basis or just a salary arrangement?</p> <p>12 A Salaried.</p> <p>13 Q And you said it was relatively consistent</p> <p>14 with the -- your salary at Skyview?</p> <p>15 A Yes.</p> <p>16 Q And you also had an opportunity to receive</p> <p>17 a bonus?</p> <p>18 A Yes.</p> <p>19 Q Are you familiar with an entity called</p> <p>20 CPCM LLC?</p> <p>21 A Yes.</p> <p>22 Q What is that?</p> <p>23 A That is an entity that is a wholly owned</p> <p>24 subsidiary of Skyview. Skyview's legal name is</p> <p>25 Highgate Consulting Group, Inc. It uses a dba in</p> |
| <p>22</p> <p>1 A Yes.</p> <p>2 Q Okay.</p> <p>3 A Sorry, what do you mean -- work with</p> <p>4 specific Highland funds, what do you mean by that?</p> <p>5 Q Like would you have done, just picking a</p> <p>6 fund, CDO Opportunity Master Fund, would you have</p> <p>7 done work specifically for that fund or would you</p> <p>8 say that your work was undertaken on behalf of</p> <p>9 HCM, as opposed to any particular fund?</p> <p>10 A I mean, my work was -- I mean, HCM was my</p> <p>11 employer. HCM is in the business of managing</p> <p>12 funds, among other things, so I don't necessarily</p> <p>13 distinguish between the two. But you mentioned</p> <p>14 portfolio companies, you know, to the extent a</p> <p>15 fund had an interest, an equity interest or some</p> <p>16 other interest in a portfolio company, my work for</p> <p>17 that portfolio company would have been in</p> <p>18 connection with managing -- Highland managing that</p> <p>19 fund.</p> <p>20 Q Who paid you at Highland? Was it just</p> <p>21 Highland?</p> <p>22 A Yes.</p> <p>23 Q Okay. So you weren't paid by any entity</p> <p>24 other than Highland?</p> <p>25 A No.</p> | <p>24</p> <p>1 Texas, but that is an entity owned by Skyview that</p> <p>2 essentially houses Skyview employee claims,</p> <p>3 compensation claims.</p> <p>4 Q So just so I understand. So Skyview's</p> <p>5 legal name is Highgate Consulting Group; is that</p> <p>6 right?</p> <p>7 A Yes.</p> <p>8 Q And it does business as Skyview in Texas?</p> <p>9 A Correct.</p> <p>10 Q And CPCM is a wholly owned subsidiary of</p> <p>11 Highgate?</p> <p>12 A Yes.</p> <p>13 Q You submitted a claim in the underlying</p> <p>14 bankruptcy case in this matter; is that right?</p> <p>15 A Yes.</p> <p>16 Q And you've since transferred that claim to</p> <p>17 CPCM?</p> <p>18 A Yes.</p> <p>19 Q Okay.</p> <p>20 (Deposition Exhibit 46 marked for</p> <p>21 identification.)</p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q I'm going to hand you what has been</p> <p>24 previously marked as Exhibit 46. To be clear,</p> <p>25 what we have just marked as Exhibit 46, it has not</p> |

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| <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 A I do. 16 Q Okay. And this is the document 17 transferring your claim to CPCM on March 22nd, 18 2021? 19 A Yes. 20 Q And that's your signature on the second 21 page? 22 A Yes. 23 Q Okay. Did you approach CPCM or did it 24 approach you? 25 MS. SMITH: Objection, relevance.</p> | <p>27</p> <p>1 A I believe they were one and the same. 2 They changed it from HCMLP to Highland Capital at 3 some point, but to me they're synonymous. 4 Q Any others? 5 A Those are the only Highland e-mail 6 addresses I had. 7 Q Did you ever use your personal e-mail 8 address in connection with your work for HCM? 9 A No. 10 Q After you were terminated in 11 February 2021, did you have a chance to clean out 12 your office? 13 A After I was terminated? 14 Q Uh-huh. 15 A Not after. It was before. 16 Q Okay. So you -- 17 A I didn't have an office. I had a desk. 18 Q Okay. But you did have a chance to clean 19 out your desk? 20 A I did. 21 Q So any files that you had on your desk 22 were left at HCM? 23 A To the -- not every file. 24 Q Okay. That's a better question. Did you 25 take any files with you?</p> |
| <p>26</p> <p>1 A I don't think either side approached the 2 other. Transferring my compensation claim to this 3 entity was an expectation of my employer. 4 BY MS. TOMKOWIAK: 5 Q I see. So that's why you sold your claim 6 to CPCM? 7 MS. SMITH: Objection, relevance. 8 A I wouldn't characterize it as sold. I 9 assigned it. 10 BY MS. TOMKOWIAK: 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 A Yes. 15 BY MS. TOMKOWIAK: 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 A jsevilla@hcmlp.com was my Highland e-mail. 24 Q Did you ever use 25 jsevilla@highlandcapital.com?</p> | <p>28</p> <p>1 A I took some files with me, yes. 2 Q What did you take with you? 3 A Information relating to portfolio 4 companies that I was still on the board on -- 5 board of. To the extent I had any personal 6 effects or personal files, data, you know, in my 7 files, or information or -- information related to 8 NexPoint or HCMFA, which were shared services 9 recipients that I was still going to be working 10 on. I would say that's the -- that's the 11 universe. 12 Q What companies do you still sit on the 13 board of? 14 A CCS Medical, TerreStar, Lake Las Vegas. I 15 believe that's it. 16 Q And are all of those still affiliated with 17 HCM? 18 MS. SMITH: Objection, form. 19 A No. 20 BY MS. TOMKOWIAK: 21 Q No? 22 A No. 23 Q Were they ever? 24 A What do you mean by affiliated? 25 MS. SMITH: Objection.</p> |

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| <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 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. 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 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. 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 I do now, if we'd like to use -- I was -- 3 Q I'm trying to understand how you use the 4 word. 5 A 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. 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 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. 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 About what?</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 Inquiring about her newborns. Personal 19 pleasantries. 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> |

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| <p>33</p> <p>1 relationship with any of them? 2 MS. SMITH: Objection, form. 3 A I would say so. 4 BY MS. TOMKOWIAK: 5 Q Which ones? 6 A Mr. DiOrio, Mr. Leventon, to some degree 7 Mr. Ellington, but I mean, I would say in the 8 nature of colleagues who inquire about each 9 other's personal lives. 10 Q Since leaving Highland, have you had any 11 communications with any current employees of 12 Highland? 13 MS. SMITH: Objection, form. 14 A Yes. 15 BY MS. TOMKOWIAK: 16 Q Who? 17 A I sit on the board of CCS Medical with 18 Cameron Baynard and Sean Fox. So in connection 19 with board functionality, I would say we have 20 communicated. I have communicated with Mr. Seery. 21 I have communicated with Tim Cournoyer. I think 22 that would be it. 23 Q What were the nature of your 24 communications with Mr. Seery? 25 A Relating to a portfolio company called</p> | <p>35</p> <p>1 Highland should settle that litigation? 2 A No. 3 Q What is your general understanding of that 4 litigation? 5 A It began in -- around the time of the 6 economic crisis, 2008, 2009, related to a 7 warehouse facility, or something like it. I mean, 8 that's pretty much the extent of it. 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 A Yes. I mean, generally that's my 14 understanding of what the adversity is about, a 15 failed loan warehouse or some sort of warehouse 16 facility that resulted in financial losses. 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 A Only anecdotally from the Highland BK, 21 having listened to certain things in the Highland 22 bankruptcy. 23 BY MS. TOMKOWIAK: 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 Cornerstone Healthcare Group. 2 Q And what were the nature of your 3 communications with Mr. Cournoyer? 4 A Cournoyer. 5 Q Cournoyer. 6 A Personal. 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 A I've heard of it. 12 Q You've heard of it? 13 A Yes. 14 Q Okay. So what role, if any, did you play 15 in managing that litigation for Highland? 16 MS. SMITH: Objection, form. 17 A None. 18 BY MS. TOMKOWIAK: 19 Q None? 20 A None. 21 Q What role did you play, if any, in 22 responding to discovery requests from UBS in that 23 matter? 24 A None. 25 Q Did you play any role in analyzing whether</p> | <p>36</p> <p>1 A At which time? I'm sorry. 2 Q During the time that you were employed at 3 Highland. 4 A Well, I-- 5 MS. SMITH: Objection, form. 6 A My last year of employment was during the 7 pendency of the bankruptcy, so I would have 8 learned more about the UBS lawsuit. But prior to 9 that, I had no real knowledge or understanding 10 about what it was about. 11 MS. TOMKOWIAK: Can you mark that as 47. 12 (Deposition Exhibit 47 marked for 13 identification.) 14 BY MS. TOMKOWIAK: 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 A It is. 22 Q Do you have any reason to doubt that you 23 received this e-mail on April 19th, 2017? 24 A No. 25 MS. SMITH: I'm going to raise an</p> |

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| <p style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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 style="text-align: right;">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> |

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| <p>41</p> <p>1 A Yes.</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 A I'm not familiar with the context of</p> <p>8 settlement, but these steps -- I have some</p> <p>9 familiarity with the steps, sort of without --</p> <p>10 without that context, without a settlement</p> <p>11 backdrop or context of settlement.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Okay. And which steps are those?</p> <p>14 A The ATE policy from Sentinel. I mean,</p> <p>15 really Step 1. I mean, the rest of the steps sort</p> <p>16 of, I guess, intuitively make sense, but I never</p> <p>17 really -- I'm not familiar with the context here.</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>43</p> <p>1 A Yes.</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 A Yes.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Were you part of Mr. Ellington's team?</p> <p>8 A Yes.</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 A I'm not certain of the \$94 million part.</p> <p>18 The \$100 million ATE policy does -- I am familiar</p> <p>19 with. So, yes, generally I'm familiar with this.</p> <p>20 BY MS. TOMKOWIAK:</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>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 A I guess it's intuitive that there would be</p> <p>9 a settlement step, but I don't recall this context</p> <p>10 being explained to me or otherwise knowing of it</p> <p>11 in real time, if that makes sense.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Do you know whether any of the steps on</p> <p>14 this page actually happened?</p> <p>15 A I believe the ATE policy was entered into.</p> <p>16 I don't know the rest.</p> <p>17 Q And this slide contemplates buying a</p> <p>18 \$100 million policy; is that right?</p> <p>19 A Yes.</p> <p>20 Q If you go to slide 10, and that's Bates</p> <p>21 ending 61.</p> <p>22 A Yes.</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>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 A I'm assuming it does.</p> <p>5 BY MS. TOMKOWIAK:</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 A No.</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 A I don't.</p> <p>13 Q You weren't part of those, if they did?</p> <p>14 A No.</p> <p>15 Q Who else was on Scott's team?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A Thomas Surgent, Tim Cournoyer, Stephanie</p> <p>18 Vitiello, Lauren Thedford, Helen Kim. Obviously</p> <p>19 the team changed over time. I'm sort of</p> <p>20 mentioning the individuals towards the end there.</p> <p>21 There were other litigators over time who came --</p> <p>22 you know, who came and went and corporate</p> <p>23 attorneys as well. But it's the legal group. It</p> <p>24 was the Highland legal group.</p> <p>25</p> |

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| <p style="text-align: right;">45</p> <p>1 BY MS. TOMKOWIAK: 2 Q What about Mr. Leventon? 3 A Mr. Leventon. 4 Q What about Mr. DiOrio? 5 A Mr. DiOrio, Ms. Irving. 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 A Sorry, the pages are upside down, so I'm 16 having to -- 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 A Okay. 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 A I don't. 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 A I don't. 3 BY MS. TOMKOWIAK: 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 A I don't. 12 BY MS. TOMKOWIAK: 13 Q And it says here that the ATE premium is 14 all assets in HFP CDO fund. Do you see that? 15 A Yes. 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 A Yes. 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> |

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1 **A These look familiar. I don't know if this**
2 **is the final asset list or if this is**
3 **comprehensive. I can take it at face value, but I**
4 **don't have personal knowledge about the**
5 **completeness or incompleteness of it.**
6 **BY MS. TOMKOWIAK:**
7 Q Okay. Do you know who would?
8 **A Sorry, we're referring to what? Can you**
9 **restate what we're -- exactly what we're talking**
10 **about.**
11 Q Who would have knowledge about this list
12 of assets?
13 MS. SMITH: Objection, form.
14 **A I mean, Highland accounting, I guess,**
15 **relating to these entities.**
16 **BY MS. TOMKOWIAK:**
17 Q Who would have pulled together something
18 like this?
19 MS. SMITH: Objection, form.
20 **A In what year? Like when?**
21 **BY MS. TOMKOWIAK:**
22 Q In 2017.
23 **A Probably Mr. Stoops, the chief accounting**
24 **officer. Mr. Klos. I think he was -- I don't**
25 **know if he was the controller then, but he -- I**

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1 **remember him as the controller. I don't know who**
2 **else they would have consulted, but that's who I**
3 **would sort of assume.**
4 Q Okay. And you don't know who put this
5 specific list together?
6 **A Not that I know of, no. Not that I**
7 **recall.**
8 Q I am going to switch topics.
9 MS. TOMKOWIAK: I'm good to keep going,
10 but does anybody else want to take a break now?
11 MS. SMITH: I could actually go to the
12 ladies room.
13 MS. TOMKOWIAK: We can go off the record.
14 THE VIDEOGRAPHER: We are off the record
15 at 10:30 a.m.
16 (Recess taken from 10:30 a.m. CDT to
17 10:41 a.m. CDT)
18 THE VIDEOGRAPHER: The time is 10:41 a.m.
19 We are back on the record.
20 BY MS. TOMKOWIAK:
21 Q Mr. Sevilla, earlier in the day you said
22 that you were familiar with an entity named
23 Sentinel; is that right?
24 **A Yes.**
25 Q What is Sentinel?

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1 **A An insurance company.**
2 Q Do you recall when Sentinel was formed?
3 **A 2011 -- or 2012, I believe.**
4 Q Were you involved in that?
5 **A I was.**
6 Q Do you recall at the time what the purpose
7 was of forming Sentinel?
8 **A The purpose was for it to be an insurance**
9 **company was my understanding.**
10 Q What type of insurance would it provide?
11 **A You're saying at formation?**
12 Q Yes.
13 **A Like what was the intention? I don't know**
14 **what exactly the strategic intention was. I know**
15 **the name -- the legal name has the word**
16 **reinsurance in it, but I -- at the time of**
17 **incorporation, I don't know what the strategic**
18 **vision was for it so I don't know what was**
19 **intended.**
20 Q Or what types of policies it would issue
21 or anything like that?
22 **A Correct.**
23 MS. TOMKOWIAK: We're on 49, right?
24 **A Should I set these to the side?**
25

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1 BY MS. TOMKOWIAK:
2 Q Yes, go ahead. We'll give those to the
3 court reporter at the end of the deposition.
4 MS. TOMKOWIAK: If you could mark that as
5 Exhibit 49.
6 (Deposition Exhibit 49 marked for
7 identification.)
8 BY MS. TOMKOWIAK:
9 Q Mr. Sevilla, this is a lengthy document.
10 Just to orient ourselves a bit, this is an e-mail
11 from Sara Galletly, if I'm pronouncing that right,
12 at Maples to you. The date is December 10th,
13 2012, and the subject line is Sentinel
14 Restructure. Do you see that?
15 **A Yes.**
16 Q Okay. And --
17 MS. SMITH: Sorry, is the debtor going to
18 waive the privilege as to this document too, to
19 the extent it's privileged?
20 MR. FEINSTEIN: Yes, that's correct.
21 BY MS. TOMKOWIAK:
22 Q Do you know who Ms. Galletly is?
23 **A I don't recall.**
24 Q Okay. What about Maples in general?
25 **A A law firm.**

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| <p>53</p> <p>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 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</p> | <p>55</p> <p>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.?</p> |
| <p>54</p> <p>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</p> | <p>56</p> <p>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> |

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1 **A I was working on the Sentinel**
2 **incorporation with outside counsel.**
3 Q Do you recall who asked you to work on
4 that?
5 **A Yes.**
6 Q Who is that?
7 **A Mr. Ellington.**
8 Q Anybody else?
9 **A Not that I recall.**
10 Q Do you know who came up with this
11 structure for Sentinel?
12 MS. SMITH: Objection, form.
13 **A My recollection is outside counsel.**
14 **BY MS. TOMKOWIAK:**
15 Q Outside counsel at where?
16 **A I don't remember whether it was at**
17 **Sutherland or at Maples. I don't recall.**
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 **A I don't recall.**
23 **BY MS. TOMKOWIAK:**
24 Q Did you have any role in reviewing the M&A
25 that are attached to this e-mail?

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1 **A I'm sure I would have reviewed them, but**
2 **it's a Cayman document so I wouldn't have had had**
3 **much to say about it.**
4 Q Do you know why Sentinel was incorporated
5 in the Caymans?
6 **A I don't know the reasoning behind it.**
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 **A Again, I don't know what the strategic**
12 **thought process was. At least I don't recall as**
13 **to why Cayman.**
14 **BY MS. TOMKOWIAK:**
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 **A Yes.**
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

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1 remaining 30 percent.
2 Do you see that?
3 **A Yes.**
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 **A Yes.**
9 MS. SMITH: Objection, form.
10 **A I see that.**
11 **BY MS. TOMKOWIAK:**
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 **A I believe that's what the e-mail says.**
19 **BY MS. TOMKOWIAK:**
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 **A I'd need to see them.**
25

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1 **BY MS. TOMKOWIAK:**
2 Q Do you know who would have those?
3 **A The entity --**
4 MS. SMITH: Objection, form.
5 **A The entities themselves. I don't have**
6 **them.**
7 **BY MS. TOMKOWIAK:**
8 Q So do you mean the Sentinel entities?
9 **A Yes.**
10 Q Did Sentinel have an office?
11 **A I believe it had a registered office.**
12 Q Did it have a physical office?
13 **A Not that I know of.**
14 Q Did it have employees?
15 **A Not that I know of.**
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 **A Yes.**
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 **A Not that I recall.**

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| <p>61</p> <p>1 Q So to the best of your recollection, 2 you're just asking for an update? 3 A I don't recall there being urgency per se. 4 I don't know -- I don't remember much other than 5 that. 6 Q And you don't recall there being a 7 specific time frame or deadline by which you were 8 supposed to -- 9 A I don't think so. 10 Q Who is Tabor? Tabor. How do I say that? 11 A Tabor Pittman. 12 Q Tabor Pittman, who is that? 13 A He was a lawyer in the Highland legal 14 group. 15 Q To your knowledge, did Mr. Dondero or 16 Mr. Ellington make any investment in Sentinel? 17 MS. SMITH: Objection, form. 18 A I recall that they did, yes. 19 BY MS. TOMKOWIAK: 20 Q In what form? 21 A I don't recall exactly in what form, but I 22 have a general recollection that they did 23 capitalize the entity. I don't remember the 24 amount or the form, but I have a general 25 recollection that that was done.</p> | <p>63</p> <p>1 A No, not that I recall. 2 Q Did anybody ever tell you to keep Sentinel 3 confidential? 4 A I don't recall being told that. 5 Q Did anybody ever tell you not to widely 6 discuss the existence of Sentinel within Highland? 7 A I don't remember getting direction like 8 that, no. 9 Q Not in words or substance? 10 A No. No, I don't recall it being a secret. 11 Q Do you recall it being kept to a small 12 group of people? 13 A I think a limited group of people provided 14 services to it, but I don't remember a mandate 15 that said keep it a secret. 16 Q Did that ever change at any point after 17 2012? 18 A I'm sorry, what? 19 Q Keeping it a secret or keeping it limited 20 to a smaller group of people. 21 MS. SMITH: Objection, form. 22 A I don't remember that being a directive, 23 to keep it a secret. 24 BY MS. TOMKOWIAK: 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 A Yes. 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 A I don't think that's exactly right. Yes, 8 that's true. I wasn't sure exactly what kind of 9 insurance they intended to write in the -- I think 10 initially -- actually, I think initially there was 11 a thought of what kind of policies it would write, 12 D&O policies and the like, but as far as more than 13 that, I don't recall. 14 BY MS. TOMKOWIAK: 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 A Yes. 20 MS. SMITH: Objection, form. 21 BY MS. TOMKOWIAK: 22 Q Did anybody else capitalize Sentinel? 23 A Not that I recall. 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 A No, I don't remember that. 4 BY MS. TOMKOWIAK: 5 Q What about its ownership? Did anybody 6 instruct you to keep its ownership structure a 7 secret? 8 A No, no one instructed me, but I do recall 9 there being confidentiality rules in Cayman around 10 ownership, so I think it would have been 11 some things that was -- wasn't particularly, you 12 know, widely disseminated, just in light of that, 13 but I don't -- that would be the only sort of -- 14 when you mention that, that's what I think of. 15 Q Is that the reason that Sentinel was 16 incorporated in the Cayman Islands? 17 A I don't know. 18 MS. SMITH: Objection, form. 19 A I don't know. 20 BY MS. TOMKOWIAK: 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 A I don't know if I would call it more</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

| | |
|--|--|
| <p style="text-align: right;">69</p> <p>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.</p> | <p style="text-align: right;">71</p> <p>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.</p> |
| <p style="text-align: right;">70</p> <p>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</p> | <p style="text-align: right;">72</p> <p>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> |

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1 from Stephen Beck. Do you know who Stephen Beck
2 is?
3 **A I have a general recollection that he's a**
4 **tax practitioner, an accounting practitioner.**
5 Q External to Highland?
6 **A Yes.**
7 Q And do you know why you're being copied on
8 this?
9 **A I don't know why exactly.**
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 **A I recall this happening. I recall hearing**
24 **about that feedback.**
25

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1 BY MS. TOMKOWIAK:
2 Q Do you recall why they wanted the
3 structure to be simplified?
4 **A I don't recall --**
5 MS. SMITH: Objection, form.
6 THE WITNESS: Sorry.
7 **A I don't remember the reason.**
8 BY MS. TOMKOWIAK:
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 **A At a high level.**
14 Q What does it stand for?
15 **A Controlled Foreign Corporation.**
16 Q And at a high level, what is that?
17 **A It's a tax moniker. I don't -- I don't**
18 **remember -- I don't purport to be a specialist in**
19 **this. It's a company control -- a foreign company**
20 **controlled by another company, but that's pretty**
21 **much all I remember about what a CFC is.**
22 Q And then do you remember anything about
23 why they de-CFC'ed in October 2014?
24 **A I don't.**
25 Q In the chain -- in the later e-mail in the

75

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 **A Sorry, I'm trying to find where she writes**
6 **that.**
7 Q At the top.
8 **A Yeah.**
9 Q Top e-mail, second sentence.
10 **A GP structure, I don't recall what that --**
11 **general partner. I don't recall.**
12 Q Do you know what a topco is?
13 **A The entity at the top of the structure is**
14 **what I would refer to as a topco.**
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 **A I'm there.**
25 Q Okay. At the top it says: CFC

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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 **A I'll take it at face value. I don't have**
8 **direct recollection of the exact structure chart.**
9 BY MS. TOMKOWIAK:
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 **A Anthem. No, I don't recall that.**
16 BY MS. TOMKOWIAK:
17 Q Or Brave?
18 **A I don't recall when that was added.**
19 Q USP2 at the top right there, that refers
20 to Mr. Dondero, correct?
21 MS. SMITH: Objection, form.
22 **A I don't know whether it refers to him.**
23 BY MS. TOMKOWIAK:
24 Q Well, would you expect that USP means US
25 person?

77

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.**

80

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

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1 litigation funding business?
2 **A I would say all of them at different times**
3 **were litigation funders or contemplated litigation**
4 **funders. I don't want to represent that, but when**
5 **I-- when you asked what's SAS, litigation funding**
6 **business. And, you know, these are the entities**
7 **that effectuated that business.**
8 Q Do you know whose idea it was to form SAS?
9 **A I don't.**
10 Q Do you know when it was formed?
11 MS. SMITH: Objection, form.
12 **A It predated my time at Highland. I don't**
13 **know exactly when it was formed.**
14 **BY MS. TOMKOWIAK:**
15 Q When you arrived at Highland, it was
16 already in existence?
17 MS. SMITH: Objection, form.
18 **A That's my recollection.**
19 **BY MS. TOMKOWIAK:**
20 **Q What was the relationship between SAS and**
21 **Highland?**
22 MS. SMITH: Objection, form.
23 **A The relationship between the two?**
24 **BY MS. TOMKOWIAK:**
25 Q Yes.

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1 **A Is that the question?**
2 Q Yeah.
3 **A I don't think there was -- I mean, I don't**
4 **think there was a relationship between Highland**
5 **and SAS, other than Highland employees providing**
6 **services to SAS from time to time, but I-- that's**
7 **about as much as I knew.**
8 Q So there's no affiliation between Highland
9 and SAS?
10 MS. SMITH: Objection, form.
11 **A When you say affiliation, you mean --**
12 **BY MS. TOMKOWIAK:**
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 **A I believe SAS had offices.**
17 Q Do you know where?
18 **A In Cayman. In the Cayman Islands.**
19 Q In the US?
20 **A In the Cayman Islands.**
21 Q Just in the Cayman Islands?
22 **A Yeah.**
23 Q Okay. Did they have separate bank
24 accounts from Highland?
25 MS. SMITH: Objection, form.

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1 **A I don't know specifics as to bank**
2 **accounts.**
3 **BY MS. TOMKOWIAK:**
4 **Q Did they have any common ownership between**
5 **SAS and any Highland entity?**
6 MS. SMITH: Objection, form.
7 **A Any Highland entity?**
8 **BY MS. TOMKOWIAK:**
9 **Q Any Highland entity.**
10 MS. SMITH: Objection, form.
11 **A I can't recall directly. I know the**
12 **Highland ownership structure changed over time, so**
13 **I don't want to represent that I know Highland's**
14 **ownership structure at any moment.**
15 **BY MS. TOMKOWIAK:**
16 **Q Did Mr. Ellington form SAS?**
17 **A I don't --**
18 MS. SMITH: Objection, form.
19 **A I don't know exactly.**
20 **BY MS. TOMKOWIAK:**
21 **Q Did Mr. Ellington own SAS?**
22 MS. SMITH: Objection, form.
23 **A Did he own it? I don't think he owned it.**
24 **No, I don't think he owned it.**
25

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1 **BY MS. TOMKOWIAK:**
2 **Q Do you know who owned SAS?**
3 MS. SMITH: Objection, form.
4 **A I believe Mr. Ellington had a beneficial**
5 **interest. I don't know if I would consider that**
6 **the owner or I would break it down that way, but I**
7 **know he had a beneficial interest in the**
8 **litigation funding enterprise.**
9 **BY MS. TOMKOWIAK:**
10 **Q What does a beneficial interest mean?**
11 **A I'd refer to it as economics, an economic**
12 **interest.**
13 **Q What does that mean?**
14 **A I mean, nothing -- I mean, I mean it in**
15 **the simplest possible terms. I think he had an**
16 **ownership interest in the economics of whatever**
17 **the entity created or whatever the fruits of the**
18 **business were, I think he had an economic interest**
19 **in that.**
20 **Q So are you saying he got paid by SAS?**
21 MS. SMITH: Objection, form.
22 **A I don't know if he got paid by SAS.**
23 **BY MS. TOMKOWIAK:**
24 **Q So I'm still struggling to understand what**
25 **you mean by ownership interest in the economics of**

| | |
|--|--|
| <p style="text-align: right;">85</p> <p>1 SAS. How did he benefit from SAS?</p> <p>2 A I mean, I think one can own shares in</p> <p>3 something without necessarily being paid by them</p> <p>4 or being their employee, is sort of what I mean.</p> <p>5 Q So was he a shareholder of SAS?</p> <p>6 MS. SMITH: Objection, form.</p> <p>7 A I don't know if I would consider him a</p> <p>8 shareholder. I think -- the extent of what I know</p> <p>9 is that he had a beneficial interest in the</p> <p>10 litigation funding business.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q What about Mr. Dondero? Did he also have</p> <p>13 a beneficial interest in the litigation funding</p> <p>14 business?</p> <p>15 A I believe so.</p> <p>16 Q What about Mr. Leventon? Did he have a</p> <p>17 beneficial interest in the litigation funding</p> <p>18 business?</p> <p>19 A I don't know.</p> <p>20 Q What about you? Did you have a beneficial</p> <p>21 interest in the litigation funding business?</p> <p>22 A I did not.</p> <p>23 Q What about Mr. DiOrio?</p> <p>24 A I don't know.</p> <p>25 Q What services did Highland employees</p> | <p style="text-align: right;">87</p> <p>1 A He is not.</p> <p>2 Q Did you ever receive payments from SAS for</p> <p>3 these services?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 A I never received payment from SAS.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Did anybody else?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 A I don't know.</p> <p>10 BY MS. TOMKOWIAK:</p> <p>11 Q Why would Highland employees, including</p> <p>12 yourself, provide services for free?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A I don't know if they were for free. I</p> <p>15 know my only paycheck was from Highland.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q And did that paycheck from Highland</p> <p>18 include any compensation for the services that you</p> <p>19 provided to SAS?</p> <p>20 MS. SMITH: Objection, form.</p> <p>21 A I don't know. My paycheck from Highland</p> <p>22 was compensation for the services that I was</p> <p>23 assigned to work on.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q And were you assigned to work on projects</p> |
| <p style="text-align: right;">86</p> <p>1 provide to SAS?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A Diligence on potential litigation funding</p> <p>4 matters. That's largely the -- that's what I</p> <p>5 would consider the kind of material services</p> <p>6 provided were relating to kind of the litigation</p> <p>7 funding of cases of different cases as they arose</p> <p>8 from time to time.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Which Highland employees provided those</p> <p>11 services?</p> <p>12 A I don't have an exact -- I don't know the</p> <p>13 exact universe at any given time. I know I did</p> <p>14 from time to time.</p> <p>15 Q And to the best of your recollection, who</p> <p>16 else?</p> <p>17 A I believe Mr. Leventon did from time to</p> <p>18 time. I believe Ms. Irving did. Different</p> <p>19 Highland litigators at different points. Like I</p> <p>20 said, you'd have to narrow it down temporally.</p> <p>21 Q Mr. DiOrio?</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A I think he may have. I'm not certain.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q Is he a lawyer?</p> | <p style="text-align: right;">88</p> <p>1 for SAS?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I was.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Who assigned you to work on them?</p> <p>6 A Mr. Ellington.</p> <p>7 Q Anybody else?</p> <p>8 A Assigned me? No, just him.</p> <p>9 Q Anybody else tell you to work on SAS</p> <p>10 projects?</p> <p>11 A Tell me to?</p> <p>12 Q Ask you to. Anybody besides Mr. Ellington</p> <p>13 say, hey, here's something for SAS, can you help</p> <p>14 work on it?</p> <p>15 A No.</p> <p>16 Q Did you have an SAS management e-mail</p> <p>17 address?</p> <p>18 A Yes.</p> <p>19 Q And why is that?</p> <p>20 A To work on SAS litigation matters,</p> <p>21 litigation funding matters.</p> <p>22 Q Even though those were being done in your</p> <p>23 capacity as a Highland employee?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 A Yes.</p> |

| | |
|--|---|
| <p style="text-align: center;">89</p> <p>1 BY MS. TOMKOWIAK: 2 Q Was there a shared services agreement 3 between Highland and SAS? 4 A I don't know. 5 MS. SMITH: Objection, form. 6 BY MS. TOMKOWIAK: 7 Q I'm sorry, what? 8 A Sorry. I don't know. 9 Q Were you personally involved in finding 10 claims to fund? 11 A No. 12 Q Were you personally involved in doing 13 diligence, as you said? 14 A I had -- I have done that. 15 Q Do you recall any specific claims or 16 matters? 17 A Vaguely I have a recollection. It's been 18 quite some time since I did that. 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 A Yes. 24 BY MS. TOMKOWIAK: 25 Q In brief, what is that case?</p> | <p style="text-align: center;">91</p> <p>1 MS. SMITH: Objection, form. 2 A Again, the names look familiar, sound 3 familiar. I don't recall exactly what any of them 4 did in any -- at any given moment. 5 BY MS. TOMKOWIAK: 6 Q Do you know who came up with names like 7 Helpful or Clean or Courteous? 8 A No. 9 Q You don't? 10 A I don't. 11 Q To your knowledge, is SAS still a 12 functioning entity today? 13 MS. SMITH: Objection, form. 14 A I don't know if it is. 15 BY MS. TOMKOWIAK: 16 Q Do you still have an SAS management e-mail 17 account? 18 A I don't know. 19 Q When was the last time you used it? 20 A December of '20 was the last time I 21 recall. 22 Q When was the last time that you performed 23 services for SAS? 24 MS. SMITH: Objection, form. 25 A Summer of '19, I would say is the last</p> |
| <p style="text-align: center;">90</p> <p>1 A It was a case from 2003 involving a sale 2 of securities of a Mexican -- sale of shares of a 3 Mexican company. 4 Q Why were you talking about it in 2019? 5 MS. SMITH: Objection, form. 6 A I don't know why it would be brought up in 7 2019. I don't know what the relevance was to 8 Katie to Sam Dawson -- I need to remember to 9 brief -- I don't know what she had in mind when 10 she said that. I don't know. 11 BY MS. TOMKOWIAK: 12 Q Did SAS make any money off of that case? 13 A No. 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 A Yes. 18 Q Do you know anything about that entity? 19 MS. SMITH: Objection, form. 20 A The name looks familiar, but I don't have 21 specific knowledge of it. 22 BY MS. TOMKOWIAK: 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: center;">92</p> <p>1 time I remember doing work on SAS. 2 BY MS. TOMKOWIAK: 3 Q Does anybody at Skyview provide services 4 to SAS? 5 MS. SMITH: Objection, form. 6 A Not that I know of. 7 BY MS. TOMKOWIAK: 8 Q You can set that aside. 9 Mr. Sevilla, did you have any role in 10 preparing financial statements for Sentinel? 11 A Any role? I did not prepare financial 12 statements for Sentinel. 13 Q Did you review them? 14 A I think from time to time I've seen them, 15 but I wouldn't consider myself qualified to review 16 them in an official capacity. I'm sure I've seen 17 them from time to time. 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 BY MS. TOMKOWIAK: 23 Q Let me know when you're ready. And when 24 the court reporter is ready. 25 A Go ahead.</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,

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1 and page 1081.
2 **A Yes.**
3 Q This is a little small, so let me --
4 I'm --
5 **A Yeah.**
6 Q Let me know if you can't see something.
7 **A No. I see it.**
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 **A Okay.**
12 Q What's a CLO?
13 **A Collateralized Loan Obligation.**
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 **A I see that.**
20 **BY MS. TOMKOWIAK:**
21 Q Do you know who Sentinel acquired these
22 securities from?
23 **A I don't recall.**
24 Q Did you have any role in that?
25 **A I have a recollection of when the CLO**

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1 **assets were acquired. I don't remember who the**
2 **seller was, but I have a general recollection of**
3 **the circumstances around that purchase.**
4 Q What is your general recollection?
5 **A That the seller was Morgan Stanley or**
6 **Merrill Lynch. A bulge bracket bank. I don't**
7 **remember much more than that.**
8 Q Not a Highland-affiliated entity?
9 **A Not that I recall.**
10 Q Do you recall anything else about the
11 circumstances around those purchases?
12 **A I don't.**
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 **A Yes, I do. I do.**
17 Q Do you know what an investment at cost is?
18 **A At a high level.**
19 Q At a high level, what is that?
20 **A I think you would mark the investment at**
21 **what it cost you not to mark it. I could be**
22 **wrong. I could be wrong.**
23 Q Do you have any investment background?
24 **A Not directly, no, not -- not to speak**
25 **authoritatively on a term of art like that. I**

99

1 **don't want to lead you astray.**
2 Q Do you recall that Asset Holdings was a
3 wholly owned subsidiary of Sentinel?
4 MS. SMITH: Objection, form.
5 **A I don't recall if that's true.**
6 **BY MS. TOMKOWIAK:**
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 **BY MS. TOMKOWIAK:**
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 **A Okay. Go ahead.**
18 **BY MS. TOMKOWIAK:**
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 **A I've seen it before.**

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1 Q Okay. And so you've also seen before
2 reports from this independent auditor regarding
3 Sentinel?
4 **A I'm sure I have.**
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 **A Generally.**
9 Q What does that mean?
10 **A There is an issue that they feel the need**
11 **to articulate to make sure that the -- that their**
12 **findings and that their report are as accurate as**
13 **possible.**
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 **A That's what it says.**
19 **BY MS. TOMKOWIAK:**
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

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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?

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| <p>105</p> <p>1 A I don't remember.</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 A I did not.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Do you know who did?</p> <p>8 A I do not.</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 A No, I don't.</p> <p>18 Q If you look at the next page that's ending</p> <p>19 in 2231.</p> <p>20 A Okay.</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&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 A I don't recall exactly.</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 A I agree that's what it says.</p> <p>14 BY MS. TOMKOWIAK:</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 A I don't want to opine on what common</p> <p>19 ownership means in Cayman, so I'll leave it as to</p> <p>20 what it says. I don't have any further knowledge.</p> <p>21 BY MS. TOMKOWIAK:</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 A I think, based on this, it's the position</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 A Yes. Yes.</p> <p>5 Q And then it says that effective March 1st,</p> <p>6 2015, limits of D&O coverage were US\$ million per</p> <p>7 occurrence. Do you see that?</p> <p>8 A Yes.</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 A Generally, yes.</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 A I'm not -- I don't recall exactly. By SAS</p> <p>19 structure, you mean? I know there were universal</p> <p>20 policies. I don't know exactly which entities</p> <p>21 were covered, so I don't want to...</p> <p>22 BY MS. TOMKOWIAK:</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 that the auditor took.</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 A Its auditors.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Its auditors?</p> <p>8 A I would think so.</p> <p>9 Q So those would be the folks at Crowe</p> <p>10 Horwath?</p> <p>11 A I don't know who -- what firm Sentinel</p> <p>12 uses today. It appears this was issued by that</p> <p>13 firm, Crowe.</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 BY MS. TOMKOWIAK:</p> <p>19 Q Let me know when you're ready.</p> <p>20 (Witness reviews document.)</p> <p>21 A Okay.</p> <p>22 BY MS. TOMKOWIAK:</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> |

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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 **A I don't know.**
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 **A At which -- sorry, at which point?**
18 Q In May 24, 2019.
19 **A Yes.**
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 **A I was not.**
25

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1 BY MS. TOMKOWIAK:
2 Q Okay. Were you involved in that trial at
3 all?
4 **A No.**
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 **A I don't remember the exact timing of when
14 that happened, but I have a general recollection
15 that it happened.**
16 BY MS. TOMKOWIAK:
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 **A Again, I don't have specific knowledge
21 about what was awarded to whom or the exact
22 timing. I have a general recollection that there
23 was a verdict of some sort.**
24 Q Okay. Do you know whether Sentinel's
25 auditors were provided information regarding that

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1 judgment?
2 **A I don't.**
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 **A Sorry, say -- who would provide the
9 auditors information requested about Sentinel?**
10 BY MS. TOMKOWIAK:
11 Q Yes.
12 **A I don't know. I mean, the -- I don't
13 know. The directors I assume would manage
14 information flow. I don't know who would answer
15 what or what you -- exactly you're referring to,
16 as far as updates or information and it's pretty
17 broad.**
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

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1 types of inquiries from Sentinel's auditors?
2 MS. SMITH: Objection, form.
3 **A Depends when you're asking temporally. I
4 don't have personal knowledge of, for example,
5 this time frame. I don't know what the
6 information flow would have been.**
7 BY MS. TOMKOWIAK:
8 Q And is that true in 2017 as well?
9 **A I had been asked in 2017 for information
10 and so I would have answered questions to the
11 extent they were posed to me, which they were a
12 few times, but I don't know the entire universe of
13 who was providing what.**
14 Q So who posed questions to you in 2017?
15 MS. SMITH: Objection, form.
16 **A And I'm sorry, let's narrow this. When
17 you say information, we're referring to what?
18 What are you referring to?**
19 BY MS. TOMKOWIAK:
20 Q Information relevant to the audit of
21 Sentinel.
22 **A I recall being asked by the administrator.
23 Q Who was the administrator?
24 A Beecher Carlson Cayman.
25 Q So Beecher Carlson was the administrator**

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| <p>113</p> <p>1 of Sentinel; is that what you're saying?</p> <p>2 A Yes.</p> <p>3 Q And you recall that they would reach out</p> <p>4 to you with questions relating to the audit of</p> <p>5 Sentinel?</p> <p>6 A They had in the past.</p> <p>7 Q In what time frame?</p> <p>8 A Over the course of 2012 through -- I mean,</p> <p>9 at different times, but starting in 2012.</p> <p>10 Q Through approximately when?</p> <p>11 A '17 I would say.</p> <p>12 Q Do you know why they stopped reaching out</p> <p>13 to you for questions after 2017?</p> <p>14 A I don't. I don't.</p> <p>15 Q Did your role change?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A My role with respect to what?</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q To your duties at Highland. Did anything</p> <p>20 about your role change such that you would no</p> <p>21 longer be the person who would provide them with</p> <p>22 that information that they requested from you?</p> <p>23 A I mean, I ended up working on a range of</p> <p>24 matters over my time at Highland, so I don't know</p> <p>25 if my role would have changed. I just know that</p> | <p>115</p> <p>1 the following table with the likely outcomes of</p> <p>2 the case.</p> <p>3 Do you see that sentence?</p> <p>4 A Yes.</p> <p>5 Q Do you know who the actuary is?</p> <p>6 A I don't recall.</p> <p>7 Q And by the case, looking at this chart,</p> <p>8 does this look like it refers to the UBS matter?</p> <p>9 A I don't want to speculate.</p> <p>10 Q Is there any other -- any other litigation</p> <p>11 that Highland had going on at the time related to</p> <p>12 synthetic warehouse losses?</p> <p>13 A I have no personal knowledge. I don't</p> <p>14 want to -- I don't know.</p> <p>15 Q And in the column that says expected</p> <p>16 payout, do you know, payout, from whom is that</p> <p>17 referring to; do you know?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A I'm sorry, I'm not -- where is that?</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Sure. In the chart there's -- the header</p> <p>22 is Outcome Probability and then Expected Payout is</p> <p>23 the last column.</p> <p>24 A Oh, no, I -- no, I don't know.</p> <p>25 Q And when Mr. Kemp says to Mr. Leventon in</p> |
| <p>114</p> <p>1 the questions stopped -- I stopped receiving the</p> <p>2 questions. Yeah.</p> <p>3 Q What types of questions did they ask?</p> <p>4 A I recall there had been questions about --</p> <p>5 for example, in 2013 or '14, there had been</p> <p>6 questions about distributions from CLOs and so I</p> <p>7 would connect them with the indentured trustee,</p> <p>8 for example. That sort of connecting information</p> <p>9 flow.</p> <p>10 Q Distributions from CLOs to Sentinel?</p> <p>11 A Uh-huh. Yes.</p> <p>12 Q The CLOs that we looked at earlier or</p> <p>13 different CLOs?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A I don't remember which exact ones. I just</p> <p>16 remember that as an example of being asked a</p> <p>17 question at Highland with respect to Sentinel.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Grayson or Greenbriar?</p> <p>20 A Could have been any of those.</p> <p>21 Q Do you know why Mr. Leventon is forwarding</p> <p>22 this to you?</p> <p>23 A I don't.</p> <p>24 Q In the first -- in the June 16th e-mail,</p> <p>25 Mr. Kemp references an actuary who has provided</p> | <p>116</p> <p>1 that second sentence there -- or the sentence</p> <p>2 after point 2, per their report, you have agreed</p> <p>3 that these estimates are reasonable.</p> <p>4 Do you know if that's referring to anybody</p> <p>5 besides Mr. Leventon?</p> <p>6 A I don't have personal knowledge of the</p> <p>7 e-mail. I don't know.</p> <p>8 Q You don't recall today, as we sit here</p> <p>9 today, getting a copy of this e-mail in June of</p> <p>10 last year?</p> <p>11 A I'm just not agreeing or disagreeing with</p> <p>12 what Kemp tells -- Kemp says in this e-mail.</p> <p>13 Q Did you -- do you recall agreeing at the</p> <p>14 time that any of these estimates were reasonable?</p> <p>15 MS. SMITH: Objection, form.</p> <p>16 A I don't recall that. I was never asked</p> <p>17 any of that.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q And just to be clear, because I'm not sure</p> <p>20 that it is clear, do you recall receiving this in</p> <p>21 June of 2020?</p> <p>22 A I'm CC'd on a lot of e-mails. I don't --</p> <p>23 I believe I got it. I don't recall exactly</p> <p>24 getting it.</p> <p>25 Q Do you recall that during this time</p> |

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| <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 A I have no personal knowledge or 5 recollection of that. 6 BY MS. TOMKOWIAK: 7 Q Did you have any role in preparing legal 8 rep letters? 9 MS. SMITH: Objection, form. 10 A No. 11 BY MS. TOMKOWIAK: 12 Q Do you know what a legal rep letter is? 13 A Generally. 14 Q And with respect to Sentinel, did you have 15 any role preparing legal rep letters? 16 A Not that I recall. 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 A I don't know. Sentinel. 22 BY MS. TOMKOWIAK: 23 Q Meaning its directors? 24 A I don't know. 25 Q You can set that aside. Okay. Let's talk</p> | <p>119</p> <p>1 A Christopher Watler. 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 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. 13 BY MS. TOMKOWIAK: 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 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. 22 BY MS. TOMKOWIAK: 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 A In procuring the policy? 5 Q Yeah. 6 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. 11 Q Who's outside counsel? 12 A Solomon Harris. 13 Q Anyone else? 14 A Not that I recall. 15 Q Who is the administrator? Is that Beecher 16 Carlson? 17 A Beecher Carlson Cayman. 18 Q The directors, do you mean the directors 19 of Sentinel? 20 A Yes. 21 Q And then who were they in August of 2017, 22 if you recall? 23 A Again, the name I remember is Andrew Dean. 24 I don't remember the other person's name. 25 Q Christopher Watler?</p> | <p>120</p> <p>1 mean by that? 2 A I don't know the distinction you're trying 3 to draw. 4 Q With the policy or with respect to 5 approval? Let's back up. 6 A Sorry. 7 Q That's okay. That's all right. So you 8 said that Mr. Surgent was the chief compliance 9 officer, right? 10 A Yes. 11 Q And you recall working with him on sort of 12 compliance approval? 13 A Oh, okay. Yeah. 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 A Compliance approval of the transaction in 19 the Sentinel policy. 20 Q So you recall that Mr. Surgent approved 21 that? 22 A Yes. 23 Q Did he do that orally? Did he do that in 24 writing? Do you recall how he approved that? 25 A I believe both ways.</p> |

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| <p style="text-align: right;">121</p> <p>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</p> | <p style="text-align: right;">123</p> <p>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.</p> |
| <p style="text-align: right;">122</p> <p>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?</p> | <p style="text-align: right;">124</p> <p>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> |

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| <p style="text-align: right;">125</p> <p>1 afterwards, directly, where Mr. Ellington and I 2 sat with Mr. Surgent. 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. Surgent's office. And in that meeting is it 9 your recollection that that was only you, 10 Mr. Ellington and Mr. Surgent? 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> |

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| <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 Sure, please. 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 That wasn't -- that overarching strategy 25 or end that you're describing was not part of a</p> | <p>131</p> <p>1 A I don't recall hearing that. No, I don't 2 think that's the case. I believe it was just 3 related to the UBS action. 4 Q Had Sentinel ever issued an 5 after-the-event policy before? 6 A No. 7 Q So this was the first? 8 A This was the first. 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 Again, rough estimate. I remember -- 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 I remember it being a lengthy meeting. I 19 don't recall the exact time. 20 Q What happened during the meeting? 21 A The policy was discussed, the -- sort of 22 the compliance component included whether -- or 23 compliance approval of a -- of a transaction of a 24 policy that was being written by an insurance 25 company in which Mr. Dondero and Ellington had an</p> |
| <p>130</p> <p>1 conversation that I had with Mr. Ellington. 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 That the intention of the policy would be 6 to essentially have Sentinel issue a policy to 7 insure the defendants in the UBS case. 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 Insure defendants in the UBS case related 13 to the litigation. I didn't -- again, the 14 overarching strategy or the -- we didn't get into 15 that. That's not something we discussed or I 16 asked about. 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 I did not. 21 Q Did you know whether there was? 22 A No, I did not know. I do not know. 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 interest, whether the policy was acceptable from a 2 compliance perspective, things of that nature. 3 Q So what is the compliance component of 4 that transaction? 5 A Again, I -- well, I think the compliance 6 component largely turned on whether Sentinel was 7 some sort of affiliate or related party and 8 whether there was a conflict of interest and 9 whether from -- and again, I don't know the entire 10 regulatory framework applicable. I don't want to 11 say -- represent that I was in the compliance -- 12 on the compliance team, but the acceptability and 13 the -- whether there were any compliance issues 14 related to the policy being put into place. 15 Q Related to this being a related party 16 transaction? 17 A Potential -- 18 MS. SMITH: Objection, form. 19 A Potentially. That was one of the 20 questions. 21 BY MS. TOMKOWIAK: 22 Q Well, was that question answered during 23 the meeting? 24 A I believe so. 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

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| <p style="text-align: right;">141</p> <p>1 followed Mr. Ellington and Mr. Surgent. 2 Q So to the best of your recollection, that 3 just sort of happened informally; you guys just 4 walked into Mr. Surgent's office? 5 A I believe so. 6 Q Do you know whether the funds who are 7 insured under the policy got quotes from any other 8 insurance companies? 9 A I don't know. 10 MS. SMITH: Objection, form. 11 THE WITNESS: Sorry. 12 A I don't know. 13 BY MS. TOMKOWIAK: 14 Q Was that discussed at either of the 15 meetings that you described? 16 A No. 17 Q Did you ask whether you should get quotes 18 from other insurance companies? 19 MS. SMITH: Objection, form. 20 A I did not ask. 21 BY MS. TOMKOWIAK: 22 Q And who was going to negotiate this policy 23 on behalf of Sentinel? 24 A Sentinel had outside counsel drafting the 25 policy and it also had its own directors and</p> | <p style="text-align: right;">143</p> <p>1 Q Okay. Ms. Irving? 2 A I don't recall. 3 MS. TOMKOWIAK: Why don't we take another 4 break, if it's okay. Let's go off the record. 5 THE VIDEOGRAPHER: The time is 12:49 p.m. 6 We are off the record. 7 (Recess taken from 12:49 p.m. CDT to 8 1:39 p.m. CDT) 9 THE VIDEOGRAPHER: The time is 1:39 p.m. 10 We are back on the record. 11 BY MS. TOMKOWIAK: 12 Q Mr. Sevilla, before lunch we were talking 13 about a meeting that occurred in the Bois d'Arc 14 conference room that you believe occurred around 15 July 2017. Do you remember that? 16 A Yes. 17 Q And you testified that you recall 18 Mr. Ellington was in the room, Mr. Stoops was in 19 the room, Mr. Surgent was in the room, you were in 20 the room and then you believed that there might 21 have been one other person with Mr. Stoops and one 22 other person with Mr. Surgent in the room; is that 23 right? 24 A Yes. 25 Q And you don't have any recollection of who</p> |
| <p style="text-align: right;">142</p> <p>1 administrator. 2 Q So at the time that you had this meeting, 3 to the best of your recollection, was the policy 4 already being drafted? 5 MS. SMITH: Objection, form. 6 A Yes. It had been -- the proposed policy 7 had been drafted by this point. 8 BY MS. TOMKOWIAK: 9 Q And how had that already happened? 10 A Again, I had come to learn that the 11 intention was for this policy to be put into 12 place. Sentinel's outside counsel drafted the 13 proposed policy and that was part and parcel to 14 the meeting as approval of that policy. 15 Q By outside counsel, do you mean Maples? 16 A No. The Solomon Harris firm. 17 Q So Solomon Harris is the one that drafted 18 the policy? 19 A Correct. 20 Q Was Mr. DiOrio in the meeting in 21 Mr. Surgent's office? 22 A I don't think so. I don't recall him 23 being in any of those meetings. 24 Q How about Mr. Leventon? 25 A I don't think so. I don't recall.</p> | <p style="text-align: right;">144</p> <p>1 those other two individuals were? 2 A Yeah, it's a vague recollection and I 3 don't remember who. And it -- I may be mistaken, 4 but that's sort of my recollection is it was a 5 larger group in that conference room. 6 Q And you don't recall Mr. Leventon being 7 there? 8 A I don't. 9 Q And you don't recall Mr. DiOrio being 10 there? 11 A I do not. 12 Q You don't recall Ms. Irving being there? 13 A Correct. 14 Q You don't recall Mr. Dondero being there? 15 A Correct. 16 Q When you say you have a vague 17 recollection, does that mean you have a 18 recollection of someone you think was in the room 19 but you don't know if they were in the room? 20 A Mr. Post, who was on the compliance team, 21 may have been in the room. I know there were 22 issues that he weighed in on, not necessarily at 23 that meeting, but in -- at different times. But 24 that's my best recollection of that one meeting 25 you're referencing.</p> |

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1 Q And you don't recall who was there with
2 Mr. Stoops?
3 **A That's right.**
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 **A No. It could be that there wasn't, that
8 it was just Mr. Stoops from the accounting side.**
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 **A Ellington, Surgent and me, and I believe
14 Mr. Stoops and then it kind of goes foggier with
15 respect to the others.**
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.**

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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 **A Correct.**
5 Q And were there any notes taken at this
6 meeting?
7 MS. SMITH: Objection, form.
8 **A I don't recall.**
9 BY MS. TOMKOWIAK:
10 Q Did you take any notes?
11 **A I don't recall.**
12 Q Did you see anybody else taking notes?
13 **A I don't recall.**
14 **Q Were there any documents reviewed at this
15 meeting?**
16 **A Yes.**
17 MS. SMITH: Objection, form.
18 THE WITNESS: Sorry.
19 **A Yes, the proposed -- the insurance policy,
20 the document, transaction documents.**
21 BY MS. TOMKOWIAK:
22 Q So by insurance policy, do you mean there
23 was a copy of the draft insurance policy in the
24 room?
25 **A Correct.**

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1 Q And then what do you mean by transaction
2 documents?
3 **A I believe the purchase agreement.**
4 Q Anything else?
5 **A That would have been it.**
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 **A I think that's right.**
11 Q Was that also in draft form?
12 **A It would have been in draft form, yeah.**
13 Q Do you know who drafted that?
14 **A Outside counsel. I believe Mr. Stoops
15 would have also had the asset listing, the
16 spreadsheet of assets.**
17 Q Who asked him to bring that?
18 **A I don't know.**
19 Q Did you?
20 **A I don't think so.**
21 Q Did anybody make a presentation at this
22 meeting?
23 **A I don't think it was a presentation, but
24 it -- it was more of a discussion.**
25 Q Who led the discussion?

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1 **A Mr. Ellington.**
2 Q Who brought the insurance policy to the
3 meeting?
4 **A I did.**
5 Q And did you also bring the purchase
6 agreement?
7 **A Yes.**
8 Q Did you bring any other documents?
9 **A Not that I recall.**
10 Q Did anybody else bring any other
11 documents?
12 **A Not that I recall.**
13 Q Were there any reports that were written
14 about this meeting afterwards?
15 **A Not that I have knowledge of.**
16 Q Were there any reports written about any
17 of the conclusions that were reached at this
18 meeting?
19 **A Not that I know of.**
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 **A Ownership was discussed. I don't know if
25 it was on a percentage basis to the exact number**

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| <p>149</p> <p>1 that you're referencing.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q But it was specifically discussed that</p> <p>4 Mr. Dondero owned part of Sentinel?</p> <p>5 MS. SMITH: Objection, form.</p> <p>6 A Yes. Yes.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Who said that?</p> <p>9 A I don't recall exactly who. Mr. Ellington</p> <p>10 and myself both would have conveyed that to -- I</p> <p>11 certainly mentioned it.</p> <p>12 Q You mentioned it?</p> <p>13 A Yes.</p> <p>14 Q Okay. Did you also mention that</p> <p>15 Mr. Ellington also owned part of Sentinel?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I don't know if I mentioned that or not.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Did Mr. Ellington mention that?</p> <p>20 A I don't know.</p> <p>21 Q So you --</p> <p>22 A I don't recall.</p> <p>23 Q -- don't know if the folks in the room</p> <p>24 knew that Mr. Ellington owned part of Sentinel?</p> <p>25 MS. SMITH: Objection, form.</p> | <p>151</p> <p>1 that's largely what was discussed. The proposed</p> <p>2 terms of the policy, the proposed terms of the --</p> <p>3 you know, proposed terms of the insurance policy</p> <p>4 and the purchase agreement.</p> <p>5 Q Did you think it was not relevant that</p> <p>6 Mr. Ellington also owned part of Sentinel?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A Again, it may have been discussed. It's</p> <p>9 not something I recall, but I think it's -- I do</p> <p>10 think it's relevant.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q You do think it's relevant sitting here</p> <p>13 today?</p> <p>14 A I think it's a fact around the ownership</p> <p>15 of the company. So if there are questions about</p> <p>16 the ownership of the company, I think that would</p> <p>17 be something discussed. And it very well might --</p> <p>18 might well have, I just -- what I recall is</p> <p>19 Dondero's ownership component.</p> <p>20 Q Who asked you to bring those documents to</p> <p>21 the meeting?</p> <p>22 A I don't recall. I don't know if anyone</p> <p>23 did.</p> <p>24 Q And what was the specific question posed</p> <p>25 to Mr. Surgent during that meeting?</p> |
| <p>150</p> <p>1 A I don't have direct recollection of that</p> <p>2 being discussed.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q You knew it at the time, right?</p> <p>5 A Yes.</p> <p>6 Q And Mr. Ellington knew it at the time?</p> <p>7 A I suppose. I presume he did.</p> <p>8 Q But to the best of your recollection,</p> <p>9 neither you nor Mr. Ellington mentioned that fact</p> <p>10 in the room?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 A I don't recollect one way or the other</p> <p>13 that that came up.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q So then was the discussion of the</p> <p>16 compliance issues, as you said, around</p> <p>17 Mr. Dondero's ownership of Sentinel?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 A It was a discussion of a broad range of</p> <p>20 facts and -- about the policy and about Sentinel</p> <p>21 itself.</p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q What about Sentinel itself?</p> <p>24 A Its ownership, Mr. Dondero's connection</p> <p>25 with it, and that's large -- that's largely --</p> | <p>152</p> <p>1 A The specific -- I don't think it was one</p> <p>2 question. I think it was a number of questions</p> <p>3 and discussion points. I don't think there was</p> <p>4 just one thing.</p> <p>5 Q When it came to Sentinel's ownership --</p> <p>6 when it came to Sentinel's ownership, was there a</p> <p>7 specific question posed to Mr. Surgent?</p> <p>8 A I don't -- I don't remember the meeting in</p> <p>9 those terms to break it down into one question or</p> <p>10 another. It was a meeting that covered a broad</p> <p>11 variety of topics, including ownership, commercial</p> <p>12 terms, documentation, et cetera. So I apologize.</p> <p>13 I can't break it down the way you're asking me to.</p> <p>14 Q You mentioned earlier that there was a</p> <p>15 discussion of the potential conflict of interest.</p> <p>16 What was the conflict of interest that was</p> <p>17 discussed?</p> <p>18 A Well, there was an ownership interest on</p> <p>19 the part of Sentinel, Mr. Dondero's ownership</p> <p>20 interest on the Sentinel side, and where Highland</p> <p>21 sat in relation to the insureds and also being a</p> <p>22 defendant in the case.</p> <p>23 Q So was the question whether it was a</p> <p>24 conflict of interest for these funds to enter into</p> <p>25 this transaction and insurance policy with</p> |

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| <p style="text-align: right;">153</p> <p>1 Sentinel?</p> <p>2 A Again, it was a series of discussions and</p> <p>3 questions around these facts. I can't break it</p> <p>4 into -- you know, a discrete question set, but it</p> <p>5 was a comprehensive discussion around all of these</p> <p>6 salient facts.</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 A I think at this meeting and subsequent</p> <p>11 meetings, certainly.</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 A I think there was a conclusion at this</p> <p>18 meeting that it was -- it was an acceptable</p> <p>19 transaction from a compliance perspective and that</p> <p>20 that was reinforced and discussed in subsequent</p> <p>21 meetings, touching on topics like the actual block</p> <p>22 and tackle of transferring the assets and the</p> <p>23 like. So it was a series of meetings, but this</p> <p>24 was certainly one where approval from a compliance</p> <p>25 perspective, I think -- I think that was the gist</p> | <p style="text-align: right;">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 A I don't think it was up to me to move</p> <p>5 forward with the transaction. It would have been</p> <p>6 up to others, but that was my -- certainly my</p> <p>7 takeaway.</p> <p>8 BY MS. TOMKOWIAK:</p> <p>9 Q Who was it up to to move forward with the</p> <p>10 transaction?</p> <p>11 A Mr. Surgent, Mr. Ellington, Mr. Dondero.</p> <p>12 Q Why Mr. Dondero?</p> <p>13 A I think as just -- because of his</p> <p>14 relationship and control of Highland and</p> <p>15 Highland's relationship to those insureds.</p> <p>16 Q Do you know whether that conclusion was</p> <p>17 ever conveyed to Mr. Dondero?</p> <p>18 A Which conclusion?</p> <p>19 Q The conclusion that it was an acceptable</p> <p>20 transaction from a compliance perspective.</p> <p>21 A I don't have firsthand -- I did not convey</p> <p>22 to him, so I don't have firsthand knowledge of</p> <p>23 that.</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 style="text-align: right;">154</p> <p>1 of that meeting.</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 A I'm not following the distinction.</p> <p>8 BY MS. TOMKOWIAK:</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 A I don't think that's right.</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 A That was my takeaway.</p> <p>17 Q Why was that your takeaway?</p> <p>18 A Because I believe in form and substance,</p> <p>19 that -- spirit and substance, that's what was said</p> <p>20 and discussed at the meeting and in subsequent</p> <p>21 meetings.</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 A Not that I know of.</p> <p>25 Q So that oral approval at that meeting</p> | <p style="text-align: right;">156</p> <p>1 policy? What was your specific role?</p> <p>2 A I think I provided some interface with</p> <p>3 outside counsel, with the insurance administrator,</p> <p>4 with the board. To the extent there were</p> <p>5 questions from Sentinel with respect to the assets</p> <p>6 and in what form they were, whether it was</p> <p>7 certificated securities or otherwise. So I think</p> <p>8 I consider the tasks in the nature of interface</p> <p>9 between all of these different subject matter</p> <p>10 experts, whether on the Highland side or the</p> <p>11 Sentinel side.</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 A I don't believe I did. I had -- I didn't</p> <p>17 have a say in the commercial -- or the -- no, I</p> <p>18 don't -- I don't think so. I certainly</p> <p>19 communicated with outside counsel, but I left it</p> <p>20 to all of them to do their respective jobs.</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 BY MS. TOMKOWIAK:</p> <p>25 Q So in your -- from your perspective,</p> |

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| <p>157</p> <p>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?</p> | <p>159</p> <p>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?</p> |
| <p>158</p> <p>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</p> | <p>160</p> <p>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</p> |

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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

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| <p>165</p> <p>1 and maintain its solvency. 2 A Yes. 3 Q Who are those shareholders that she's 4 referring to? 5 MS. SMITH: Objection, form. 6 A I believe she was referring to 7 Mr. Ellington and Mr. Dondero. 8 BY MS. TOMKOWIAK: 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 A That the shareholders were committed to 16 the -- committed to the company and committed to 17 seeing it succeed. 18 Q By shareholders, were you referring to 19 Mr. Dondero and Mr. Ellington? 20 A Yes. 21 Q How did you know that they had made this 22 fundamental commitment? 23 A I had spoken to Mr. Ellington about 24 Ms. Thompson's inquiry and he had authorized me to 25 make this comment.</p> | <p>167</p> <p>1 BY MS. TOMKOWIAK: 2 Q Did you ask him? 3 A I don't recall asking him. I don't have 4 personal knowledge of what they discussed. 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 A I don't think that's what my response 13 commits to on their behalf. I think the -- no, I 14 don't think that's what my response conveys. 15 BY MS. TOMKOWIAK: 16 Q So are you saying your response didn't 17 actually answer her question? 18 A You'd have to ask her, but this is what I 19 was authorized to convey. 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 A My recollection is that that was a -- that</p> |
| <p>166</p> <p>1 Q So after you received Ms. Thompson's 2 e-mail, you reached out to Mr. Ellington? 3 A Yes. Although I had spoken to 4 Ms. Thompson, she may have previewed this issue, 5 so I may have spoken to him before she sent the 6 e-mail, but I remember her conveying to me this 7 concept and me connecting with Mr. Ellington about 8 it. 9 Q Okay. And why was this an issue? 10 A I didn't think it was an issue. I just 11 didn't want to speak out of school. 12 Q When you spoke to Mr. Ellington about this 13 inquiry, what did he say? 14 A He authorized me to make this comment. 15 Q Were these his words? 16 A Substantially. I may have formalized them 17 a little bit, but he authorized me to convey that 18 there was a commitment on his part and 19 Mr. Dondero's part to the company's long-term 20 success. 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 A I don't know.</p> | <p>168</p> <p>1 seemed to be a bit of an aggressive ask and 2 unorthodox to ask of a shareholder. And so this 3 response tried to convey comfort. That was the 4 thrust of the communication between he and I 5 around this. 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 A We did not speak to that point, so I -- he 12 never told me that. 13 BY MS. TOMKOWIAK: 14 Q So did it seem to be a bit of an 15 aggressive ask from your perspective or from his? 16 A I think from mine, certainly. You'll have 17 to ask him how he thought of it. 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 A I don't know if -- I think it's related to 23 UBS, but I wouldn't say globally. I would say 24 more on a micro perspective from the ATE policy 25 perspective.</p> |

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1 **BY MS. TOMKOWIAK:**
2 Q So a loss related to the New York State
3 litigation that was covered by this policy?
4 **A The topic of the policy or the -- yeah,**
5 **the lawsuit referred to in the policy is how I**
6 **would think about it.**
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 **A I haven't discussed any matters -- any**
15 **Sentinel matters with them on this topic. I don't**
16 **know.**
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.)

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1 **A Okay.**
2 **BY MS. TOMKOWIAK:**
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 **A Doesn't look to be executed.**
13 **BY MS. TOMKOWIAK:**
14 Q It doesn't?
15 **A No.**
16 Q Well, there are signatures on the back.
17 **A Oh, I'm sorry. Yes, there are. Yes.**
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 **A I really don't.**
22 Q Do you know where you would have pulled
23 this document from?
24 **A My e-mails.**
25 Q Is that where you stored your documents?

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1 **A Generally.**
2 Q Anywhere else that you would have possibly
3 pulled this from?
4 **A I don't think so.**
5 Q Would you have had like a specific folder
6 about the UBS policy?
7 **A Most likely. E-mail folder.**
8 Q I realize this is testing your memory, but
9 do you know what that folder would be called?
10 **A Oh, gosh. No, I don't remember.**
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 **A Okay.**
21 **BY MS. TOMKOWIAK:**
22 Q This is an e-mail from Mr. Leventon to
23 Chris Dunn. Who is Chris Dunn?
24 **A The name rings a bell. I don't remember**
25 **what he did at Highland.**

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1 Q Was he in the legal department?
2 **A No.**
3 Q Was he in the -- do you remember what
4 department he was in?
5 **A No.**
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 **A I don't.**
13 **BY MS. TOMKOWIAK:**
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 **A I don't recall the context.**
20 MS. SMITH: Objection, form.
21 **A I don't recall the context.**
22 **BY MS. TOMKOWIAK:**
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?

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| <p>1 MS. SMITH: Objection, form. 2 A I don't. 3 BY MS. TOMKOWIAK: 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 A I think that's true. Yeah. 8 Q Same answer with respect to the purchase 9 agreement? 10 MS. SMITH: Objection, form. 11 A From what I recall. From what I recall. 12 BY MS. TOMKOWIAK: 13 Q Would you consider yourself a member of 14 the legal team at this time? 15 A Yes. 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 A Not that I recall. 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 A I believe so, yes. 24 Q And if you turn to schedule -- the 25 schedule on the back, I believe it's Bates ending</p> | <p>173</p> | <p>1 representative is Paul Lackey. Do you know who 2 decided that Mr. Lackey would be the appointed 3 representative. 4 A No, I don't. I don't know. I don't 5 remember who would have made that decision. 6 Q Do you know what Mr. Lackey's role was 7 with respect to the UBS litigation at this time? 8 A I believe he was trial counsel for the 9 insureds. 10 Q Okay. And then the period of insurance 11 commences August 1st, 2017. Do you see that? 12 A Yes. 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 A I don't know how that case is styled. 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 A Not that I know of. 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 A It does say that, yes. 25 Q And the opponent is UBS Securities LLC and</p> | <p>175</p> |
| <p>1 3070. 2 A Yes. 3 Q You testified earlier that you think you 4 might have drafted this? 5 A I may have aggregated this information 6 into a schedule. 7 Q Where would you have aggregated it from? 8 A Information I received from others working 9 on the litigation. 10 Q Others working on the litigation or 11 working on the policy or both? 12 A Both. 13 Q Do you remember anybody specifically 14 sending you information for this schedule? 15 A No, I don't remember -- I don't -- no, I 16 don't remember. 17 Q Okay. And there are three Highland 18 entities that are insured under this policy? 19 MS. SMITH: Objection, form. 20 BY MS. TOMKOWIAK: 21 Q There's three funds that are listed as 22 being insured, correct? 23 A I see the insureds, the three entities, 24 yes. 25 Q Okay. And then the appointed</p> | <p>174</p> | <p>1 UBS AG, London Branch? 2 A Yeah. 3 Q And again, you don't know what was going 4 on in that litigation as of August 1st, 2017? 5 A No. 6 Q So the coverage here is US \$100 million in 7 aggregate. Do you see that? 8 A Yes. 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 A I don't recall. 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 A Yes. That's my understanding. 18 BY MS. TOMKOWIAK: 19 Q In fact, it was significantly higher than 20 the D&O policy that it had written for the SAS 21 entities, correct? 22 A Yes. 23 Q Do you see that the premium is 24 \$25 million? 25 A Yes.</p> | <p>176</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

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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 **A I think that mischaracterizes what I said.**
9 BY MS. TOMKOWIAK:
10 Q Well, then, what is the purpose of this
11 policy?
12 **A For the insurer to indemnify the insured**
13 **in respect to any legal liability, et cetera,**
14 **et cetera.**
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 **A Again, I'd defer to the language. I don't**
20 **want to summarize it and use some legal term of**
21 **art the wrong way. I think this speaks for**
22 **itself.**
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.

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1 **A I'd refer to counsel as to the**
2 **applicability and what these words mean. These**
3 **words seem clear to me on their face, but, you**
4 **know, I can read them the same way. They seem --**
5 **they speak for themselves.**
6 BY MS. TOMKOWIAK:
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 **A To insure against a loss in a lawsuit.**
14 Q In a lawsuit against UBS?
15 **A In the UBS lawsuit.**
16 MS. SMITH: Objection, form.
17 BY MS. TOMKOWIAK:
18 Q Do you know whether there were any
19 endorsements to this policy?
20 **A I have knowledge that there might have**
21 **been subsequently, but I don't have direct**
22 **recollection of them.**
23 Q Okay. Would Highland have conducted its
24 own valuation of the assets prior to entering into
25 this policy?

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1 **A I believe so.**
2 Q Who would have done that?
3 **A The valuation group.**
4 Q Who is the valuation group?
5 **A In 2017, I don't remember who was on the**
6 **valuation group, but I think it was a subset of**
7 **the accounting team.**
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 **A I don't remember discussions to that**
14 **effect, other than knowing that they did -- they**
15 **did evaluate -- excuse me -- a valuation**
16 **methodology. I don't know exactly what that**
17 **methodology was.**
18 BY MS. TOMKOWIAK:
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 **A I don't remember what the date or the**
25 **timing of that was, so I don't want to commit to,**

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1 **but I know there was a number -- I know there was**
2 **a number in time. I don't know what time you're**
3 **referring to, but...**
4 BY MS. TOMKOWIAK:
5 Q Well, that settlement analysis was in
6 April 2019.
7 MS. SMITH: Objection, form.
8 **A Okay.**
9 BY MS. TOMKOWIAK:
10 Q So that was a few months before this
11 policy.
12 **A Agreed.**
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 **A I know I saw that for April. I don't know**
18 **what it was in July, August, subsequent before**
19 **that. Yeah, I...**
20 Q Could have gone up, could have gone down?
21 **A I wouldn't know.**
22 Q And that wouldn't be relevant to know
23 before you entered into this policy?
24 MS. SMITH: Objection, form.
25 **A I guess I don't understand the question.**

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| <p>185</p> <p>1 BY MS. TOMKOWIAK: 2 Q That's a double negative. Would that be 3 relevant to know before you entered into this 4 policy? 5 A I think that valuation methodology was an 6 input. As to its relevance, that was outside of 7 my -- the scope of my involvement. 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 A Okay. 18 Q Are you familiar with either of these 19 endorsements? 20 MS. SMITH: Objection, form. 21 A Not directly. 22 BY MS. TOMKOWIAK: 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>187</p> <p>1 that -- I remember her becoming a director at some 2 point. I don't remember exactly when. 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 A Yes. 9 Q Okay. Do you know who would have 10 calculated the total fair value of received 11 assets? 12 A No. 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 A I don't know. I don't recall. 19 BY MS. TOMKOWIAK: 20 Q Do you know whether that number is 21 consistent with any valuation that anybody did 22 before signing the insurance policy? 23 A No. I don't know. And I don't know the 24 timing of this either, so I -- no. 25 Q Well, it has to come after the insurance</p> |
| <p>186</p> <p>1 you thought you recalled? 2 A Yes. I came to know that there was a 3 question about endorsements. I didn't work on it, 4 so I -- these don't seem particularly -- I don't 5 have a direct recollection of these. I kind of 6 anecdotally knew that there had been these 7 endorsements. 8 Q Do you know when these endorsements were 9 entered into? 10 A I don't. 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 A I guess she elevated to a director at some 18 point from whatever she was before. I don't 19 recall when that would've been. 20 Q You don't know when that took place? 21 A No. 22 Q And are you basing that assumption on 23 anything besides the fact that it's stamped 24 director here? 25 A That -- seeing that stamp recollects</p> | <p>188</p> <p>1 policy because it's an endorsement, right? 2 A Yes. 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 A No. 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 A August of some -- August of 2017 at some 12 point is what I would think as the transfer date. 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 A I don't. 17 Q And then it says here that all other terms 18 and conditions remain unchanged? 19 A Yes. 20 Q So is it your understanding that the 21 amount of coverage would remain the same? 22 A I don't want to interpret a Cayman Islands 23 insurance document. It speaks for itself. 24 Q You would agree that one term of the 25 insurance policy is the indemnity limit, correct?</p> |

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| <p style="text-align: right;">189</p> <p>1 A Yes.</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 A I don't know.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Does that seem reasonable to you?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I don't have a view as to what the</p> <p>11 auditors or anyone else -- what conclusions they</p> <p>12 came to. I wouldn't know.</p> <p>13 BY MS. TOMKOWIAK:</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 A I'm sorry, can you repeat that?</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 A Not that I recall.</p> <p>24 Q Do you know why the insured didn't sign</p> <p>25 this endorsement?</p> | <p style="text-align: right;">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 A I don't know.</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 A I don't have a view on this. I'm not</p> <p>12 familiar with it.</p> <p>13 BY MS. TOMKOWIAK:</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 A I don't recall being involved in this. I</p> <p>20 don't know what the dates were, so I -- I can't</p> <p>21 speak to them with any authority.</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 A I don't know. I don't know.</p> |
| <p style="text-align: right;">190</p> <p>1 A I don't.</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 A I don't.</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 A I don't recall.</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 A It says what it says.</p> <p>20 BY MS. TOMKOWIAK:</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 A Sorry, say that last part, the insureds</p> <p>25 are paying an additional --</p> | <p style="text-align: right;">192</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Okay. So you don't know who calculated</p> <p>3 that as the total fair value?</p> <p>4 A I don't.</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 A Not that I recall being a part of.</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 A Not that I remember, no.</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 A It became minimal. Not a lot of</p> <p>18 involvement.</p> <p>19 Q Do you know why?</p> <p>20 A I started focusing on other matters.</p> <p>21 Q Are you aware that there was a trial in</p> <p>22 the UBS litigation?</p> <p>23 A I'm sorry, when?</p> <p>24 Q Pardon me?</p> <p>25 A When?</p> |

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| <p style="text-align: right;">193</p> <p>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</p> | <p style="text-align: right;">195</p> <p>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.</p> |
| <p style="text-align: right;">194</p> <p>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</p> | <p style="text-align: right;">196</p> <p>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> |

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| <p>197</p> <p>1 Q What about Mr. Ellington? Would he have 2 had a role? 3 A I'm not sure. 4 Q Okay. So you just have no clue who 5 negotiated this agreement on behalf of Highland 6 CDO Opportunity Master Fund? 7 A I don't know if there were discussions 8 that I'm not privy to, so I don't know. 9 Q Okay. Yeah, you only know what you know, 10 but you don't know? 11 A Correct. 12 Q Same question with respect to Highland CDO 13 Holding Company. Do you know who negotiated this 14 policy on their behalf? 15 A It would be the same answer, Highland. 16 Q But you don't know who at Highland? 17 A I can't point to a single person, no. 18 Q You have no idea? 19 A I don't know. 20 Q And what about with respect to Highland 21 Special Opportunities Holding Company? Who 22 negotiated this policy on its behalf? 23 A Same answer. 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 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. 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 A I can't point to when I came to know of 11 it. 12 Q But to the best of your recollection, it 13 was not in November 2019? 14 A Correct. It was not in real time. Let's 15 put it that way. 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 A I know nothing about that. 22 BY MS. TOMKOWIAK: 23 Q You know nothing about that? 24 A No. 25 Q You weren't part of those discussions?</p> |
| <p>198</p> <p>1 A I believe Highland negotiated on their 2 behalf. 3 Q But you don't know who at Highland? 4 A I don't. 5 Q What about Sentinel Reinsurance? Do you 6 know who specifically negotiated this policy on 7 its behalf? 8 A Same answer. I don't know. Sentinel on 9 its behalf. 10 Q But you don't know the specific 11 individuals? 12 A No. 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 A I can't identify names, if that's the 17 question. 18 Q I guess the question is, can you be any 19 more specific than Highland? 20 A I don't think so. 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 A No. 25 Q So at the time you don't recall hearing</p> | <p>200</p> <p>1 A If you're representing that that's what 2 happened, I don't know. 3 MS. SMITH: Objection. 4 BY MS. TOMKOWIAK: 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 A No. 9 Q And were you aware that any such 10 settlement discussions were occurring? 11 A No. 12 Q Did you hear that there was roughly a 13 \$1 billion judgment? 14 MS. SMITH: Objection, form. 15 A When? Sorry, this feels like a question 16 I've already -- but I came to know it at some 17 point. 18 BY MS. TOMKOWIAK: 19 Q But at some point you came to know it, 20 right? 21 A Yeah. 22 Q And I -- a few months ago? Five month 23 ago? Six months ago? Before you left Highland? 24 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,</p> |

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| <p style="text-align: right;">201</p> <p>1 that sounds familiar to me and it sounds like I 2 have heard that. I can't point to when I learned 3 it. I don't know. 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 A I did not say that. 8 Q Why not? 9 A Nobody asked me and it was outside of -- I 10 don't know. I just -- I don't know. 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 A Did I think of it? 15 Q Yeah. 16 A I'm sure I did. 17 Q Did you raise it with anybody at the time? 18 A No. 19 MS. SMITH: Objection to form. 20 A No. 21 BY MS. TOMKOWIAK: 22 Q After Highland declared bankruptcy, what 23 was your role? 24 MS. SMITH: Objection to form. 25 A I was largely focused on the private</p> | <p style="text-align: right;">203</p> <p>1 Q Correct. 2 A I don't recall. 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 A Again, I can't point to a date. I can't 8 point to it. 9 BY MS. TOMKOWIAK: 10 Q And when you -- you said you thought of 11 it, did you discuss it with anybody? 12 A No, I did not. 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 A It's not something I worked on. Others 19 were working on those matters. I had my own job 20 to worry about, my own tasks. 21 BY MS. TOMKOWIAK: 22 Q Well, you worked on the policy, right? 23 A When? 24 Q In 2017. 25 A Yes.</p> |
| <p style="text-align: right;">202</p> <p>1 equity business at that point. 2 BY MS. TOMKOWIAK: 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 A Can you repeat that? 9 BY MS. TOMKOWIAK: 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 A I think there was a gap between when 15 Highland filed and the board came in. 16 Q Do you recall when the board came in? 17 A Beginning of 2020. I can't point to the 18 date, but sometime in early -- very early 2020. 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 A Sorry, between when Highland filed and 25 when the board came in?</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 A No. My job was what I was working on at 5 the time, which was largely trying to turn the 6 portfolio companies around. Other people did 7 their jobs. 8 BY MS. TOMKOWIAK: 9 Q Did anybody ever tell you to disclose this 10 policy to UBS? 11 A Did anyone ever tell me that? No. 12 Q Did anybody ever tell you not to disclose 13 the existence of this policy to UBS? 14 A No. 15 Q Did anybody ever tell you not to disclose 16 the existence of this policy to any of the 17 independent directors? 18 A Nobody ever told me that. 19 Q Did you ever disclose this policy to any 20 of the independent directors? 21 A No. 22 Q Why not? 23 A It wasn't my job. I was never asked and I 24 had plenty of other things to do that were within 25 my lane.</p> |

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| <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 A I did not. 6 Q Did anybody ever instruct you not to do 7 that? 8 A No. 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 A No. 18 Q Do you recall anybody else raising it? 19 A No. 20 Q Do you recall receiving any communications 21 from Sentinel or any of its auditors following the 22 judgment? 23 A No. 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 A And during what time frame? 5 BY MS. TOMKOWIAK: 6 Q Between 2017 and 2020. 7 A I think over the course of '17, I recall 8 there being expenses that I passed through to the 9 Sentinel board and the administrator. I don't 10 remember what the expenses were or the size, but I 11 remember them -- I remember being told that they 12 were related to the litigation. But after that, 13 no, I don't recall. After 2017, I don't recall 14 that workflow or being asked to do that. 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 A Since I came to learn of the 21 billion-dollar judgment and what, and now? 22 BY MS. TOMKOWIAK: 23 Q Uh-huh. 24 A And now? 25 Q Yeah.</p> |
| <p>206</p> <p>1 MS. SMITH: Objection to form. 2 A I didn't have an opinion one way or the 3 other. I was focused on my job. 4 BY MS. TOMKOWIAK: 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 A Can you ask -- sorry, can you ask that 11 again? 12 BY MS. TOMKOWIAK: 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 A I don't have -- sorry, I don't have direct 19 knowledge as to what had -- what, if anything, had 20 been -- you said paid for legal -- for legal 21 expenses. 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 A Have I spoken about the policy to anyone 2 other than my lawyers? 3 Q Correct. Other than to your lawyers who 4 are representing you in your personal -- 5 A Yeah, I get it. No, not that I can 6 recall. 7 Q So you thought about it, but you didn't 8 discuss it with anyone? 9 MS. SMITH: Objection to form. 10 A Yeah. I guess, I -- I made the connection 11 briefly but, no, I didn't bring it up to anyone 12 and I didn't -- no, I didn't talk about it with 13 anyone. 14 BY MS. TOMKOWIAK: 15 Q I'm handing you what has been marked 16 previously in this case as Exhibit 2. 17 A Okay. 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 A I believe so. 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> |

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1 right?

2 **A So I worked on this Schedule A,**

3 **transferring it into Word form. And I recall**

4 **working on the purchase agreement with outside**

5 **counsel -- I believe I -- I worked on it**

6 **initially, sent it to outside counsel just from a**

7 **form and they added to it. It's pretty -- it's**

8 **pretty short.**

9 Q From a form -- was this a Highland form?

10 **A I don't recall. I don't recall if it was**

11 **a Highland form.**

12 Q Do you recall who asked you to put an

13 initial draft of this together?

14 **A Again, I don't -- I don't recall who**

15 **asked. It was sort of on the list of things that**

16 **needed to be done. I don't recall who asked.**

17 Q If you look at Section 1, it says

18 Purchaser, and that is Sentinel, agrees to accept

19 the assets listed in Schedule A hereto as

20 100 percent payment of the premium.

21 And then it goes on to say, skipping a

22 clause, that: with the explicit undertaking that

23 if anything of value is received by the Sellers,

24 such cash or other item of value shall be held in

25 trust for the Purchaser and promptly remitted

210

1 thereto.

2 And then you define that as the

3 transferred interest. Do you see that?

4 **A I see that.**

5 Q Is that meant to say that if the sellers

6 receive anything of value not listed in

7 Schedule A, that they commit to remitting those

8 interests to Sentinel as well?

9 MS. SMITH: Objection to form.

10 BY MS. TOMKOWIAK:

11 Q A simpler question would be, what did you

12 mean by that?

13 MS. SMITH: Objection to form.

14 **A I don't recall exactly. I don't know if**

15 **outside counsel drafted the -- what is it, the**

16 **explicit undertaking. My view would be that**

17 **anything deriving from the assets in Schedule A,**

18 **but I -- that's my understanding.**

19 BY MS. TOMKOWIAK:

20 Q What would that be? Like cash

21 distributions? Do you have any understanding of

22 that?

23 MS. SMITH: Objection to form.

24 **A Not particularly. I don't really recall.**

25

211

1 BY MS. TOMKOWIAK:

2 Q Okay. The purchaser is Sentinel

3 Reinsurance, right?

4 **A Yes.**

5 Q We're in the first paragraph or the

6 preamble. And then the sellers are Highland CDO

7 Opportunity Master Fund, Highland CDO Holding

8 Company and Highland Special Opportunities Holding

9 Company, right?

10 **A Yes.**

11 Q And these sellers are the same three

12 entities that are the insureds under the policy?

13 MS. SMITH: Objection to form.

14 **A I'd have to --**

15 BY MS. TOMKOWIAK:

16 Q You can take a look at the -- if you want

17 to compare, match them up.

18 **A Yeah. Yes, they are the same.**

19 Q If you'd turn to Schedule A. So the

20 assets listed in Schedule A are what the purchaser

21 Sentinel has agreed to accept as payment for the

22 premium, right?

23 MS. SMITH: Objection to form.

24 **A It's whatever the document says.**

25

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1 BY MS. TOMKOWIAK:

2 Q Right. That's what the document says.

3 That's what we just read: The Purchaser agrees to

4 accept the assets listed in Schedule A hereto as

5 100 percent payment of the Premium.

6 **A Okay.**

7 Q Okay. And there's six different entities

8 listed here, right?

9 **A Yes.**

10 Q Why are entities -- you agree with me that

11 at least three of these entities are not covered

12 insureds under the insurance policy, right?

13 MS. SMITH: Objection, form.

14 **A I don't know if that's true or not. I**

15 **can't agree with that.**

16 BY MS. TOMKOWIAK:

17 Q Well, Highland CDO Opportunity Master

18 Fund, that's an insured under the policy, right?

19 **A Yes.**

20 Q Okay. And Highland CDO Opportunity Fund,

21 is that an insured under the policy?

22 **A I don't know. I don't know how these**

23 **entities are related to each other or whether --**

24 **the answer is I don't know if they're an insured**

25 **or not.**

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| <p style="text-align: right;">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 A I agree that there are three entities 6 listed as insured. 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 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. 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 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. 25 Q But for purposes of paying the premium on</p> | <p style="text-align: right;">215</p> <p>1 premium. That's where I would -- that's how I 2 would say it. 3 BY MS. TOMKOWIAK: 4 Q Where did the list of assets on the 5 schedule come from? 6 A The accounting team. 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 A Mr. Stoops or one of his colleagues. I 11 don't know exactly who. 12 Q And Highland CDO Opportunity Master Fund, 13 is this all of the assets at that fund in 14 August 2017? 15 A I don't know for certain. 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 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. 24 Q Was the intent that all of the assets of 25 each of these entities would be used to pay the</p> |
| <p style="text-align: right;">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 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. 8 BY MS. TOMKOWIAK: 9 Q That will be used to pay the premium on 10 the insurance policy? 11 A That's what the -- yes, the policy says. 12 Q Who negotiated the purchase agreement on 13 behalf of Sentinel? 14 A Sentinel. 15 Q Who at Sentinel? 16 A I can't point to a specific advisor or 17 outside counsel. 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 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</p> | <p style="text-align: right;">216</p> <p>1 premium on the insurance policy? 2 A That was the intent. 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 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. 15 BY MS. TOMKOWIAK: 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 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. 22 Q But that was the intent? 23 MS. SMITH: Objection to form. 24 A The intent was for the assets on this 25 schedule provided to me to be transferred.</p> |

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| <p style="text-align: right;">217</p> <p>1 BY MS. TOMKOWIAK: 2 Q Would you say this transaction was in the 3 ordinary course of business? 4 MS. SMITH: Objection to form. 5 A Whose ordinary course of business? 6 BY MS. TOMKOWIAK: 7 Q Highland's. 8 A I don't think I would say one way or the 9 other. 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 A Again, I can't speak to what's common or 15 not. I'm just -- I'm not able to speak to what's 16 common or not. 17 BY MS. TOMKOWIAK: 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 A I mean, when you have a fund launch, 22 you're selling securities into the market and it's 23 at a high -- it's at a high volume, a high level. 24 I can't say -- this is the only policy -- ATE 25 policy I worked on while I was at Highland.</p> | <p style="text-align: right;">219</p> <p>1 A I think that's probably true. 2 BY MS. TOMKOWIAK: 3 Q You know that's true, or you just believe 4 that to be the case? 5 A I believe at the time that was true. 6 Q Why do you believe that? 7 A Because they provided the schedule. 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 A I don't know. 13 BY MS. TOMKOWIAK: 14 Q Did the accounting team have any questions 15 about why they were providing this to you? 16 A Not that they asked me, no. 17 Q Do you know whether there were multiple 18 versions of this schedule? 19 A I don't recall. 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 A Not that -- no, not that I recall. 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 A I'm not sure. 5 BY MS. TOMKOWIAK: 6 Q It wasn't you? 7 MS. SMITH: Objection to form. 8 A Initially, no. No, it wasn't -- no, it 9 wasn't. 10 BY MS. TOMKOWIAK: 11 Q What do you mean by initially? 12 A I'm sure I asked for a schedule, but I 13 distinguish that from directing the accounting 14 team to send me information. I don't know who 15 originally -- I don't know where the directive 16 came from originally. 17 Q But there was a directive originally? 18 A I know the policy contemplated the 19 schedule of assets. How it came to be that that 20 asset group was identified, I'm not certain. 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 A Not that I have direct knowledge of. That 3 would have been a valuation question, valuation 4 team question. 5 BY MS. TOMKOWIAK: 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 A I don't remember being told that. 11 BY MS. TOMKOWIAK: 12 Q Do you remember telling anybody that? 13 A I don't recall telling anyone that either. 14 Q On the face of this schedule, are you able 15 to tell what the fair value is of these assets? 16 A I am not. 17 MS. TOMKOWIAK: I'm going to ask the court 18 reporter to mark this next document as Exhibit 59. 19 BY MS. TOMKOWIAK: 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> |

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| <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 This would not have been done at my 5 direction. 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 I don't know who directed him to do it. 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 I believe it would be Sentinel. 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 Do I recall asking Mr. Stoops that? 8 Q Yeah. 9 A I don't. 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 Yes. This would have been subsequent to 14 that. 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 I'd need to look at what's listed here. 22 It appears to be that. I can't -- I mean, I can't 23 read part of this, so I -- you know. 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 I don't recall that. 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 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. 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 Sorry, which entities? 25</p> |

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| <p style="text-align: right;">225</p> <p>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?</p> | <p style="text-align: right;">227</p> <p>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</p> |
| <p style="text-align: right;">226</p> <p>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.</p> | <p style="text-align: right;">228</p> <p>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> |

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1 the policy?

2 **A I don't recall exactly what the substance**

3 **was, but he was on the tax team and it was tax**

4 **stuff.**

5 Q Do you recall that there were tax

6 implications of doing -- entering into this

7 purchase agreement and policy?

8 **A I didn't know of any. I have no knowledge**

9 **of whether there were or not. No one discussed**

10 **that with me.**

11 Q Would Mr. Swadley have been involved if

12 there weren't any tax issues?

13 MS. SMITH: Objection to form.

14 **A I'm sorry?**

15 **BY MS. TOMKOWIAK:**

16 Q Would Mr. Swadley be involved if there

17 were no tax issues?

18 **A I think Mr. Swadley works on all manner of**

19 **topics. I wouldn't assume that.**

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 **A No.**

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1 **BY MS. TOMKOWIAK:**

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 **A Have I received memos like this? No.**

8 **BY MS. TOMKOWIAK:**

9 Q Do you know if others have?

10 **A I don't.**

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 **A The premium --**

18 Q On the UBS policy was \$25 million?

19 MS. SMITH: Objection to form.

20 **A In the 2017 policy, yes.**

21 **BY MS. TOMKOWIAK:**

22 Q Yes.

23 **A That's correct.**

24 Q Okay. And then the -- he writes here:

25 The aggregate fair market value of the assets on

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1 the date of the Transaction was 105,647,679.

2 Do you see that?

3 **A Yes.**

4 Q Do you know where Mr. Raver would have

5 gotten that number?

6 **A No.**

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 **A No.**

16 **BY MS. TOMKOWIAK:**

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 **A I don't know. I mean, it says what it**

22 **says. I don't know what -- I don't know. Are you**

23 **asking if -- sorry, what was the question?**

24 **BY MS. TOMKOWIAK:**

25 Q Well, by -- at least by Mr. Raver's memo,

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1 the value of the assets was at least four times

2 the premium paid, right?

3 MS. SMITH: Objection to form.

4 **BY MS. TOMKOWIAK:**

5 Q 105 million is at least four times greater

6 than 25 million?

7 **A I agree that's what it says.**

8 Q Did the fair market value of the assets

9 that were being transferred to Sentinel really

10 matter?

11 **A I don't understand the question.**

12 MS. SMITH: Objection to form.

13 **BY MS. TOMKOWIAK:**

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 **A I don't know.**

18 Q Who would know that?

19 **A I don't know. I'm not sure I understand**

20 **the question, but -- I don't know what -- I don't**

21 **know. Can you ask it again?**

22 Q Sure. Under the policy --

23 **A Yes.**

24 Q -- the premium was \$25 million, right?

25 **A Yes.**

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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

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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 **A I don't recall any urgency or deadline.**
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 **A Not that I know of.**
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 **A Okay.**
15 **BY MS. TOMKOWIAK:**
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 **A Yes.**
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.**

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1 Do you recall this issue at all?
2 **A I do.**
3 **Q What do you recall about it?**
4 **A Just as you said, certificates -- an**
5 **investment was made in certain CLOs and the**
6 **certificates were never reregistered and so there**
7 **was administrative friction around waterfall**
8 **payments from time to time.**
9 **Q And what are waterfall payments as they**
10 **relate to CLOs?**
11 **A To the extent there's residual cash on a**
12 **quarterly basis, the CLO will pay that cash to the**
13 **bondholder of the relative tranche.**
14 **Q And do you recall whether these CLOs**
15 **regularly made those types of distributions to**
16 **Sentinel?**
17 **A I don't know if they did so regularly.**
18 **They did from time to time.**
19 **Q Do you recall whether this issue was ever**
20 **resolved?**
21 **A I don't recall whether it was ever**
22 **resolved.**
23 **Q So you don't know if the certificates were**
24 **ever registered in Sentinel's name?**
25 **A I don't.**

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1 **Q Do you know who those certificates were**
2 **incorrectly registered to?**
3 **A No. I'd have to look at them.**
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 **A Indentured trustee.**
14 **Q So was the mistake on their part?**
15 **MS. SMITH: Objection to form.**
16 **A I'm not sure on whose part the mistake**
17 **was. I don't know when -- no, I don't know.**
18 **BY MS. TOMKOWIAK:**
19 **Q Do you know whether Sentinel received**
20 **additional distributions from these CLOs after**
21 **November 2016?**
22 **A I don't recall offhand.**
23 **Q Okay.**
24 **MS. TOMKOWIAK: Let's take a break.**
25 **THE WITNESS: Are we done with this?**

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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 **A Okay.**
20 **BY MS. TOMKOWIAK:**
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 **A Yes.**

| | |
|--|--|
| <p>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 A 2017. 6 Q 2017, yes. 7 A Yes. 8 Q Okay. And what role did you have in that 9 transfer? 10 A Connected Highland SEI and Sentinel's 11 personnel to effectuate and settle the transfer. 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 A This was part of that. 18 BY MS. TOMKOWIAK: 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 A SEI is the fund administrator for 24 Multi Strat. 25 Q Okay. And if you look at the next page,</p> | <p>243</p> <p>1 A No, I don't. 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 A No, not at the time. 6 Q Is there any reason why you would have 7 been listed as a secondary contact for Sentinel? 8 A Highland's the manager of Multi Strat. I 9 was at Highland, but... 10 Q Have you, in fact, ever received 11 communications pursuant to your role here as 12 secondary contact for notices and communications? 13 A I have not. 14 Q Do you know who filled out this form? 15 A I don't. 16 Q Was it you? 17 A I may have filled out portions of it, but 18 certainly not all of it. 19 Q If you go to Section 9, which starts at 20 page 6 which is Bates ending 627. 21 A Okay. 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>242</p> <p>1 which is Bates ended 617, the amount of the 2 subscription is 24,313 shares? 3 A Yes. 4 Q And then that's signed by Mr. Watler? 5 A Yes. 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 BY MS. TOMKOWIAK: 14 Q 1618, are you there? 15 A Yes. 16 Q My first question is on page 3, which is 17 the Bates number ending 624. 18 A Yes. 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 A I have no idea. I don't know. 25 Q Do you know who made that decision?</p> | <p>244</p> <p>1 And the subscriber in this context is 2 Sentinel Reinsurance, right? 3 A Yes. 4 Q And the box here is checked yes. Do you 5 recall if this is a section that you filled out? 6 A I don't recall. 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 A Yes. 14 Q Do you know how Starck, Ltd. is affiliated 15 with Sentinel Reinsurance? 16 A I don't recall. 17 Q Do you know how Sentinel Re Holdings is 18 affiliated with Sentinel Reinsurance? 19 A It's in the same organizational structure 20 as Sentinel, either a parent or a subsidiary, but 21 they're in the same structure. 22 Q And is Starck, Ltd. affiliated with 23 Highland Capital Management? 24 A I don't know. I don't recall. 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 A I don't. 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 A I don't -- I have no direct knowledge. I 15 don't see -- it doesn't -- I don't know the -- an 16 entity Stark Limited. It doesn't ring a bell. 17 BY MS. TOMKOWIAK: 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 A As I sit here, I don't. 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 A Okay. 11 BY MS. TOMKOWIAK: 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 A I've always said Colbert, but that may be 17 wrong. 18 Q Do you know who Taylor Colbert is? 19 A Generally. 20 Q And who is he or she? 21 A He worked in the accounting group. 22 Q At Highland? 23 A At Highland. 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 A I don't. 3 Q If you didn't fill out the whole thing, do 4 you know who else would have? 5 A Sentinel, the directors would have filled 6 out portions of it. I don't recall exactly which 7 portions, but things like Section 3 and the like. 8 Q Do you know when Sentinel Re Holdings 9 obtained its interest in the Multi Strat fund? 10 A I believe it was sometime in 2015. 11 Q Were you involved in that? 12 A I recall being involved in that, yeah. 13 Q Do you recall who it received that 14 interest from? 15 A I don't recall exactly. 16 Q Do you recall if it was another Highland 17 entity? 18 A I don't recall. I would need to look at 19 the underlying document. 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 A Trey Parker was the ex-head of private 2 equity. 3 Q And when you say ex, do you mean -- 4 A Previously -- until February of '20. 5 Q Okay. But at the time he was the head of 6 private equity at the time of this e-mail? 7 A Yeah. Yes. He was the -- he was head of 8 credit research at this time, I believe, in 9 December of 2017. 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 A Yes. 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 A Yes. 22 Q Do you agree with that? 23 A That's what it -- well, I'm sorry. 24 MS. SMITH: Objection, form. 25 A I don't see that.</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?

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|---|---|
| <p>273</p> <p>1 MS. SMITH: Objection to form. 2 A I generally knew of what it was, yeah. 3 BY MS. TOMKOWIAK: 4 Q And the -- and what the purpose of an ATE 5 policy was? 6 A Or at least one purpose based on what I 7 had seen previously. I don't think I got a 8 comprehensive understanding or view of the 9 product, but I certainly had seen it before. 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 A Okay. 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 A Yes. 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 A Yes. 3 Q Do you understand your obligations with 4 respect to confidentiality under this agreement? 5 A I believe so, yes. 6 Q Okay. And have you adhered to those 7 obligations? 8 A I believe so, yes. 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 A No. I think I have complied with it. 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> |

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|---|--|
| <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 & Jones for 13 counsel to Highland. We've never met before, have 14 we? 15 A No, sir. 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 I believe that's right. 22 Q And the board -- do you know -- can you 23 identify the board members by name? 24 A Yes. 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 No. 4 BY MR. FEINSTEIN: 5 Q Is there any reason why you didn't do 6 that? 7 A 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. 14 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. 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 Dubel, Nelms and Seery. 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 I interacted with all of them at different 9 times from time to time. 10 Q Did there come a point when Mr. Seery 11 became the CEO? 12 A Yes. 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 Yes. 17 Q And when did you leave the employ of the 18 debtor? 19 A February 28th of '21. 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 I don't recall using those words, but I 4 know it was -- it was litigated over and it was 5 discussed quite extensively. 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 Yes, I did know that. 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 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. 23 BY MR. FEINSTEIN: 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

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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 **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.**
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 **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.**
24 Q You saw documents at the time, did you
25 not, that showed that those assets were worth tens

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1 of millions of dollars, correct?
2 MS. DANDENEAU: Objection to form.
3 **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.**
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 **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**

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1 **understand.**
2 **BY MR. FEINSTEIN:**
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?
25 **A Will you please repeat it?**

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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 **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.**
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 **A I don't remember asking them that**
22 **question, as you've phrased it.**
23 BY MR. FEINSTEIN:
24 Q Do you recall any discussions with either
25 of them about the amount of the premium relevant

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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>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 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. 16 BY MR. FEINSTEIN: 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 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. 25 Q Well, you're a lawyer and you worked on</p> | <p>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 A I understand your analogy, sir. I'm not 14 able to agree with your way in. That's outside of 15 my work. 16 Q Which part of my question don't you 17 understand? It's a simple question. 18 MS. DANDENEAU: Objection to form. 19 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</p> |
| <p>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 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 -- 11 BY MR. FEINSTEIN: 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 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. 20 Q Did you think about it at the time? 21 MS. DANDENEAU: Objection to form. 22 A Candidly, insurance was not my bailiwick. 23 I relied on the subject matter experts to know 24 what was reasonable and feasible. 25</p> | <p>300</p> <p>1 me to agree with a very simple premise like that. 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 A Managed fund. Can you be a little more 12 specific? What do you mean by managed fund? 13 BY MS. TOMKOWIAK: 14 Q Is that a term that you -- that was used 15 at Highland? 16 A Yeah, I mean, generally, the concept of a 17 fund managed by Highland. 18 Q Would you consider Sentinel to be a fund 19 managed by Highland? 20 A I never considered it that way. 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> |

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1 **A Yes.**
2 **BY MS. TOMKOWIAK:**
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 **A I had become aware of it before I left**
8 **Highland.**
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 **A Suitability of the funds to -- and**
16 **wherewithal to purchase the -- or enter into the**
17 **insurance policy. Where the fund -- where the --**
18 **where the assets -- how Sentinel would hold the**
19 **assets and whether that was acceptable. But, you**
20 **know, I think of compliance approval and I think**
21 **of a whole bevy of -- a whole bevy of issues, some**
22 **of which involve conflicts of interest, some of**
23 **which involve, you know, an ability of a fund to**
24 **enter into a given investment or transaction,**
25 **things of that nature.**

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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 **A I think the appropriateness of the**
7 **transaction on a holistic level. I believe that**
8 **was part of the compliance review and approval**
9 **ultimately.**
10 **BY MS. TOMKOWIAK:**
11 **Q** Anything else?
12 **A That's what I can think of now.**
13 **Q** What do you mean by suitability and
14 wherewithal to purchase?
15 **A It involves a lawsuit. Is the lawsuit**
16 **active and alive? Is the insurance company a bona**
17 **fide counterparty? Things like that.**
18 **Q** Okay. And were any conclusions reached
19 about whether the lawsuit was active and alive?
20 **A I believe the answer is yes, it was.**
21 **Q** Okay. And do you recall that conclusion
22 being reached during that meeting?
23 **A I remember that conclusion being reached.**
24 **I don't necessarily know whether it was during**
25 **that meeting or subsequent meetings, in the**

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1 **compliance review sort of apogee.**
2 **Q** Who reached that conclusion?
3 **A The chief compliance officer.**
4 **Q** Mr. Surgent?
5 **A Yes.**
6 **Q** Anybody else?
7 **A Compliance was the only -- at least as far**
8 **as I know, compliance was being asked to weigh in**
9 **on these questions.**
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 **A I think the answer was, yes, that it was.**
15 **Q** And who reached that conclusion?
16 **A I think for some of the securities, I**
17 **think it ultimately would have been approved by**
18 **Mr. Surgent, but I think there was a question as**
19 **to some of the securities that involved Mr. Post**
20 **weighing in, but I would consider it having been**
21 **approved by compliance versus one person or**
22 **another.**
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

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1 confused by that.
2 **A Whether Sentinel was qualified to take**
3 **ownership of certain securities, is what I mean.**
4 **Q** I see. Was Mr. Post a Highland employee
5 at this time?
6 **A I believe so.**
7 **Q** Okay. And so with what securities do you
8 believe he would have weighed in on?
9 **A I think there were some questions as to**
10 **interval funds. I don't have more specific**
11 **recollection than that.**
12 **Q** What's an interval fund?
13 **A A fund where the -- as I understand it,**
14 **the redemption period is -- it's fixed by length**
15 **of time. So it could be quarterly, it could be**
16 **yearly, but there's an interval in which the**
17 **investor can be redeemed, as far as I understand,**
18 **and that's a very rudimentary sort of**
19 **understanding of it.**
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 **A I think that would have been subsequent to**
25 **the larger meeting.**

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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 **Over the course of August, I would say. I**
6 **don't have an exact date.**
7 Q Who reached that conclusion?
8 A **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.**
13 Q Okay. And Mr. Fuentes, was he employed by
14 Highland or NexBank at this time?
15 A **I don't know.**
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 **I recall he had to weigh in on certain --**
20 **on certain assets.**
21 Q Okay. Did those assets relate to NexBank;
22 do you recall?
23 A **NexBank?**
24 Q Yeah.
25 A **No, I don't think anything related to**

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1 **NexBank.**
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 **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.**
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 **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**

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1 **different Highland touchpoints I previously**
2 **mentioned.**
3 **BY MS. TOMKOWIAK:**
4 Q So did the legal department have no role
5 in that?
6 MS. SMITH: Objection to form.
7 A **No, I would say legal -- yeah, I -- the**
8 **legal department would have an approval component,**
9 **sure.**
10 **BY MS. TOMKOWIAK:**
11 Q And would that be Mr. Ellington?
12 A **Mr. Ellington and Mr. Sargent.**
13 **Mr. Sargent -- both of them, I think, as GC and**
14 **deputy GC.**
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 **I think so. I don't recall directly, but**
19 **I think so.**
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?**

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1 MS. SMITH: Objection to form.
2 A **I have no doubt that it was discussed. I**
3 **just don't remember it creating a conflict of**
4 **interest question or issue.**
5 **BY MS. TOMKOWIAK:**
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 **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.**
17 Q Did Mr. Ellington ever recuse himself from
18 any of these conversations?
19 A **Not that I recall.**
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.

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1 **A I remember testimony to that effect.**
2 **BY MS. TOMKOWIAK:**
3 **Q Okay. Did you assume that somebody else**
4 **would bring it to their attention?**
5 **A My assumption solely was that other --**
6 **other colleagues were working on these different**
7 **litigation matters and working with the**
8 **independent board and the Pachulski firm about**
9 **these matters. I -- the only assumption I had is**
10 **that all of those people were working together and**
11 **working effectively together.**
12 **Q Do you think any of those colleagues had a**
13 **duty to bring the UBS policy to the board's**
14 **attention?**
15 **MS. SMITH: Objection to form.**
16 **A I don't know what was asked, what**
17 **discussions they had or otherwise. I really can't**
18 **opine.**
19 **BY MS. TOMKOWIAK:**
20 **Q Okay. And you didn't have an assumption**
21 **one way or the other that somebody was going to**
22 **bring that to the board's attention?**
23 **A Again, my only assumption was that very**
24 **qualified people were working with the Pachulski**
25 **firm and the independent board on these matters.**

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1 **These weren't matters I was working on. And that**
2 **they were effectively being handled, worked on,**
3 **addressed and resolved.**
4 **Q So as Highland's assistant general counsel**
5 **at the time that the policy was entered into, were**
6 **Highland and Sentinel affiliated entities?**
7 **MS. SMITH: Objection to form.**
8 **A I think the compliance conclusion is that**
9 **they were not affiliates.**
10 **BY MS. TOMKOWIAK:**
11 **Q Did you have a conclusion as to whether or**
12 **not they were affiliates?**
13 **MS. SMITH: Objection to form.**
14 **A I was not asked nor was that -- nor would**
15 **it have mattered what -- my view. Compliance's**
16 **perspective was the one that counted.**
17 **BY MS. TOMKOWIAK:**
18 **Q Okay. But did you have a view?**
19 **A I deferred and agreed to compliance. I**
20 **didn't have reason to think they were wrong or**
21 **they had missed something.**
22 **Q Do you still hold that belief today?**
23 **A Yes.**
24 **Q Is there any definition of affiliates that**
25 **you would use under which Highland and Sentinel**

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1 **would be affiliates?**
2 **MS. SMITH: Objection, form.**
3 **A That I would use -- can you be a little**
4 **more specific?**
5 **BY MS. TOMKOWIAK:**
6 **Q That you would use in your capacity as a**
7 **lawyer. Is there any definition of affiliates**
8 **under which Highland and Sentinel would be**
9 **affiliates?**
10 **MS. SMITH: Objection to form.**
11 **A The only legal term of art I know of is**
12 **this concept that affiliates are entities under**
13 **common control, which I think derives from the**
14 **securities laws. Applying that definition, I**
15 **would say that they're not.**
16 **BY MS. TOMKOWIAK:**
17 **Q And how do you reach that conclusion?**
18 **A Because I don't think they're under common**
19 **control.**
20 **Q Why don't you think they're under common**
21 **control?**
22 **A They're controlled by two different sets**
23 **of people.**
24 **Q And it doesn't matter if those two**
25 **different sets of people have any overlap?**

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1 **MS. SMITH: Objection to form.**
2 **A Those two sets of people have any overlap.**
3 **What do you mean by that?**
4 **BY MS. TOMKOWIAK:**
5 **Q Well, you said that they're controlled by**
6 **two different sets of people, right?**
7 **A Yes.**
8 **Q And those two different sets of people**
9 **included at least, at some point in time,**
10 **Mr. Dondero, correct?**
11 **A Yes.**
12 **Q And that doesn't change your analysis as**
13 **to whether they're controlled -- they're under**
14 **common control; is that right?**
15 **A Right.**
16 **Q I'm going to hand you what we will mark as**
17 **Exhibit --**
18 **A 66.**
19 **Q -- 66; is that right?**
20 **(Deposition Exhibit 66 marked for**
21 **identification.)**
22 **A Okay.**
23 **BY MS. TOMKOWIAK:**
24 **Q Mr. Sevilla, is this the document that you**
25 **found in your Gmail that you produced to us?**

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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?

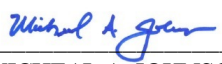
316

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.
8
9
10 _____
11 (DATE) (SIGNATURE)
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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 style="text-align: center;">1</p> <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 CONTAINS HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION</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 style="text-align: center;">3</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 & 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 & 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 & 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 & SMITH, PC 29 700 N. Pearl Street, Suite 1610 30 Dallas, Texas 75201 31 (214) 377-7879 32 frances.smith@judithwross.com</p> |
| <p style="text-align: center;">2</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 Diplmate Reporter and 9 Certified Realtime Reporter.</p> | <p style="text-align: center;">4</p> <p>1 APPEARANCES CONTINUED</p> <p>2 ON BEHALF OF THE WITNESS:</p> <p>3 Debra A. Dandeneau 4 Michelle Hartmann 5 BAKER & 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 INDEX ISAAC D. LEVENTON July 22, 2021</p> <p>2</p> <p>3 APPEARANCES 3</p> <p>4 PROCEEDINGS 8</p> <p>5</p> <p>6 EXAMINATION OF ISAAC D. LEVENTON: 7 BY MR. CLUBOK 9</p> <p>8</p> <p>9 ACKNOWLEDGMENT OF DEPONENT 369</p> <p>10 REPORTER'S CERTIFICATION 370</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>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit 2 287</p> <p>4 Exhibit 4 292</p> <p>5 Exhibit 5 294</p> <p>6 Exhibit 47 169</p> <p>7 Exhibit 53 281</p> <p>8 Exhibit 56 215</p> <p>9 Exhibit 57 235</p> <p>10 Exhibit 59 284</p> <p>11 Exhibit 61 243</p> <p>12 Exhibit 62 297</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 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 & Watkins, LLP.</p> <p>20 MS. McLAUGHLIN: Shannon McLaughlin, also</p> <p>21 with Latham & Watkins.</p> <p>22 MS. SMITH: Frances Smith with Ross &</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> |

Transcript of Isaac D. Leventon

Conducted on July 22, 2021

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| 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 & 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 Isaac Daniel Leventon. 19 Q And what's your home address? 20 REDACTED 21 22 Q Roughly how long have you lived there? 23 A Since 2013 or '14. 24 Q What's your current business address? 25 A 2515 McKinney Avenue.</p> | <p>1 A Not personally. 2 Q Have you been deposed before? 3 A Yes. 4 Q How many times, approximately? 5 A Over ten. 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 I believe so. 11 BY MR. CLUBOK: 12 Q When was the last time you were deposed, 13 roughly? 14 A I'm trying to recall. I believe it may 15 have been early this year. 16 Q Have you ever served as a corporate 17 representative or as the equivalent state law 18 nomenclature? 19 A Yes. 20 Q Roughly many times? 21 A Most of the depositions I gave were in a 22 corporate representative capacity. The majority 23 of them. 24 Q Who were you representing? 25 A Depended on the case.</p> | |
| 0 | <p>1 Q You are an attorney authorized to practice 2 law, correct? 3 A Yes. 4 Q In what states? 5 A Texas. 6 Q Just Texas? 7 A I'm only barred in the state of Texas, 8 yes. 9 Q Where did you go to college? 10 A Emory University. 11 Q What year did you graduate? 12 A 2001. 13 Q What was your degree? 14 A Political science. 15 Q And where did you go to law school? 16 A University of Texas School of Law. 17 Q Where did -- when did you graduate? 18 A 2005. 19 Q Did you do something between college and 20 law school? 21 A Yes. 22 Q What was that? 23 A I worked for the Centers for Disease 24 Control. 25 Q Did you know Dr. Fauci?</p> | 2 | <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 The last one at the beginning of this 5 year, I served as the corporate representative for 6 the plaintiffs in the lawsuit against Celtic 7 Pharma. 8 Q Who were the plaintiffs? 9 A You'd have to pull -- I don't recall the 10 exact names of them. You'd have to look at the 11 style of the case, but it was all of them. 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 I really don't remember. I would have to 17 look back at the records on that. I don't recall 18 which ones. 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 There was a case related to the real 25 estate fund a number of years back, but I don't</p> |

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| 13 | <p>1 remember who I was representing as the witness in</p> <p>2 that case.</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>9 A First of all, it's Celtic, like -- spelled</p> <p>10 like the basketball team.</p> <p>11 Q Although apparently pronounced</p> <p>12 differently.</p> <p>13 A Correct. And now thinking about it</p> <p>14 further, I represented Highland Capital</p> <p>15 Management, LP, as their corporate representative</p> <p>16 in the Crusader arbitration.</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>20 A No, not sitting here today.</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>24 A Yes.</p> <p>25 Q How many times, roughly?</p> | 15 |
| 14 | <p>1 Q Had they been a client of yours before you</p> <p>2 started working for them?</p> <p>3 A No.</p> <p>4 Q How did you come to be employed at</p> <p>5 Highland Capital Management?</p> <p>6 A Online application, interview.</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>13 A So when you say HCM, you're referring to</p> <p>14 Highland Capital Management, LP, the debtor,</p> <p>15 correct?</p> <p>16 Q Correct.</p> <p>17 A Okay. We can make that agreement.</p> <p>18 Q Okay. Thank you. And who interviewed you</p> <p>19 for your job at HCM?</p> <p>20 A A number of people interviewed me.</p> <p>21 Q Did you have an understanding as to who</p> <p>22 was the final decision-maker?</p> <p>23 A No, I didn't actually.</p> <p>24 Q Who interviewed you? Identify the people</p> <p>25 who interviewed you.</p> | 16 |
| 14 | <p>1 A Maybe two or three.</p> <p>2 Q Were those all in connection with your</p> <p>3 work?</p> <p>4 A Yes.</p> <p>5 Q Okay. And what were the circumstances of</p> <p>6 those depositions?</p> <p>7 A I honestly don't remember. I honestly</p> <p>8 don't recall.</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>12 A I really don't remember now.</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>16 A Yes. Would you like me to do so?</p> <p>17 Q Yes.</p> <p>18 A Okay. I went to work for a litigation</p> <p>19 boutique for approximately five years here in</p> <p>20 Dallas.</p> <p>21 Q Named?</p> <p>22 A Hartline, Dacus, Barger, Dryer & Kern.</p> <p>23 We'll spell it during a break. And then in</p> <p>24 September 2009, I began working at Highland</p> <p>25 Capital Management, LP.</p> | 16 |
| 14 | <p>1 A Michael Colvin, Andrei Dorenbaum, Patrick</p> <p>2 Daugherty, John Honis, Scott Ellington, Brian</p> <p>3 Collins and I believe Debbie Reynolds as well.</p> <p>4 Q And what was -- and you were hired by</p> <p>5 Highland Capital Management, correct?</p> <p>6 A Yes.</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>12 A Okay.</p> <p>13 Q Thanks. So what was the job you were</p> <p>14 hired to do for HCM?</p> <p>15 A I was hired as litigation counsel.</p> <p>16 Q What did that mean? What were your job</p> <p>17 duties as litigation counsel?</p> <p>18 A To work on and manage litigation.</p> <p>19 Q For whom?</p> <p>20 A For HCMLP and for its other affiliates.</p> <p>21 Q And did your role ever change?</p> <p>22 A Yes.</p> <p>23 Q When?</p> <p>24 A February 2011.</p> <p>25 Q How did your role change in February 2011?</p> | 16 |

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| <p style="text-align: right;">17</p> <p>1 A I was promoted to assistant general 2 counsel. 3 Q Who promoted you? 4 A The company. 5 Q Was there a person who you understood to 6 have made the decision? 7 A I don't know. 8 Q Who were you reporting to prior to your 9 promotion? 10 A Scott Ellington. 11 Q Did you always report to Scott Ellington 12 throughout your tenure at HCM? 13 A Not that entire period. I believe there 14 was a brief period where I did not report to him. 15 Q When was that? 16 A Subsequent to my promotion but before 17 Mr. Ellington became general counsel. 18 Q And when was that? 19 A I think it would have been most of 2011. 20 Q Okay. So -- and who did you report to 21 during most of 2011? 22 A Michael Colvin. 23 Q And then Mr. Colvin left and Mr. Ellington 24 became general counsel? 25 A Correct.</p> | <p style="text-align: right;">19</p> <p>1 general counsels to him? 2 A I'm trying to remember the exact time 3 frame. There were other assistant general 4 counsels at various points in time. Those are 5 individuals I recall held that title at one point 6 in time or another. 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 A Yes. 12 Q And did your role ever change after that? 13 A I mean, I took on additional duties and 14 responsibilities as needed. 15 Q Did you -- and what were those? 16 A Depended on which business unit needed 17 support and I would help them out. 18 Q What do you mean? 19 A I assisted the real estate team, I 20 assisted the credit analysis team and I assisted 21 the back office, accounting and operations. 22 Q How did you assist the back office 23 accounting and operations? 24 A I worked on audit-related matters. 25 Q What do you mean?</p> |
| <p style="text-align: right;">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 A Correct. 5 Q Did your duties change when you became 6 assistant general counsel? 7 A Yes. 8 Q In what way? 9 A I took on nonlitigation management-related 10 duties. 11 Q Like what? 12 A Corporate work, contract drafting and 13 review, and then supporting some of the business 14 units, a lot of transactional work. 15 Q Were there other assistant general 16 counsels at the time? 17 A I believe the answer is yes. 18 Q Do you know who they were? 19 A Thomas Surgent, Scott Ellington and Andrei 20 Dorenbaum. 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 style="text-align: right;">20</p> <p>1 A The preparation of audits. 2 Q Did you work on asset valuations ever? 3 A No. 4 Q What does the credit analysis team do? 5 A They analyze and track and make 6 recommendations for investments in debt 7 instruments. 8 Q And what was the assistance you provided 9 to that group? 10 A Credit analysis -- credit agreement 11 analysis as requested. 12 Q What does that mean? 13 A Mean if they asked me to look at a credit 14 agreement, I would look at it and I would give 15 them my perspective on it. 16 Q Okay. Did you ever get a promotion after 17 2011? 18 A I had an additional job title added, but I 19 don't think it was really a promotion. 20 Q What was that? 21 A I believe I had a title of managing 22 director of distress added. 23 Q What did that title entail? 24 A I didn't really do any work under that 25 title.</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?</p> <p>3 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.</p> <p>7 Q Starting when?</p> <p>8 A Maybe 2018.</p> <p>9 Q Who anticipated that?</p> <p>10 A Mr. Ellington informed us that we were 11 going to be asked to help out with that role.</p> <p>12 Q And -- but you never did help out with any 13 distressed assets after you got that job title?</p> <p>14 A Not really, no.</p> <p>15 Q Were you ever given the title director of 16 private equity?</p> <p>17 A Oh, that's what the title was. Yeah.</p> <p>18 Q Okay. Did you ever perform any functions 19 related to that title?</p> <p>20 A No, not really.</p> <p>21 Q So your job really didn't change beyond 22 what you've described, from 2011 until you left 23 HCM, correct?</p> <p>24 A We had -- depending on the needs of the 25 company, things would -- things would change and</p> | <p style="text-align: right;">23</p> <p>1 Q Did you physically work near him?</p> <p>2 A We were in the same office facility, if 3 that's the question.</p> <p>4 Q Were you on the same floor?</p> <p>5 A The entire firm was on the same floor, so 6 yes.</p> <p>7 Q Okay. So I take it you'd see him at least 8 on a relatively frequent basis around the office?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A Not necessarily, no, actually.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Did you have your own office?</p> <p>13 A No.</p> <p>14 Q Did you sit out on a pod situation or what 15 was your physical layout for your workspace?</p> <p>16 A We had an open floor plan and I was 17 sitting in the open floor plan.</p> <p>18 Q Who sat near you?</p> <p>19 A When?</p> <p>20 Q In the 2017 through 2019 time frame.</p> <p>21 A I believe Jason Goldsmith sat near me.</p> <p>22 Q Anyone else?</p> <p>23 A Eric Girard.</p> <p>24 Q Anyone else?</p> <p>25 A I don't remember anyone else sitting near</p> |
| <p style="text-align: right;">22</p> <p>1 you'd have different tasks, but the basic nature 2 of my role didn't change.</p> <p>3 Q How often did you communicate with 4 Mr. Dondero during the course of your employment 5 at HCM?</p> <p>6 A It really depended on when during that 7 employment. I was there for 11 years.</p> <p>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?</p> <p>13 A So you're talking approximately 2017 14 through 2019?</p> <p>15 Q Yes.</p> <p>16 A I don't know. Maybe once a month.</p> <p>17 Q And would that communication be in person 18 or be by e-mail?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A It would depend on the communication.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q How often did you speak with Mr. Dondero 23 on average in 2017 through 2019?</p> <p>24 A I really don't recall. I would have to 25 speculate.</p> | <p style="text-align: right;">24</p> <p>1 me at that point in time, no.</p> <p>2 Q How about Scott Ellington?</p> <p>3 A He did not sit near me.</p> <p>4 Q Where did he sit?</p> <p>5 A He had an office.</p> <p>6 Q How often did you speak with Scott 7 Ellington on average during that time period?</p> <p>8 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.</p> <p>11 Q Well, would it be on a -- can you say 12 whether it would be roughly on a daily, weekly, 13 monthly basis?</p> <p>14 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.</p> <p>17 Q Who did Scott Ellington report to during 18 the time period you worked -- were -- strike that.</p> <p>19 After Scott Ellington became general 20 counsel, who did he report to?</p> <p>21 A Mr. Dondero.</p> <p>22 Q Did you supervise anyone in the legal 23 department after you got your promotion to 24 assistant general counsel?</p> <p>25 A I had younger associate attorneys that</p> |

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| 25 | <p>1 could be staffed on to matters of mine, but they</p> <p>2 did not technically report to me.</p> <p>3 Q Okay. But you would direct their work in</p> <p>4 some -- depending on the needs?</p> <p>5 A Depending on the tasks, yes.</p> <p>6 Q Who were they?</p> <p>7 A Stephanie Vitiello.</p> <p>8 Q Anyone else?</p> <p>9 A Lauren Thedford.</p> <p>10 Q Anybody else?</p> <p>11 A No.</p> <p>12 Q So Stephanie -- how did you pronounce --</p> <p>13 how do you spell that last name?</p> <p>14 A V-i-t-i-e-l-l-o.</p> <p>15 Q She was an attorney there?</p> <p>16 A Yes.</p> <p>17 Q Does she still work at HCM?</p> <p>18 A No.</p> <p>19 Q When did she leave HCM?</p> <p>20 A I don't know exactly.</p> <p>21 Q Was she there until you left?</p> <p>22 A Yes.</p> <p>23 Q So she was still there until this year,</p> <p>24 2021?</p> <p>25 A Yes.</p> | 27 | <p>1 amount of deferred compensation.</p> <p>2 Q And then did your compensation change</p> <p>3 after the bankruptcy?</p> <p>4 A No. Well, depends on your interpretation</p> <p>5 of whether it changed or not.</p> <p>6 Q Okay. In terms of dollar amounts, did</p> <p>7 it --</p> <p>8 A In terms of the dollar amounts I actually</p> <p>9 received, yes, it changed.</p> <p>10 Q In what -- roughly the magnitude, did you</p> <p>11 get half as much, two-thirds as much, twice as</p> <p>12 much?</p> <p>13 A The UCC objected to the payment of my</p> <p>14 bonuses. So in the amounts that the UCC objected.</p> <p>15 Q I see. And so what was your comp last</p> <p>16 year? I guess 2020 would have been the full year</p> <p>17 that you were under the bankruptcy rules. What</p> <p>18 was your rough total comp?</p> <p>19 A I'm not exactly sure. It would have been</p> <p>20 my salary, plus not receiving the bonuses.</p> <p>21 Q And what is your compensation at your new</p> <p>22 job?</p> <p>23 A Roughly flat, as compared to what I had</p> <p>24 been promised at Highland.</p> <p>25 Q Meaning what? Roughly 400,000 is what you</p> |
| 26 | <p>1 Q Where is she now in terms of employment?</p> <p>2 A She works at Skyview.</p> <p>3 Q How about Lauren? Does she work at</p> <p>4 Skyview as well?</p> <p>5 A No.</p> <p>6 Q Where is she now in terms of employment,</p> <p>7 if you know?</p> <p>8 A I don't.</p> <p>9 Q Did you -- during the time you were at</p> <p>10 Highland, who paid your salary?</p> <p>11 A Highland Capital Management, LP.</p> <p>12 Q In the last year before the bankruptcy,</p> <p>13 what was your total comp, roughly, from HCM?</p> <p>14 A I would have to go back and look. It was</p> <p>15 maybe 3- or \$400,000.</p> <p>16 Q And was that partially salary and</p> <p>17 partially bonus?</p> <p>18 A Yes.</p> <p>19 Q What was the rough split there?</p> <p>20 A Maybe 50/50.</p> <p>21 Q And did you have any other comp, in terms</p> <p>22 of equity or deferred compensation or anything</p> <p>23 else like that, in the final year that you worked</p> <p>24 at Highland before the bankruptcy?</p> <p>25 A I think I might have had a very small</p> | 28 | <p>1 expect to make this year?</p> <p>2 A I don't know the exact number, but it's</p> <p>3 roughly flat, so it's whatever is reflected in the</p> <p>4 accounting records.</p> <p>5 Q What accounting records?</p> <p>6 A The ones at Highland.</p> <p>7 Q So whatever is reflected in terms of what</p> <p>8 you were slated to receive prebankruptcy is the</p> <p>9 amount -- is the amount you're expecting to get</p> <p>10 paid at your new job?</p> <p>11 A Correct.</p> <p>12 Q Did you have any other sources of income</p> <p>13 other than HCM during your time there?</p> <p>14 A Yes.</p> <p>15 Q What was that?</p> <p>16 A I received a payment from NexPoint.</p> <p>17 Q Okay. What's NexPoint?</p> <p>18 A NexPoint Advisors, LP.</p> <p>19 Q And when did you receive a payment from</p> <p>20 NexPoint?</p> <p>21 A May of 2020.</p> <p>22 Q For -- what was the amount of that?</p> <p>23 A It was approximately 300,000 something.</p> <p>24 Q And what was that for?</p> <p>25 A It was the deferred compensation that I</p> |

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| 29 | <p>1 had been waiting for for three years, that the UCC</p> <p>2 chose not to pay me that had vested and earned.</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>6 A Correct.</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>20 A Yes.</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>24 A I'm struggling with your question. It was</p> <p>25 the amount of the deferred compensation that</p> | 31 |
| 30 | <p>1 was -- that I had earned and was due and payable</p> <p>2 to me in May of 2020.</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>8 A Yes.</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>13 A Yes.</p> <p>14 Q Okay. And did you disclose that</p> <p>15 compensation to the debtor?</p> <p>16 A To the company generally? I mean, it came</p> <p>17 from the HR department of the debtor. So the</p> <p>18 debtor was aware of it.</p> <p>19 Q Sorry. It came from the HR department of</p> <p>20 the debtor?</p> <p>21 A Yes.</p> <p>22 Q What do you mean?</p> <p>23 A Mr. Brian Collins, who was a debtor</p> <p>24 employee, told me to -- that I would be receiving</p> <p>25 the payment.</p> | 32 |
| 31 | <p>1 Q But not from the debtor, instead from</p> <p>2 NexPoint?</p> <p>3 A I don't believe we discussed where it was</p> <p>4 going to come from.</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>7 A Yes.</p> <p>8 Q And then it showed up and it was from</p> <p>9 NexPoint?</p> <p>10 A It showed up and honestly I didn't even</p> <p>11 check where it came from until much later.</p> <p>12 Q When did you check?</p> <p>13 A There was a deposition earlier and -- I</p> <p>14 apologize. I'm trying to remember. It had -- it</p> <p>15 had something -- no, there was a deposition</p> <p>16 earlier I think this year and I wasn't -- I didn't</p> <p>17 know the answer and so I went back and looked.</p> <p>18 Q I see. Did you look before the deposition</p> <p>19 or after?</p> <p>20 A After.</p> <p>21 Q Did you -- did you ever discuss receiving</p> <p>22 that comp with anyone other than Mr. Collins?</p> <p>23 A I don't believe so, no.</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> | 32 |
| 32 | <p>1 other than that, or your lawyers?</p> <p>2 A Actually, I was about to say. The answer</p> <p>3 is, yes, I did discuss it with other people and</p> <p>4 that would be the attorneys sitting to the right</p> <p>5 of me.</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>9 A I have a spouse.</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>14 A No.</p> <p>15 Q Not Mr. Ellington?</p> <p>16 A No.</p> <p>17 Q Not anybody else at the debtor other than</p> <p>18 Mr. Collins?</p> <p>19 A No.</p> <p>20 Q Where are you currently employed?</p> <p>21 A I'm currently employed by Skyview Group.</p> <p>22 Q When did you leave HCM?</p> <p>23 A On or about January 5th, 2021.</p> <p>24 Q Why did you leave HCM?</p> <p>25 A My employment was terminated.</p> | 32 |

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| <p style="text-align: right;">33</p> <p>1 Q By whom?</p> <p>2 A Mr. Seery.</p> <p>3 Q Did he or anybody tell you why?</p> <p>4 A Yes.</p> <p>5 Q What did they tell you? Well, first of</p> <p>6 all, who told you?</p> <p>7 A Mr. Seery.</p> <p>8 Q Okay. What did he say?</p> <p>9 A He said I was being terminated for breach</p> <p>10 of fiduciary duty, for disclosing confidential</p> <p>11 information and for working against the best</p> <p>12 interest of the debtor.</p> <p>13 Q Did he give you any more details?</p> <p>14 A I asked him for details and he refused to</p> <p>15 provide them.</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 A Yes.</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 A No.</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 A I did due diligence and evaluated</p> <p>3 litigation that SAS was considering investing in</p> <p>4 as a litigation funder.</p> <p>5 Q Anything else for SAS Management?</p> <p>6 A That was really it.</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 A It was something I was instructed to do</p> <p>10 from my seat at Highland. It was a service I was</p> <p>11 instructed to provide from my seat at Highland.</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 A That's not my testimony.</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 A I knew it had some connection to</p> <p>22 Mr. Ellington, but other than that, I really</p> <p>23 didn't know.</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 A I don't want to say it related to the work</p> <p>5 I did at Highland, but I had another e-mail</p> <p>6 address.</p> <p>7 Q What was that?</p> <p>8 A I had an e-mail address at sasmgt.com.</p> <p>9 Q What's SAS MGT?</p> <p>10 A SAS Management.</p> <p>11 Q What is that?</p> <p>12 A It was a litigation funding company.</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 A From my role at Highland, I was instructed</p> <p>16 to provide services to SAS Management and I did</p> <p>17 so.</p> <p>18 Q Who instructed you to do that?</p> <p>19 A Mr. Ellington.</p> <p>20 Q And was SAS owned by Highland?</p> <p>21 A Actually, I don't know who owns SAS.</p> <p>22 Q Is SAS affiliated with Highland?</p> <p>23 A I don't know the answer to that question.</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 A He had some level of authority with the</p> <p>2 organization.</p> <p>3 Q And you knew nothing more specific than</p> <p>4 that?</p> <p>5 A Not really, no.</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 A I mean, sitting here today, I really don't</p> <p>12 recall anything else.</p> <p>13 Q Do you today know anything more about</p> <p>14 SAS's connection, if any, to Highland?</p> <p>15 A No, I don't.</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 A That was outside of the scope of my job</p> <p>22 duties. That was solely the purview of</p> <p>23 Mr. Sargent in the compliance department.</p> <p>24 BY MR. CLUBOK:</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 A Correct. 4 Q Did you understand SAS to be a Highland 5 affiliate when you were asked to do work for it? 6 A I don't remember how the compliance 7 department classified SAS. I believe they 8 classified them as not an affiliate. 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 A I understood that whatever the compliance 13 department and Mr. Surgent's determination of what 14 was or wasn't an affiliate was the final 15 determination, and his determination, I believe, 16 is that it wasn't. 17 Q Why do you believe that? 18 A Because that's my recollection is that was 19 his determination. 20 Q Did he tell you that? 21 A I'm trying to remember if he told me that 22 or if his determination was told to me by somebody 23 else. 24 Q Did you specifically seek out that 25 information as to whether SAS was an affiliate of</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 A Not necessarily, no. 5 Q Well, Katie Irving did, correct? 6 A Assisted me? No. 7 Q Did Katie Irving perform work for SAS 8 while she was employed at HCM, as far as you know? 9 A I have a general understanding that she 10 did, but I don't really know what she did for that 11 entity or those entities. 12 Q Did you ever -- when was the last time you 13 performed work for SAS? 14 A It's been a long time. Probably prior to 15 the bankruptcy sometime. 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;">38</p> <p>1 Highland? 2 A I don't believe I did, no. 3 Q Do you have any idea, as you sit here 4 today, who owns SAS? 5 A I don't. 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 A I actually don't know. 10 Q Did you talk to anybody else about work 11 you were doing for SAS other than Mr. Ellington? 12 A Yes. 13 Q Who? 14 A Other individuals. I guess Mr. Sevilla. 15 Q Who else? 16 A Ms. Thedford. 17 Q Who? 18 A Thedford. 19 Q Is that Lauren? 20 A Yes. 21 Q Okay. Who else? 22 A Ms. Katie Irving. 23 Q Who else? 24 A That's who I can think of sitting here 25 today.</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> |

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| <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 A I actually don't remember what the 17 question was at this point. 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 A I don't ever remember discussing that 24 entity with them one way or another. 25 Q Did you disclose the existence of SAS to</p> | <p style="text-align: right;">43</p> <p>1 A Mr. Ellington. 2 Q The sole owner? 3 A I don't know actually. I know he's one of 4 the owners. 5 Q Do you know any other owners of Skyview? 6 A Sitting here today, I do not. 7 Q I take it you have no equity in Skyview 8 Group? 9 A No. 10 Q Do you expect to get any equity? 11 A I don't know if I will or not. 12 Q Has that been discussed at all? 13 A There have been discussions but nothing 14 really determinative. 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 A Correct. 20 Q And those discussions were with 21 Mr. Ellington, right? 22 A I don't believe they were, actually. 23 Q Who were they with? 24 A Mr. Collins. 25 Q And you understood Mr. Collins to be</p> |
| <p style="text-align: right;">42</p> <p>1 counsel for the independent directors? 2 A I don't recall discussing that entity with 3 them at any point in time, no. 4 Q Let's go back to your current employment. 5 You said you work for the Skyview Group? 6 A Yes. 7 Q Is that the only entity you work for 8 currently? 9 A No. 10 Q Okay. Who else do you work for besides 11 the Skyview Group? 12 A Skyview Legal PC. 13 Q What's that? 14 A It is a dedicated law firm that provides 15 services -- legal services to Skyview Group's 16 clients. 17 Q Do you work for any other entities? 18 A No. 19 Q Who pays your compensation? 20 A Today it's Skyview Group, but I think it's 21 switching over to Skyview Legal PC. 22 Q And do you expect that to affect your 23 total compensation? 24 A No. 25 Q Who owns Skyview Group?</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 A I understood him to be speaking on behalf 4 of the company. 5 Q Okay. On behalf of Skyview Group? 6 A Correct. 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 A Correct. 12 Q Was Mr. Collins working for NexPoint at 13 the time? 14 MS. SMITH: Objection, form. 15 A Could you clarify your question, please? 16 BY MR. CLUBOK: 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 A I don't know that I can answer the 21 question as asked. Could you rephrase it, please? 22 BY MR. CLUBOK: 23 Q Did you know -- well, was Mr. Collins 24 working for HCM in May of 2020, as far as you 25 know?</p> |

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| <p style="text-align: right;">45</p> <p>1 A Yes.</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 A Can you define working? Because given the</p> <p>5 situation, it has some complexities to it. Are</p> <p>6 you asking if he was employed by NexPoint?</p> <p>7 Q Yes, was he employed by NexPoint?</p> <p>8 A Not that I'm aware of.</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 A Under shared services agreements, yes.</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 A No.</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 A Sorry, let me rephrase. I disagree with</p> <p>22 the premise of your prior question. I shouldn't</p> <p>23 have answered no. I simply disagree with the</p> <p>24 underlying premise.</p> <p>25 Q In what way?</p> | <p style="text-align: right;">47</p> <p>1 statement detail.</p> <p>2 Q Did you believe it was coming from HCM at</p> <p>3 that time?</p> <p>4 A No.</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 A I'm not saying I had no idea. I'm saying</p> <p>10 I simply didn't check or look into it at all.</p> <p>11 Q What was the idea you had about the source</p> <p>12 of the funds?</p> <p>13 A I didn't have an idea. I didn't check or</p> <p>14 look, Mr. Clubok.</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 A I didn't look one way or another.</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 A At the time I received that payment, I</p> <p>2 didn't know that it had come from NexPoint.</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 A I didn't have a belief one way or another.</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 A He said you're going to get the deferred</p> <p>22 compensation that your -- that you earned and that</p> <p>23 you're owed and that you've been waiting for for</p> <p>24 three years, but he didn't mention where it was</p> <p>25 coming from and I didn't check the bank account</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 A I didn't look one way or another.</p> <p>4 BY MR. CLUBOK:</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 A I didn't look one way or another.</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 A I don't recall having any -- having any</p> <p>23 thought process at the time because I simply</p> <p>24 didn't look into it.</p> <p>25 Q What are your job -- what's your job title</p> |

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| <p>1 at Skyview?</p> <p>2 A I think it's counsel.</p> <p>3 Q Who do you report to at Skyview Group?</p> <p>4 A It's not really clear, actually. We're</p> <p>5 still kind of figuring things out.</p> <p>6 Q Who gives you directions on what to do?</p> <p>7 A Really nobody.</p> <p>8 Q You just have a sense of what to do</p> <p>9 without anyone telling you?</p> <p>10 A I mean, we talk internally about tasks and</p> <p>11 we divide them up and I take the ones that I need</p> <p>12 to do and take care of and I take care of them.</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 A Maybe Mr. Sevilla, but that's not really</p> <p>17 clear.</p> <p>18 Q What about Skyview Legal PC? Do you have</p> <p>19 a job title there?</p> <p>20 A Yes.</p> <p>21 Q What's that?</p> <p>22 A Shareholder.</p> <p>23 Q How many shareholders are there at Skyview</p> <p>24 Legal PC?</p> <p>25 A We're just forming the entity, so we</p> | <p>1 A I'm not really sure.</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 A There's been no determination. I don't</p> <p>11 have an anticipation one way or another.</p> <p>12 BY MR. CLUBOK:</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 A Correct.</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 A No.</p> <p>21 Q You don't know if it's 1 percent or</p> <p>22 50 percent?</p> <p>23 A Correct.</p> <p>24 Q And has there been any discussion to that</p> <p>25 effect?</p> |
| 50 | 52 |
| <p>1 actually haven't determined that yet.</p> <p>2 Q Has it been established already?</p> <p>3 A It's been formed, but we haven't executed</p> <p>4 the bylaws yet.</p> <p>5 Q Who are the shareholders that you</p> <p>6 anticipate?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A We really haven't figured that out yet.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Well, you said that you anticipate being a</p> <p>11 shareholder, right?</p> <p>12 A Yes.</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 A The latter. I don't think we have</p> <p>17 anything executed yet.</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 A Mr. Sevilla.</p> <p>22 Q Who else?</p> <p>23 A I don't know.</p> <p>24 Q Just you and Sevilla and no one else, as</p> <p>25 you sit here today?</p> | <p>1 A No.</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 A Correct.</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 A No.</p> <p>10 Q Who will be the ultimate decision-maker</p> <p>11 for that?</p> <p>12 A Collectively, the attorneys that will be</p> <p>13 employed by Skyview Legal PC.</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 BY MR. CLUBOK:</p> <p>22 Q Whose idea was it to create Skyview</p> <p>23 Legal PC?</p> <p>24 A I need to confer with my counsel for a</p> <p>25 moment as to attorney-client privilege.</p> |

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| <p>53</p> <p>1 Q Okay. We'll come back to that, then. 2 When did you start working at Skyview 3 Group? 4 A March 1st, 2021. 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 A I disagree with one premise of what you 11 just stated. 12 Q What's that? 13 A Skyview Legal PC is a created and existing 14 entity. 15 Q So who are the current shareholders of 16 Skyview Legal PC? 17 A We don't have a shareholders agreement 18 yet. We just have a filing with the State of 19 Texas that forms the entity. 20 Q And you didn't have to identify the owners 21 in that filing? 22 A I believe I'm the individual who's the 23 contact person with the State for that entity. 24 Q Okay. Well, I'll try to say Skyview 25 Group, then, to the best of my ability.</p> | <p>55</p> <p>1 A No. Well, I don't think I did, no. 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 A That was not my testimony. 7 Q Mr. Ellington is the only owner of Skyview 8 Group that you're aware of, correct? 9 A He's the only one I can think of, yes. 10 He's the only person I can think of, yes. 11 Q Are you aware of any others? 12 A No. 13 MS. SMITH: Objection, form. 14 BY MR. CLUBOK: 15 Q Okay. Does that entity go by any other 16 name? 17 A It used to be called Highgate. 18 Q Why the switch? Do you know? 19 A Marketing or branding decided to change 20 the name. 21 Q Okay. Any other names? 22 A No. 23 Q The work address you previously provided, 24 is that the principal place of business for 25 Skyview Group?</p> |
| <p>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 A I do. 5 Q What are they? 6 A Providing service to -- legal service to 7 clients. 8 Q So you've already started doing that? 9 A Yes. 10 Q Who are your clients? 11 A I have a nondisclosure agreement with 12 clients that are not affiliated with Mr. Dondero 13 and so I am not at liberty to go into that 14 information at this time. 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 A I would really have to think about it. 20 BY MR. CLUBOK: 21 Q Can you identify any clients who aren't 22 affiliated with Mr. Dondero or Mr. Ellington? 23 A Sitting here today, no. 24 Q Okay. What -- did you have any role in 25 the formation of Skyview Group?</p> | <p>56</p> <p>1 A Yes. 2 Q How many employees does it have, roughly? 3 A Thirty to 40. 4 Q Are they almost all ex-Highland Capital 5 Management employees? 6 A Yes. 7 Q Are they all ex-HCM employees? 8 A No. 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 A Yes. 14 BY MR. CLUBOK: 15 Q What are they? 16 A NexBank. 17 Q Okay. What else? 18 A NexPoint, I believe. 19 Q What else? 20 A I think that's it. 21 Q And do you current -- 22 A Although there are other tenants in the 23 building. I just don't know who they are. 24 Q What about CPCM? 25 MS. SMITH: Objection, form.</p> |

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| <p>57</p> <p>1 A CPCM is a wholly owned subsidiary of 2 Skyview Group. 3 BY MR. CLUBOK: 4 Q Are there other wholly owned subsidiaries 5 of Skyview Group? 6 A I don't know. 7 Q That's the only one you know of, CPCM? 8 A Correct. 9 Q What is CPCM? 10 A It is a claims holding company. 11 Q For what kind of claims? 12 A Claims in the debtor's bankruptcy. 13 Q For what? 14 A I believe mostly for employee compensation 15 that was due and payable but not paid. 16 Q And that would include your compensation? 17 A Yes. 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 A Not necessarily, no. 23 BY MR. CLUBOK: 24 Q Is it? 25 A No, not necessarily, no.</p> | <p>59</p> <p>1 pay me my unpaid bonus amounts. 2 Q Did you still have unpaid bonus amounts? 3 A Yes. 4 Q Is that amounts from May 2020 through the 5 time of your employment, or something else? 6 A That's one time period, but that's not all 7 of them. 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 A No. 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 A So you're using the wrong nomenclature. 17 There's bonuses and then there's deferred 18 compensation. 19 BY MR. CLUBOK: 20 Q Okay. Roughly how much in bonuses do 21 you -- did you believe you were still owed? 22 A As of what date? 23 Q As of the date of your termination with 24 HCM. 25 A I don't recall the exact number. It would</p> |
| <p>58</p> <p>1 Q What's the amount of that claim with 2 respect to you? 3 A I'd have to look at the -- I don't recall. 4 Q Roughly. Is it -- 5 A It's whatever is in the -- I don't recall, 6 honestly. 7 Q Did you sell your claim to CPCM? 8 MS. SMITH: Objection, form. 9 A I assigned it to CPCM. 10 BY MR. CLUBOK: 11 Q For what consideration? 12 A Employment at Skyview. 13 Q That was a condition of your employment at 14 Skyview? 15 MS. SMITH: Objection, form. 16 A I believe that's right. I don't recall 17 exactly, but I think that's right. Maybe. I take 18 it back actually. I'm going to change my 19 testimony. I don't remember, honestly. It's 20 whatever is reflected in the documents. 21 BY MR. CLUBOK: 22 Q You don't remember what the consideration 23 is for assigning your claim in the bankruptcy case 24 to CPCM? 25 A I believe Skyview indicated that it would</p> | <p>60</p> <p>1 have been several hundred thousand dollars. 2 Q When was the last time you spoke with 3 Scott Ellington? 4 MS. SMITH: Objection, form. 5 A Three weeks ago, maybe a month. 6 BY MR. CLUBOK: 7 Q Before he left for his vacation or since 8 he's left? 9 A Before. 10 Q Have you communicated with him in any way 11 since he started the vacation he's currently on? 12 A Have I communicated with him in any way? 13 I've been -- actually, no, I haven't directly 14 communicated with him at all. 15 Q What were you thinking about there? 16 A I received a forward of an e-mail that he 17 wrote, but that's it. 18 Q An e-mail to whom? 19 A Brigid Brewer. 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> |

Transcript of Isaac D. Leventon

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| <p style="text-align: right;">6</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 A I didn't receive the e-mail from 6 Mr. Ellington. 7 Q You received a forward of it? 8 A Correct. 9 Q From Brigid? 10 A Correct. 11 Q And that was dated when, roughly? 12 A I don't remember. Sometime over the last 13 two weeks. 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 A No. 18 Q Did you ever get text messages from 19 Mr. Ellington? 20 A Yes. 21 Q Do you have -- by the way, did you search 22 for documents in connection with this adversary 23 proceeding? 24 A Yes. 25 Q Where did you search?</p> | <p style="text-align: right;">63</p> <p>1 A No, actually, I wouldn't. Who knows phone 2 numbers these days. 3 Q Well, if you looked at your phone, you 4 could identify the phone number Mr. Ellington 5 texted you from? 6 A Probably, yes. 7 Q And Mr. Ellington uses different phones, 8 correct? 9 MS. SMITH: Objection, form. 10 A I don't really know what he does. 11 BY MR. CLUBOK: 12 Q Well, you've gotten texts from him from 13 different phone numbers, correct? 14 A I don't know that that's true actually. 15 No. 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 A I'm going to defer to my counsel on what 21 documents we gathered and how we handled them. If 22 there's a privilege issue, I'm sure they can 23 address it. 24 BY MR. CLUBOK: 25 Q Well, did you -- who made the decision as</p> |
| <p style="text-align: right;">62</p> <p>1 A On my phone. 2 Q Where else? 3 A On my personal e-mail. 4 Q What's your personal e-mail address? 5 REDACTED 6 Q Do you have any other personal e-mail 7 addresses? 8 A No. 9 Q Okay. Where else did you search for 10 documents, if anywhere? 11 A That's it. 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 A Yes. 16 Q What did you retain? 17 A My personnel file. So like my pay stubs 18 and those sorts of documents. 19 Q Anything else besides your personnel file? 20 A I'm trying to remember. I think that was 21 it. I may have picked up like some CLE materials 22 that I hadn't read yet, but I think that was it. 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;">64</p> <p>1 to whether or not documents that you reviewed were 2 relevant or not, you or -- 3 A The counsel sitting to my right. 4 Q Did you identify documents? I mean, did 5 you turn over your phone and have them search your 6 phone? 7 A No. 8 Q Okay. So who did the search of your 9 phone? 10 A I did the search. 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 A I was responsible for locating everything 15 that could potentially be responsive and turning 16 it over to counsel. 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 A No. 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 A No, that is incorrect.</p> |

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| <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 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. 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 A Maybe two weeks ago, week and a half. 22 Q When was the last time you spoke with 23 Mr. DiOrio? 24 A Yesterday. 25 Q Did you speak about this matter at all?</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 A I don't believe so. 5 BY MR. CLUBOK: 6 Q Have you spoken to her about any 7 work-related issues since she left HCM? 8 A No. We just talk about her babies. 9 Q Okay. How long is her maternity leave? 10 MS. SMITH: Objection, form. 11 A I don't know, Mr. Clubok. 12 BY MR. CLUBOK: 13 Q Do you have a -- 14 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. 18 Q It depends if they're, I suppose, HR. Is 19 Mr. Collins your HR person? 20 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. 24 Q Who decides that at Skyview Group? 25 A I don't know.</p> |
| <p style="text-align: right;">66</p> <p>1 A Very briefly. 2 Q What did you say? 3 A We just exchanged basically the dates when 4 we were going to be deposed. 5 Q Anything else? 6 A That's pretty much it. 7 Q When was the last time you spoke with 8 Ms. Irving? 9 A It's been months. 10 Q Ms. Irving works at Skyview Group? 11 MS. SMITH: Objection, form. 12 A Yes, but she's on maternity leave. 13 BY MR. CLUBOK: 14 Q When did she start working there? 15 A I don't know. 16 Q Did you hire her? 17 A Did I hire her? No. 18 Q Was she ever there before she went on 19 maternity leave after her employment at HCM? 20 A I don't know. 21 Q Did you ever -- have you talked to her at 22 all since she left HCM? 23 A Yes. 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;">68</p> <p>1 Q Is Mr. Collins in the HR group? 2 A I believe he's the head of HR. 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 A No. 17 Q Did you review any documents at all in 18 anticipation of this deposition? 19 A No. 20 Q Did you look at any documents this 21 morning? 22 A No. 23 Q And roughly how long did you spend with 24 your attorneys preparing for this deposition, 25 total?</p> |

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| <p>69</p> <p>1 A Maybe five or six hours.</p> <p>2 Q When was that?</p> <p>3 A Monday.</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 A Yes, sir.</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 A So aware that UBS had filed litigation</p> <p>10 against Highland Capital Management and two funds</p> <p>11 managed by it.</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 A Those would be the colloquial names I</p> <p>17 would use, but if we want to be specific, we</p> <p>18 probably should identify the entities.</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 A I believe that was the CDO Fund entity</p> <p>25 that was the named defendant in that matter, yes.</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 A That's correct.</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 A Not in 2009, no.</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 A Highland Financial Partners, LP, which we</p> <p>16 would refer to as HFP, yes, was a defendant.</p> <p>17 Q And Strand was also a defendant in the</p> <p>18 litigation ultimately, correct?</p> <p>19 A Strand Advisors, Inc., I believe that's</p> <p>20 correct.</p> <p>21 Q Which we would shorthand by just referring</p> <p>22 to often as Strand?</p> <p>23 A That may have been your practice.</p> <p>24 Q There was also an entity that was called</p> <p>25 Highland Credit Opportunities CDO, LP, that we</p> |

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| <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 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. 8 BY MR. CLUBOK: 9 Q And that entity was later changed to a 10 name that we have shorthanded since as 11 Multi Strat, correct? 12 A Again, I would need to look at the style 13 of the case to match up the exact entities. 14 Q Okay. But colloquially as, you know, you 15 were on this litigation for a long time -- 16 A Yes. 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 A That's fair to say, yes. 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 A Kevin Rabinowitz 6 Q Who was outside counsel at the time? 7 A Correct. 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 A I was primarily responsible at that point 12 for managing the litigation from the in-house 13 side. 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 A Yes, but I think there were also like 20 three different cause numbers at some point. 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 A During what time period? 3 Q From 2009 till you were terminated? 4 A I didn't have a consistent role during 5 that entire period of time. 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 A I don't think that's how I would phrase 13 it, no. 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 A I don't know that you can identify a 18 single person that would have been responsible for 19 responding to discovery. 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 A That's not my testimony. 25 Q Who, to the best of your knowledge, was</p> | <p style="text-align: right;">76</p> <p>1 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. 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 A Yes. 9 Q And you were primarily responsible for 10 supervising that litigation from 2011 through at 11 least the bankruptcy? 12 A That's not correct. 13 Q Okay. When were you the primary person 14 responsible for supervising that litigation, 15 during what time frame? 16 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. 20 Q And that was during what period of time? 21 A I'm struggling to remember. It would have 22 been somewhere in 2012 to '15 or so. 23 Q And then you resumed day-to-day 24 supervision after that? 25 A I don't remember if we handed it off to</p> |

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| <p style="text-align: right;">77</p> <p>1 one other person or if I took it straight back 2 over. 3 Q But you came to resume your role as the 4 day-to-day supervisor of that litigation prior to 5 it going to trial, correct? 6 A Correct. 7 Q And you were the day-to-day supervisor of 8 that litigation during the trial, correct? 9 A Yes. 10 Q And that was a trial that ultimately 11 resulted in a roughly \$1 billion judgment against 12 two of the defendants in that case, correct? 13 A Correct. 14 Q And you, during that trial, came every 15 single day to court and actively directed the 16 outside counsel who were the courtroom advocates 17 for the defendants in that case, correct? 18 MS. SMITH: Objection to form. 19 A I mean, I don't know that I directed them, 20 but we were part of a team together that was 21 working cooperatively for the clients. 22 BY MR. CLUBOK: 23 Q Well, did they take your direction during 24 the trial? 25 A They took my direction sometimes and I</p> | <p style="text-align: right;">79</p> <p>1 Q By whom? 2 A By Mr. Ellington. 3 Q Did you ever directly inform Mr. Dondero 4 about the trial or the litigation? 5 A I don't remember if I did or not. I don't 6 recall. 7 Q How do you know Mr. Ellington did that? 8 A I only have a very general recollection 9 that he indicated that Mr. Dondero had been kept 10 apprised. 11 Q He indicated that to you? 12 A Correct. 13 Q And after the trial, did you communicate, 14 in words or substance, that it was likely that UBS 15 would get a significant judgment? 16 A I don't remember how I communicated -- 17 what I communicated at that point. 18 Q Did you have any recommendation as to 19 whether or not UBS would likely obtain a judgment 20 after sitting through the trial? 21 A I don't recall if I did one way or 22 another. 23 Q Did you have a belief at the time as to 24 whether UBS would likely get a judgment based on 25 what you saw at the trial?</p> |
| <p style="text-align: right;">78</p> <p>1 took theirs sometimes. 2 Q Did you report daily during that trial to 3 Scott Ellington? 4 A I don't recall if I did or not. 5 Q Did you regularly report to Scott 6 Ellington throughout the course of that trial? 7 A I believe that's fair to say, yes. 8 Q Did you regularly report to anyone else 9 other than Scott Ellington about the -- how the 10 trial was going? 11 A I don't believe so, no. 12 Q And were you also responsible for 13 supervising the post-trial proceedings, the 14 briefing and other communications with the Court 15 in between the end of the trial and prior to the 16 decision by the Court? 17 A I don't remember what the post-trial 18 briefing was or not. I don't remember what the 19 post-trial briefing was. 20 Q Was there anyone else at Highland who was 21 responsible from the in-house perspective of 22 dealing with the litigation proceedings in between 23 trial and judgment other than yourself? 24 A Mr. Ellington would have had some role and 25 then Mr. Dondero would have been kept informed.</p> | <p style="text-align: right;">80</p> <p>1 A I mean, it was -- it was pretty complex, 2 so there were a variety of different possible 3 outcomes that I was considering. 4 Q Yeah, but you saw it coming, that there 5 would likely be a significant judgment given what 6 went on at the trial; is that fair? 7 MS. SMITH: Objection to form. 8 A Actually not necessarily, no. 9 BY MR. CLUBOK: 10 Q It's true that you spoke with 11 Mr. Ellington at some point where Mr. Ellington 12 acknowledged it was likely to be a significant 13 judgment based on what happened at the trial; 14 isn't that true? 15 MS. SMITH: Objection to form. My 16 understanding, there's two parts to the trial. I 17 just want to make sure what we're talking about. 18 BY MR. CLUBOK: 19 Q Isn't it true that you had discussions 20 with Mr. Ellington at some point where, in words 21 or substance, you discussed the likelihood that 22 the outcome of the first phase of the trial would 23 be a significant judgment in UBS's favor? 24 A So just to be clear, we're talking about 25 the Phase 1 trial that took place against SOHC and</p> |

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| <p>81</p> <p>1 CDO Fund, correct?</p> <p>2 Q Correct.</p> <p>3 A I don't remember if I did tell him that or</p> <p>4 not. I mean, we spoke about kind of all of the</p> <p>5 legal permutations of how the Court might rule.</p> <p>6 Q Right. But in words or substance, during</p> <p>7 that discussion, whether you told him or he told</p> <p>8 you, you discussed the likelihood that UBS was</p> <p>9 going to get a meaningful judgment against</p> <p>10 CDO Fund and SOHC as a result of that Phase 1</p> <p>11 trial, correct?</p> <p>12 A I don't recall. I mean, we certainly</p> <p>13 discussed it as a possibility, but in terms of how</p> <p>14 we weighed likelihoods, I just don't remember.</p> <p>15 Q The trial did not go well for the</p> <p>16 defendants, correct?</p> <p>17 MS. SMITH: Objection, form.</p> <p>18 A The outcome did not go as the defendants</p> <p>19 had hoped. I actually thought that our trial</p> <p>20 counsel performed fairly well.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q Fair enough. I'm not asking you how your</p> <p>23 trial counsel performed. But in terms of the</p> <p>24 facts that were revealed at trial that led to the</p> <p>25 judge's decision, those were facts that were not</p> | <p>83</p> <p>1 litigation?</p> <p>2 A At various points in time I was asked to</p> <p>3 assist in preparation kind of settlement-related</p> <p>4 materials, but the actual decision-making was</p> <p>5 never mine.</p> <p>6 Q Whose was it?</p> <p>7 A Ultimately, it would have been</p> <p>8 Mr. Dondero's.</p> <p>9 Q Did you ever provide any advice regarding</p> <p>10 the wisdom of settling the case?</p> <p>11 A I don't recall if I did or not.</p> <p>12 Q Did you ever provide any advice regarding</p> <p>13 the merits of the case?</p> <p>14 A I'm certain I did that, yes.</p> <p>15 Q Who did you provide that advice to?</p> <p>16 A It would really depend on the time period.</p> <p>17 Q You said part of the job you always did</p> <p>18 at -- strike that.</p> <p>19 As part of the job that you did over the</p> <p>20 years at Highland was due diligence on litigation,</p> <p>21 correct?</p> <p>22 A That doesn't accurately reflect my</p> <p>23 testimony.</p> <p>24 Q Shorthand it, but part of the job you</p> <p>25 did, for example, for SAS was due diligence on</p> |
| <p>82</p> <p>1 favorable generally to the positions --</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q -- that the defendants had been taking,</p> <p>5 correct?</p> <p>6 A I'll let the court judgment speak for</p> <p>7 itself.</p> <p>8 Q Did you play any role ever in analyzing</p> <p>9 whether or not Highland and its affiliates should</p> <p>10 settle with UBS?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 A I never -- I never analyzed whether they</p> <p>13 should settle, no.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. You never analyzed whether or not</p> <p>16 Highland -- if I say the Highland defendants, is</p> <p>17 that sufficient acceptable shorthand for all the</p> <p>18 defendants in the case?</p> <p>19 A Yes.</p> <p>20 Q And all the defendants in the case were</p> <p>21 either Highland or Highland affiliates, correct?</p> <p>22 A That's correct.</p> <p>23 Q Okay. So did you ever perform any</p> <p>24 analysis as to whether or not the Highland</p> <p>25 defendants should settle with UBS in the New York</p> | <p>84</p> <p>1 litigation they were considering funding?</p> <p>2 A Well, I knew SAS was affiliated with</p> <p>3 Mr. Dondero somehow. I didn't -- well, let me</p> <p>4 rephrase it. I knew Mr. Dondero was involved in</p> <p>5 SAS and had approved its operations in some way.</p> <p>6 I didn't know how he was related to it. And so</p> <p>7 from my seat at Highland, I analyzed cases that</p> <p>8 SAS could potentially provide litigation funding</p> <p>9 for.</p> <p>10 Q Right. And when you say analyzed, you</p> <p>11 would be asked to review the matter and give your</p> <p>12 opinion about the relative merits of the case?</p> <p>13 A Yes.</p> <p>14 Q And did you consider yourself to be good</p> <p>15 at that job of analyzing a case and giving an</p> <p>16 opinion as to the merits?</p> <p>17 A I mean, we all hope we're pretty good at</p> <p>18 our jobs, don't we?</p> <p>19 Q We all hope. Did you consider yourself to</p> <p>20 be good at that job?</p> <p>21 A I did it to the best of my ability. I</p> <p>22 think I'm pretty good at my job generally.</p> <p>23 Q And specifically were you good at</p> <p>24 analyzing the merits of litigation -- are you</p> <p>25 okay?</p> |

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| <p style="text-align: right;">85</p> <p>1 A Yeah.</p> <p>2 Q Do you need a break?</p> <p>3 A No.</p> <p>4 Q Are you sure?</p> <p>5 A Yeah.</p> <p>6 MR. CLUBOK: Let's go off the record.</p> <p>7 A No, we're not. Let's keep going.</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 A Yes.</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 A Yes.</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;">87</p> <p>1 A No, I believe it probably was</p> <p>2 Mr. Ellington and Mr. Dondero.</p> <p>3 Q Directly to Mr. Dondero?</p> <p>4 A Probably, but I can't say for certain.</p> <p>5 Q Would that have been oral or written?</p> <p>6 A I don't know.</p> <p>7 Q When did you first make that</p> <p>8 recommendation?</p> <p>9 A I don't know. It was a very lengthy</p> <p>10 litigation.</p> <p>11 Q Did you ever make that recommendation</p> <p>12 prior to trial?</p> <p>13 A I don't recall if I did or not.</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 A Immediately prior to stepping into trial?</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;">86</p> <p>1 A I don't recall my exact recommendations,</p> <p>2 but I probably did.</p> <p>3 Q And --</p> <p>4 A At least on some of the claims, but not on</p> <p>5 others.</p> <p>6 Q Which claims?</p> <p>7 A I don't recall. There were a lot of them.</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 A Well, it's hard to say the answer because</p> <p>12 prevailing had a lot of different meanings in that</p> <p>13 context.</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 A Yes, I did.</p> <p>20 Q And what was that recommendation?</p> <p>21 A That liability was likely to be found.</p> <p>22 Q Who did you make that to?</p> <p>23 A I don't recall. It certainly would have</p> <p>24 been -- well, I don't recall who it was.</p> <p>25 Q You said it certainly would have been?</p> | <p style="text-align: right;">88</p> <p>1 A My testimony was that I believed that I</p> <p>2 probably stated to Mr. Ellington and Mr. Dondero</p> <p>3 that SOHC and CDO Fund were likely to be found</p> <p>4 liable on breach of contract.</p> <p>5 Q And that was before the trial?</p> <p>6 A Right. But I don't know when exactly.</p> <p>7 Q Okay.</p> <p>8 A Some time period which was -- I mean, that</p> <p>9 covers like nine years.</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 A With respect to those two funds, the</p> <p>13 answer is yes. With respect to the other</p> <p>14 entities, not necessarily.</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 A I know it was prepared to go to trial. It</p> <p>20 was -- there were claims going to trial. In terms</p> <p>21 of what the orders say, I'll let them speak for</p> <p>22 themselves.</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 A I really don't recall. 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 A I'm not saying that I didn't. I'm just 12 saying, sitting here today, I don't remember. 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 A Well, again, when we're talking about 18 prior to trial, you're talking about that 19 nine-year time period from 2009 to 2018? 20 Q In that question I was. 21 A Okay. We discussed the UBS case numerous 22 times. 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 A That's probably fair, yes. 6 BY MR. CLUBOK: 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 A So it's difficult for me to answer the 14 question because at the time I was a very junior 15 attorney. No one was really asking me for my 16 opinion about anything. I was responsible for 17 kind of the day-to-day grind of working on the 18 case. 19 Q Okay. At what point did people start 20 asking you about your opinion on the merits of the 21 case? 22 A I can't pinpoint exactly, but it would 23 have been probably after I had been at Highland 24 three or four years. 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 A What do you mean from the get-go? 3 Q From the beginning of the litigation? 4 A I wasn't employed at Highland from the 5 beginning of the litigation. 6 Q You started working on the matter in 7 roughly 2011, correct? 8 A That's not accurate, no. 9 Q When did you start working on the matter? 10 A Earlier than that. When I arrived in 11 Highland in two thousand -- late September, 12 October 2009 I started working on it. 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 A I don't recall. It would have been early 19 on, but I don't know exactly when. 20 Q Like as early as 2010? 21 A I don't remember. 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 A Maybe around then, maybe a little later 3 than that. 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 A Correct. 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 A I think I probably -- I don't exactly 14 recall, but I believe I probably discussed it with 15 Mr. Ellington. 16 Q What about Mr. Dondero? 17 A At that time I don't -- I don't remember 18 one way or another if I would have spoken to him. 19 I was still pretty junior and so I didn't 20 regularly converse with him. 21 Q Okay. But then you resumed day-to-day 22 management of the matter approximately when? 23 A Whenever Mr. -- well, that's what I said. 24 I don't recall because Mr. Vancour left and then I 25 don't remember if another person took over the</p> |

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| <p style="text-align: right;">93</p> <p>1 case afterwards and then I took over after that</p> <p>2 person left, or if I took over directly from</p> <p>3 Mr. Vancour.</p> <p>4 Q Who was that person you're thinking of?</p> <p>5 A Jason Goldsmith.</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>10 A Well, those were different time periods.</p> <p>11 Mr. Vancour left first, Mr. Goldsmith left second.</p> <p>12 So after Mr. Goldsmith's departure, I certainly</p> <p>13 know -- well, after Mr. Goldsmith's departure</p> <p>14 would have been when I believe I probably would</p> <p>15 have picked up management.</p> <p>16 Q And that would have been before summary</p> <p>17 judgment briefing?</p> <p>18 A Probably. I mean, the -- I don't know.</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>24 A At some point I did discuss that with him,</p> <p>25 I believe.</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>3 A I don't recall.</p> <p>4 Q Roughly?</p> <p>5 A It would have been more than one and</p> <p>6 probably less than five.</p> <p>7 Q Okay. And did Mr. Dondero push back?</p> <p>8 A I don't remember what he said on that.</p> <p>9 There were so many moving parts in that case, I</p> <p>10 don't know that I -- it's difficult to isolate</p> <p>11 those very specific claims against those very</p> <p>12 specific defendants as part of the conversation.</p> <p>13 Q Right. But the breach of contract was</p> <p>14 certainly a core part of the case, right?</p> <p>15 A Yes, but there were numerous what you</p> <p>16 would call core parts of the case.</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>21 A That's fair, they were.</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>2 A I don't know, sir.</p> <p>3 Q Certainly years ago, right?</p> <p>4 A Yes, it was a long time ago.</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>9 A Can you clarify the question, please?</p> <p>10 BY MR. CLUBOK:</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>16 A That's fair. I did contribute to a</p> <p>17 settlement analysis on the case.</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>23 A I just don't remember, sir.</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>2 A Yes, he did.</p> <p>3 Q And what did he say?</p> <p>4 A I don't remember the specific words, but I</p> <p>5 definitely remember he pushed back.</p> <p>6 Q And ultimately did he convey whether or</p> <p>7 not he accepted your recommendation?</p> <p>8 A Well, the case never settled. The case</p> <p>9 never settled, so I don't know what to say about</p> <p>10 that.</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>16 A I don't know that he ever accepted that,</p> <p>17 no.</p> <p>18 Q Did Mr. Ellington?</p> <p>19 A I don't know if he did or not.</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>25 A I have a variety of opinions, but I don't</p> |

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| <p style="text-align: right;">97</p> <p>1 think there was one in particular that I had as 2 the most likely outcome. 3 Q What were the -- how many likely -- did 4 you have no view, like there's three or four 5 outcomes and each were equally likely or were 6 there two outcomes that were equally likely or you 7 just had -- you couldn't -- even with your ability 8 to analyze litigation, had no idea what was going 9 to happen with damages? 10 MS. SMITH: Object to form. 11 A My recollection actually was that there 12 were nine separate independent scenarios. 13 BY MR. CLUBOK: 14 Q Nine? 15 A Yes. 16 Q And were these laid out in a document? 17 A Yes. 18 Q And who did you present these to? 19 A Mr. Ellington. 20 Q And Mr Dondero? 21 A I don't remember if I showed it to 22 Mr. Dondero or not. 23 Q When did you prepare that? 24 A It would have been -- it incorporated the 25 expert reports, so it would have been subsequent</p> | <p style="text-align: right;">99</p> <p>1 A I'm familiar with that, yes. 2 Q And you're certainly familiar with the 3 process of looking at different scenarios and 4 coming up with an expected range of outcomes in 5 terms -- 6 A Yes. 7 Q Did you ever, in words or substance, come 8 up with an expected likely range of outcomes for 9 damages in connection with the breach of contract 10 claims? 11 A I don't think I did, no. 12 Q And did you ever, in words or substance, 13 convey anything about your views on the relative 14 likelihood of one scenario versus another in terms 15 of damages? 16 A I just generally -- I may have, but I 17 don't recall having done so. 18 Q And did you ever, in words or substance, 19 have a belief that likely it would be damages in 20 the hundreds of millions of range or more? 21 A Those were certainly possible scenarios, 22 but I don't recall doing a probability analysis as 23 to whether they were the most likely scenarios. 24 Q Yeah, but whether or not you did a formal 25 probability analysis, fair to say that you and</p> |
| <p style="text-align: right;">98</p> <p>1 to the expert reports and prior to trial, but 2 where exactly, I don't know. But the document's 3 on the debtor's system, which you can check the 4 metadata. 5 Q What was it called? 6 A It was an Excel spreadsheet. I don't 7 remember what it was called. 8 Q And do you remember -- was it the kind of 9 thing that you -- did you assign percentage 10 likelihood to each of the nine scenarios? 11 A I don't believe I did on that sheet, no. 12 Q Did you ever? 13 A I don't believe -- well, I don't recall if 14 I did or not just because there were, I don't 15 know, maybe 12 different line items that went into 16 damages and then it depended on about six or seven 17 different rulings of the Court as to which one 18 would be incorporated or not. And so it's 19 difficult to really come up with -- to say how I 20 was thinking about it at the time because you're 21 looking at -- I mean, it's literally an Excel 22 matrix that was more than a screen full. 23 Q Right. But you're aware of -- you're 24 familiar with Monte Carlo simulations in terms of 25 the context of analyzing litigation outcomes?</p> | <p style="text-align: right;">100</p> <p>1 Mr. Ellington at various times discussed the 2 general likelihood that the damages in the case 3 were likely to be in excess of \$100 million? 4 A We certainly discussed it as a 5 possibility. I don't know that we agreed that it 6 was a probability. 7 Q Well, Mr. Ellington conveyed to you, in 8 words or substance, that he believed it was more 9 likely than not that ultimately damages in excess 10 of \$100 million would be awarded in UBS's favor 11 with respect to the breach of contract claims 12 against SOHC and CDO Fund, correct? 13 A He may have. I don't recall if he did or 14 not. 15 Q And did you ever convey, in words or 16 substance, to anyone, that you believed it was 17 more likely than not that the damages that would 18 be awarded in UBS's favor with respect to the 19 breach of contract claims against SOHC and 20 CDO Fund would likely be in excess of \$100 21 million? 22 A I very well might have, but I don't recall 23 having done so. 24 Q You certainly believed that prior to the 25 trial, correct?</p> |

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| <p style="text-align: right;">101</p> <p>1 A I don't think that's fair to say, no. I</p> <p>2 thought we actually had really good arguments on</p> <p>3 the synthetic warehouse.</p> <p>4 Q Okay. So you believe -- so you said you</p> <p>5 were good at your job, but you believed it was</p> <p>6 more likely than not that the ultimate damages</p> <p>7 would be less than \$100 million total?</p> <p>8 A I didn't say that, Counselor. Your</p> <p>9 question was whether or not I believed in the</p> <p>10 arguments we were making and I did, which would</p> <p>11 have knocked damages well below 100 million.</p> <p>12 Q No, I never asked you about the -- whether</p> <p>13 you believed in the arguments. That was a concept</p> <p>14 you introduced. I'm looking at the transcript.</p> <p>15 Let me ask the question again.</p> <p>16 Taking into account the argument you're</p> <p>17 making and the argument UBS was making and your</p> <p>18 ability to analyze litigation, take all of that</p> <p>19 and the work you did on the case, everything that</p> <p>20 you had done, fair to say that at some point prior</p> <p>21 to trial, you came to the belief that it was more</p> <p>22 likely than not that damages in excess of</p> <p>23 \$100 million would be awarded in UBS's favor with</p> <p>24 respect to the breach of contract claims against</p> <p>25 CDO Fund and SOHC?</p> | <p style="text-align: right;">103</p> <p>1 including but not limited to the synthetic</p> <p>2 warehouse agreement argument, which would have</p> <p>3 dropped damages below \$100 million.</p> <p>4 Q That's not true, is it? Even if you had</p> <p>5 won the synthetic warehouse agreement, the total</p> <p>6 damages still would have been in excess of</p> <p>7 100 million, unless you won some other theories;</p> <p>8 isn't that true?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 A That may be your testimony, sir.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Well, the damages on the nonsynthetic</p> <p>13 warehouse that were claimed in the case were well</p> <p>14 in excess of \$100 million, correct?</p> <p>15 A I'm sorry, Mr. Clubok. I'm not in a</p> <p>16 position to debate the merits of the case that we</p> <p>17 tried together. I'm just recalling the</p> <p>18 arguments -- that we had arguments that would</p> <p>19 knock it down below 100 million. And among those</p> <p>20 arguments were the synthetic warehouse agreement</p> <p>21 arguments.</p> <p>22 Q Okay. I didn't ask you to debate the</p> <p>23 merits. Again, you're -- please don't introduce</p> <p>24 concepts that I didn't ask. My simple question is</p> <p>25 the damages that were claimed on the cash</p> |
| <p style="text-align: right;">102</p> <p>1 A I don't recall having had that thought.</p> <p>2 Q So prior to trial was it your belief that</p> <p>3 it was more likely than not that the total</p> <p>4 damages -- well, strike that.</p> <p>5 You've said that you believed that</p> <p>6 liability would be established. That you agree</p> <p>7 prior to trial you believed was more likely than</p> <p>8 not based on the work you had done, correct?</p> <p>9 A To be specific, I believed that liability</p> <p>10 was more likely than not to be proven against</p> <p>11 CDO Fund and SOHC on the breach of contract</p> <p>12 claims.</p> <p>13 Q Right. And --</p> <p>14 A Which were the ones tried in Phase 1.</p> <p>15 Q Right. And what was tried in Phase 1 was</p> <p>16 the liability and the damages with respect to</p> <p>17 those claims, correct?</p> <p>18 A Yes.</p> <p>19 Q Okay. So prior to trial was it your</p> <p>20 belief that it was more likely than not that</p> <p>21 despite liability being likely, the total damages</p> <p>22 would be less than \$100 million?</p> <p>23 A I just don't recall which way -- what my</p> <p>24 risk analysis was at the time, but I do remember</p> <p>25 having a great deal of faith in certain arguments,</p> | <p style="text-align: right;">104</p> <p>1 warehouse were well in excess of \$100 million;</p> <p>2 isn't that true?</p> <p>3 A Yes, assuming that UBS won all of its</p> <p>4 arguments on the cash warehouse and lost on the</p> <p>5 synthetic, I think that -- my recollection is it</p> <p>6 may have been above 100 million. I honestly don't</p> <p>7 remember.</p> <p>8 Q Okay. And again, you -- as you sit here</p> <p>9 today, your testimony is even though you remember</p> <p>10 believing and giving the advice on liability, you</p> <p>11 don't remember if you had any belief as to whether</p> <p>12 it was more likely than not that total damages</p> <p>13 would be above or below \$100 million prior to the</p> <p>14 Phase 1 trial?</p> <p>15 A That's correct, because the damages issue</p> <p>16 was fundamentally a series of math problems that</p> <p>17 were determined by experts, and so I don't know</p> <p>18 that I necessarily had a conclusion about those.</p> <p>19 Q You don't know if you did or you don't</p> <p>20 remember if you did?</p> <p>21 A I just don't remember if I did.</p> <p>22 Q Okay. Were you ever asked by anyone to</p> <p>23 run that analysis or to give your opinion on what</p> <p>24 the likely damages would be, given your belief</p> <p>25 that liability was likely to be established?</p> |

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| <p>105</p> <p>1 A I would have to speculate if I did or not.</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 A I just don't recall.</p> <p>9 Q Well, did anyone give an opinion on</p> <p>10 damages that you were aware of?</p> <p>11 A On a probability weighted basis, I don't</p> <p>12 remember if they did, no.</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 A I don't remember if they were or not.</p> <p>23 BY MR. CLUBOK:</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>107</p> <p>1 A I don't know that that was necessarily the</p> <p>2 basis.</p> <p>3 Q What was?</p> <p>4 A It was a big case with big claims and</p> <p>5 going to trial inevitably has risks and it's</p> <p>6 better to limit those risks to some sort of</p> <p>7 negotiated amount than to roll the dice at trial.</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 A I'm certain that was a factor I</p> <p>14 considered, but your point -- your question, I</p> <p>15 believe, was something slightly different.</p> <p>16 BY MR. CLUBOK:</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 A I don't remember if that was an essential</p> <p>23 motivating factor in my recommendation or not.</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>106</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 A I don't. It's been a long time,</p> <p>3 Mr. Clubok. I don't recall.</p> <p>4 BY MR. CLUBOK:</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 A I think I made recommendations that it</p> <p>10 should be settled, but I don't know that I made</p> <p>11 any recommendations as to the amounts.</p> <p>12 Q Who did you recommend the case should be</p> <p>13 settled to?</p> <p>14 A Mr. Ellington.</p> <p>15 Q Anybody else?</p> <p>16 A I believe that would have been it.</p> <p>17 Q How many times roughly did you tell</p> <p>18 Mr. Ellington this case should be settled?</p> <p>19 A I don't recall. It would have been a</p> <p>20 number of times at various different points over</p> <p>21 various years.</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>108</p> <p>1 role in recommending the case should be settled?</p> <p>2 A That's not my testimony.</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 A Yes.</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 A That's correct.</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 A If you're asking for a general comment,</p> <p>20 decontextualized from the actual facts of the UBS</p> <p>21 case, yes, but I don't think that general</p> <p>22 statement applies to the UBS case.</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>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 A I'm sorry, Counselor. I'm not going to 8 sit here and come up with how I would render legal 9 advice generally. 10 BY MR. CLUBOK: 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 A I believe they would be found in breach of 17 contract. 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 A As a general proposition -- I'm sorry. 23 I'm not going to be able to give general 24 testimony. If you'd like to ask me about a 25 specific situation, I'm happy to address that.</p> | 109 | <p>1 Q Okay. Mr. Dondero was the sole director 2 of SOHC at the time, correct? 3 A I think that's right, yes. 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 A You can -- you can add -- I'm not going to 9 adopt the word control. He was a director of -- 10 he was the sole director of SOHC. That's a fact. 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 A That would be a business decision and 17 Mr. Dondero could make it if he wanted to. 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 A Again, my only advice, sir, was that I 24 believed liability was more likely than not to be 25 found. I didn't talk about obligations and</p> | 111 |
| <p>1 BY MR. CLUBOK: 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 A Did I believe I was obligated to inform -- 7 I mean, we had -- I had discussed, as I said, 8 liability and probability of liability on those 9 specific claims of those specific defendants with 10 both Mr. Ellington and Mr. Dondero at various 11 points in time. 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 A I'm going to disagree with the premise of 19 your question, sir. 20 BY MR. CLUBOK: 21 Q What's the premise you disagree with? 22 A I don't know that there necessarily was 23 anyone generally responsible for the -- those two 24 entities, save potentially Mr. Dondero at the top 25 of the organization.</p> | 110 | <p>1 expectations and that he needed to do anything. 2 My legal advice was solely with respect to the 3 probability of outcome on those two claims. 4 BY MR. CLUBOK: 5 Q Is that a no to my question? 6 A Your question assumes statements I did not 7 make. 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 A Okay. 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 A I disagree with the premise of the 17 question. 18 Q What premise do you disagree with? 19 A That there are contractual obligations 20 that SOHC and CDO Fund necessarily owed to UBS. 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 A Yes.</p> | 112 |

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| <p>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?</p> <p>5 A Again, my responsibility was to do the 6 legal analysis, not to tell people how to run 7 their business.</p> <p>8 Q So that's a no to my question?</p> <p>9 A Well, no, I disagreed with the underlying 10 premise of your question and that was my response, 11 sir.</p> <p>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?</p> <p>18 A Right. And my testimony was that I 19 disagreed with the premise of that question.</p> <p>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>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?</p> <p>6 A That was not my testimony.</p> <p>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?</p> <p>12 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.</p> <p>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?</p> <p>22 A I don't recall.</p> <p>23 Q Did you continue to play any role in 24 connection with the settlement analysis after the 25 bankruptcy?</p> |
| <p>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?</p> <p>6 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.</p> <p>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?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 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.</p> <p>19 BY MR. CLUBOK:</p> <p>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?</p> <p>24 A I don't specifically remember what role I 25 played in settlement analysis.</p> | <p>116</p> <p>1 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.</p> <p>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?</p> <p>9 A Yes.</p> <p>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?</p> <p>15 A Actually, no, that was -- I don't recall 16 that ever being disclosed to me.</p> <p>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?</p> <p>21 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?</p> |

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| <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 A Okay. 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 A No, I -- so I had had an accident in early 12 January of 2020. By the time I got back from 13 leave of absence in April or May, largely I had 14 just kind of become a task attorney at that point 15 and Pachulski was running things. 16 BY MR. CLUBOK: 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 A It was a slow return. I came back 22 part-time in April, and I think I was fully back 23 in May. 24 Q Okay. After returning to your active 25 employment following your accident in April or May</p> | <p>117 119 1 but it was a large number. 2 Q And so you reviewed and gave comments 3 throughout the process of objecting to the UBS 4 claims? 5 A Yes. 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 A Not really, no. 10 Q Not really, or no? 11 A Sit -- I'm -- I would say -- yeah, I would 12 say no. I worked on the claim objection as my 13 role with respect to UBS. 14 Q How about on the summary judgment? 15 A I call that part of the claim objection 16 because it's part of the same process. 17 Q Okay. 18 A So also there was a lift stay motion. I 19 was involved in that. So really it -- let me 20 rephrase it. I was involved in what I'm going to 21 call the litigating part. So the adversarial 22 pleadings between the debtor and UBS with respect 23 to how the Court should rule on the claim. 24 Q And you were responsible for all of that 25 up until the time the parties reached a</p> |
| <p>118 1 of 2020, were you ever tasked with any work in 2 connection with the UBS claim? 3 A Yes. 4 Q What were you tasked with? 5 A I was tasked with assisting Pachulski in 6 analysis and drafting of the claim objection. 7 Q Who tasked you with that? 8 A Mr. Seery. 9 Q Directly? 10 A Yes. 11 Q He told you that he needed assistance in 12 analyzing UBS's claim and helping draft the claim 13 objection, correct? 14 A He told me to assist Pachulski in that 15 process. 16 Q I see. And who specifically at Pachulski 17 did you assist in that process? 18 A It was a team of lawyers, but primarily 19 led by Mr. Feinstein. 20 Q Anyone else? 21 A His entire team. Elissa Wagner, I believe 22 was an associate, John Morris had some involvement 23 at various points in time, Greg Demo had 24 involvement at certain points in time. I don't 25 remember who the other lawyers were at Pachulski,</p> | <p>120 1 settlement? 2 MS. SMITH: Objection to form. 3 A I didn't say I was responsible, no. 4 BY MR. CLUBOK: 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 A No, that's not accurate. 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 A Probably would have been responding to 14 certain discovery that UBS propounded in advance 15 of summary judgment. 16 Q That was the last time you were given any 17 kind of task, that you can recall? 18 A The last time I can recall, yes. Largely, 19 Pachulski took it over and if they asked me to do 20 something, I would, but I was mostly kept out of 21 that process. 22 Q And who asked you to help respond to 23 discovery requests that UBS had propounded in 24 advance of summary judgment? 25 A I believe it was Greg Demo.</p> |

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| <p>1 Q And did you provide complete assistance to 2 Mr. Demo in responding to the UBS discovery 3 request to the best of your ability? 4 A I provided assistance to Mr. Demo in 5 response to the tasks that he had given me, yes. 6 Q Did you believe that you were providing 7 complete assistance to Mr. Demo in responding to 8 the UBS discovery requests to the best of your 9 ability? 10 MS. SMITH: Objection to form. 11 A So I disagree with the premise of your 12 question because I was given specific tasks and I 13 did those specific tasks. 14 BY MR. CLUBOK: 15 Q Do you believe that in connection with the 16 tasks that Mr. Demo assigned you, you performed 17 those tasks to the very best of your ability? 18 A Yes. 19 Q And do you believe that you were totally 20 candid with Mr. Demo in the course of performing 21 those tasks that you were assigned with respect to 22 the discovery requests for UBS? 23 MS. SMITH: Objection to form. 24 A With respect to those tasks, yes. 25</p> | <p>121 123 1 BY MR. CLUBOK: 2 Q You never affirmatively made misstatements 3 to him as far as you can recall, correct? 4 A As far as I can recall, I never made a 5 misstatement to Mr. Demo. 6 Q And same thing with respect to all of the 7 lawyers at the Pachulski firm? 8 MS. SMITH: Objection to form. 9 A To the best of my recollection, I never 10 made an affirmative misstatement to any of them. 11 BY MR. CLUBOK: 12 Q Did you ever make an affirmative 13 misstatement to any of the independent directors? 14 A None that I can recall. 15 Q But you certainly -- there's certainly 16 information that you did not volunteer in 17 connection with your work with them; is that fair? 18 MS. SMITH: Objection to form. 19 A I don't believe that's how I would 20 characterize it, sir, no. 21 BY MR. CLUBOK: 22 Q Well, there's information that you had 23 that may have been relevant to the tasks you were 24 performing that you chose not to volunteer. Fair? 25 MS. SMITH: Objection to form.</p> |
| <p>122 1 BY MR. CLUBOK: 2 Q Were there any tasks that you were not 3 completely candid with Mr. Demo about? 4 MS. SMITH: Objection to form. 5 A No. I'm being very specific. With 6 respect to the tasks that I had with respect to 7 the discovery in UBS, I believe I was candid with 8 Mr. Demo. 9 BY MR. CLUBOK: 10 Q Was there ever a time you were less than 11 candid with Mr. Demo? 12 MS. SMITH: Objection to form. 13 A In response to a question that he had or 14 just generally volunteering lots of information to 15 him? 16 BY MR. CLUBOK: 17 Q Well, let's start with -- 18 A I don't -- I'm sorry, I don't understand 19 the question, sir. 20 Q You don't understand the question as to 21 whether or not you were ever less than candid with 22 Mr. Demo? 23 MS. SMITH: Objection to form. 24 A Did I ever not tell him the truth? No, I 25 didn't ever not tell him the truth.</p> | <p>124 1 A Relevant to the tasks I was performing? 2 No, I don't know that that's necessarily true. 3 BY MR. CLUBOK: 4 Q Relevant to the UBS litigation with 5 Highland. Strike that. 6 MS. SMITH: Objection, form. 7 BY MR. CLUBOK: 8 Q Let me ask this question again. There was 9 certainly information that you had that was 10 relevant to the UBS litigation with the debtor 11 that you chose not to volunteer, correct? 12 A No. 13 MS. SMITH: Objection to form. 14 A Actually, I don't think that's right at 15 all. No, I don't believe that's correct. 16 BY MR. CLUBOK: 17 Q You were specifically asked to identify 18 information about the assets of CDO Fund and SOHC, 19 correct? 20 A That wasn't the exact task, no. 21 Q At some point you were made aware that UBS 22 was seeking information about the assets of 23 CDO Fund and SOHC, correct? 24 A Yes. 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 A I was aware that UBS sought that 6 information, yes. 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 A So we had fairly detailed conversations 13 about what we were going to do in response to that 14 discovery. I don't know that there was ever a 15 discussion of -- well, I remember we had fairly -- 16 we had pretty detailed conversations about how to 17 try to figure out how to respond to that 18 discovery. 19 Q Who's the we in that sentence? 20 A It was me and Mr. Demo. 21 Q That's it? 22 A John Morris may have been involved, but I 23 believe it was primarily Mr. Demo. 24 Q Anybody else? 25 A No one else that I can recall sitting here</p> | <p style="text-align: right;">127</p> <p>1 tasks? 2 A I don't believe -- in terms of what he -- 3 of what we were supposed to be gathering for them, 4 no, I don't believe he did. 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 A That wasn't exactly the task I was given. 16 I'm struggling to recall exactly what we said UBS 17 wanted, but that ultimately was not -- the task I 18 was given was something more specific. 19 BY MR. CLUBOK: 20 Q What was that? 21 A To link up the assets that were in the 22 funds in May of 2009 and answer the question what 23 happened to those assets and where are they today. 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 today. 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 A I conveyed to Mr. Ellington the tasks that 10 I had been assigned and what I was doing to 11 fulfill those tasks. 12 Q Anyone else? 13 MS. SMITH: Objection to form. 14 A Stephanie Vitiello assisted in gathering 15 some of the documents, although I don't remember 16 if it was in response to UBS or not. There were a 17 lot of document requests at the time. 18 BY MR. CLUBOK: 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 A No. 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 A It was -- in terms of past assets? That's 3 probably right. That was the defined task. 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 A I don't remember if I was or not. I would 9 have to look at the -- I don't remember. 10 Q You understood that UBS was trying to 11 obtain information about the current assets of 12 CDO Fund and SOHC, correct? 13 A Yes. 14 Q And also HFP? 15 A Yes. 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 A I don't know. We provided a lot of 22 documents, so the documents will speak for 23 themselves. 24 BY MR. CLUBOK: 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 2 assets held by CDO Fund, SOHC and HFP from March 3 of 2009 through the present in response to the 4 detailed discussions you had with Mr. Demo? 5 A No. There were certain documents that 6 were separately held, like e-mails, and so we 7 didn't touch the e-mails. 8 Q What do you mean? 9 A So there was a motion to compel by the UCC 10 in July of 2020. And so all of the e-mail 11 communications were at that point separated out 12 and sent to Meta-e for contract review. And so 13 that e-mail process was part of a very long 14 conversation -- a long series of conversations and 15 process with Sidley. And so once those e-mails 16 went over to Meta-e, I didn't really address them. 17 They were a separate data set that were being 18 handled separately. 19 Q Did you make it clear to Mr. Demo that you 20 were -- that you did not consider any review of 21 those e-mails to be part of your -- 22 A Absolutely. 23 Q Okay. And did Mr. Demo say that other 24 people would deal with that, those e-mails and the 25 information, if any, that was relevant to the</p> | <p style="text-align: right;">131</p> <p>1 looking for documents for HFP. 2 Q Why did you do that? 3 A Because the process of figuring out what 4 had happened to the CDO Fund and SOHC assets had 5 been a lengthy task, and I told Mr. Demo that 6 unless I got positive instructions from them to 7 the contrary, that I didn't want to have to repeat 8 that task for HFP and he agreed with that. 9 Q Is that because you-all agreed that -- is 10 that because you said -- sorry. You guys decided 11 you just didn't want to do it or you thought it 12 was unnecessary because you had already gathered 13 information in the course of looking for SOHC's 14 assets? 15 A I don't remember what -- I don't remember 16 if the basis was that we'll just stand on our 17 objections or if it's not necessary for UBS's 18 motion for summary judgment. Because the 19 fundamental point was UBS was asking for -- 20 Pachulski and I agreed that UBS was asking for 21 documents it didn't need, but the reason it was 22 asking for documents it didn't need was for the 23 purposes of preventing the Court from going 24 forward with the summary judgment on the claims 25 against the debtor. And so there was a discussion</p> |
| <p style="text-align: right;">130</p> <p>1 asset information that UBS was seeking? 2 A I don't recall if he did or not. I 3 remember John Morris was the person at Pachulski 4 responsible for that part of the process and what 5 conversations happened between Mr. Demo and 6 Mr. Morris, I don't know. 7 Q Well, did anyone convey to you, in words 8 or substance, that other people would be handling, 9 reviewing those e-mails that were being housed by 10 Meta-e for responsiveness to the information about 11 the assets of SOHC, CDO Fund and HFP that UBS was 12 requesting? 13 MS. SMITH: Objection, form. 14 A The conversation simply was, all right, 15 the e-mails are separate, Isaac, you don't need to 16 look at those or worry about those, they're being 17 handled separately. 18 BY MR. CLUBOK: 19 Q But other than those e-mails, you were 20 responsible for getting any other material 21 information you had about the assets of CDO Fund, 22 SOHC and HFP dating back to March 2009? 23 A So there's one exception to that. 24 Q Yes. 25 A I told Mr. Demo that I was not going to be</p> | <p style="text-align: right;">132</p> <p>1 of what are the documents we need to give them, 2 how hard is it to get, and then what are we -- 3 between, you know, kind of the balance of the 4 burden and the requests and, you know, how much 5 you want to show the Court that you've produced 6 these documents, even though they're completely 7 irrelevant to the claims at bar. I mean, that's a 8 balancing test that counsel goes through all the 9 time. 10 Q You told Mr. Demo that the total value of 11 assets at SOHC and HFP from the time period of 12 March 2009 through the present was totally 13 irrelevant to our claims against the debtor? 14 MS. SMITH: Objection to form. 15 A I don't know that that was the 16 conversation. The conclusion was that we weren't 17 going to look for the HFP documents. 18 BY MR. CLUBOK: 19 Q Okay. You introduced this concept of 20 total irrelevancy. Did you, in words or 21 substance, discuss with Mr. Demo that asset 22 information about CDO Fund, SOHC and HFP was 23 totally irrelevant against the claims of the 24 debtor? 25 MS. SMITH: Objection to form.</p> |

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| <p style="text-align: right;">133</p> <p>1 A I believe the conversation was UBS -- UBS 2 has had ten years to seek whatever discovery it 3 wants and it didn't need these documents until a 4 month before summary judgment. And so the 5 discussion was that that request for documents 6 immediately before summary judgment was an attempt 7 to delay summary judgment. 8 BY MR. CLUBOK: 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 A To be clear, these aren't my arguments, 14 sir. This is Pachulski's position they were 15 conveying to me. 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 A There was a conclusion that we weren't 21 going to. I don't remember if there was a 22 discussion, the use of the word necessary or not, 23 but ultimately we didn't decide to. 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 A Ultimately that was not the task that he 2 concluded I should undertake. 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 A At some point in the process, that may 11 have been his statement, but that wasn't the 12 conclusion after we had gone through numerous 13 discussions. 14 BY MR. CLUBOK: 15 Q What was the conclusion? 16 A The conclusion was that my task was to 17 locate the assets that were in the production to 18 UBS as of May 2009 and identify what had happened 19 to those assets. 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 A Again, you're introducing the word 4 necessary, which I'm not prepared to adopt. I can 5 just say the conclusion from Mr. Demo was that we 6 weren't going to do that at that time. 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 A Can you repeat that question? It had a 12 lot in it. 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 A I think that's probably a fair 18 characterization. 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 A From March 2009 through the present, yes, 2 I did have some other information I did not share 3 with him. 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 A Material information about the value of 9 assets? I don't really think that's right, no. 10 BY MR. CLUBOK: 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 A Yes. 22 Q And when you say some information, do you 23 mean material information about those assets? 24 A Material information over that entire time 25 period, probably, yes.</p> |

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| <p>137</p> <p>1 Q But was --</p> <p>2 A Hold on. Apologies, sir, let me finish</p> <p>3 the answer. Material information about that</p> <p>4 entire time period, yes. Material information</p> <p>5 about the task I was assigned, no.</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 A So I'm going to put the word material to</p> <p>13 the side, sir. So if you want to just re-ask the</p> <p>14 question, because that's a judgment call and I'll</p> <p>15 let the Court make that decision.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q You're a lawyer.</p> <p>18 A I am.</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 A I'm not going to perform -- sir, I'm not</p> | <p>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 A I made a conscious decision that it wasn't</p> <p>6 relevant to the task I was undertaking.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q Did you ever share that information with</p> <p>9 Mr. Seery?</p> <p>10 A No, but we rarely spoke.</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 A I almost never spoke to the other two</p> <p>14 directors, or even directly ever communicated with</p> <p>15 them hardly ever.</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 A No. It wasn't relevant to the task I was</p> <p>22 working on.</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>138</p> <p>1 prepared to perform legal analysis on the fly, but</p> <p>2 if you'd like to ask me for objective facts, I'm</p> <p>3 happy to provide those to you.</p> <p>4 BY MR. CLUBOK:</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 A I knew that there had been a transaction</p> <p>11 in 2017 sometime with respect to an</p> <p>12 after-the-event insurance policy with Sentinel.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Anything else?</p> <p>15 A Is there anything else? There may have</p> <p>16 been other things, but I just didn't look into</p> <p>17 them really.</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 A It wasn't relevant to the task I was</p> <p>24 undertaking.</p> <p>25</p> | <p>140</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 A Yes.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Who did you discuss it with?</p> <p>5 A Beecher Carlson.</p> <p>6 Q Who is Beecher Carlson?</p> <p>7 A They're the underwriter for Sentinel on</p> <p>8 the insurance policy.</p> <p>9 Q And there's an insurance policy?</p> <p>10 A Yes.</p> <p>11 Q And who is that insurance -- who is the</p> <p>12 insured on that insurance policy?</p> <p>13 A Certain of the defendants in the UBS case.</p> <p>14 Q Including CDO Fund and SOHC?</p> <p>15 A I believe that's probably right, but I'd</p> <p>16 have to have my recollection refreshed.</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 A No.</p> <p>20 Q What do you think it is?</p> <p>21 A I don't know how to -- it's however</p> <p>22 accountants would classify it, but, no, I don't</p> <p>23 believe it's an asset. The accountants didn't</p> <p>24 classify it as an asset was my understanding. I</p> <p>25 don't think insurance policies show up on balance</p> |

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| <p>141</p> <p>1 sheets.</p> <p>2 Q There were assets exchanged for that</p> <p>3 insurance policy in 2017, correct?</p> <p>4 A That's my understanding, yes.</p> <p>5 Q What was the rough value of those assets</p> <p>6 that were exchanged?</p> <p>7 A I don't know.</p> <p>8 Q You have no idea?</p> <p>9 A No.</p> <p>10 Q Did you ever know?</p> <p>11 A No, I don't believe I did.</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 A No, I wasn't really involved in that.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q You weren't involved in what?</p> <p>20 A The drafting of the policy or the process</p> <p>21 of getting it implemented.</p> <p>22 Q You weren't involved at all in the</p> <p>23 drafting of the policy?</p> <p>24 A No.</p> <p>25 Q You weren't involved at all in the process</p> | <p>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 A I shared it with them. I don't remember</p> <p>5 if it was immediately because you have to remember</p> <p>6 at this time I was in recovery at home. So I</p> <p>7 think I provided it to them kind of as quickly as</p> <p>8 possible, given my limitations at the time.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Why did you provide it to Beecher Carlson</p> <p>11 as quickly as possible?</p> <p>12 A Because it's a -- the judgment against the</p> <p>13 insureds would be a fact that you should inform</p> <p>14 the underwriter.</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 A No, sorry, that's the wrong term. Oh,</p> <p>19 man. I forget their exact role. They're -- maybe</p> <p>20 they're more like an auditor.</p> <p>21 Q For Sentinel?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A Well, that's the thing. For the policy.</p> <p>24 My understanding is that you had to have kind of</p> <p>25 an external third party looking at the policy, but</p> |
| <p>142</p> <p>1 of getting the insurance policy implemented; is</p> <p>2 that correct?</p> <p>3 A I had one role and it was a limited one.</p> <p>4 Q What was that?</p> <p>5 A It was to share information with Beecher</p> <p>6 Carlson as the underwriter about the underlying</p> <p>7 litigation.</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 A That's the only one I can ever recall,</p> <p>12 yes.</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 A Pleadings --</p> <p>17 Q Anything else?</p> <p>18 A -- for the most part. The appellate</p> <p>19 rulings of the New York appellate division.</p> <p>20 Q Anything else?</p> <p>21 A When the February 2020 judgment came down,</p> <p>22 I believe I shared that with them.</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>144</p> <p>1 I don't remember exactly. There's the right word</p> <p>2 for what their role was and I apologize. It's</p> <p>3 just slipping my mind right now.</p> <p>4 BY MR. CLUBOK:</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 A No.</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 A My recollection is that I had one</p> <p>14 conversation with Beecher Carlson in advance of</p> <p>15 the execution of the policy.</p> <p>16 Q Who at Beecher Carlson?</p> <p>17 A I don't know.</p> <p>18 Q And what was the substance of that one</p> <p>19 conversation?</p> <p>20 A To essentially give the entire background</p> <p>21 of the litigation.</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 A I-- it was one conversation about</p> |

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| <p style="text-align: right;">145</p> <p>1 45 minutes four years ago. I really don't</p> <p>2 remember what we said.</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>7 A I don't recall.</p> <p>8 BY MR. CLUBOK:</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>15 A I don't recall. Largely it was providing</p> <p>16 Beecher Carlson with information and letting them</p> <p>17 make their determination.</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>21 A I don't recall if I did. Mostly I</p> <p>22 provided them objective data, like pleadings,</p> <p>23 orders of the Court, those sorts of materials.</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>3 A Yes, that's what after the event stands</p> <p>4 for. It's a fairly standard industry product</p> <p>5 that's very common, particularly in the UK and</p> <p>6 other common law jurisdictions. So it's a fairly</p> <p>7 matured industry.</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>12 A My understanding is that Mr. Dondero made</p> <p>13 that decision.</p> <p>14 Q What's that understanding based on?</p> <p>15 A I believe that was communicated to me by</p> <p>16 Mr. Ellington.</p> <p>17 Q When?</p> <p>18 A Back around the time, probably right after</p> <p>19 the policy was implemented.</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>3 A Well, I'm saying neither. What I'm saying</p> <p>4 is I don't remember one way or another.</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>10 A No, not that I recall.</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>15 A I don't believe that I was involved in</p> <p>16 that process really.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Who made the decision -- by the way, you</p> <p>19 called it an after-the-event policy?</p> <p>20 A Yeah. Sorry. I need to sneeze, but I'll</p> <p>21 try to push through it.</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>25 A Just a sneeze on this one.</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>10 A I'm trying to recall, but I think that's</p> <p>11 right.</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>15 A I certainly don't recall -- let me</p> <p>16 rephrase. I don't recall that ever happening. I</p> <p>17 don't believe it did happen.</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>21 A In or around -- you know, for the policy</p> <p>22 that got implemented, no.</p> <p>23 Q For any ATE policy?</p> <p>24 A I think there had been contemplation of an</p> <p>25 ATE policy earlier in that year as a settlement</p> |

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| <p>149</p> <p>1 mechanism, but that's the only other thing I can 2 remember. 3 Q Were you involved in that? 4 A I believe it was part of a settlement 5 analysis that I contributed to. Or that I was 6 involved in. 7 Q And so as part of that settlement 8 analysis, you assessed the pros and cons of 9 entering into an ATE policy? 10 A I don't remember if I did or not. I 11 remember that term showed up during that time in 12 those considerations. 13 Q But you're not linking that work you did 14 to the actual entering into the ATE policy? 15 A No, they're two completely separate 16 processes. 17 Q Why? 18 A Well, one was essentially a mechanism for 19 funding a settlement which, you know, basically 20 in -- like essentially like you have a settlement 21 agreement already done and signed and this is how 22 you're going to fund it. 23 Q Okay. 24 A That's not what the August 2017 25 transaction was.</p> | <p>151</p> <p>1 this policy to any of the independent directors? 2 A I never discussed it with them one way or 3 another. 4 Q Did you ever disclose the existence of 5 this policy to any lawyer representing the debtor? 6 A I never discussed it with them one way or 7 another. 8 Q Did you discuss this policy with any other 9 human being other than Beecher Carlson since the 10 time that bankruptcy started? 11 MS. SMITH: Objection to form. 12 A Yes. 13 BY MR. CLUBOK: 14 Q Who? 15 A Matt DiOrio. 16 Q When? 17 A He was the one who usually would set up 18 the calls with Beecher Carlson. 19 Q And anyone else at all? Any other human 20 being that you discussed this policy with since 21 the bankruptcy? 22 A I had discussed it at one point with 23 Mr. Ellington. 24 Q When? 25 A July sometime maybe.</p> |
| <p>150</p> <p>1 Q What was the August 2017 transaction? 2 A I'm not going to -- I don't know that I 3 have a good characterization for it. I wasn't 4 really involved in it, but it wasn't that. 5 Q What was it, as far as you know? 6 A It was a purchase of an after-the-event 7 insurance policy. 8 Q To do what? 9 A I don't know what the purpose was. I 10 wasn't really involved. 11 Q You have no idea what the purpose of the 12 after-the-event insurance policy was? 13 A I don't know. 14 Q Did you ever see it? 15 A I remember seeing one page of it one time. 16 Q When was that? 17 A We were doing one of our annual update 18 calls with Beecher Carlson and I think I asked 19 on -- can we -- can someone confirm for me who the 20 insureds are so I can make sure to link the 21 developments for the defendants to the insureds 22 that are named, and so I saw one page of the 23 insurance policy at that point that listed who the 24 insureds were. 25 Q Did you ever disclose the existence of</p> | <p>152</p> <p>1 Q Of what year? 2 A 2020. My apologies. 3 Q Anyone else at all? 4 A Not that I recall. 5 Q Okay. 6 MR. CLUBOK: Let's take a break. 7 THE VIDEOGRAPHER: We are off the record 8 at 1:04 p.m. 9 (Recess taken from 1:04 p.m. CDT to 10 2:12 p.m. CDT) 11 THE VIDEOGRAPHER: The time is 2:12 p.m. 12 We are back on the record. 13 BY MR. CLUBOK: 14 Q Mr. Ellington [sic] -- 15 A No. 16 Q Sorry. Mr. -- strike that. 17 Mr. Leventon, you said you discussed the 18 ATE policy with Mr. Ellington in approximately 19 July 2020, correct? 20 A I believe that was my testimony, yes. 21 Q What was the reason for that conversation? 22 A We were discussing the discovery task that 23 I had been placed on by -- or maybe it was August 24 then. The discovery task that I had been placed 25 on by Pachulski and I was checking with</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>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 A I believe it was conveyed to me that UBS</p> <p>5 thought the task was very important, but I don't</p> <p>6 know that that's necessarily what Pachulski's</p> <p>7 position was.</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 A No.</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A Not that I recall. And it's certainly not</p> <p>15 the task ultimately that I was given.</p> <p>16 BY MR. CLUBOK:</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 A Not that I recall and that's certainly not</p> <p>22 at the end of kind of the iterative discussion</p> <p>23 process with Mr. Demo what I was tasked with</p> <p>24 doing.</p> <p>25 Q You said -- earlier, I was asking you</p> | <p>159</p> <p>1 A That's correct.</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 A No, not that I recall. I don't -- no, I</p> <p>5 don't believe I ever saw a draft.</p> <p>6 Q Did you see an unsigned version of the ATE</p> <p>7 policy?</p> <p>8 A I don't believe I ever saw an unsigned</p> <p>9 copy of the ATE policy.</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 A To the best of my recollection, that's</p> <p>19 correct.</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 A I never asked to see a copy of the ATE</p> <p>23 policy that I recall.</p> <p>24 Q When -- roughly when did Mr. Sevilla show</p> <p>25 you this one page from the ATE policy?</p> |
| <p>158</p> <p>1 about the ATE policy that was ultimately entered</p> <p>2 into. Remember that discussion?</p> <p>3 A Yes.</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 A That's right.</p> <p>7 Q Who showed you that one page?</p> <p>8 A JP Sevilla.</p> <p>9 Q And how?</p> <p>10 A On his computer screen.</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 A I don't know that --</p> <p>17 BY MR. CLUBOK:</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 A Yes.</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>160</p> <p>1 A We were going into an update call with</p> <p>2 Beecher Carlson and I looked at it for about</p> <p>3 30 seconds and then continued on to the call. It</p> <p>4 would have been sometime in 2018 or '19 probably.</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 A I disagree with the premise of the</p> <p>9 question, sir.</p> <p>10 BY MR. CLUBOK:</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 A Under the circumstances, it wasn't unusual</p> |

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| <p>161</p> <p>1 in the slightest.</p> <p>2 BY MR. CLUBOK:</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>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 BY MR. CLUBOK:</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 BY MR. CLUBOK:</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>162</p> <p>1 know that Sentinel was the insurer.</p> <p>2 MR. CLUBOK: Okay. Thank you.</p> <p>3 BY MR. CLUBOK:</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>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 BY MR. CLUBOK:</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 BY MR. CLUBOK:</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>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 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. 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 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</p> | <p>165</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 A I don't recall those conversations. I'm 7 not sure that I did. 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 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. 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 A I disagree with a premise of your 24 question. I'm happy to explain why. 25 Q Please. Thank you.</p> |
| <p>166</p> <p>1 mechanism. So that's why they're two different 2 transactions. 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 A I don't know what the policy said. I've 7 never seen it. 8 Q You've never seen the ATE policy that was 9 actually executed? 10 A No, sir, other than that one page. 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 A Fair enough. 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 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. 24 Q All right. And you're sure about that? 25 A Yes, I am, sir.</p> | <p>167</p> <p>1 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. 8 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. 11 Regardless of the terms of the ultimate policy in 12 August of 2017, it was a different transaction. 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 A I don't recall if I did or not, sir. 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>169</p> <p>1 A Can you restate the question, sir?</p> <p>2 BY MR. CLUBOK:</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 A I remember it was a concept around that</p> <p>9 time, but -- that there would be an ATE policy to</p> <p>10 fund a potential settlement, but I really don't</p> <p>11 remember much more than that.</p> <p>12 BY MR. CLUBOK:</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 A Actually, I don't.</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 A Not that I recall, but if you would like</p> <p>20 to show me a document, I'm happy to have my</p> <p>21 recollection refreshed.</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>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 A I've reviewed the document, sir.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q Okay. Did you draft this document?</p> <p>12 A I don't know if I did or not.</p> <p>13 Q Do you recognize it?</p> <p>14 A I know I've seen it before. I have no</p> <p>15 reason to dispute that I didn't receive it -- or</p> <p>16 send it, I should say.</p> <p>17 Q You didn't just receive it --</p> <p>18 A I said or send it, I should say.</p> <p>19 Q Okay. And you played some role in</p> <p>20 drafting this document at least, correct?</p> <p>21 A I don't remember if I did or not, sir.</p> <p>22 But the metadata will answer that question kind of</p> <p>23 easily.</p> <p>24 Q Isn't it true that you drafted this</p> <p>25 document together with Stephanie Vitiello?</p> |
| <p>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 A Yes.</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 A I do, yes.</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 A It does.</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 A I'm reviewing the document.</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>172</p> <p>1 MS. SMITH: Objection, assumes facts not</p> <p>2 in evidence.</p> <p>3 A If that's what the metadata says, I don't</p> <p>4 dispute it, but I don't know or recall, I should</p> <p>5 say.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Who -- do you recall being asked to draft</p> <p>8 a presentation like this?</p> <p>9 A I don't remember, sir.</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 A Like I said, I don't remember if I drafted</p> <p>15 this document or not, but the metadata will answer</p> <p>16 the question affirmatively.</p> <p>17 BY MR. CLUBOK:</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 A You would need the debtor to provide you</p> <p>21 with that metadata.</p> <p>22 Q What did you do with this presentation</p> <p>23 other than send it to Mr. Sevilla?</p> <p>24 A I don't recall. But again, if I sent it</p> <p>25 to someone else, it would be in the debtor's</p> |

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| <p>173</p> <p>1 documents.</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>6 A Correct.</p> <p>7 Q Did you -- did Highland go to trial in the</p> <p>8 Citi matter?</p> <p>9 A No.</p> <p>10 Q What happened in that matter?</p> <p>11 A It settled.</p> <p>12 Q For how much?</p> <p>13 A It was more than 500,000, but I think less</p> <p>14 than a million.</p> <p>15 Q Okay. And when?</p> <p>16 A Oh, wow. 2018 or '19 sometime.</p> <p>17 Q Okay. So sometime after this presentation</p> <p>18 was sent in April of 2017, correct?</p> <p>19 A Correct.</p> <p>20 Q And is that Citi matter totally settled,</p> <p>21 done?</p> <p>22 A Yes.</p> <p>23 Q And it was settled for something less than</p> <p>24 a million dollars?</p> <p>25 A That's my recollection.</p> | <p>175</p> <p>1 BY MR. CLUBOK:</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>9 A I don't recall what you're talking about,</p> <p>10 but if you want to show me a document to refresh</p> <p>11 my recollection, I'm happy to look at it.</p> <p>12 BY MR. CLUBOK:</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>15 A I can neither confirm nor deny it, sir. I</p> <p>16 just don't know what you're talking about.</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>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>5 A I knew that UBS was alleging over a</p> <p>6 billion dollars in damages against the</p> <p>7 counterparty funds and it also alleged some quasi</p> <p>8 contractual claims for that liability against HCM</p> <p>9 itself.</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>14 A I knew that was UBS's argument. I didn't</p> <p>15 necessarily agree with it.</p> <p>16 BY MR. CLUBOK:</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>22 A I was aware that that was a possible worst</p> <p>23 case scenario. I didn't necessarily agree that it</p> <p>24 was probable or that UBS's arguments in support of</p> <p>25 that position were valid.</p> | <p>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>11 A I believed that that was one of the</p> <p>12 worst-case scenarios that was possible, yes.</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>17 A It does say that HFP assets include</p> <p>18 32 million of DAF note payable.</p> <p>19 Q And that DAF refers to a DAF that was</p> <p>20 established by Mr. Dondero?</p> <p>21 A I don't necessarily believe that's</p> <p>22 correct, no.</p> <p>23 Q Who was the DAF established by?</p> <p>24 A I don't know specifically, but I believe</p> <p>25 it was the debtor itself.</p> |

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| <p>177</p> <p>1 Q Okay. The debtor, though, was 80 percent 2 owned by Mr. Dondero, right? 3 A I actually don't know. 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 A Immediately prior to bankruptcy, I think I 10 did because we had to know that type of 11 information for kind of first day schedules, but 12 prior to that, no. 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>179</p> <p>1 A Sir, my testimony is I know that there was 2 some transaction that would have reduced 3 Mr. Dondero's economic interest and the documents 4 will speak for themselves as to exactly when that 5 transaction took place. I just -- I don't know 6 exactly when it took place. 7 BY MR. CLUBOK: 8 Q Okay. 9 A And I wasn't involved in that transaction 10 either. 11 Q All right. The DAF was considered an 12 affiliated entity to Highland Capital Management, 13 correct? 14 A The compliance department via Mr. Surgent 15 determined that the DAF was not -- I don't 16 believe -- I think it determined it wasn't an 17 affiliate. 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 A I believe that that was a possible 23 worst-case scenario. 24 BY MR. CLUBOK: 25 Q By the way, you don't use anywhere on this</p> |
| <p>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 A I don't know. 6 Q Okay. 7 A It -- I don't know. 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 A The reason I'm qualifying it is because I 12 know that there were some transaction that reduced 13 his interest from whatever it was down to a much, 14 much smaller percentage. I just don't remember 15 exactly when that transaction took place. 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 A No, that's not correct. 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>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 A No, these are -- if you read the document, 6 these are the kind of two extremes. 7 BY MR. CLUBOK: 8 Q I understand. 9 A If UBS wins or if Highland wins. 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 A It doesn't say that on that page. 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 A I don't think that's right. That's not 20 what it says here. 21 BY MR. CLUBOK: 22 Q If you can turn -- but it refers to 23 Slide 3. Do you see that? 24 A Yes. 25 Q And do you see where it says that: Taxes:</p> |

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| <p>181</p> <p>1 If Highland wins... it Loses? 2 A I do see that and it does say -- I was 3 looking at the second page of the presentation. 4 Looking at the third page, it does say Mr. Dondero 5 would have to pay approximately \$50 million in 6 taxes. 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 A They could have asserted that claim. It 13 was -- I mean, my job was to identify risk. That 14 was a risk I identified. 15 Q And you also understood at the time, that 16 Dondero was the decision-maker for Highland 17 Financial Partners, correct? 18 A I believe that's right. 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 A That's what this says. 25 Q And that was your understanding at the</p> | <p>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 A Well, I'm disagreeing with the word 11 specifically, because we discussed that among 12 numerous other potential parties that would have 13 significant tax consequences, not just the ones on 14 this page. 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 A I don't remember if I drafted this 21 document or not, but this document specifically 22 lists a \$50 million potential tax liability for 23 Mr. Dondero. 24 Q So you were aware of that specifically 25 with respect to Mr. Dondero, correct?</p> |
| <p>182</p> <p>1 time, right? 2 A I would say that is what had been 3 represented to me by the tax department and it is 4 nonincumbent on a nontax person to second-guess 5 what the tax department says is going to happen in 6 a given situation. 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 A We had discussed the consequences to 13 Dondero, but also to all of the other HFP limited 14 partners. 15 Q Right. But the specific consequences to 16 Dondero -- economic consequences dwarfed all the 17 others, correct? 18 A Well, this isn't -- 19 MS. SMITH: Objection to form. 20 A This isn't all the limited partners in 21 HFP. There were -- almost every Wall Street bank 22 you could think of had a significant interest in 23 HFP and would have been in the same situation as 24 the people listed on Slide 3. 25</p> | <p>184</p> <p>1 A I would have been aware of that and the 2 variety of other parties, yes. 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 A We discussed that among the parties that 14 would suffer significant tax consequences, 15 Mr. Dondero was one of them and that the tax 16 department had advised us that his exposure was 17 approximately \$50 million. 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 A I believe that's correct. 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 A That's correct.</p> |

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| <p>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 A I think that's fair, yes. 6 Q And they had made that determination prior 7 to April of 2017, correct? 8 A Yes. 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 A I don't know the answer to that question 15 because I don't remember if there was an 16 insolvency analysis on SOHC. 17 BY MR. CLUBOK: 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 A I remember that there was a letter that 23 went out to HFP investors that said HFP is 24 insolvent and that that was approximately January 25 of 2009, but it didn't mention SOHC and there was</p> | <p>187</p> <p>1 Q Well, was it truthful? 2 A I assume so. I have no idea actually. 3 Q Do you have any reason to believe that 4 CDO Fund was not insolvent as of March 2009? 5 A No. 6 Q Do you have any reason to believe that HFP 7 was not insolvent as of January 2009? 8 A No. Those are accounting determinations 9 and the accountant's determinations on those 10 issues are final. 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 BY MR. CLUBOK: 18 Q -- in a rough approximation without being 19 technical? 20 A It's partially correct. 21 Q What's partially not correct? 22 A Well, I think it -- at that time it was 23 both -- for HFP, it was just UBS. For CDO Fund, 24 it was UBS and Citibank, I think. 25 Q But the Citibank -- was that the million</p> |
| <p>186</p> <p>1 no separate equivalent letter for SOHC. 2 Q Okay. Well, there are no investors to 3 SOHC. SOHC is just a wholly owned sub of HFP, 4 correct? 5 A HFP is SOHC's sole investor, yes. 6 Q Okay. And as of at least January 2009, 7 HFP was insolvent, correct? 8 A Yes. 9 Q And also as of January 2009, CDO Fund was 10 insolvent? 11 A I believe that CDO Fund's letter went out 12 to its investors closer to like March of 2009, so 13 it would have been that time period. Now, from an 14 accounting perspective when exactly were they 15 insolvent, I don't know. 16 Q Okay. 17 A But from a legal perspective when did we 18 give notice to -- or when -- let me rephrase, 19 sorry. When did Highland give notice to the 20 investors in those respective entities, those are 21 the documents I've seen and that I remember. 22 Q Okay. So CDO Fund was insolvent at or 23 prior to March of 2009, correct? 24 A It stated to its investors, I think in 25 March of 2009 that it was insolvent.</p> | <p>188</p> <p>1 dollar liability -- or the matter to Citibank that 2 was ultimately settled for less than a million 3 dollars? 4 A Yes. 5 Q I see. So CDO Fund -- I guess I don't 6 understand. 7 A Let's back up and do this again. 8 Q Sure. With respect to HFP -- 9 A Okay. 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 A I believe that's a fair description 16 without sitting here today and being a tax expert. 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 A Again, that's partially correct with 22 respect to CDO Fund. 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 A I think for Citi -- let me -- sorry, let 2 me rephrase. For CDO Fund, the insolvency would 3 be reversed if it successfully defeated both UBS 4 and Citibank. 5 Q Right. Right. So it -- CDO Fund would 6 have had to win both in order to have insolvency 7 analysis reversed? 8 A As of this time period, that's correct. 9 Q Right. 10 A Please let me know when we hit a break. 11 Q Oh, we can take a break if you want. 12 A You sure? 13 Q Of course. 14 A I wanted to let you finish your series of 15 questions. 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 A In the context, I don't believe that would 5 have made any sense to conduct -- 6 Q Is that a no to my question? 7 A -- that analysis. Well, it's a -- it 8 would have been counterintuitive and non -- 9 illogical to kind of perform that analysis in 10 conjunction with this proposal because this was 11 supposed to be a proposal for a settlement with 12 UBS. 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 A Essentially that you would be on the 20 precipice of settlement, that you would be close 21 enough that it was worth going out and getting 22 funding for what ultimately would be the 23 settlement. 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 A That was one of the things that was 5 contemplated, yes. 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 A Yes. 11 Q When this -- and by the way, this 12 settlement analysis ends with a proposal -- a 13 seven-step proposal, right? 14 A It does appear to have a proposed 15 settlement structure summary. 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 A Well, I guess that assumes -- that assumes 20 facts that I disagree with, and I can explain why. 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 A Yes. 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 A Maybe that was a slight overstatement. I 4 should have said approximate amount. 5 Q Okay. You'd know the approximate amount? 6 A Right. 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 A I don't know because all the settlement 11 conversations were -- as far as I was aware, were 12 between yourself and Mr. Ellington. 13 Q What did you understand the approximate 14 amount of settlement that was being contemplated? 15 A I didn't have an understanding. 16 Mr. Ellington did not share that information with 17 me. 18 Q You had no idea if it was 1 million or 19 \$100 million? 20 A I didn't. 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 A Yes. 25 Q Okay. When was that?</p> |

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| <p>193</p> <p>1 A There was a proposed settlement with UBS 2 for I want to say 72.5 million that was drafted 3 but never executed. I want to say that was in 4 2014 or '15 sometime. That's when I had an 5 understanding of a magnitude of potential 6 settlements with UBS. 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 A Those were subsequent separate settlement 13 agreements is my understanding. 14 Q Okay. 15 A That there was a proposed -- I'll call it 16 global settlement, which was all of the claims 17 filed by UBS against all of the defendants, that 18 was drafted but never fully executed and then 19 there were separate executed settlements between 20 UBS and Crusader on the one hand and UBS and 21 Credit Strategies on the other. 22 Q And that was all in the 2014-2015 time 23 frame, correct? 24 A I think it was primarily 2015. 25 Q Okay. After that point, did you ever</p> | <p>195</p> <p>1 struggling with the question, but I -- this is -- 2 this is the summary, I guess, of the potential 3 outcomes if the settlement process is completed. 4 Q If the settlement process that's laid out 5 in this presentation is completed? 6 A Yes. 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 A That's what this says, yes. 11 Q And it was believed that it was currently 12 a total of about \$94 million, right? 13 A That's what the document says. I have no 14 independent recollection of that information. 15 Q Who determined that the assets were worth 16 approximately \$94 million at this time? 17 A I don't know. It would have been someone 18 in the accounting department most likely. 19 Q Did they do that at your direction? 20 A I don't remember that. 21 Q Do you see at the very last page of this 22 document it says Appendix 1 and it's blank? 23 A I do see that, yes. 24 Q And Ms. Smith asked before if we had a 25 complete document here and I had said I believe</p> |
| <p>194</p> <p>1 again hear about any magnitude of a potential 2 settlement with UBS? 3 A No, not that I recall. 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 A I wasn't contemplating any amount and I 9 don't know what other people were or were not 10 contemplating. 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 A Yes. 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 A I'm sorry, say that again. 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 A I think that's -- I apologize. I'm</p> | <p>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 A I do. 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 A I'm sorry, say that one more time, please. 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 A The gross assets? 25 Q Yeah.</p> |

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| <p>197</p> <p>1 A Okay.</p> <p>2 Q The gross assets total, according to this,</p> <p>3 about \$94 million. Do you see that?</p> <p>4 A I do see that, yes.</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 A I do see that, yes.</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 A She's an attorney who worked with me, yes.</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 A I don't know specifically. It would have</p> <p>21 been someone in the accounting department I would</p> <p>22 guess.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And that is your e-mail address, right, on</p> <p>25 Exhibit 67?</p> | <p>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 A Okay. I'll -- I won't re-create the math</p> <p>10 here. That's certainly a possibility.</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 A I'm kind of embarrassed that there's an</p> <p>19 error in a Highland document that --</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 A Sir, I honestly don't recall, but I do</p> |
| <p>198</p> <p>1 A 67 or 47?</p> <p>2 Q 67. The Appendix 1.</p> <p>3 A Sorry, I was looking at the wrong one.</p> <p>4 Say that -- let's have a clean record. Why don't</p> <p>5 you repeat your question one more time.</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 A I don't have any independent recollection,</p> <p>11 but that's what this appears to be.</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 A Okay.</p> <p>25 Q That's my understanding. We can pull up</p> | <p>200</p> <p>1 believe that it -- first of all, I'm not saying --</p> <p>2 again, you're saying you and I'm not sure that I</p> <p>3 drafted this document that's attached to</p> <p>4 Exhibit 47. But it does appear that whoever</p> <p>5 drafted it included the number from document 67.</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 A I don't remember this document and I don't</p> <p>15 remember any mention of an error.</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 A Sir, because I don't have any independent</p> <p>24 recollection of this, I can only say that your</p> <p>25 analysis of the documents seems to be a fair one,</p> |

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| 201 | <p>1 but I'm not saying that's what happened. It just 2 happens to be something that might have been what 3 happened. 4 BY MR. CLUBOK: 5 Q Okay. Thanks for that clarification. 6 In any event, whether it's 94 or 98, that 7 doesn't change the point that's being made in 8 No. 1, which is if Highland settles, Sentinel 9 would control the HFP/CDO Fund assets? 10 A Which page are you on, sir? 11 Q Back to page 6. So if Highland were to 12 settle under the proposal that's being 13 contemplated in this document, Sentinel would then 14 control the HFP/CDO Fund assets referenced in -- 15 at least in Appendix 1? 16 A That's what this document says. 17 Q And the contemplation was that Sentinel 18 and Highland Capital Management could then use 19 those assets that had originated at HFP and 20 CDO Fund to generate cash to pay a UBS settlement, 21 a Citi settlement and outstanding legal fees, 22 correct? 23 A That is what this says. 24 Q And you have no reason to believe that you 25 had a different understanding than what was in</p> | 203 | <p>1 again because the problem is we're so off base 2 that I'm being -- I'm confused as to how to answer 3 the question. 4 BY MR. CLUBOK: 5 Q Well, it's your document, so I'm asking -- 6 MS. SMITH: Objection, form. 7 BY MR. CLUBOK: 8 Q It's a document that you sent to 9 Mr. Sevilla, correct? 10 A It is a document that I attached to an 11 e-mail to Mr. Sevilla, yes. 12 Q And with no -- with no further 13 explanation, you just sent this document to 14 Mr. Sevilla? 15 A In Exhibit 47, I just sent the document to 16 Mr. Sevilla. 17 Q Okay. And you at one point in the 18 document -- at one point -- strike that. 19 At one point the document refers to 20 Dondero's tax liability as 50 million plus and 21 here it talks about HCMLP's \$50 million plus tax 22 liability. You see that? 23 A The document refers to Dondero's potential 24 tax liability of \$50 million plus and HCMLP's tax 25 liability of \$50 million plus.</p> |
| 202 | <p>1 this document at the time, as you sit here today, 2 correct? 3 A I don't remember it so I don't remember if 4 I had a different belief or not at the time. 5 Q Okay. And then -- and then another 6 benefit is that it says HCMLP's \$50 million tax 7 liability would be avoided. Do you see that? 8 A It does. 9 Q It doesn't say Jim Dondero's \$50 million 10 plus tax liability. You see that? 11 A Yeah, I -- it doesn't, but I think you're 12 conflating two issues. 13 Q How so? 14 A Well, it's a limited partnership. So the 15 liability would be at HCMLP and it would flow 16 through to the limited partners. 17 Q But the only limited partners at HCM at 18 that time -- or the only significant limited 19 partners at HCM at that time were Jim Dondero and 20 Mark Okada, right? 21 MS. SMITH: Objection, form. 22 A First of all, I don't remember who the 23 significant limited partners were. I've already 24 told you that, depending on what time period it 25 is, but your -- I'm -- here, ask the question</p> | 204 | <p>1 Q Right. And I guess if you go back to -- 2 A Oh, actually, I answered that question 3 wrong. There's going to be part of my testimony 4 I'll need to correct. 5 Q Sorry, what -- 6 A Because I messed up. 7 Q Go ahead and correct it now, then. As 8 they say, by the way, deposition testimony is not 9 a take home exam, so please correct it now if you 10 can. 11 A So whoever owned HCMLP would be completely 12 irrelevant to the tax liability. It's tax 13 liability associated with HFP, not HCMLP. 14 Q Right. It's owners of HFP? 15 A Right. But that means that ownership of 16 HCMLP is not relevant to this inquiry. 17 Q Unless you're treating the economic 18 interest of HCMLP interchangeably with Mr. Dondero 19 and a few other limited partners, correct? 20 MS. SMITH: Objection, form. 21 A That's -- no, that's completely incorrect, 22 sir. 23 BY MR. CLUBOK: 24 Q All right. Let's just continue with the 25 document here, though. It says: Residual assets</p> |

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| <p>1 (up to \$50 million) stay at Sentinel. 2 Do you see that? 3 A I do. 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. 8 A It is bullet point 3 below bullet point 2. 9 BY MR. CLUBOK: 10 Q Sorry, bullet point 4 below bullet 11 point 2? 12 A Yes, you're right, bullet point 4, below 13 bullet point 2. 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. 20 A That's not really accurate, sir. 21 BY MR. CLUBOK: 22 Q Why not? 23 A Because bullet point 4 says up to 24 \$50 million. 25 Q Up to 50 million. Okay. So it's</p> | 205 | <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? 12 A Not necessarily, no. 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? 17 A It's a matured industry. It's fairly 18 commonly used in a variety of different 19 jurisdictions. 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? 24 A I don't know. I don't know the ATE 25 industry that well to be able to say one way or</p> | 207 |
| <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? 8 A I-- I mean, I guess if that's how you 9 want to describe the document, sir. But since I 10 don't remember the document, I really have nothing 11 to add other than what's on the page. 12 Q So turning to page 8, it summarizes the 13 UBS Settlement: Structure Summary. Do you see 14 that? 15 A I do. 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? 19 A I do. 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? 24 A That's correct. 25 Q And indeed if you think about it, wouldn't</p> | 206 | <p>1 another, sir. 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? 7 A I don't know one way or another. 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? 13 A I've never seen the ATE policy that was 14 executed in August 2017, so I don't know one way 15 or another. 16 Q Did you have access to that policy if you 17 had wanted to see it? 18 A I think I did at one point. 19 Q At what point? 20 A I think it was e-mailed to me at one 21 point. 22 Q Sorry, it was e-mailed to you? 23 A I think that's right. 24 Q You said you never had it. 25 A No, I said I never looked at it, sir.</p> | 208 |

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| <p style="text-align: right;">209</p> <p>1 There's a difference.</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>4 A I don't recall. I would have to -- I</p> <p>5 would have to look. I don't remember.</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>11 A I've never seen the policy, sir. That</p> <p>12 is -- that is true.</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>17 A I'd have to think about it. I'm sorry.</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>1 had I seen it and I haven't, other than the page.</p> <p>2 BY MR. CLUBOK:</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>6 A I'd have to think about it. I don't know.</p> <p>7 Q I'm asking you that question.</p> <p>8 A I know and I'm thinking --</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>15 A I'd have to think about it, Mr. Clubok. I</p> <p>16 don't --</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q Think about it.</p> <p>19 A Okay.</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>24 A I'm not sure. I'd need to think about it</p> <p>25 further.</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>4 A I'd have to think about it, Mr. Clubok.</p> <p>5 We could take a break, but I don't -- I don't</p> <p>6 know.</p> <p>7 BY MR. CLUBOK:</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>12 A Fair enough.</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>21 A I don't --</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 A I don't think that was something I was</p> <p>24 thinking about when you asked me those questions</p> <p>25 because I was answering the question you asked,</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>3 A No.</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>7 A I'm not going to talk about what my lawyer</p> <p>8 said to me.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Did you speak to anyone at all?</p> <p>11 A The only people I have conversed with</p> <p>12 today are my wife and my attorneys.</p> <p>13 Q Did you review anything in --</p> <p>14 A No, sir.</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>18 A I've given you my testimony, sir.</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>21 A I mean, I think my answer is that I have</p> <p>22 nothing to say that's not potentially subject to</p> <p>23 privilege.</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>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 A I'm not going to -- I've given you my 5 testimony, sir. 6 BY MR. CLUBOK: 7 Q Why were you e-mailed a copy of the 8 policy? 9 A I don't recall. 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 A Yes.</p> | 213 | <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 A I do. 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 A I don't recall. 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 A Actually, I don't remember this e-mail at 20 all. 21 Q And what did you do when you got the 22 policy? You just got it and didn't look at it? 23 A Actually I don't even want to look at it 24 now. I haven't seen it before. 25 Q Well, I would like you to look at it, and</p> | 215 |
| <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 A I don't think so. I was actually 7 answering the question that you asked, which was 8 did I ever ask to see a policy copy and I never 9 did. 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 A When I was answering that question, I 14 don't believe so. I think I was answering the 15 question in front of me. 16 Q So what's caused you now -- by the way, 17 did you ever ask for a copy of the document? 18 A I don't recall, but if you'd like to show 19 me a document to refresh my recollection, I may 20 have. 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 A I don't remember. 25 Q I'm going to hand you what's been</p> | 214 | <p>1 you asked Mr. Sevilla for the policy, correct? 2 A That's what this appears to say, yes. 3 Q That's your e-mail to Mr. Sevilla, right? 4 A Yes. 5 Q ILeventon@HighlandCapital.com was you in 6 October 2017, right? 7 A Yes. 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 A Correct. 13 Q Why? 14 A I don't remember, sir. 15 Q Why did you want it? 16 A I don't remember, sir. 17 Q What did you do with it? 18 A I don't remember, sir. 19 Q And you didn't even remember asking for it 20 until I just showed you this document, correct? 21 A I didn't remember asking Mr. Sevilla for 22 it, no. 23 Q Do you consider yourself to have a good 24 memory? 25 A You know, I literally send and received</p> | 216 |

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| <p style="text-align: right;">217</p> <p>1 probably 10,000 e-mails over this time period. I 2 think I have a decent memory. 3 Q You send and received 10,000 e-mails over 4 what time period? 5 A I mean, if you're talking about over a 6 four-year period, five-year period, thousands of 7 e-mails. I didn't remember this one. 8 Q Did you read thousands of documents over 9 that time period? 10 A Possibly. 11 Q So it's possible that you forgot you had 12 read the ATE policy? 13 A No. I am certain that the only part of 14 the ATE policy I ever read was just the one page. 15 Q Why? Why did you -- why did you refuse to 16 read the policy? 17 MS. SMITH: Objection to form. 18 A Refuse is not accurate. 19 BY MR. CLUBOK: 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 A That's not accurate, sir. 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 A I think that's right. 5 Q And Mr. Dondero had authority to sign on 6 behalf of CDO Fund at this time? 7 A I suppose he did. It appears that he 8 signed on behalf of that entity. 9 Q And also on behalf of CDO Hold Co and 10 SOHC, correct? 11 A Appears that he signed on behalf of all of 12 those entities, yes. 13 Q And CDO Hold Co and SOHC were both subs of 14 Highland Financial Partners, correct? 15 A They were both owned by Highland Financial 16 Partners, yes. 17 Q Who negotiated this policy on behalf of 18 CDO Opportunity Master Fund? 19 A I don't know. 20 Q Who negotiated this policy on behalf of 21 Highland CDO Hold Co? 22 A I have no idea. 23 Q So who negotiated this policy on behalf of 24 SOHC? 25 A I don't know.</p> |
| <p style="text-align: right;">218</p> <p>1 BY MR. CLUBOK: 2 Q What's inaccurate about that statement? 3 A I don't ever remember consciously thinking 4 I better not look at this. I don't -- but I 5 certainly know that I didn't look at it. 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 A I do. 11 Q And do you see that it was signed on 12 behalf of Sentinel Reinsurance by someone named 13 Andrew Dean, director? 14 A I see that, yes. 15 Q Do you know who Andrew Dean is? 16 A I don't. 17 Q Do you know who negotiated the policy on 18 behalf of Sentinel Reinsurance? 19 A No, sir, I don't. 20 Q Okay. Do you see there where it lists the 21 insureds under the policy? 22 A I do. 23 Q And do you see it lists Highland CDO 24 Opportunity Master Fund, LP? 25 A Yes.</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 A I don't think so, no. 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 A Gosh. 12 Q I don't know if that's -- 13 A Yeah. 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 A I do. 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 A It might have been. 25 Q Certainly -- did you know that the ATE</p> |

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| 221 | <p>1 policy was for \$100 million?</p> <p>2 A I don't think I did, no.</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 A Where are you, sir?</p> <p>15 Q Back to page 8.</p> <p>16 A Of which document?</p> <p>17 Q 47.</p> <p>18 A I see the page.</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 A Can you rephrase the question? I'm sorry,</p> <p>25 I got lost in all of the advocacy of that one.</p> | 223 | <p>1 A The settlement proposal in April was</p> <p>2 different than the ATE policy purchased in August.</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 A What I'm --</p> <p>8 Q Is that correct?</p> <p>9 A What I'm testifying is to, sir, the</p> <p>10 contemplated settlement process, which is what's</p> <p>11 discussed in this document, is different than the</p> <p>12 ATE policy that was purchased in August of 2017.</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 A Honestly, I'm seeing this document -- the</p> <p>19 ATE policy for the first time.</p> <p>20 BY MR. CLUBOK:</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> |
| 222 | <p>1 BY MR. CLUBOK:</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 A There was a potential settlement structure</p> <p>7 with UBS contemplated in April of 2017.</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 A There is the consideration of purchasing</p> <p>12 an ATE policy.</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 A Whatever my testimony was, it will speak</p> <p>20 for itself.</p> <p>21 BY MR. CLUBOK:</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> | 224 | <p>1 A The document states that HFP and CDO Fund</p> <p>2 would buy a \$100 million ATE policy from Sentinel</p> <p>3 as the first of what ultimately were seven steps</p> <p>4 in a settlement process.</p> <p>5 BY MR. CLUBOK:</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 A Yes.</p> <p>9 Q And it would be a \$100 million ATE policy</p> <p>10 from Sentinel Reinsurance, right?</p> <p>11 A From Sentinel, yes.</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 A Right. That's what it says on the page.</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 A Which page are you on, sir?</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>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 A To clarify my earlier testimony, the only 7 thing I did was I looked at who the insureds were 8 on this page. That's all I cared about. I don't 9 even remember looking at the rest of the page. 10 BY MR. CLUBOK: 11 Q You knew that the insureds were HFP and 12 CDO Fund, correct? 13 MS. SMITH: Objection, form. 14 A I apparently had to confirm that the 15 insureds were Highland CDO Opportunity Master 16 Fund, LP, Highland CDO Holding Company and 17 Highland Special Opportunities Holding Company. 18 That's why I looked at this page. 19 BY MR. CLUBOK: 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 A I don't really know that it does, no.</p> | <p>225 227 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 A I can't give you that testimony one way or 9 another. I'm seeing that ATE policy for the first 10 time. 11 BY MR. CLUBOK: 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 A I disagree with one of the premises of 18 your question, and I'm happy to explain. 19 Q Yeah. 20 A The April settlement proposal was a series 21 of steps, but they were all part of a single 22 proposal. I don't know that we can pull one of 23 them out and characterize it as something that 24 happened later or didn't happen later. It's a 25 single process with multiple steps.</p> |
| <p>226 1 BY MR. CLUBOK: 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 A The documents speak for themselves. I'm 11 looking at one document I didn't even remember and 12 know that I've drafted and another document I've 13 never seen. 14 BY MR. CLUBOK: 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 A Okay. 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>228 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 A I'm just seeing the ATE policy for the 15 first time today and frankly haven't even had a 16 chance to review the whole document. And I also 17 wouldn't pull one step out of the April proposal 18 and characterize it. So I don't believe I can 19 answer your question as asked. 20 BY MR. CLUBOK: 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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| 229 | <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. 10 A I've given you my testimony, sir. 11 BY MR. CLUBOK: 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? 17 A I've given you my -- 18 MS. SMITH: Objection, asked and answered. 19 A I've given you my testimony, sir. 20 BY MR. CLUBOK: 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> | 231 | <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. 9 A Let me give you a full answer. I disagree 10 with the premise of your question, sir, and I 11 cannot answer it as asked. 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? 15 A I don't know. 16 Q Did anyone ever tell you whether or not 17 that occurred? 18 A I don't remember ever being told that. 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. 23 A I don't think I can really answer the 24 question as asked. 25</p> |
| 230 | <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? 15 A My response to the question was that I did 16 not believe I could answer the question as phrased 17 and I gave you the reasons I did not believe I 18 could answer the question as phrased. That was my 19 testimony. And that is still my testimony in 20 response to the same question, sir. 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> | 232 | <p>1 BY MR. CLUBOK: 2 Q Why not? 3 A I didn't -- well, let me rephrase. I 4 didn't know what assets went over. 5 Q Did you believe -- you knew that there was 6 an ATE policy that had been purchased, right? 7 A Yes. 8 Q And you knew who the insureds were, right? 9 A Yes. 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? 13 A I didn't know what the consideration was 14 for the policy. 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. 22 A What I was aware of was in April 2017, it 23 was contemplated that Sentinel and HMLP can use 24 HFP and CDO Fund assets to generate cash to pay 25 UBS, Citi and outstanding legal bills.</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 A I can characterize what's on the page, 11 which is HFP and CDO Fund would buy a \$100 million 12 ATE policy from Sentinel and the ATE premium, 13 apparently, was going to be all the assets in HFP 14 and CDO Fund. 15 BY MR. CLUBOK: 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 A I don't remember -- 21 MS. SMITH: Objection, form. 22 THE WITNESS: Sorry. 23 A I don't remember the proposal from 24 April 2017, so I can't add or subtract from what's 25 on the page.</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 A I believe I do. 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 A I don't remember if I did or not. 21 Q Who's Chris Dunn? 22 A Chris was an accountant at Highland. I 23 think a junior fund accountant. 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 BY MR. CLUBOK: 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 A Sitting here today, I don't remember one 9 way or another, sir. 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 A As I sit here today, yes. 17 Q Okay. 18 A Was I ever aware, I don't know. 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 A Hold on one moment, please. I do see 4 that, yes. 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 A Yes. 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 A I do. 15 Q What documents did you request Mr. Dunn 16 draft in connection with this ATE policy? 17 MS. SMITH: Objection, form. 18 A I never requested Mr. Dunn draft any 19 documents in connection with the ATE policy. 20 BY MR. CLUBOK: 21 Q What did you request Mr. Dunn do in 22 connection with the ATE policy? 23 A I don't recall. I don't recall if I 24 requested him to do anything with it. 25 Q Well, you talk about this project. You</p> |

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| <p>1 refer to this project. Do you see? 2 A I do. 3 Q What's this project that you're referring 4 to? 5 A I mean, I can speculate, but I don't 6 recall. 7 Q Give your best educated guess. 8 A Something having to do with the UBS 9 ATE policy. 10 Q You know nothing beyond that? 11 A I don't. 12 Q Do you have any educated assumption about 13 what this was beyond that it had something to do 14 with the UBS ATE policy? 15 A When you say this, you're talking about 16 the e-mail to Mr. Dunn? 17 Q I'm talking about the project you 18 reference, as if he knows what you're talking 19 about when you send this policy to Mr. Dunn. 20 A I mean, I don't have a recollection, I 21 guess. I'm trying to figure out if I have an 22 educated guess. I mean, there were a number of 23 things that that could have referenced. 24 Q Mr. Leventon, in the course of this 25 deposition, you understand you have an obligation</p> | 237 | <p>1 you also understand that you have to 2 affirmatively -- do you believe when you're 3 answering these questions, I just want to 4 understand what your -- your process when you're 5 answering questions, do you believe you have an 6 obligation not to omit intentionally information 7 that is necessary to make the statements you say 8 fully true? 9 A I mean, I answer the questions fully and 10 truthfully. That's what I can say, sir. 11 Q Yeah. My question is in the -- when you 12 do that, do you believe, as you sit here today, 13 that you have an obligation not to omit 14 information that's necessary to make a statement 15 that you have made fully true? 16 MS. SMITH: Objection. You've already 17 asked him that and he's answered. You're 18 badgering him now. 19 MR. CLUBOK: The record's going to show 20 he's not answered this question and I think it's 21 an important question for the judge to know and I 22 think it's a perfectly fair -- 23 MS. SMITH: You're testifying now. 24 MR. CLUBOK: So are you. We're not 25 supposed to -- you should limit yourself to</p> | 239 |
| <p>1 to affirmatively tell the truth, right? 2 A Yes. 3 Q Do you understand as part of that 4 obligation, you also can't intentionally omit 5 information that is necessary to make a statement 6 you're saying the complete truth? 7 MS. SMITH: Objection. 8 BY MR. CLUBOK: 9 Q Do you have that understanding? 10 MS. SMITH: Objection. 11 A I'm going to testify fully and truthfully 12 to the best of my ability. 13 BY MR. CLUBOK: 14 Q When you're answering questions in this 15 deposition, do you understand that you have an 16 obligation not to omit information that is 17 necessary to make statements you are making true? 18 MS. SMITH: Objection. Mr. Clubok, you're 19 badgering him now. 20 A I'll accept my counsel's instructions on 21 how to conduct a deposition. 22 BY MR. CLUBOK: 23 Q I'm asking your understanding of when 24 you're trying to answer these questions, you know 25 that you're not supposed to affirmatively lie. Do</p> | 238 | <p>1 objection to form and I should limit myself, so 2 I'm going to ask my question again and I'm going 3 to try not to take the bait of this argument. I 4 agree with you, it's inappropriate. 5 BY MR. CLUBOK: 6 Q Mr. Leventon, when you are answering these 7 questions, do you believe you have an obligation 8 not to intentionally omit material information 9 that's necessary to make one of your answers 10 completely truthful? 11 A I have to fully and truthfully answer a 12 question, but I am not obligated to answer a 13 question I haven't been asked, is my understanding 14 of the rules. 15 Q And do you believe you're allowed to 16 intentionally omit material information that might 17 be necessary to make an answer you give completely 18 true? 19 MS. SMITH: Objection, form. 20 BY MR. CLUBOK: 21 Q Yes or no? 22 A I'm not allowed to omit information that 23 would make an answer to a question asked true, but 24 I don't believe I have an obligation to educate 25 the questioning lawyer with respect to questions</p> | 240 |

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| <p style="text-align: right;">241</p> <p>1 they haven't asked.</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>8 A My answer previously was that I don't</p> <p>9 recall, but that I was prepared to give my</p> <p>10 educated guess.</p> <p>11 Q Okay. And that guess is?</p> <p>12 A It had something to do with the audits</p> <p>13 being run by the accounting team, where you would</p> <p>14 do some sort of risk analysis, potentially, in</p> <p>15 order to determine if something goes into an audit</p> <p>16 or not.</p> <p>17 Q When did you first become aware of</p> <p>18 Sentinel Reinsurance?</p> <p>19 A I knew there was a reinsurance company in</p> <p>20 the Cayman Islands in 2013 sometime, but I don't</p> <p>21 recall if I knew the name or not.</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>25 A I mean, I knew it was somehow associated</p> | <p style="text-align: right;">242</p> <p>1 with Mr. Dondero and Mr. Ellington, but I didn't</p> <p>2 know who owned it.</p> <p>3 Q Did you know that those two had beneficial</p> <p>4 economic interests in Sentinel?</p> <p>5 A I don't know -- I didn't know that then</p> <p>6 and I don't believe I know that now.</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>12 A I don't recall ever seeing the beneficial</p> <p>13 ownership of Sentinel.</p> <p>14 BY MR. CLUBOK:</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>18 A It would have been whatever Mr. Surgent</p> <p>19 and the compliance department determined and I</p> <p>20 believe his determination is that it wasn't an</p> <p>21 affiliated investor.</p> <p>22 BY MR. CLUBOK:</p> <p>23 Q Why?</p> <p>24 MS. SMITH: Objection, form.</p> <p>25 A Because I believe I either spoke to him</p> |
| <p style="text-align: right;">243</p> <p>1 about it directly or was told by somebody that</p> <p>2 that was his determination.</p> <p>3 BY MR. CLUBOK:</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>10 A I'm going to put the marked version into</p> <p>11 the pile and I'm going to look at the color</p> <p>12 version.</p> <p>13 Q This is the last few pages of that.</p> <p>14 A Is this --</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>18 A I'm sorry, say that one more time, please.</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 A I see on Bates number 020562 toward the 2 bottom, an e-mail from Mr. Taylor Colbert to Trey 3 Parker, copying a bunch of people, stating: As 4 discussed, please see the updated file with 5 Sentinel being presented as an affiliated 6 investor. 7 BY MR. CLUBOK: 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 A Sorry, sir, give me a moment, please. 17 This isn't completely straightforward. 18 (Witness reviews document.) 19 A Okay. I see that there's nothing on 20 nonaffiliated master for Sentinel Re Holdings, 21 Ltd. 22 BY MR. CLUBOK: 23 Q What? 24 A On one, two, three, four -- fifth column 25 over, top of the first page on the attachment,</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 A I guess that's right. 6 Q And -- 7 A Maybe. 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 A I do. 13 Q Do you remember him calling you about 14 this? 15 A No, I do not. 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 it -- there are percentages of non-affiliated 2 master and it does not have an entry for Sentinel. 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 A I think that's probably fair, yes. 12 BY MR. CLUBOK: 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 A I don't mean to quibble with you, but 17 Mr. Surgent appears to have been one of the 18 initial people copied on Mr. Colbert's e-mail at 19 5:50 p.m. on December 1 and then Mr. Surgent 20 forwards that to Mr. Ellington. 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 A I'm looking at this for the first time and 25 that apparently is correct.</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 A No. 6 Q Do you remember ever discussing 7 Multi Strat's cash projections on or about 8 December of 2017? 9 A No. 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 A I don't specifically recall December 2017, 15 but I do know that at some point the compliance 16 department via Mr. Surgent made the determination 17 that it was not an affiliated investor. 18 Q Why do you know that? 19 A I believe my testimony was I either -- I 20 don't remember if I spoke to Mr. Surgent about it 21 directly or heard from somebody indirectly that 22 that had been Mr. Surgent's determination. 23 Q And do you know the basis that that 24 determination was supposedly made on? 25 A I don't. It would be the purview of the</p> |

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| <p style="text-align: right;">249</p> <p>1 compliance department to make those calls.</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>5 A Yes.</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>9 A I'm sorry, can you say that one more time,</p> <p>10 please?</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>15 A I don't actually know what assets were</p> <p>16 involved in that ATE policy, but it would -- it</p> <p>17 would be a fair assumption.</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>21 A Say that one more time, please.</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>1 BY MR. CLUBOK:</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>6 A I certainly had this schedule. I don't</p> <p>7 remember focusing on it particularly, but I know I</p> <p>8 had it.</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>15 A Hold on. This is the -- that was in the</p> <p>16 attachment that was sent to me.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q So that's a yes?</p> <p>19 A I'm not meaning to quibble about -- I know</p> <p>20 I received these documents. I have no dispute</p> <p>21 about that. I just don't have a recollection of</p> <p>22 looking at them, comparing them and noticing that</p> <p>23 particular point, as we're doing today.</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>3 A I saw the e-mail that showed that schedule</p> <p>4 of assets, and I think Multi Strat is on there,</p> <p>5 but I don't have an independent recollection of</p> <p>6 that ownership.</p> <p>7 Q Right. But Exhibit 67 --</p> <p>8 A Hold on one second, please. Hold on. I</p> <p>9 don't have --</p> <p>10 Q Exhibit 67 is a one-page document.</p> <p>11 A Sorry, I don't have Exhibit 67 in front of</p> <p>12 me for some reason.</p> <p>13 Q Well, Exhibit 67 is a one-page document</p> <p>14 that was Appendix 1 --</p> <p>15 A Sorry, it got attached. I found it.</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>23 A Yes. And as I told you after looking at</p> <p>24 this document, it appears that the Highland Credit</p> <p>25 Opportunities CDO Ltd./LP units are on here.</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>5 A That's what this line says for the</p> <p>6 offshore feeder.</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>10 A I mean, now that I'm comparing these for</p> <p>11 the first time, I mean, this is a -- they don't</p> <p>12 match. They don't match.</p> <p>13 Q Right. The dollar amounts don't match</p> <p>14 exactly.</p> <p>15 A No, the entities don't match.</p> <p>16 Q Oh, the entities don't match.</p> <p>17 A No. The entities don't match.</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>22 A I'm not saying that, sir. I'm making an</p> <p>23 observation of fact that Highland Credit</p> <p>24 Opportunities Fund, Ltd., on Exhibit --</p> <p>25 whatever -- 61, is a different entity than</p> |

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| <p style="text-align: right;">253</p> <p>1 Highland Credit Opportunities CDO, Ltd., which was 2 colloquially known as the MVCDO and was a wholly 3 owned subsidiary of the master fund and they don't 4 match. 5 BY MR. CLUBOK: 6 Q Sir -- 7 A I'm not making a dispute about 8 transactions. I'm pointing out -- I mean as you 9 pointed out to me that there was a math error, I'm 10 pointing out to you there's an error. 11 Q Well, there may or may not be an error in 12 the names used, but fair to say that you knew in 13 April of 2017 that CDO Fund had roughly 14 \$24 million of LP units in what was then known as 15 Credit Strategies, correct? 16 A In some level of Credit Strategies, but 17 they're not matching up, correct. 18 Q Okay. And you also received 19 information -- you also -- strike that -- knew 20 that there was a plan being proposed in April that 21 would have had an ATE policy with a \$100 million 22 face value purchased by CDO Fund and HFP for all 23 of the assets in those two funds from Sentinel, 24 correct? 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 2 been transferred to Sentinel? 3 MS. SMITH: Objection to form. 4 A We discussed that they had at one point 5 owned an interest in Multi Strat, but I don't -- 6 there was a problem with that interest. 7 BY MR. CLUBOK: 8 Q What did you say specifically -- well, 9 first of all, who's the we in that sentence? 10 A Sorry, if you'll read my testimony back. 11 Q You said we discussed. 12 A Mr. -- oh, gosh. It was either me and 13 Mr. Demo or me and Mr. Seery. I think it was me 14 and Mr. Demo. 15 Q You and Mr. Demo discussed what on this 16 subject? 17 A That there had been -- that there had been 18 an interest in the Credit Opportunities fund 19 structure or fund entities that had been owned by 20 CDO Fund. 21 Q And did you ever in any way, to Mr. Demo 22 or Mr. Seery or any other lawyer for the debtor or 23 independent director, convey that that interest 24 that CDO Fund had had in Multi Strat was 25 transferred to Sentinel?</p> |
| <p style="text-align: right;">254</p> <p>1 A I was aware that what was in that 2 presentation is what was in the presentation, that 3 it was a \$100 million ATE policy, I believe, in 4 exchange for all the assets. Whatever it says 5 there is the answer. 6 BY MR. CLUBOK: 7 Q And then you were advised at the end of 8 December -- strike that. 9 You were advised at the end of 2017 that 10 Sentinel (from Highland CDO Fund) had some 11 interest in one of the Credit Opportunities funds, 12 correct? 13 A I was advised that Sentinel had -- well, I 14 don't know advised. I was sent a document that 15 included a lot of information, but amongst it 16 included the line that there was 28 million in 17 offshore NAV that was transferred to Sentinel from 18 Highland CDO Fund. 19 Q Okay. And did you ever follow up on that 20 issue with anyone at any time after that? 21 A I don't recall if I did, and the 22 determination as to what was or wasn't an 23 affiliate was not my decision or purview. 24 Q Did you ever tell Mr. Seery or anyone else 25 affiliated with the debtor, that CDO Fund had once</p> | <p style="text-align: right;">256</p> <p>1 A Yes. 2 Q When did you tell them that? 3 A Mr. Sargent was at all times aware of 4 that. He had been intimately involved in the 5 transaction and he was deputy general counsel for 6 the debtor and senior to me in the legal team. I 7 technically reported to Mr. Ellington, but 8 Mr. Sargent often would task me with things as 9 well and I had to follow his instructions. 10 Q Sorry, let's set aside Mr. Sargent for the 11 moment. Did you ever tell Mr. Demo or any other 12 lawyer at the Pachulski law firm, that the 13 interest that CDO Fund had had in Multi Strat was 14 transferred to Sentinel? 15 A I believe what I told Mr. Demo was that I 16 wasn't sure what happened to that interest. 17 Q But, in fact, you knew that that interest 18 had been transferred to Sentinel pursuant to this 19 document that we've just reviewed, correct? 20 MS. SMITH: Objection, form. 21 A Actually based on the discrepancy I just 22 showed you, which actually was something I 23 originally became aware of back in August of 2020 24 or maybe September, I don't actually know that 25 that was an effective transfer.</p> |

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| <p style="text-align: right;">257</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q You don't know if there actually has been</p> <p>3 an effective transfer from CDO Fund to Sentinel;</p> <p>4 is that correct?</p> <p>5 A Well, it -- the problem is --</p> <p>6 Q I just want an answer to my question. As</p> <p>7 you sit here today, you don't know if there</p> <p>8 actually has been an effective transfer of CDO's</p> <p>9 interest in Multi Strat to Sentinel, correct?</p> <p>10 A The answer is I don't know and I also</p> <p>11 think that that question assumes certain facts</p> <p>12 that I can't confirm or agree with.</p> <p>13 Q Like what?</p> <p>14 A Like the problem I ran into was if you</p> <p>15 have an accounting entry that shows that a fund</p> <p>16 owns -- let's just round it -- we'll call it</p> <p>17 24 million; is that fair? We'll just call the</p> <p>18 CDO Fund interest that --</p> <p>19 Q For purpose of this discussion you can</p> <p>20 call it 24 million for ease of --</p> <p>21 A Okay.</p> <p>22 Q Whether it's 24 or 28.</p> <p>23 A Twenty-four or 28, I'm not --</p> <p>24 (Simultaneous discussion interrupted by</p> <p>25 reporter.)</p> | <p style="text-align: right;">259</p> <p>1 you're saying?</p> <p>2 A It may or may not.</p> <p>3 Q Okay.</p> <p>4 A But it -- that interest may not exist, is</p> <p>5 another possibility.</p> <p>6 Q Okay. And then -- and you identified this</p> <p>7 issue at some point?</p> <p>8 A Yes, absolutely.</p> <p>9 Q While you were still working for the</p> <p>10 debtor?</p> <p>11 A Yes.</p> <p>12 Q And did you fully describe this issue to</p> <p>13 Mr. Demo or another lawyer at the Pachulski firm?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 A I discussed this at length with Mr. Demo.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q And did you explain to Mr. Demo that there</p> <p>18 had been -- when you say discussed it at length,</p> <p>19 did you ever, in words or substance, say something</p> <p>20 that reflected that there was some effort, whether</p> <p>21 or not it had been successful, to transfer</p> <p>22 interest in Credit Strat from Highland CDO Fund to</p> <p>23 Sentinel?</p> <p>24 A We discussed --</p> <p>25 Q That's a yes-or-no question.</p> |
| <p style="text-align: right;">258</p> <p>1 A So if you have one accounting sheet that</p> <p>2 shows one asset and one accounting sheet that</p> <p>3 shows that after it was transferred it's a</p> <p>4 completely different asset, then you have a</p> <p>5 problem. Which then raises the question, did you</p> <p>6 own what you think you owned and did you actually</p> <p>7 transfer something you owned? I mean, it's kind</p> <p>8 of like -- it's like any other security that would</p> <p>9 be issued. Like if you own shares of UBS</p> <p>10 Securities USA, LLC, and then you sell them and</p> <p>11 someone on their balance sheet reflects US AG</p> <p>12 stock, then what just happened?</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q I see. And, in fact, for example, you</p> <p>15 know that -- you -- based on the analysis you did,</p> <p>16 you determined that CDO Fund still has ownership</p> <p>17 of an entity that's been loosely called</p> <p>18 Greenbriar, perhaps because of a faulty</p> <p>19 transaction?</p> <p>20 A That is a different situation.</p> <p>21 Q Okay. With respect to CDO Fund and</p> <p>22 Multi Strat, you believe that CDO Fund may still</p> <p>23 retain whatever interest it had in Multi Strat</p> <p>24 that you were aware of in April of 2017 because of</p> <p>25 perhaps an incorrect book entry; is that what</p> | <p style="text-align: right;">260</p> <p>1 A The issue of Sentinel did not come up in</p> <p>2 our conversations.</p> <p>3 Q So when you claim that you discussed at</p> <p>4 length this potential problem with identifying</p> <p>5 whether CDO Fund, in fact, owned an interest in</p> <p>6 Multi Strat, you never thought to raise the issue</p> <p>7 of whether or not CDO Fund had effectuated a</p> <p>8 proper transfer of that interest if it had one, to</p> <p>9 Sentinel, correct?</p> <p>10 A I got stuck in an earlier stage in the</p> <p>11 analysis and so Sentinel didn't come up.</p> <p>12 Q You never raised it affirmatively,</p> <p>13 correct?</p> <p>14 A We never got to that point in the inquiry.</p> <p>15 So no.</p> <p>16 Q You never mentioned that in order to</p> <p>17 figure out what interest, if any, CDO Fund had in</p> <p>18 Multi Strat, you might need to look at Sentinel's</p> <p>19 books, correct?</p> <p>20 A No, I wouldn't care what Sentinel's books</p> <p>21 said.</p> <p>22 Q You never mentioned that in order to</p> <p>23 figure out what interest, if any, CDO Fund had in</p> <p>24 Multi Strat, you might need to look at what</p> <p>25 Highland's books reflected in terms of transfers</p> |

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| <p>261</p> <p>1 from Highland CDO Fund to Sentinel, correct?</p> <p>2 A We didn't say Sentinel in particular, but</p> <p>3 we did talk about any transfers, yes.</p> <p>4 Q But you definitely didn't say Sentinel,</p> <p>5 which was the transfer that you were aware at</p> <p>6 least had been contemplated and at least in one</p> <p>7 place reflected as having had occurred?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q I'll break that up into two questions.</p> <p>11 You knew that it was contemplated that</p> <p>12 there would be a transfer of CDO Fund's interest</p> <p>13 in Credit Strat to Sentinel, but you never</p> <p>14 affirmatively raised that with Mr. Demo or any</p> <p>15 other lawyer at Pachulski, correct?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I don't remember being aware of that at</p> <p>18 the time and it wasn't pertinent to the task that</p> <p>19 I was working on, which was the asset trade.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Sir, you knew that it had been</p> <p>22 contemplated based on the work you did in April of</p> <p>23 2017, that to purchase an ATE policy, CDO Fund</p> <p>24 might use as part of the consideration whatever</p> <p>25 interest it had in Multi Strat, correct?</p> | <p>263</p> <p>1 Q And you knew that there was a schedule</p> <p>2 that showed Sentinel having interest in</p> <p>3 Multi Strat (from Highland CDO Fund), correct?</p> <p>4 A In December I think that's fair -- sorry,</p> <p>5 December 2017. I think that's fair.</p> <p>6 Q And you even -- when you were tasked with</p> <p>7 helping trace the assets of CDO Fund and HFP, you</p> <p>8 even talked to Mr. Ellington, in words or</p> <p>9 substance, about whether or not you should mention</p> <p>10 Sentinel, correct?</p> <p>11 A Correct.</p> <p>12 Q And you never did once mention Sentinel to</p> <p>13 anyone at the Pachulski law firm in the course of</p> <p>14 doing the task you were given with respect to</p> <p>15 tracing the assets of CDO Fund and SOHC, correct?</p> <p>16 Correct?</p> <p>17 A It was not relevant to the task, so, no, I</p> <p>18 didn't.</p> <p>19 Q I'm going to hand you what's been marked</p> <p>20 as Deposition Exhibit No. 2. I don't want you to</p> <p>21 spend time reading it. I just want to -- in fact,</p> <p>22 before I hand it to you, I just want to ask you.</p> <p>23 Did you know there was a purchase agreement that</p> <p>24 was executed on or about the same time as the</p> <p>25 ATE policy was executed?</p> |
| <p>262</p> <p>1 A I can affirmatively state that in August</p> <p>2 of 2020, I was not thinking about an e-mail from</p> <p>3 April of 2017.</p> <p>4 MR. CLUBOK: Move to strike as</p> <p>5 nonresponsive.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q I didn't ask you that. I just said you</p> <p>8 knew based on the work you had done in April 2017,</p> <p>9 that CDO Fund had been contemplating using its</p> <p>10 interest in Multi Strat to partially fund the</p> <p>11 purchase of an ATE policy, correct?</p> <p>12 A Sir, it was one of many assets on a</p> <p>13 schedule, and I just don't remember thinking about</p> <p>14 that asset in -- I don't remember thinking of that</p> <p>15 asset from that schedule in April of 2017 back</p> <p>16 in -- whenever we were, August of 2020.</p> <p>17 Q You knew it was contemplated that CDO Fund</p> <p>18 would transfer all of its assets to Sentinel as</p> <p>19 part of the consideration for what was then</p> <p>20 contemplated to be an ATE policy. You knew that</p> <p>21 for sure, right?</p> <p>22 A Apparently in April 2017, I did, yes.</p> <p>23 Q And you knew that there had been an</p> <p>24 ATE policy purchased, correct?</p> <p>25 A Yes.</p> | <p>264</p> <p>1 A I think I knew that there was such an</p> <p>2 agreement, but I've never seen it.</p> <p>3 Q You've never seen it before today and that</p> <p>4 you're sure about, right?</p> <p>5 A Yes.</p> <p>6 Q Did you ever ask for a copy of it?</p> <p>7 A Not that I'm aware of.</p> <p>8 Q Were you ever sent a copy of it?</p> <p>9 A Not that I'm aware of.</p> <p>10 Q Okay. You knew -- you specifically were</p> <p>11 involved with authorizing payments from Sentinel</p> <p>12 for legal fees associated with the UBS litigation</p> <p>13 in New York, correct?</p> <p>14 A Say that one more time, please.</p> <p>15 Q You were involved with authorizing</p> <p>16 payments to be made from Sentinel for legal fees</p> <p>17 associated with the UBS litigation in New York,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q In fact, you directed Sentinel to make</p> <p>21 certain payments to lawyers and vendors associated</p> <p>22 with the legal work done in New York against UBS,</p> <p>23 correct?</p> <p>24 A I don't want to say I directed them to.</p> <p>25 I'll say we requested that they do so.</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 A I can't say -- 6 MS. SMITH: Objection to form. 7 A I can't say every single time, but I think 8 pretty much every time, if not every. 9 BY MR. CLUBOK: 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 A Sitting here today, I'm not aware of any 17 time that they refused to pay requested legal 18 fees. 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 at Highland. 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 A I haven't read the policy, sir. 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 A Well, those are two slightly different 16 questions. Can we break them into two, please? 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 A I believe that was my understanding, yes. 22 Q And who gave you that understanding? 23 A I don't recall exactly, but it would have 24 been probably Mr. Ellington or Mr. Sevilla. 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 A Again, I don't remember every single 4 instance, but I don't remember any time that they 5 didn't do it. 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 A It was my understanding that that was 11 something contemplated in the ATE policy, was that 12 Sentinel would pay legal invoices. 13 Q How did you know that if you never saw the 14 ATE policy? 15 A I don't remember who told me, but somebody 16 did. 17 Q Who? 18 A I don't remember. It would have been 19 Mr. Sevilla or Mr. DiOrio, most likely. 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 A Maybe they told me other things, but this 24 particular subject would have come up because I 25 was the person in charge of processing legal fees</p> | <p style="text-align: right;">268</p> <p>1 A I don't know. 2 Q Before the bankruptcy? 3 A Yes. 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 A I don't know that I ever spoke to the 11 Pachulski firm about settlement of the New York 12 litigation. 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 A I don't believe I ever spoke to Pachulski 17 about satisfaction of the judgment in New York or 18 settlement of the New York litigation. 19 Q So is that a no to my question? 20 A That's right. 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 A I don't know that that's something we ever 2 discussed, but it would be logical. But I don't 3 recall ever discussing that point. 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 A We never discussed settlement or 11 satisfaction of a judgment against those two 12 entities, whether the insurance policy or from any 13 other source of funds. 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 A That question assumes -- I don't want to 4 make an assumes facts not in evidence objection 5 for myself, but that's what I'm saying. It 6 assumes things that didn't happen and I told you 7 the thing that didn't happen. 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 A And my -- 21 MS. SMITH: Objection, form. 22 A And my answer is that assumes that I spoke 23 to the Pachulski firm or the independent directors 24 about satisfaction of the judgment or 25 settlement --</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 A Okay. 11 BY MR. CLUBOK: 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 A My answer is I disagree with the premise 20 of the question. I can explain why. It's the 21 explanation I just gave. 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 BY MR. CLUBOK: 2 Q It doesn't -- 3 A -- which it didn't. 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 A That was never a conversation that we had. 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 A I don't know that I did. 23 BY MR. CLUBOK: 24 Q Well -- 25 A I thought that action was stayed.</p> |

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| <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 A I don't know if I did or not. I don't 7 remember. 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 A I believe I spoke to Beecher Carlson at 13 some point about the impact of the judgment on the 14 policy. 15 Q And you never told the independent 16 directors that you were having those discussions, 17 correct? 18 A It wouldn't have come up ever, so, no, we 19 never had those conversations. 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 A It would never have come up with the 25 Pachulski lawyers, so, no, we didn't have those</p> | <p>273</p> <p>1 chart is clearly after the judgment because it 2 refers to the Phase 1 decision, correct? 3 A Well, it -- it refers to the -- yes, the 4 Phase 1 decision from November. 5 Q Right. And that's this -- the decision 6 that led to the so-called billion dollar judgment, 7 correct? 8 A That's correct. 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 A I see Mr. Kemp's chart, yes. 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 A Yes. 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 A I believe that's right, yes.</p> |
| <p>274</p> <p>1 conversations. 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 A I don't recall that. 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 A I do. 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 A Yes. 25 Q And this analysis that's reflected in the</p> | <p>275</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 A I think that's right, yes. 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 A I see where it says that, yes. 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 A I didn't tell him to expect that. This is 23 the assumptions he's giving me. 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>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? 5 A I didn't -- I agreed with Mr. Kemp's 6 analysis -- or I didn't change it. 7 Q You agreed that it was a reasonable 8 assumption? 9 A Yes. 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? 13 A That's what that says, yes. 14 Q And you said there was a reasonable 15 assumption that there would only be a 20 percent 16 chance of that, correct? 17 A That's not exactly right. Because it's 18 total probabilities, so it's not isolating just 19 the probability of success on the appeal. 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>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? 7 A I know the scenarios incorporated hedging. 8 I would have to go back and look at what they 9 said. But certainly by the end of trial, we would 10 have -- excuse me. Certainly by the end of the 11 trial, we would have known that the Court -- the 12 trial court had ruled against us on hedging. 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? 20 A Mr. Surgent would have been aware of the 21 potential payout, but other than that, I don't 22 know if there's anyone else. And Mr. Ellington 23 would have been, but I mean that's my whole -- 24 that's my chain of command. 25 Q Did you inform Mr. Surgent about this</p> |
| <p>1 A I mean, in terms of the 20 percent, the 2 20 percent is in terms of the total outcome. I'm 3 not saying that the appeal is only 20 percent. 4 Like that UBS has an 80 percent chance of losing 5 its appeal, that's not what I thought this said. 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? 10 A Honestly, I don't remember. 11 Q Well, you -- 12 A I still remember that we -- we thought we 13 had really good textual arguments on the synthetic 14 warehouse. 15 Q But you actually believed from day one 16 that UBS was likely to win on liability, right? 17 A Which is a wholly separate issue, yes. 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? 24 A The Court made a ruling on hedging during 25 the trial, yes.</p> | <p>1 analysis you were doing in June of 2020? 2 A No, but he was aware of the ATE policy and 3 what it covered. 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? 19 A I don't believe that I ever discussed 20 Exhibit 68 with Mr. Seery. 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 A I believe -- without characterizing</p> <p>8 whether it's been performed or blessed, the</p> <p>9 document will speak for itself, but I believe that</p> <p>10 Mr. DiOrio was aware of this analysis.</p> <p>11 Q Why do you believe that?</p> <p>12 A Because he was the person who was in</p> <p>13 charge of the -- coordinating the Sentinel audit.</p> <p>14 Q Who made Mr. DiOrio aware of this?</p> <p>15 A I believe it would have been me.</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 A This specific analysis, I don't know that</p> <p>19 I discussed it with anyone else.</p> <p>20 Q Did you?</p> <p>21 A Not that I recall.</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;">282</p> <p>1 you see that?</p> <p>2 A Yes. I remembered forwarding it to</p> <p>3 Mr. DiOrio. I forgot who I CC'd, which was</p> <p>4 Mr. Sevilla and Ms. Irving.</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 A Greg Demo is not on this e-mail.</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 A That's correct.</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 A No -- nobody is on this e-mail except for</p> <p>16 the people on this e-mail.</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;">283</p> <p>1 independent directors or with their outside</p> <p>2 counsel?</p> <p>3 MS. SMITH: Objection, form.</p> <p>4 A I only remembered sharing it with</p> <p>5 Mr. DiOrio. So I can't say that I expected this</p> <p>6 information to be -- that I recall expecting this</p> <p>7 information to be shared with the independent</p> <p>8 directors.</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 A This document? Not that I recall.</p> <p>13 Q How about this analysis or anything about</p> <p>14 this subject in 2020?</p> <p>15 A This analysis, no. Anything about this</p> <p>16 subject, I would have to think about further.</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 A They all did know about the ATE policy.</p> <p>21 Q And you discussed this analysis also with</p> <p>22 Mr. Ellington at some point?</p> <p>23 A I don't know that I did.</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;">284</p> <p>1 the time the debtor declared bankruptcy, correct?</p> <p>2 A I don't know if we talked about it or not.</p> <p>3 I don't remember.</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 A Sitting here today, I can't remember that</p> <p>8 conversation having taken place.</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 A I do.</p> <p>25 MS. SMITH: And like yesterday, Shannon,</p> |

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| 285 | <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> | 287 | <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> |
| 286 | <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> | 288 | <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>289</p> <p>1 A No. I don't think I've seen either of 2 these two things before. 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 A I mean, I don't know what was in 9 Mr. Stoops's mind, but I can speculate. 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 A My best guess as to why I was involved in 14 this process is because I was the guy in charge of 15 the legal bills. And so it would have been 16 relevant to payment of the legal wires that you 17 see on the first page of this exhibit. 18 Q And so all of those payments were made 19 prior to the transfers? 20 A I don't know. 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>291</p> <p>1 maybe what the difference is, but they weren't 2 exactly the same. 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 A I know the number went down, but I don't 9 remember exactly how it matched up to the final 10 judgment because there were a lot of toggles that 11 went on with the expert reports. 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 A Sitting here today, I don't know the 17 answer to that. They were big numbers. I mean, 18 there's no dispute they were big numbers, but I 19 don't remember exactly what they were, if it was 20 20 percent, 30 percent, 10 percent. 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 A As of August 2017, I think that I knew 25 that UBS was seeking \$500 million or so.</p> |
| <p>290</p> <p>1 prior to transferring all of these assets to 2 Sentinel in 2017? 3 A I don't know. 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 A To the best of my recollection, accounting 10 had taken UBS's initial complaint and the number 11 identified in the initial complaint and then just 12 rolled that number forward year over year. 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 A That's not exactly right. 20 Q Why not? 21 A So the initial complaint was for 22 \$746 million in principal, and to the best of my 23 recollection the judgment principal amount was 24 something like 530. I know, we're talking about 25 enormous numbers where it kind of doesn't matter</p> | <p>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 A The August 2017 transaction was the 6 purchase of an ATE policy relative to the UBS 7 state court action. 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 A Do I keep or do I throw? 13 Q You can put it in front of me. 14 A No, these? 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 A Yes. 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>1 A That's what Mr. Chism says in his e-mail.</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>5 A Yes.</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>9 A I don't honestly know if -- I mean,</p> <p>10 reading this, Mr. Willmore says there are two</p> <p>11 wires that are CDO Fund wires, which wouldn't</p> <p>12 include HFP. Sitting here today, I have no idea</p> <p>13 whether there were two of them.</p> <p>14 Q Does it ring a bell --</p> <p>15 A That's what it says.</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>19 A No. No.</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>23 A Apparently I did.</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>5 A I can infer that from the document and it</p> <p>6 wouldn't surprise me, but I don't know.</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>12 A To the best of my recollection, neither</p> <p>13 myself nor any of the other individuals mentioned</p> <p>14 it to him.</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>18 A I believe you do, yes.</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>24 A Yes.</p> <p>25 Q And you understood you ultimately reported</p> |
| <p style="text-align: right;">294</p> <p>1 A I knew that it was in consideration of the</p> <p>2 ATE policy.</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>6 A No, I did not.</p> <p>7 Q Did you know whether it was for equivalent</p> <p>8 value?</p> <p>9 A I didn't know what the assets were so I</p> <p>10 couldn't comment one way or another.</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>18 A I do.</p> <p>19 Q Was Mr. Stoops the one responsible for</p> <p>20 transferring the HFP cash?</p> <p>21 A I don't know.</p> <p>22 Q Did Mr. Stoops have a role in connection</p> <p>23 with HFP at the time?</p> <p>24 A Yes.</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>2 A That's fair to say.</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>7 A I'm not sure how -- I'm not sure how</p> <p>8 the -- that I had -- say that one more time. That</p> <p>9 I had a fiduciary duty to make them aware of all</p> <p>10 facts that they needed for their job?</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>19 A No. My understanding -- I understood my</p> <p>20 job was to do the tasks that I was assigned.</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>25 A Sorry, I really don't --</p> |

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| <p style="text-align: right;">297</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A I don't understand the question as asked.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q So in August 2017, you were copied on</p> <p>5 these documents that purported to show there had</p> <p>6 been transfers made from CDO Fund and HFP to</p> <p>7 Sentinel Reinsurance, correct?</p> <p>8 A Yes.</p> <p>9 Q And over the next couple of years, did you</p> <p>10 come to learn that there were questions about</p> <p>11 whether those transfers had properly been</p> <p>12 effectuated?</p> <p>13 A I didn't really get involved in that until</p> <p>14 mid -- like kind of third quarter of 2020.</p> <p>15 Q Well, you were asked about information</p> <p>16 relating to the transfers as early as February of</p> <p>17 2019, weren't you?</p> <p>18 A I was? Okay. I don't recall that.</p> <p>19 Q I'm going to share with you what's been</p> <p>20 marked as Exhibit 62. Exhibit 62 has an e-mail</p> <p>21 chain that begins with Ernest Ramos of BNY Mellon</p> <p>22 reaching out to Carter Chism about custody</p> <p>23 invoices.</p> <p>24 A I apologize. Where are you, sir?</p> <p>25 Q The very last e-mail in the chain working</p> | <p style="text-align: right;">299</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Sir, do you remember this exchange? And</p> <p>3 in particular I want to point your attention to</p> <p>4 the first page that's Bates-labeled 35 of</p> <p>5 Exhibit 62 where you --</p> <p>6 A Go ahead.</p> <p>7 Q Where you are specifically e-mailing</p> <p>8 Carter Chism to say that: CDO Fund is and has</p> <p>9 been insolvent since the financial crisis of 2009.</p> <p>10 Do you see that?</p> <p>11 A I do see that, yes.</p> <p>12 Q And then in response, Carter Chism says:</p> <p>13 Thinking about this further, I believe the</p> <p>14 CDO Opps fund was included in the transfer to</p> <p>15 Sentinel.</p> <p>16 Do you see that?</p> <p>17 A I do.</p> <p>18 Q And this is an e-mail that you and</p> <p>19 Mr. Sevilla and Mr. DiOrio and Clifford Stoops are</p> <p>20 all copied on, correct?</p> <p>21 A Yes.</p> <p>22 Q So this is another reminder that there had</p> <p>23 been this transfer to Sentinel, right?</p> <p>24 A I suppose, yes.</p> <p>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</p> <p>2 Bates-labeled 39 at the end.</p> <p>3 A Give me a moment to review it.</p> <p>4 MS. SMITH: Is this the complete e-mail?</p> <p>5 MR. CLUBOK: This is the e-mail that was</p> <p>6 marked as Exhibit 62 yesterday that I presume is</p> <p>7 the complete e-mail.</p> <p>8 MS. SMITH: In the middle it says: See</p> <p>9 column M for approved action, and I don't see</p> <p>10 anything with column M.</p> <p>11 MR. CLUBOK: What page are you on?</p> <p>12 MS. SMITH: 9039.</p> <p>13 MR. CLUBOK: Yeah. Well, I don't know.</p> <p>14 Sometimes the top -- yeah. There was originally</p> <p>15 attachments, but on this particular version of the</p> <p>16 document, I don't believe it included the</p> <p>17 attachments. But in any event, yeah -- -- look,</p> <p>18 as I stated, the first e-mail refers to attached</p> <p>19 invoices. Obviously those attached invoices</p> <p>20 aren't included as part of this document, just the</p> <p>21 cover e-mail. And then Carter Chism talks about</p> <p>22 column M presumably in the attached invoices. If</p> <p>23 I could just focus the questions I want to ask of</p> <p>24 Mr. Leventon.</p> <p>25</p> | <p style="text-align: right;">300</p> <p>1 says: Jason, CDO Fund and has been insolvent.</p> <p>2 Do you see that?</p> <p>3 A Yes.</p> <p>4 Q Did you mean to send that e-mail to Jason</p> <p>5 Martinez?</p> <p>6 A No.</p> <p>7 Q Why did you say Jason?</p> <p>8 A I was suggesting -- I don't recall</p> <p>9 exactly, but I know what my practice was and I</p> <p>10 think I was suggesting language to Mr. Chism that</p> <p>11 he could use to go back to Mr. Martinez.</p> <p>12 Q I see. So you -- this is a draft e-mail</p> <p>13 of what you were suggesting that Mr. Chism could</p> <p>14 send to Jason Martinez in response to the question</p> <p>15 that he asked, correct?</p> <p>16 A Correct.</p> <p>17 Q And when you say that CDO Fund is and has</p> <p>18 been insolvent since the financial crisis, you</p> <p>19 weren't going to tell him that CDO Fund actually</p> <p>20 had some assets in August of 2017, correct?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I mean, I don't know that I was going to</p> <p>23 mention it in this communication, but Bank of</p> <p>24 New York Mellon was actually the bank for those</p> <p>25 funds that was directly involved in apparently the</p> |

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| <p style="text-align: right;">301</p> <p>1 transfers, as I'm noticing from the earlier</p> <p>2 exhibits. So they certainly knew about it.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Do you know what Sebastian Clarke is?</p> <p>5 A Who?</p> <p>6 Q Have you ever heard of an entity called</p> <p>7 Sebastian Clarke?</p> <p>8 A No, sir.</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>12 A I'm sorry, sir, I don't know that name.</p> <p>13 Q You've never heard that name before ever?</p> <p>14 A Candidly, I thought it was a person when</p> <p>15 you first asked it.</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>25 A Yes.</p> | <p style="text-align: right;">303</p> <p>1 Q Was there -- so was Mr. Willmore still</p> <p>2 there?</p> <p>3 A Mr. Willmore was no longer employed by the</p> <p>4 debtor.</p> <p>5 Q Who was Mr. Willmore employed by at that</p> <p>6 time?</p> <p>7 A He was employed -- well, I don't know who</p> <p>8 exactly he was employed by, but he started to work</p> <p>9 for some NexPoint affiliate and didn't work on any</p> <p>10 further Highland stuff.</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>14 A I think I did actually.</p> <p>15 Q And what did he tell you?</p> <p>16 A He generally pointed me to some accounting</p> <p>17 drives on the G drive.</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>23 A I mean, as I previously stated, the</p> <p>24 e-mails were separate from the production process</p> <p>25 that I was involved in and that was agreed to with</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>4 A I was part of a team of people</p> <p>5 responsible.</p> <p>6 Q Did you review this request carefully?</p> <p>7 A I don't know about carefully, but I</p> <p>8 certainly reviewed it.</p> <p>9 Q Would it have been your practice to review</p> <p>10 a document request like this carefully?</p> <p>11 A I definitely reviewed it and understood</p> <p>12 its contents. I don't know what carefully means,</p> <p>13 but I definitely reviewed it and knew what it</p> <p>14 said.</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>18 A That's a really hard question to answer.</p> <p>19 Not exactly. Not really.</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>23 A So that's the problem, is I don't think</p> <p>24 there was an accountant who was responsible for</p> <p>25 CDO Fund at that point.</p> | <p style="text-align: right;">304</p> <p>1 Pachulski, and all of those e-mails were actually</p> <p>2 sitting at Meta-e and were accessible by</p> <p>3 Pachulski.</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>8 A In the e-mails, yes.</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>13 A I knew that information was in the e-mails</p> <p>14 that had been sent to Meta-e.</p> <p>15 BY MR. CLUBOK:</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>21 A No, the e-mails were carved out completely</p> <p>22 from the process I was involved in.</p> <p>23 Q Same answer with respect to HFP's assets,</p> <p>24 including SOHC's assets, correct?</p> <p>25 A Everything that was in the e-mails I did</p> |

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| <p style="text-align: right;">305</p> <p>1 not look at as part of this response. And I</p> <p>2 understand from Mr. Morris was that he told you</p> <p>3 that we weren't going to be looking through</p> <p>4 e-mails in response to these requests because that</p> <p>5 was being handled separately.</p> <p>6 Q Mr. Morris told you that he told me,</p> <p>7 Andrew Clubok, that?</p> <p>8 A That's --</p> <p>9 Q That's what you're claiming?</p> <p>10 A That's what I recall, is that it was</p> <p>11 agreed that the e-mails would be separate.</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>16 A That -- it may not have been an agreement</p> <p>17 per se, but it was -- essentially Mr. Morris and</p> <p>18 Mr. Demo told me not to worry about the e-mails</p> <p>19 and they would take care of it.</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>10 A You mean in the e-mails, that that</p> <p>11 information was sitting in the e-mails?</p> <p>12 BY MR. CLUBOK:</p> <p>13 Q That that information was available</p> <p>14 anywhere.</p> <p>15 A The only place that I know that it was</p> <p>16 available was the e-mails and that was, again,</p> <p>17 carved out of what I was looking at. But I</p> <p>18 understand that these issues were being looked at</p> <p>19 by whomever was reviewing the e-mails.</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>2 A No.</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>7 A He may have said that at one point, but</p> <p>8 then we had additional iterations as to how we</p> <p>9 were going to respond and ultimately I was tasked</p> <p>10 with tracing the -- I can't remember if it was</p> <p>11 March or May of 2009, I think it was May of 2009</p> <p>12 through -- but those assets and explain where they</p> <p>13 were today.</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>20 A I do.</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>24 A Yes.</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>3 A At that point I was a task lawyer with</p> <p>4 what Pachulski was telling me, so if it was in the</p> <p>5 e-mails, frankly, I just ignored it because they</p> <p>6 had them and I knew that they were focused on</p> <p>7 these issues as well.</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>11 A See, let me rephrase. I don't know that</p> <p>12 I, sitting here today, knew that all these</p> <p>13 e-mails -- let me rephrase.</p> <p>14 I don't know that in September 2020 I knew</p> <p>15 that all those e-mails existed from 2017, but to</p> <p>16 the extent they existed, they had been sitting</p> <p>17 with Pachulski from the end of July.</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> |

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| <p>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 A Sorry, this is hard to read. If you'll 20 give me a moment. 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 A I'm going to review the document.</p> | <p>311</p> <p>1 specifically. 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 A Yes. 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>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 A Yes. 23 Q And MSCF refers to Multi Strat, correct? 24 A I think that means the Multi Strat Credit 25 Fund. I'm just not sure which level it would be</p> | <p>312</p> <p>1 as one of the redeemers. 2 Do you see that? 3 A Actually I lost you while you were 4 reading, but I will take your word for it that you 5 read it right. 6 Q I paraphrased it slightly and skipped what 7 I thought was not every word. 8 A Okay. 9 Q But the gist of this is -- 10 A Could you tell me -- sorry, I don't know 11 where we are in the document. 12 Q The gist of what Greg is asking -- 13 A Sorry, which e-mail from Greg? 14 Q There's an e-mail from Greg at the bottom 15 of the page that ends in 16 -- 16 A Okay. I'm there. 17 Q -- that is to you and other people -- 18 A Yes. 19 Q -- copying Seery -- 20 A Yes. 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 A That's what it says.</p> |

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| <p>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 A Yes. 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 A I do. 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 A I do. 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>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 A I'll let the document speak for itself. 10 The impression that I got at the time was that he 11 was butting heads with Mr. Demo. 12 BY MR. CLUBOK: 13 Q That's the only impression you got from 14 this exchange, that he's butting heads with 15 Mr. Demo? 16 A That's the primary impression that I got. 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>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 A I do. 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 A Yes. 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 A Yes. 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 A Yes. 24 Q And Greg Demo. 25 A Yes.</p> | <p>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 A Well, I didn't really know what the answer 10 was because I wasn't speaking to Mr. Seery, but 11 Greg was saying that Mr. Seery needed one thing 12 and Scott's saying, no, he doesn't and I was not 13 involved in either of those conversations and then 14 it was just going to be me and Dave trying to 15 figure things out. 16 BY MR. CLUBOK: 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 A So I wasn't sure, because Mr. Ellington 24 conveyed essentially that -- I mean, to get the 25 deliverable handled, but I don't know that this</p> |

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| <p style="text-align: right;">317</p> <p>1 one outstanding item was the most important thing 2 in the deliverable. And then Greg thought that 3 this one outstanding item was the most important 4 thing in the deliverable and I didn't speak to 5 Mr. Seery either way to confirm who was right. 6 BY MR. CLUBOK: 7 Q Well, wait a second. You were instructed 8 by Mr. Seery to get this UBS deliverable handled, 9 weren't you? 10 A Yes. 11 Q And Mr. Seery made it clear to you 12 personally in that call that this was a priority, 13 didn't he? 14 A This deliverable, yes. But this one 15 specific item that was holding up the deliverable, 16 I don't remember that. 17 Q All right. You then read Mr. Seery 18 telling your -- or telling this group including -- 19 sorry. 20 You read Mr. Ellington's -- strike that. 21 Let me start over. 22 You read Mr. Ellington's e-mail to 23 Mr. Seery and to others in which he says that 24 there are ghost funds such as these target 25 entities, and by target entities he means</p> | <p style="text-align: right;">319</p> <p>1 Herculean task. Do you see? 2 A He does. 3 Q And he says: Isaac and myself have spent 4 in excess of 100 hours trying to piece together 5 everything we can to create a true and accurate 6 document-based record of what happened with these 7 target entities. 8 Correct? 9 A Yes. 10 Q As part of that -- and by the way, was 11 that a true statement when you read it, in your 12 mind, that you had gone through a Herculean task 13 to do everything you could to create a true and 14 accurate document-based record of what happened to 15 HFP, CDO Fund and SOHC? 16 A I think a more fair characterization is we 17 had put a substantial amount of effort into 18 tracing the May 2009 assets against -- well, 19 figuring out what happened to the May 2009 assets. 20 Q My question to you is not that question. 21 So I want you to answer my question. 22 Is it true that you and Mr. Ellington 23 did -- had done everything you could to create a 24 true and accurate document-based record of what 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? 2 A I can assume that's what he means, but I 3 don't know. 4 Q And he talks about how the ghost funds 5 don't have directors, custodians, administrators, 6 bank accounts and no one knows -- no one knows 7 what they truly retain. Do you see that? 8 A I do. 9 Q And he claims that UBS is aware of the 10 situation because he's personally discussed it 11 with Andy Clubok, that's me, several dozen times, 12 including as recently as this year, right? 13 A He does say that. 14 Q And did you know that Mr. Ellington had 15 represented to me that these were ghost funds and 16 there was no way really as a practical matter to 17 figure out how much assets they had or when they 18 last had assets or words to that effect? 19 A I wasn't privy to your conversations. 20 Q Did you -- did Mr. Ellington ever tell 21 you, in words or substance, that he had conveyed 22 that information to UBS other than what's here in 23 Exhibit 70? 24 A I don't recall him ever doing that. 25 Q Okay. He then said, the project is a</p> | <p style="text-align: right;">320</p> <p>1 August 15th, 2020? 2 MS. SMITH: Objection, form. 3 A I think that was a slight 4 mischaracterization of the work that we were 5 doing, which was tracing the assets. 6 BY MR. CLUBOK: 7 Q Did you -- 8 A And that we had done a lot of work. 9 MR. CLUBOK: Move to strike as 10 nonresponsive. 11 A Sorry, I was addressing the Herculean task 12 portion of it. 13 BY MR. CLUBOK: 14 Q Okay. Well, I'm asking you whether it was 15 true as Mr. Ellington reported to Mr. Seery and 16 others, that as of August 15th, 2020, you were -- 17 you had spent 100 hours trying to piece together 18 everything you could to create a true and accurate 19 document-based record of what happened with HFP, 20 SOHC and CDO Fund? 21 A I think his statement was not precise, and 22 I believe that what I stated was a more precise 23 characterization of what he was saying. 24 Q Did you make any effort to correct his 25 statement to this audience?</p> |

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| <p style="text-align: right;">321</p> <p>1 A I never responded to this e-mail and I 2 wasn't going to get involved in a -- what I viewed 3 to be essentially a butting of heads between 4 Mr. Ellington and Pachulski. 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 A That was not what I had been tasked with 10 doing. I had been tasked with the other thing 11 that I've already described. 12 Q So is the answer to my question no? 13 A No, I didn't because that wasn't my task. 14 Q Is the answer to my question no? 15 A I said no, because that's not what I was 16 tasked with doing. 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 A Well, I tried to do everything I could and</p> | <p style="text-align: right;">323</p> <p>1 Q To whom? 2 A So Mr. Demo knew exactly what I was 3 working on, as did -- well, I take it back. I 4 don't know if DSI knew what I was working on. But 5 Mr. Demo knew exactly what I was working on and I 6 never represented to him, or anybody that I 7 remember, maybe I did, but I just -- I don't 8 remember having that conversation of I'm going to 9 do a forensic audit of the funds. 10 Instead, it was, I'm going to identify 11 what did they have as of this date, which has 12 already been produced to UBS and show UBS what 13 happened to those assets. 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 A Yes. 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 A This is the -- before the document 22 request. 23 Q Okay. This was with respect to -- this is 24 before the formal document request. 25 A I don't know how to respond to that, sir.</p> |
| <p style="text-align: right;">322</p> <p>1 I put a lot of effort into tracing the May 2009 2 assets and identifying what happened -- where they 3 were today. I put a lot of effort into that. 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 A The problem is that's a paraphrase of what 17 Mr. Ellington said here and I'm happy to point out 18 where, frankly, I disagree with Mr. Ellington on 19 this. 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 A I think I did actually, yes.</p> | <p style="text-align: right;">324</p> <p>1 It's before the request for production that are 2 marked as Exhibit 69. 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 A I don't know that I ever saw UBS requests 8 that -- whenever these informal requests were that 9 predated the request for -- 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 A I knew that UBS certainly was asking for a 17 lot of information, but in terms of exactly how 18 you phrased it just now, I don't remember that 19 part. But UBS was certainly asking for a lot of 20 information and then that's what me and Mr. Demo 21 spoke about, is to kind of how to satisfy that. 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 A With respect to the assets that had been 5 sitting in those SOHC and CDO Fund in May of 2009, 6 most of those weren't the subject of the 2017 7 transfer and there was a lot of -- educated guess 8 work is probably not the right way to say it. We 9 were gathering as many documents as we could to 10 try to figure out what had happened to those 11 assets. 12 BY MR. CLUBOK: 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 A I knew that substantially all of the 20 assets they had in August of 2017 had been 21 transferred in August of 2017, but that's not 22 necessarily the same as what was there in 2009. 23 BY MR. CLUBOK: 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 A I knew that the assets -- substantially 3 all of the assets that they had owned in August of 4 2017 had been transferred in -- or attempted to be 5 transferred in 2017. 6 Q And Mr. Ellington knew that too, correct, 7 when he wrote this e-mail? 8 A Mr. Ellington and Mr. Klos knew that, 9 both. 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 A I actually didn't know that, no. 14 Q Okay. But Mr. Ellington certainly knew 15 that at the time, correct? 16 MS. SMITH: Objection, form. 17 A You'll have to ask Mr. Ellington what he 18 knows. I don't -- I don't know that Mr. Ellington 19 owns any part of Sentinel. I know he's related to 20 it in some way, but I don't know if he owns it. 21 BY MR. CLUBOK: 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 A Okay. 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 A I can't give you a clean answer to that 18 question, sir. There are -- if you want to break 19 it up into parts, I'm happy to address it. 20 BY MR. CLUBOK: 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 A No. 2 Q But you do know that Mr. Dondero has an 3 economic interest in Sentinel? 4 A So it's similar to SAS, right. I knew 5 that Mr. Dondero and Mr. Ellington had some 6 involvement with that entity. I didn't know 7 exactly what the structure or ownership was. I 8 knew that they had, essentially, involvement in 9 authority with respect to those entities. 10 Q You do know that Mr. Dondero has an 11 economic interest in Sentinel, correct? 12 A Actually, I don't. 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 A I don't know if they have an economic</p> |

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| <p style="text-align: right;">329</p> <p>1 interest and I don't know what the content of 2 those conversations were, but I do know 3 Mr. Surgent's determination. 4 BY MR. CLUBOK: 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? 10 A I don't know what he knew one way or 11 another. 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? 25 A Yes.</p> | <p style="text-align: right;">331</p> <p>1 A Well, because for years, CDO Fund didn't 2 have any financials and so it just struck me as 3 unusual that they were doing anything with that 4 fund. It was very -- it was strange to me so I 5 asked. 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? 11 A Throckmorton, I think yes. Rice, I don't 12 remember. 13 Q Did you direct Mr. Seery or Pachulski to 14 these people for assistance? 15 A Well, they were asking questions of 16 Mr. Klos, and Mr. Throckmorton responded to 17 Mr. Klos. So that wasn't my chain of command. 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. 25 A I think my prior testimony is that I knew</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? 5 A I think that was reflective of the 6 judgment that had been handed down by the Court. 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? 11 A Yes. 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? 15 A Where did I ask that? 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? 24 A Yes, I see that. 25 Q Why did you ask that question?</p> | <p style="text-align: right;">332</p> <p>1 UBS wanted a lot of information, but that exact 2 characterization I don't know. I don't remember. 3 BY MR. CLUBOK: 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. 12 A I mean, I -- 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? 25 A I knew -- I knew UBS was asking for a lot</p> |

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| <p style="text-align: right;">333</p> <p>1 of information about what happened to the assets 2 in those funds and then we went through an 3 iterative process between myself and Mr. Demo to 4 determine what it was that we were going to send, 5 but I -- I don't recall ever seeing UBS's 6 requests. Really I was getting my tasking orders 7 from Pachulski. 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? 18 A I do. 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? 2 A Yes. 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? 11 A I apparently knew that you were asking for 12 documents from 12/31/07 through 12/31/19. 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? 16 A I don't recall if I did one way or 17 another. 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? 22 A Yes. 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>1 A I see that it says supplemental 2 information request. I was not interfacing with 3 UBS on these requests. I don't even remember 4 being sent them. 5 BY MR. CLUBOK: 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? 13 A I don't have any personal knowledge of 14 those. 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? 23 A I do. 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>1 A Right. That was the task that they had 2 put me on, was to track the assets from May of '09 3 forward. 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. 10 A Actually, I didn't. 11 BY MR. CLUBOK: 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? 17 A There were only two such assets and I 18 researched extensively what happened to both of 19 those assets. And so I don't necessarily agree 20 that they were effectively transferred by the 21 ATE policy -- whatever -- whatever it is that 22 people did, it didn't work, I think. 23 Q What were those two assets that you're 24 talking about? 25 A The NV -- well, sorry, let me rephrase.</p> |

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| <p style="text-align: right;">337</p> <p>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</p> | <p style="text-align: right;">339</p> <p>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.</p> |
| <p style="text-align: right;">338</p> <p>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</p> | <p style="text-align: right;">340</p> <p>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</p> |

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| <p style="text-align: right;">341</p> <p>1 told him that was my preliminary conclusion.</p> <p>2 Q When did you tell him that?</p> <p>3 A It was around this time period.</p> <p>4 Q When?</p> <p>5 A It was in August of 2020.</p> <p>6 Q And did you tell him to share that</p> <p>7 information with UBS?</p> <p>8 A I didn't give him any instructions on what</p> <p>9 to share with UBS one way or another.</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>13 A I don't remember -- I don't remember if we</p> <p>14 talked about it. I do remember that I was</p> <p>15 concerned that if we didn't have the answer, that</p> <p>16 was going to create more -- that if we gave a</p> <p>17 partial -- well, let me start over.</p> <p>18 I was concerned that if we told them -- if</p> <p>19 we told you where we were, that was going to</p> <p>20 create more problems because we had uncertainty</p> <p>21 and that was not an easy thing to say.</p> <p>22 BY MR. CLUBOK:</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>3 A I do.</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>7 A I do see that's what it says.</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>19 A I knew that it took place in August of</p> <p>20 2017. I didn't know the exact date, but yes.</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>2 A I don't remember one way or another.</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>21 A Yes.</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>1 A I see that.</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>12 A At -- I did not mention Sentinel in the</p> <p>13 context of these documents. I was still</p> <p>14 researching why the financial records showed what</p> <p>15 they showed.</p> <p>16 BY MR. CLUBOK:</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>24 A My concern is that that write-off should</p> <p>25 have actually taken place much, much earlier.</p> |

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| <p style="text-align: right;">345</p> <p>1 BY MR. CLUBOK:</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>8 A I knew that the ATE transfer had taken</p> <p>9 place on or about August 2017.</p> <p>10 BY MR. CLUBOK:</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>16 A I did not mention that.</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>3 A It shows that it was written off on that</p> <p>4 date. Any entry in WSO generates a "trade ticket"</p> <p>5 even if it's not technically a trade.</p> <p>6 Q But, in fact, it says, Trade Type, Sell,</p> <p>7 on the document, correct?</p> <p>8 A It says sell because it's -- well, because</p> <p>9 it's coming from the perspective of Highland</p> <p>10 CDO Fund. So, yes, that's what it says.</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>14 A It does say that.</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>18 A I'm sorry, after which date, sir?</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>24 A I'm sorry, you lost me, sir.</p> <p>25 MR. CLUBOK: Beg your pardon?</p> |
| <p style="text-align: right;">346</p> <p>1 BY MR. CLUBOK:</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>11 A Sorry, I'm losing a little focus. I think</p> <p>12 what you represented is what the document says.</p> <p>13 Q Right.</p> <p>14 A Yeah.</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>20 A Yes.</p> <p>21 Q And that shows -- what is this document?</p> <p>22 A So this is what's called a WSO trade</p> <p>23 ticket.</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>6 A At some point Sentinel does show up as a</p> <p>7 redeemer from Multi Strat.</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>19 A Yes. I haven't had a chance to review it</p> <p>20 yet.</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>349</p> <p>1 A I don't recall ever having seen this 2 before. 3 Q Did you know that Sentinel Reinsurance was 4 listed as a redeemer with respect to Multi Strat? 5 A I think I did, yes. 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 A I'm sorry, I don't understand that 11 question, sir. 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 A I know that there were extensive 16 discussions about redeemers in that fund, but I 17 don't remember if there was a specific discussion 18 about Sentinel. 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 A I never spoke to them about it one way or 24 another. 25 Q And did you ever -- in the course of that</p> | <p>351</p> <p>1 who they are, but they weren't affiliated with 2 Highland or Dondero or anybody in any way. 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 A That was my preliminary conclusion. 8 Q And did you share that specific conclusion 9 with Mr. Demo? 10 A The conclusion I shared with him was that 11 I thought that those interests may have been wiped 12 out in 2011 and that that was my preliminary 13 conclusion. 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 A I don't generally talk to any -- I'm 19 trying to -- I don't want to say at Sentinel 20 because that's characterizing what people's roles 21 are, but I do remember at one point telling 22 Mr. DiOrio this may not exist. 23 Q When was that? 24 A You may not own this. 25 Q When did you tell Mr. DiOrio that?</p> |
| <p>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 A Yes. 7 Q How were they extinguished? By a sale? 8 By them just disappearing? By redemption? How? 9 A Restructuring. 10 Q What do you mean? 11 A So if the interests were -- if the limited 12 partnership interest was at the level that we 13 colloquially called MVCDO, my understanding was 14 that MVCDO had issued notes prior to the financial 15 crisis and then it went through a restructuring 16 transaction sometime in 2011, where the notes 17 essentially wiped out the equity holders and then 18 noteholders became the new equity of MVCDO and 19 then, I think, they had to be essentially redeemed 20 out in cash over time. 21 Q Who redeemed out the cash interest in 22 Multi Strat? 23 A The noteholders. 24 Q Who were they? 25 A Third-party investors. I don't remember</p> | <p>352</p> <p>1 A Would have been August or September 2020. 2 Q Around the time you were tasked with 3 tracking down what happened with CDO Fund's 4 assets? 5 A Yes. 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 A I believe he was on the board of Sentinel. 12 Q You knew he was a director at the time of 13 Sentinel, right? 14 A Actually, I didn't. I knew he was -- had 15 day-to-day responsibility kind of for Sentinel, 16 but I don't actually know he was a director. 17 Q You just imagined right now when you said 18 you knew he was on the board? 19 A Well, I know today that he was on the 20 board. 21 Q How do you know today? 22 A Really through this discovery and lawsuit 23 process. 24 Q Who told you? 25 A I don't recall. I may have gotten it from</p> |

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| <p style="text-align: right;">353</p> <p>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,</p> | <p style="text-align: right;">355</p> <p>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</p> |
| <p style="text-align: right;">354</p> <p>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?</p> | <p style="text-align: right;">356</p> <p>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?</p> |

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| <p>357</p> <p>1 A I mean, I had already spoken to 2 Mr. Sevilla about the ATE policy. 3 Q Okay. But Mr. DiOrio, what, if anything, 4 did you talk to him about with respect to the 5 ATE policy, other than this subject? 6 A On an annual basis, we would talk to 7 Beecher Carlson and he would set up those 8 conversations. 9 Q On an annual basis, meaning 2017, 2018, 10 2019 and 2020? 11 A I think that's right, yes. 12 Q How about 2021, before you were 13 terminated? 14 A I don't think so. 15 Q Who is responsible for speaking to Beecher 16 Carlson in 2021 about the policy? 17 A I don't know. Not me. 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 A I don't remember if I spoke -- if I did, 23 it would have been with Mr. Ellington. 24 Q And did you suggest, in words or 25 substance, that Mr. Ellington should cause a claim</p> | <p>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 A I remember we had a discussion around a 8 document from April of 2017 related to settlement 9 analysis. 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 A That would buy claims from UBS? 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 A Not that I recall. 25 Q Anyone ever raise the fact that the -- all</p> |
| <p>358</p> <p>1 to be made on the ATE policy? 2 A I may have. I just don't remember. 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 A That's correct. 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 A I don't know that I came to a view one way 15 or another. 16 Q You might have, but you just don't know if 17 you did or you didn't? 18 A I don't remember -- I might have. I don't 19 remember. 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 A No. 25 Q Prior to April -- prior to the transaction</p> | <p>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 A No, no one ever said anything like that. 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 A Yes. It was -- the idea for it came from 14 a gentleman by the name of Jim McCormack, who 15 is -- was a legal ethics counsel that we retained. 16 Q Why? 17 A Skyview Group wanted to determine if it 18 was providing legal services. And if it was 19 providing legal services, if that was appropriate 20 under its current structure or whether or not it 21 needed to essentially create an affiliated law 22 firm or a dedicated law firm in order to avoid 23 unauthorized practice of law issues. 24 Q Okay. And you're the sole director at 25 this point of Skyview Legal PC?</p> |

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| <p style="text-align: right;">361</p> <p>1 A I am, I think. We just formed it like a 2 couple weeks ago. 3 Q Okay. And then I do have one last 4 document that my colleague handed me that I'm 5 going to just ask you about, and that's 6 Exhibit 75. 7 (Deposition Exhibit 75 marked for 8 identification.) 9 BY MR. CLUBOK: 10 Q It's a one -- it's a double-sided, 11 single-page document that reflects an e-mail 12 exchange that starts with an e-mail from me to 13 Scott Ellington, copying some other counsel, which 14 is then forwarded to you and Scott Ellington and 15 Scott Ellington confirms approved. 16 MS. SMITH: What number are we on? 17 MR. CLUBOK: 75. Thank you. 18 MS. SMITH: I missed 74. 19 MR. CLUBOK: Exhibit 75. 20 BY MR. CLUBOK: 21 Q And this is an e-mail chain that is from 22 December 2nd, 2019, the subject, Confirmation of 23 our understanding. And I asked Mr. Ellington to 24 respond confirmed if you agree that it reflects 25 our discussion. And the first item is that we</p> | <p style="text-align: right;">363</p> <p>1 A I think that's a fair -- I'm just reading 2 bullet point 2, but that sounds like a fair 3 characterization of that bullet point. 4 Q Okay. And Scott -- Angela Somers sends an 5 e-mail to you and Scott Ellington, asking to 6 confirm that you've agreed to the terms below 7 since we were not involved in these discussions 8 and we assumed you've worked with bankruptcy 9 counsel on the stay relief and possible claim. 10 Do you see that? 11 A Yes. 12 Q And then Mr. Ellington writes back, yes, 13 approved, in response to that question from 14 Ms. Somers. Do you see that? 15 A Yes. 16 Q Was that truthful what Mr. Ellington said 17 in that e-mail? 18 MS. SMITH: Objection, form. 19 BY MR. CLUBOK: 20 Q As far as you knew at the time? 21 A That he had agreed to the terms below? 22 Q Yes. 23 A I had no idea. I wasn't involved in those 24 conversations between you and Mr. Ellington. 25 Q Did you know whether he had worked with</p> |
| <p style="text-align: right;">362</p> <p>1 were going to tell the Court that we are committed 2 to having good faith settlement discussions, and 3 we asked the Court to hold the opinion and the 4 attached judgment, the form of which we have 5 already agreed to and advised her of such during 6 our call, for another ten business days from today 7 with the possibility we'll extend further as 8 needed. 9 Do you see that? 10 A I do. 11 Q So you were aware that the Court had 12 already made a decision awarding roughly a billion 13 dollars in damages, at least as of December 2nd, 14 2019, although that had not yet been made public, 15 correct? 16 A Correct. 17 Q And we agreed also that we were going to 18 tell the Court that we planned to enter into the 19 attached stipulation, which was an agreed upon 20 request for relief from automatic stay, correct? 21 A Are you talking about bullet point 2? 22 Q Yeah. If a settlement could be resolved, 23 the parties were going to jointly request relief 24 from automatic stay according to this 25 understanding, correct?</p> | <p style="text-align: right;">364</p> <p>1 bankruptcy counsel on the stay relief and possible 2 claim? 3 A I didn't know one way or another. 4 Q Did you ask him whether or not what he 5 said was true on this e-mail that you were copied 6 on, or that was actually sent to you by Angela? 7 A No, I never asked him if his statement was 8 true or false. 9 Q Did you follow up at all? 10 A I saw no reason to follow up, so no, I 11 didn't. 12 Q As part of the good-faith settlement 13 discussions, do you know whether or not 14 Mr. Ellington ever disclosed that there was a 15 after-the-event insurance policy that could be 16 used to satisfy a judgment in the New York 17 litigation? 18 MS. SMITH: Objection to form. 19 A I wasn't part of Mr. Ellington's 20 conversations with you. I don't know. 21 BY MR. CLUBOK: 22 Q But you knew at the time that there was an 23 ATE policy that could be used to satisfy the 24 judgment that was about to be made public, 25 correct?</p> |

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| <p>365</p> <p>1 A I knew of the existence of the ATE policy, 2 yes. 3 Q Did you make any effort to disclose that 4 to UBS? 5 MS. SMITH: Objection, form. 6 A I didn't -- I didn't talk to -- the only 7 person that would be UBS would be you and I didn't 8 talk do you about this. 9 BY MR. CLUBOK: 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 A I never -- I'm sorry, I got lost in who 18 all the people were that I didn't speak to. 19 BY MR. CLUBOK: 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 A Okay. 24 Q You knew as of December 2nd, 2019, that 25 the Court was about to enter judgment of roughly a</p> | <p>367</p> <p>1 in my face. 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 A I knew that there was 80 to \$100 million 9 of insurance on the after-the-event policy with 10 Sentinel so that, yeah, probably could be used to 11 settle or pay some amounts to UBS. 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 A I did not -- I didn't -- did I cause that 18 information to be communicated to UBS? I didn't 19 instruct people what to tell UBS; they instructed 20 me. So, no, I -- we never -- that never came up. 21 BY MR. CLUBOK: 22 Q And you knew at the time, that UBS was a 23 creditor in the restructuring, correct? 24 A You mean in the Highland bankruptcy? 25 Q Sorry. You knew at the time that UBS was</p> |
| <p>366</p> <p>1 billion dollars, correct? 2 A Yes. 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 A I knew about the ATE policy and that it 7 could be used to pay UBS some amounts. 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 A I don't think I knew the exact amount, no. 12 Q But you knew it was in the neighborhood of 13 \$100 million at the time? 14 A My recollection is somewhere between 80 15 and 100, but I wasn't sure where. It was clearly 16 a big number. 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 A Can you repeat that one more time? Sorry, 23 the sun literally was right in my eyes. 24 Q That is totally fine. This is really it. 25 A I'm not trying to play games. The sun was</p> | <p>368</p> <p>1 a creditor in the Highland bankruptcy, correct? 2 A Yes. 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**

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 style="text-align: center;">1</p> <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 CONTAINS HIGHLY CONFIDENTIAL 16 SUBJECT TO PROTECTIVE ORDER 17 INFORMATION</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 style="text-align: center;">3</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 & 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 & 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 & 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 & 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 & 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 style="text-align: center;">2</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 Diplome Reporter and 9 Certified Realtime Reporter.</p> | <p style="text-align: center;">4</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 &</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 | <p>1 A No.</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 Yes.</p> <p>11 Q Okay. Do you understand that you're</p> <p>12 testifying here today under oath?</p> <p>13 A I do.</p> <p>14 Q What did you do to prepare for today's</p> <p>15 deposition?</p> <p>16 A I met with counsel. They kind of laid out</p> <p>17 what this would be like, the setup and everything.</p> <p>18 That was about it.</p> <p>19 Q And when you say counsel, do you mean the</p> <p>20 individuals in this room?</p> <p>21 A Yes.</p> <p>22 Q How many times did you meet?</p> <p>23 A Once or twice.</p> <p>24 Q For how long?</p> <p>25 A We met last Friday for most of the day.</p> |
| 10 | <p>1 Latham & Watkins on behalf of UBS.</p> <p>2 MS. TOMKOWIAK: Sarah Tomkowiak with</p> <p>3 Latham & Watkins on behalf of UBS.</p> <p>4 MR. FEINSTEIN: On the Zoom, Robert</p> <p>5 Feinstein, Pachulski Stang Ziehl & 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 Matthew Thomas DiOrio.</p> <p>20 Q Where do you live?</p> <p>21 A In Dallas.</p> <p>22 Q Can you please state your address.</p> <p>23 <-- HIGHLY CONFIDENTIAL</p> <p>24 --></p> <p>25 Q Have you ever been deposed before?</p> | 12 | <p>1 Q Was that all?</p> <p>2 A Yes.</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 No. It was mainly conversational.</p> <p>6 Q You're not a lawyer, right?</p> <p>7 A That's correct.</p> <p>8 Q Okay. Do you have any professional</p> <p>9 licenses?</p> <p>10 A No.</p> <p>11 Q Where are you currently employed?</p> <p>12 A Skyview Group.</p> <p>13 Q What does Skyview Group do?</p> <p>14 A Provides kind of back and middle office</p> <p>15 services to financial services companies, banks,</p> <p>16 that sort of thing.</p> <p>17 Q Who hired you?</p> <p>18 A Who hired me?</p> <p>19 Q Uh-huh.</p> <p>20 A Skyview Group.</p> <p>21 Q Who at Skyview Group hired you?</p> <p>22 A I'm not sure who was on my employment</p> <p>23 letter, but...</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> |

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| <p>1 Skyview? 2 A A lot of the former Highland employees 3 like myself were sent offer letters, I believe by 4 Brian Collins, who's the HR manager. 5 Q Okay. And so you were sent an offer 6 letter? 7 A That's correct. 8 Q Okay. Do you recall when that was? 9 A Early March, late February. I don't know 10 the exact date. 11 Q Okay. And what is your title at Skyview? 12 A Managing director. 13 Q What are your responsibilities as managing 14 director? 15 A I've been taking on a variety of projects 16 for one of our bank clients, and then I'm helping 17 find us office space, for example, at the moment. 18 Q Do you have an office now? 19 A No. 20 Q Okay. You don't -- okay. So Skyview 21 doesn't have any physical office space right now? 22 A No. 23 Q Okay. And when did you start working 24 there? 25 A Early March. I'm not sure of the date.</p> | 13 | <p>1 Skyview, how would I send it? 2 A I actually don't know. 3 Q Okay. What if I wanted to call Skyview, 4 is there a number I could call? 5 A You'd have to call the person directly 6 that you wanted to speak to. 7 Q Would it go to your cell phone? 8 A Probably. If you were looking for me, 9 yeah. 10 Q You said that you were working for a 11 particular client. Is that client affiliated with 12 Highland in any way? 13 MS. SMITH: Objection, form. 14 A We have confidentiality agreements with 15 our clients. I'm not entirely sure if I can 16 answer that. 17 BY MS. TOMKOWIAK: 18 Q Well, this is a -- first of all, this 19 proceeding itself can be designated confidential. 20 You'll have an opportunity to review the 21 transcript. In any event, I'm not asking for the 22 name of the client, I'm just asking you if they're 23 affiliated in any way with Highland. 24 A I don't believe so. 25 Q Okay. Do you work with any clients that</p> | 15 |
| <p>1 Q Who do you report to? 2 A JP Sevilla, I guess. 3 Q Do you know who he reports to? 4 A Scott Ellington. 5 Q Mr. Sevilla is a lawyer, right? 6 A Yes. 7 Q Is there a reason that you report to him, 8 or do you know? 9 A I sat in the legal group at Highland and 10 that's kind of where they put me at Skyview. 11 Q Who owns Skyview? 12 A I believe Scott Ellington. 13 Q What's your compensation at Skyview? 14 A Base salary or bonus or -- 15 Q Both. Total compensation. 16 A It will be about \$400,000 this year. 17 Q How does that compare to your salary at 18 Highland? 19 A About the same. I get a base salary 20 raise, but everything else has been flat. 21 Q And you said that you currently don't have 22 office space. Are you currently working out of 23 NexPoint's office space? 24 A No. 25 Q No. Okay. What if I want to send mail to</p> | 14 | <p>1 are affiliated with Mr. Dondero? 2 A Yes. 3 Q And what about Mr. Ellington? Do you work 4 with any clients who are affiliated with 5 Mr. Ellington? 6 A No. I mean, he owns the company that I 7 work for. 8 Q Right. 9 A But other than that, no. 10 Q Do you know if Mr. Ellington's the sole 11 owner of that company? 12 MS. SMITH: Objection, form. 13 A I believe he is at the moment. 14 BY MS. TOMKOWIAK: 15 Q Do you believe that's going to change? 16 A It's supposed to at some point. 17 Q How is it supposed to change? 18 A Employees that were hired from Highland 19 are supposed to at some point receive some sort of 20 equity grant. 21 Q Do you -- 22 MS. SMITH: Objection, form. I'm going to 23 object to the relevance of this line of 24 questioning as it's not in accordance with the 25 orders of the Court on the -- it's supposed to be</p> | 16 |

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| <p>1 related to the temporary restraining order -- or 2 the motion for temporary restraining order and 3 motion for preliminary injunction, as I've done 4 the last two days. And it's not within the scope 5 of the judge's ruling when she said we can talk 6 about Sentinel and what it's all related to. 7 BY MS. TOMKOWIAK: 8 Q Is the legal name of Skyview, Highgate; do 9 you know? 10 MS. SMITH: Objection, form. 11 A It's not Highgate. 12 BY MS. TOMKOWIAK: 13 Q It's not? 14 A No. 15 Q Do you know what the legal name is? 16 A It's Highgate Consulting Group, Inc., dba 17 Skyview Group. 18 Q Does Skyview have any subsidiaries? 19 MS. SMITH: Objection, form. 20 A I don't know the answer to that. 21 BY MS. TOMKOWIAK: 22 Q What about an entity called CPCM? Do you 23 know what that is? 24 A I've heard the name. 25 Q Do you know what it is?</p> | 17 | <p>1 A No. 2 Q Do you currently sit on the board of any 3 companies? 4 A Yes. 5 Q What companies? 6 A GLA Resorts Holdings, LLC. It's a 7 Delaware company. 8 Q Any others? 9 A No. 10 Q What does GAL [sic] Resorts Holdings do? 11 A It's GLA. 12 Q I'm sorry, what? 13 A GLA. 14 Q GLA. Thank you. What does that do? 15 A It owns a piece of property in the west 16 end of Grand Bahamas that it's in the process of 17 trying to sell. 18 Q Does it have any operations? 19 A Just trying to sell the property. 20 Q Does anybody else sit on the board of that 21 company? 22 A Yes. 23 Q Who? 24 A Scott Ellington. 25 Q Anybody else?</p> | 19 |
| <p>1 MS. SMITH: Objection, form. 2 A Something to do with employment claims. 3 BY MS. TOMKOWIAK: 4 Q Okay. And, in fact, you assigned your 5 claim in the bankruptcy matter to CPCM, right? 6 A I think that's right. 7 MS. SMITH: Objection, form. 8 BY MS. TOMKOWIAK: 9 Q Do you know what consideration you 10 received for that claim? 11 MS. SMITH: Objection, form. 12 A Employment at Skyview. 13 BY MS. TOMKOWIAK: 14 Q Okay. So assigning your claim to CPCM was 15 a condition of your employment at Skyview? 16 A That's my understanding. 17 Q Do you know what the amount of that claim 18 was with respect to you? 19 A I don't. 20 MS. SMITH: Objection, form. 21 A I don't. 22 BY MS. TOMKOWIAK: 23 Q Do you have any other current employers? 24 A No. 25 Q Do you have any other sources of income?</p> | 18 | <p>1 A A gentleman by the name of Mark Rechan. 2 Q Can you spell that? 3 A M-a-r-k R-e-c-h-a-n. 4 Q Anybody else? 5 A That's it. 6 Q How long have you served as a director 7 for -- can I call it GLA? 8 A Yes. 9 MS. SMITH: Objection, form. 10 A I was appointed in November of 2019. 11 BY MS. TOMKOWIAK: 12 Q How did you come to sit on the board of 13 that entity? 14 MS. SMITH: Objection, form. 15 A Highland appointed me. 16 BY MS. TOMKOWIAK: 17 Q Is it owned by Highland? 18 A Partially. 19 Q Who else owns GLA? 20 MS. SMITH: Objection as to form. 21 A It's owned by -- I think there are about 22 50 partners all-in in the ownership structure. 23 BY MS. TOMKOWIAK: 24 Q Do you know who specifically from Highland 25 appointed you?</p> | 20 |

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| <p>21</p> <p>1 MS. SMITH: Objection as to form.</p> <p>2 A I don't know who specifically appointed</p> <p>3 me.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Have you ever served as a managing member</p> <p>6 of an LLC?</p> <p>7 A I'm not sure.</p> <p>8 Q Why aren't you sure?</p> <p>9 A I'm just -- I'm not sure.</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 A Yeah, I'm not sure if anything I've ever</p> <p>14 done would be considered managing member</p> <p>15 specifically.</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 A No, not that I recall.</p> <p>19 Q How long have you known Scott Ellington?</p> <p>20 A Ten, 11 years.</p> <p>21 Q How did you meet?</p> <p>22 A Through a friend.</p> <p>23 Q What friend?</p> <p>24 A What's his name?</p> <p>25 Q Yeah.</p> | <p>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 A I assumed, but I never knew one way or the</p> <p>5 other.</p> <p>6 Q Why did you assume?</p> <p>7 A Why did I assume that he owned it?</p> <p>8 Q Yeah.</p> <p>9 A That's just what I had heard, but I never</p> <p>10 saw any specific documentation that said he owns</p> <p>11 XYZ or whatever. That's what I meant.</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 A I don't specifically remember.</p> <p>15 Q Do you recall when you heard that?</p> <p>16 A I don't.</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 A I was a director.</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 A Not entirely sure. Maybe around the same</p> <p>25 time.</p> |
| <p>22</p> <p>1 A Matt Okolita.</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 A Owned how? What do you mean by owned?</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Owned in any way, directly, indirectly,</p> <p>9 partly, wholly owned in any way.</p> <p>10 A I believe I have.</p> <p>11 Q Okay. And what are those companies or</p> <p>12 entities?</p> <p>13 A Sentinel Reinsurance.</p> <p>14 Q Okay. Anything else?</p> <p>15 A SAS Asset Recovery.</p> <p>16 Q Anything else? Just give a verbal answer</p> <p>17 just so we have a clear record.</p> <p>18 A Oh, no, not that I'm aware of.</p> <p>19 Q Okay. And what's your understanding of</p> <p>20 how Mr. Ellington owns Sentinel Reinsurance?</p> <p>21 A I just know generally. I heard in court</p> <p>22 it's a split between he and Mr. Dondero.</p> <p>23 Q Okay. And you heard that from whom?</p> <p>24 A It was said in, I believe the complaint</p> <p>25 that we were allowed to review.</p> | <p>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 A I had an idea.</p> <p>4 Q How did you have an idea?</p> <p>5 A Well, I was appointed by -- Mr. Ellington</p> <p>6 told me I was going on the board and then I just</p> <p>7 knew that he had some sort of arrangement with</p> <p>8 Jim.</p> <p>9 Q Some sort of arrangement with Jim, meaning</p> <p>10 some type of ownership arrangement with Jim?</p> <p>11 A That was my understanding.</p> <p>12 Q Okay. Did Mr. Ellington tell you that?</p> <p>13 A I don't recall.</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 A Sounds right.</p> <p>20 Q Do you recall when you became a director</p> <p>21 of Sentinel?</p> <p>22 A I think it was September of 2017. I don't</p> <p>23 recall the exact date.</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> |

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| <p>1 right?</p> <p>2 A Well, he told me I was going on the board.</p> <p>3 Q He told you you were going on the board.</p> <p>4 A Asked if I wanted to serve, I guess would</p> <p>5 be a better phrasing.</p> <p>6 Q Okay. And you agreed to?</p> <p>7 A That's right.</p> <p>8 Q Okay. Was that a condition of your</p> <p>9 employment at Highland?</p> <p>10 A I don't believe so.</p> <p>11 Q Do you do any work for Mr. Ellington in</p> <p>12 his personal capacity?</p> <p>13 A At times.</p> <p>14 Q What type of work?</p> <p>15 A He has a -- I pay rent on his warehouse</p> <p>16 space that he has.</p> <p>17 Q Anything else?</p> <p>18 A No.</p> <p>19 Q Do you manage any of his finances?</p> <p>20 A No.</p> <p>21 Q Why do you pay rent on his warehouse?</p> <p>22 A He asked me to take care of it.</p> <p>23 Q Do you do that -- are you compensated for</p> <p>24 that?</p> <p>25 A No.</p> | <p>1 MS. SMITH: Objection, form.</p> <p>2 A -- Sarah Goldsmith.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Who is Sarah Goldsmith?</p> <p>5 A She was the legal group admin at Highland</p> <p>6 Capital.</p> <p>7 Q What is TT3 Partners?</p> <p>8 MS. SMITH: Objection, form.</p> <p>9 A It's a company I joined with a friend to</p> <p>10 make an investment in a venture capital fund.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q What friend?</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 A Matt Okolita.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q That's the person you said introduced you</p> <p>17 to Mr. Ellington?</p> <p>18 A Yes.</p> <p>19 Q How do you know Mr. Okolita?</p> <p>20 A I went to high school with him.</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 A I'd have to look for the exact name. I</p> <p>25 think it's Preface something, Preface Ventures or</p> |
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| <p>1 Q Do you perform any type of investment</p> <p>2 services for Mr. Ellington?</p> <p>3 A No.</p> <p>4 Q Are you familiar with an entity called</p> <p>5 TT3 Partners?</p> <p>6 A Yes.</p> <p>7 Q Okay. And that's an LLC, right?</p> <p>8 A That's correct.</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 A I don't know, honestly.</p> <p>13 Q You don't know. Did you form that</p> <p>14 company?</p> <p>15 A I believe so.</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 A That's right.</p> <p>19 Q Did you prepare the formation</p> <p>20 documentation?</p> <p>21 MS. SMITH: Objection, form.</p> <p>22 A I don't honestly know if I did or not.</p> <p>23 BY MS. TOMKOWIAK:</p> <p>24 Q So who would have done that?</p> <p>25 A Possibly --</p> | <p>1 something like that.</p> <p>2 BY MS. TOMKOWIAK:</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 A Because she knew how to do it.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Okay. So was that done in her capacity as</p> <p>9 a Highland employee?</p> <p>10 A I don't know.</p> <p>11 Q Well, did you ask her to prepare that</p> <p>12 paperwork?</p> <p>13 A If she did it, I would have asked her,</p> <p>14 yes.</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 A I wouldn't have thought about that either</p> <p>20 way.</p> <p>21 BY MS. TOMKOWIAK:</p> <p>22 Q Okay. Did you pay her to do that?</p> <p>23 MS. SMITH: Objection, form.</p> <p>24 A I don't believe so. Or if I -- sorry. If</p> <p>25 I -- if she did it, I don't -- I wouldn't have</p> |

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| 29 | <p>1 paid her, no.</p> <p>2 BY MS. TOMKOWIAK:</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>7 A I'm sure that happened, yeah.</p> <p>8 BY MS. TOMKOWIAK:</p> <p>9 Q Okay. But you don't know who prepared</p> <p>10 those papers?</p> <p>11 A Right. I don't recall.</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>15 A Sounds right.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Did Mr. Okolita previously work at</p> <p>18 Highland?</p> <p>19 A He did.</p> <p>20 Q Do you know when?</p> <p>21 A It was -- I don't know the exact dates. I</p> <p>22 think he left around 2010 or '11.</p> <p>23 Q Do you know why he left?</p> <p>24 A I believe to take another job.</p> <p>25 Q Do you know where he works today?</p> | 31 | <p>1 Highland or HCM, you'll understand that I mean</p> <p>2 Highland Capital Management?</p> <p>3 A I think so.</p> <p>4 Q Okay. And when did -- were you employed</p> <p>5 by Highland?</p> <p>6 A Again, I don't remember the exact date,</p> <p>7 but March of 2017.</p> <p>8 Q And how did you come to start working at</p> <p>9 Highland?</p> <p>10 A I'm not sure I understand. What do you</p> <p>11 mean?</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>15 A I was hired by Mr. Ellington.</p> <p>16 Q Did you apply?</p> <p>17 A I'm sure I filled out an application.</p> <p>18 Q Did he invite you to fill out an</p> <p>19 application?</p> <p>20 A I believe I would have had to as a</p> <p>21 condition of being employed.</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>25 A I'm not entirely sure. I don't really</p> |
| 30 | <p>1 A Yes.</p> <p>2 Q Where?</p> <p>3 A Greyline Partners or Greyline Solutions or</p> <p>4 Greyline something.</p> <p>5 Q What is Greyline?</p> <p>6 A It's a -- I think it's a consulting</p> <p>7 company in the financial services industry.</p> <p>8 Q Is it Greyline or Greystone, if you know?</p> <p>9 A It would be Greyline.</p> <p>10 Q Greyline. Okay. Is Greyline affiliated</p> <p>11 at all with Highland?</p> <p>12 A Not to my knowledge.</p> <p>13 Q Is Greyline affiliated with Mr. Ellington?</p> <p>14 A Not to my knowledge.</p> <p>15 Q Is Greyline affiliated with Mr. Dondero?</p> <p>16 A Not to my knowledge.</p> <p>17 Q Do you provide any services to Greyline?</p> <p>18 A No.</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>24 A That's correct.</p> <p>25 Q Okay. And if I refer to them today as</p> | 32 | <p>1 remember.</p> <p>2 BY MS. TOMKOWIAK:</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>7 A At some point.</p> <p>8 BY MS. TOMKOWIAK:</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>12 A My best guess would be I was in grad</p> <p>13 school at the time and a group of my fellow</p> <p>14 students were -- there's these things called MBA+</p> <p>15 projects in my program, where you go seek someone</p> <p>16 out in a different industry and get experience</p> <p>17 doing a different project, and our MBA+ project</p> <p>18 was with Highland via Mr. Ellington. So I assume</p> <p>19 our work there had something to do with it.</p> <p>20 Q Did you know Mr. Ellington before that</p> <p>21 MBA+ project?</p> <p>22 A Yes.</p> <p>23 Q Was it your idea to do your project with</p> <p>24 Highland?</p> <p>25 A If it -- probably. Yeah, no one else knew</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 | <p>1 Q What was your title when you first started</p> <p>2 working at HCM?</p> <p>3 A Director, I believe.</p> <p>4 Q Were you in a particular department?</p> <p>5 A It was just -- it was my title in -- it</p> <p>6 was just director.</p> <p>7 Q Okay. Did you sit in the legal</p> <p>8 department? I think you said that.</p> <p>9 A Yes, I did.</p> <p>10 Q Do you know why you sat in the legal</p> <p>11 department, given that you didn't have a law</p> <p>12 degree?</p> <p>13 A No.</p> <p>14 Q Do you know who assigned you to sit in the</p> <p>15 legal department?</p> <p>16 A I assume Mr. Ellington.</p> <p>17 Q Going back to Mr. Ellington for a second.</p> <p>18 You mentioned that he was also an owner in some</p> <p>19 manner of SAS Asset Recovery. Do you know how he</p> <p>20 owned that company?</p> <p>21 A I don't.</p> <p>22 Q Okay. When you started working at HCM,</p> <p>23 who did you report to?</p> <p>24 A Mr. Ellington.</p> <p>25 Q Anybody else?</p> |
| 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 | <p>1 A Not when I first started, no.</p> <p>2 Q And as a director sitting in the legal</p> <p>3 department, what were your responsibilities?</p> <p>4 A I worked on -- responsibilities with</p> <p>5 respect to what?</p> <p>6 Q With respect to, let's start with</p> <p>7 Highland.</p> <p>8 A I worked on some distressed investments</p> <p>9 where they would need, you know, financial</p> <p>10 modeling-type stuff.</p> <p>11 Q Anything else?</p> <p>12 A Not at the -- not when I started, no.</p> <p>13 Q Were there other nonlawyers who sat in the</p> <p>14 legal department?</p> <p>15 A Yes.</p> <p>16 Q Who was that?</p> <p>17 A Helen Kim, who was a paralegal, and Katie</p> <p>18 Irving.</p> <p>19 Q Was Ms. Irving a CPA?</p> <p>20 A I believe she's a CPA, yes.</p> <p>21 Q And were you given any reason why you were</p> <p>22 sitting in the legal department?</p> <p>23 A No.</p> <p>24 Q Did you -- where was your office or desk?</p> <p>25 A In the legal department. I sat at a</p> |

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| <p style="text-align: right;">37</p> <p>1 table. It's an open floor plan.</p> <p>2 Q So I've heard. Did anybody report to you?</p> <p>3 A No.</p> <p>4 Q Okay. And did you stay in the legal</p> <p>5 department your entire time at HCM?</p> <p>6 A Sort of.</p> <p>7 Q What do you mean by that?</p> <p>8 A Eventually private equity -- the private</p> <p>9 equity group moved into the legal department which</p> <p>10 I worked for, so technically it still fell under</p> <p>11 the legal umbrella, I guess. But my function</p> <p>12 changed to mainly private equity starting in 2019.</p> <p>13 Q Were you still a director?</p> <p>14 A In 2019, yes.</p> <p>15 Q Did that title change at any point in</p> <p>16 time?</p> <p>17 A Yes. Yes. Excuse me.</p> <p>18 Q No worries. When did it change?</p> <p>19 A Early 2020.</p> <p>20 Q What did it change to?</p> <p>21 A Managing director.</p> <p>22 Q So that was a promotion?</p> <p>23 A In name, I guess.</p> <p>24 Q And anything else?</p> <p>25 A No.</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>3 A Yes.</p> <p>4 Q When did you leave Highland?</p> <p>5 A I don't remember the exact date, but a day</p> <p>6 before everyone else.</p> <p>7 Q So in early February 2020?</p> <p>8 A Mid, late February maybe, but</p> <p>9 February 2020 -- 2021, excuse me.</p> <p>10 Q Okay. And you were terminated; is that</p> <p>11 right?</p> <p>12 A That's correct.</p> <p>13 Q Who terminated you?</p> <p>14 A Jim Seery.</p> <p>15 Q Did Mr. Seery tell you why you were being</p> <p>16 terminated?</p> <p>17 A He said performance issues.</p> <p>18 Q Did he say anything besides performance</p> <p>19 issues?</p> <p>20 A No.</p> <p>21 Q Did you ask him what he meant by</p> <p>22 performance issues?</p> <p>23 A I didn't.</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>2 A That's correct.</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>6 A Until private equity matters rolled up to</p> <p>7 JP Sevilla and Tim Cournoyer. They were made</p> <p>8 co-heads of private equity.</p> <p>9 Q So would you say that in 2019 you reported</p> <p>10 to Tim and JP?</p> <p>11 A On private equity matters.</p> <p>12 Q And then did you continue to also report</p> <p>13 to Mr. Ellington on other matters?</p> <p>14 A On distressed matters.</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>18 A What specific work?</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>22 A Not that I recall.</p> <p>23 Q When you came to work for the private</p> <p>24 equity side, did anybody report to you?</p> <p>25 A No.</p> | <p style="text-align: right;">40</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A I was curious, but I wasn't going to say</p> <p>3 anything.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Why not?</p> <p>6 A Didn't seem to be a productive next step</p> <p>7 in the conversation.</p> <p>8 Q You said a day before everybody else. Who</p> <p>9 were you referring to by everybody else?</p> <p>10 A There was -- as part of the -- as I</p> <p>11 understand it anyway, as part of the bankruptcy,</p> <p>12 several -- or many of the Highland employees were</p> <p>13 terminated on the last -- I think the last day of</p> <p>14 February or the last weekday in February. And I</p> <p>15 say a day before because Mr. Seery mentioned when</p> <p>16 he was terminating me that I know it's a day</p> <p>17 before everyone else.</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>22 A Uh-huh.</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> |

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| <p style="text-align: right;">41</p> <p>1 A I think it was public at that point or 2 known by the employees that their last day was 3 whatever the day was. 4 Q Had you been told prior to that 5 conversation with Mr. Seery that you would be 6 included in the groups of -- the group of 7 employees that were being terminated? 8 MS. SMITH: Objection to form. 9 A I assumed I was. 10 BY MS. TOMKOWIAK: 11 Q Why? 12 A No one asked me to stay, at the debtor. 13 Q So you thought that unless you were asked 14 to stay, you would be terminated? 15 A That was my assumption. 16 Q So you weren't surprised when you were 17 terminated? 18 MS. SMITH: Objection, form. 19 A I was very surprised when I was 20 terminated. 21 BY MS. TOMKOWIAK: 22 Q Okay. Why? 23 A Because it was for some sort of cause, and 24 I was just expecting to be let go as part of the 25 bankruptcy, like everyone else.</p> | <p style="text-align: right;">43</p> <p>1 desk? 2 A Yeah. 3 Q You did? 4 A I did. 5 Q All right. And what -- did you take 6 anything with you? 7 A Just papers and whatever I had there, 8 under the supervision of a DSI employee. 9 Q Did you leave any files there? 10 A There was -- I didn't take everything on 11 my desk, so I assume, yeah. 12 Q What did you take? 13 A Personal stuff, that I thought was 14 personal. Again, it was kind of a high-pressure 15 stressful situation. I was just grabbing stuff 16 and leaving, while the guy was standing there. 17 Q Did Mr. Seery tell you you needed to leave 18 immediately? 19 A Yes. Or if he didn't, one of the DSI guys 20 who was in the room did. 21 Q And just so I understand, so you -- you 22 said there was an open floor plan. So when you 23 say the room, were you -- 24 A I was called into the Bois d'Arc 25 conference room.</p> |
| <p style="text-align: right;">42</p> <p>1 Q So it was your understanding that 2 everybody else who was fired in February 2021 was 3 let go because of the bankruptcy? 4 A Yes. 5 Q Okay. And you believe that you were let 6 go for cause and that was unique to you? 7 A Yes. 8 Q Did you come to that understanding on your 9 own? 10 A I was the only one in the room when I was 11 fired. No one else was a part of that, so that 12 was my assumption. 13 Q You and Mr. Seery? 14 A He was on the phone. 15 Q Oh, he was on the phone. So you were at 16 Highland's office? 17 A I was at the Highland office, that's 18 correct. 19 Q And he was on the phone? 20 A That's correct. 21 Q Okay. Were you expecting his call? 22 A No. 23 Q Was that your last day in the office? 24 A I was walked out shortly thereafter. 25 Q Did you have a chance to clean out your</p> | <p style="text-align: right;">44</p> <p>1 Q Okay. Who called you into there? 2 A James Romey from DSI. 3 Q So Mr. -- were you finished? 4 A He had another guy with him, but I don't 5 know his name. 6 Q So they called you into the Bois d'Arc 7 conference room and said -- and said what? 8 A They came to my desk and said, not 9 verbatim obviously, but Mr. Seery or Jim wants to 10 speak to you, he's on the phone in the conference 11 room. 12 Q Okay. So then you went into the 13 conference room and that's where you had your 14 conversation with Mr. Seery? 15 A That's correct. 16 Q Do you recall approximately how long that 17 lasted? 18 A Couple minutes. 19 Q And again, other than performance issues, 20 you don't recall Mr. Seery saying -- giving you 21 any other reason for why you were being let go? 22 A Not specific reasons, no. He read some -- 23 I assume it's a standard letting-you-go letter and 24 then I said, may I ask why, and he said, 25 performance issues and I said nothing further.</p> |

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| <p>1 Q And after you hung up the phone, did 2 somebody from DSI come back into the room? 3 A They were in the room the entire time. 4 Q Okay. So you were in the room with two 5 individuals from DSI? 6 A That's correct. 7 Q And they -- what did they say to you after 8 that? 9 A Not much. Just that I had to get my stuff 10 and get out of there. 11 Q Did you have a computer that was given to 12 you by Highland? 13 A I did. 14 Q And what did you do with that? 15 A I left it on my desk. 16 Q Did you have a phone that was given to you 17 by Highland? 18 A No. 19 Q Did you have any other technology devices 20 that were provided to you by Highland? 21 A At that time? 22 Q At the time that you were terminated, 23 yeah. 24 A No, just the laptop. 25 Q Okay. And are you -- did you qualify your</p> | <p>1 A Just -- in my e-mail to them, I said that 2 we were in the process of selling the underlying 3 property that I mentioned earlier and that it 4 wouldn't make sense to put someone else in at this 5 point due to all the work we had done just to 6 get -- and when I say put someone else, replace me 7 on the board. And they said that I would be 8 allowed to continue and just to keep them updated, 9 after I was terminated. 10 Q Have you kept them updated? 11 A Yes. 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 A It's under a purchase and sale agreement. 16 It has not closed yes. 17 Q You also stayed on the board of Sentinel 18 after you were terminated, right? 19 A Correct. 20 Q Did you discuss that with anybody? 21 MS. SMITH: Objection, form. 22 A No, not that I recall. 23 BY MS. TOMKOWIAK: 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> |
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| <p>1 answer because you had other devices previously 2 during your employment at Highland? 3 A I had a tablet at one point before I got 4 the laptop, but never -- never multiple devices at 5 the same time. That is why I asked. 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 A I was allowed to stay on the board of the 11 GLA Resorts Holdings that I mentioned, which I 12 still sit on. 13 BY MS. TOMKOWIAK: 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 A I did, via e-mail. 18 Q With who? 19 A I e-mailed Jim Seery and Thomas Surgent 20 asking to stay on the board. 21 Q What did they say? 22 A They allowed me to stay on the board. 23 Q Did they say why? 24 A Not specifically. 25 Q Did they say why generally?</p> | <p>1 not have a similar outreach with respect to 2 Sentinel? 3 A That's correct. 4 Q Or outreach to anybody else of that 5 nature? 6 A Not that I recall. 7 Q Does Skyview have any contract with 8 Highland to provide shared services? 9 A I believe so. 10 Q Do you know generally what the nature of 11 those services are? 12 A I believe it's IT related and I think 13 there's a tax and accounting function, possibly 14 HR. Other than that, not sure. I don't know the 15 specifics of the actual contract. 16 Q When you were at Highland, were you -- did 17 all of your compensation come from Highland 18 itself? 19 A That's my understanding. 20 Q So you didn't receive a paycheck or wire 21 transfer from any entity other than Highland? 22 A Correct. 23 Q What about as a director of Sentinel? Did 24 you receive any compensation for that? 25 A No.</p> |

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| <p style="text-align: right;">49</p> <p>1 Q And what about for the work that you did 2 at SAS Asset Recovery? Did you receive any 3 compensation for that? 4 A No. 5 Q Since leaving Highland, have you had any 6 communications with Mr. Dondero? 7 A Yes. 8 Q What communications have you had with him? 9 A I met him for the first time in March -- 10 or spoke to him for the first time in March of 11 this year. 12 Q What do you mean by for the first time? 13 A I had never spoken to him prior in my time 14 at Highland. 15 Q So you worked at Highland for almost 16 four years and never spoke to Mr. Dondero during 17 that time? 18 A That's correct. 19 Q And are you making some distinction there 20 in terms of like speaking to him face-to-face? 21 A I make no distinctions. I've never -- I 22 never spoke to him. 23 Q Never spoke to him by e-mail? Never had a 24 phone conversation with him? 25 A Never.</p> | <p style="text-align: right;">51</p> <p>1 were you working on it collaboratively with 2 Mr. Dondero? 3 MS. SMITH: Objection, form. 4 A No, I put a pitch deck -- or our group put 5 a pitch deck together for, again, services. I'm 6 not sure if I can name -- I'm trying not -- I'm 7 not trying to be evasive. I'm not sure I can name 8 the actual businesses. 9 BY MS. TOMKOWIAK: 10 Q Well, without naming the businesses, I'm 11 just trying to understand who's pitching to who. 12 So are you saying that your group -- sorry, that 13 was a fast thing. 14 Are you saying that your group at Skyview 15 put together a pitch deck to provide services to 16 entities that are affiliated with Mr. Dondero? 17 MS. SMITH: Objection, form. 18 A That's correct. He's a client of Skyview. 19 Or his businesses are. 20 BY MS. TOMKOWIAK: 21 Q And so you met with him to review the 22 pitch deck but not to give the actual pitch? 23 A That's right. 24 Q Was anybody else at that meeting? 25 A No.</p> |
| <p style="text-align: right;">50</p> <p>1 Q Does that strike you as weird? 2 A Not particularly. 3 Q What about Mr. Ellington? Since leaving 4 Highland, have you -- you know what, actually, 5 before we get to that, so you said you met him for 6 the first time in March of this year and can you 7 tell me about that meeting? 8 MS. SMITH: Objection, form. 9 A We were reviewing a pitch deck. 10 BY MS. TOMKOWIAK: 11 Q Was this before or -- well, this would be 12 after you left Highland, right? 13 A Yes. 14 Q Yeah. Okay. And so a pitch deck for 15 what? 16 MS. SMITH: Objection, form. 17 A Services that Skyview may provide to 18 entities that he may control. 19 BY MS. TOMKOWIAK: 20 Q Okay. So were you pitching to him? 21 MS. SMITH: Objection, form. 22 A No, I was not. 23 BY MS. TOMKOWIAK: 24 Q So then can you help me understand the 25 pitch deck. Were you putting this together? Like</p> | <p style="text-align: right;">52</p> <p>1 Q Why were you the person who met with 2 Mr. Dondero? 3 A Because I was building the PowerPoint 4 presentation. 5 Q So did you discuss the substance of the 6 deck? 7 MS. SMITH: Objection, form. 8 A The substance of the deck? 9 BY MS. TOMKOWIAK: 10 Q Yeah. 11 A I suppose so. 12 Q Okay. Did you ever actually pitch for the 13 work? 14 MS. SMITH: Objection, form. 15 A To Mr. Dondero? 16 BY MS. TOMKOWIAK: 17 Q Yeah. 18 A No. 19 Q So were you already hired by Mr. Dondero 20 at the time that you were reviewing this pitch 21 book? 22 A Was I hired by Mr. Dondero? 23 MS. SMITH: Objection, form. 24 BY MS. TOMKOWIAK: 25 Q Was Skyview hired -- already hired by</p> |

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| <p style="text-align: right;">53</p> <p>1 Mr. Dondero at the time you met to review this 2 deck? 3 A Not with respect to this particular 4 business, no. 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 A Several months later, yes. 9 BY MS. TOMKOWIAK: 10 Q Approximately when? 11 MS. SMITH: Objection, form. 12 A Between March and June, a couple months 13 after. I don't know the exact date. Again, not 14 trying to be evasive. 15 BY MS. TOMKOWIAK: 16 Q Since leaving Highland, have you had any 17 other communications with Mr. Dondero? 18 A No. 19 Q So when he reached out to hire Skyview, 20 did he reach out to you? 21 A No. That was -- I had nothing to do with 22 any of that. 23 Q Do you know who he reached out to? 24 A I assume JP Sevilla, Brian Collins, Frank 25 Waterhouse, the kind of top guys.</p> | <p style="text-align: right;">55</p> <p>1 Q How many times? 2 A I have no idea. I've seen him in person. 3 Q Hundreds of times? 4 MS. SMITH: Objection, form. 5 A Hundreds? No. Wouldn't be that much. 6 BY MS. TOMKOWIAK: 7 Q Okay. Dozens? 8 A Probably less. 9 Q And have those communications related to 10 your work at Skyview? 11 A Small percentage probably. 12 Q Okay. And what else have you talked to 13 him about? 14 MS. SMITH: Objection, form. 15 A My kids, you know, friendly personal-type 16 stuff. 17 BY MS. TOMKOWIAK: 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 A That's right. 23 Q And you said you've seen him in person. 24 What was the nature of that in-person 25 communication?</p> |
| <p style="text-align: right;">54</p> <p>1 Q So how did you come to learn that Skyview 2 had been hired for that work? 3 A Well, I was part of the -- I built the 4 deck, so they said -- I was told that we were 5 hired. 6 Q You were told by one of your colleagues at 7 Skyview? 8 A That's right. 9 Q Do you remember who? 10 A It was probably on a group e-mail. I 11 don't know. I don't know specifically. 12 Q You don't know specifically or you just 13 don't recall? 14 A What's the difference here? I don't 15 recall. I don't know specifically who delivered 16 that message. 17 Q Since leaving Highland, have you had any 18 communications with Mr. Ellington? 19 A Yes. 20 MS. SMITH: Objection, form. 21 BY MS. TOMKOWIAK: 22 Q Okay. What type of communications? 23 MS. SMITH: Objection, form. 24 A We've spoken on the phone. 25 BY MS. TOMKOWIAK:</p> | <p style="text-align: right;">56</p> <p>1 MS. SMITH: Objection, form. 2 A We've had lunch a couple times. 3 BY MS. TOMKOWIAK: 4 Q Anything else? 5 A Not really that I can recall, no. 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 A A brief e-mail. 11 BY MS. TOMKOWIAK: 12 Q Do you recall when that was? 13 A Late June, early July. Several weeks ago. 14 Q Anything else? 15 A No. 16 Q Have you spoken with Mr. Ellington about 17 this deposition? 18 A No. 19 Q Have you spoken with Mr. Ellington about 20 this matter more generally? 21 A When? Can you be -- specify which time -- 22 or what time frame? 23 Q At any time after you left Highland. 24 A No. 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 A I think early on, when I -- like late '17 5 probably, early '18. 6 BY MS. TOMKOWIAK: 7 Q What did you talk about? 8 A What did I talk about with respect to -- 9 Q With respect to the topics that are 10 relevant to this matter. 11 A Can you be more specific, please? 12 Q What were you thinking of when you said 13 that? 14 A Do you mean in respect to UBS; something 15 else? 16 Q UBS, Sentinel. 17 MS. SMITH: Objection, form. 18 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. 21 BY MS. TOMKOWIAK: 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 A Yes.</p> | <p style="text-align: right;">59</p> <p>1 space. 2 Q So where is your temporary office space? 3 A It's at the NexBank building in uptown. 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 A That's right. 8 MS. SMITH: Objection, form. 9 BY MS. TOMKOWIAK: 10 Q Okay. And so you've seen Mr. Leventon in 11 person in those offices? 12 A That's correct. 13 Q Okay. Have you seen Mr. Ellington in 14 person in those offices? 15 A Once maybe. 16 Q Have you spoken with Mr. Leventon about 17 this deposition? 18 A Only in the context of logistics, as I've 19 never been deposed before. I just generally asked 20 how it goes. 21 Q What did he say? 22 A Lawyers on two sides of the table, camera 23 up front. He said it's tiring. 24 Q That's pretty accurate. 25 A So far seems to be.</p> |
| <p style="text-align: right;">58</p> <p>1 Q What types of communications? 2 A Similar to Mr. Ellington, a mix of 3 personal and professional. Isaac is a friend of 4 mine. 5 Q And does he work at Skyview? 6 A He does. 7 Q What percentage of those conversations 8 have been personal versus professional? 9 MS. SMITH: Objection, form. 10 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. 14 BY MS. TOMKOWIAK: 15 Q Have you seen Mr. Leventon in person? 16 A I have. 17 Q How many times? 18 A I don't know. 19 Q Approximately? 20 MS. SMITH: Objection, form. 21 A Ten. 22 BY MS. TOMKOWIAK: 23 Q And have those all been for personal 24 reasons? 25 A No, generally in our temporary office</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 A Since leaving Highland, is that the time 6 frame? 7 Q Yes. 8 A No. 9 Q What about Mr. Sevilla? You said that you 10 report to him at Skyview; is that right? 11 A That's correct. 12 Q Okay. So I assume you've had 13 communications with him prior to leaving -- I'm 14 sorry, after leaving Highland? 15 A That's correct. 16 Q And have the nature of those 17 communications also been both professional and 18 personal? 19 A Yeah, probably 50/50. 20 Q Have you seen him in person? 21 A Almost every day. 22 Q At the temporary office? 23 A (Nods head.) 24 Q Just a verbal -- 25 A Yes, sorry. Correct. Sorry.</p> |

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| <p style="text-align: right;">61</p> <p>1 Q Mr. Leventon should have told you that.</p> <p>2 A The one thing he left out.</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 A No.</p> <p>8 Q Have you had any communications with</p> <p>9 Mr. Sevilla about today's deposition?</p> <p>10 A No.</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 A Yes.</p> <p>15 Q What types of communications?</p> <p>16 A I check in every two or three weeks to see</p> <p>17 how her kids are doing, how she's doing. Again,</p> <p>18 she's a friend, as JP is as well.</p> <p>19 Q Did you know Mr. Leventon prior to working</p> <p>20 at Highland?</p> <p>21 A I met him on our consulting project during</p> <p>22 my MBA that I mentioned before.</p> <p>23 Q Did you know Mr. Sevilla prior to working</p> <p>24 at Highland?</p> <p>25 A Same.</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 A Same. Same working group.</p> <p>4 Q So you met all of them during your MBA+</p> <p>5 project?</p> <p>6 A Yeah.</p> <p>7 Q Do you know when Ms. Lucas is coming back</p> <p>8 from maternity leave?</p> <p>9 A I don't.</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 A I believe I exchanged a few texts with</p> <p>18 Tim Cournoyer.</p> <p>19 Q Anybody else?</p> <p>20 A I don't believe so.</p> <p>21 Q What did you text Tim Cournoyer about?</p> <p>22 A I think just, hey, how are you doing type</p> <p>23 stuff. Tim was a friend as well.</p> <p>24 Q And you said nobody else?</p> <p>25 A No. And I ran into Tim at a grocery store</p> |
| <p style="text-align: right;">63</p> <p>1 also, if that counts.</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 A I think so.</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 A Yes.</p> <p>10 Q What are those?</p> <p>11 A It was an SAS Management e-mail.</p> <p>12 Q And anything else?</p> <p>13 A That's it.</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 A No. Not that I recall.</p> <p>17 Q What is your personal e-mail address?</p> <p>18 A What is my e-mail address?</p> <p>19 Q Uh-huh.</p> <p>20 <-- HIGHLY CONFIDENTIAL --></p> <p>21 Q What is SAS Management?</p> <p>22 A It was an asset recovery/litigation</p> <p>23 funding business.</p> <p>24 Q Do you know what SAS stands for?</p> <p>25 A I don't.</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 A I don't.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Did you ever ask?</p> <p>6 A I didn't.</p> <p>7 Q Why did you have an e-mail address at SAS</p> <p>8 Management?</p> <p>9 A I provided service to SAS Management.</p> <p>10 Q Was that in your capacity as a Highland</p> <p>11 employee?</p> <p>12 A I never really thought about it. I'm not</p> <p>13 sure.</p> <p>14 Q Did you receive compensation from SAS</p> <p>15 Management?</p> <p>16 A No.</p> <p>17 Q How much time did you spend working on</p> <p>18 matters for SAS?</p> <p>19 A On what time frame?</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 A Twenty-five percent, maybe.</p> <p>24 Q Did that change over time?</p> <p>25 A It got less and less.</p> |

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| 65 | <p>1 Q And by February 2021, how much time were</p> <p>2 you spending on SAS matters?</p> <p>3 A Zero.</p> <p>4 Q What types of services did you provide for</p> <p>5 SAS?</p> <p>6 A I did -- I performed a lot of due</p> <p>7 diligence on potential cases, investments,</p> <p>8 whatever you want to call it, financial modeling,</p> <p>9 different scenarios, different outcomes.</p> <p>10 Q Who asked you to work on that?</p> <p>11 A Mr. Ellington.</p> <p>12 Q Anybody else?</p> <p>13 A No. Not that I recall.</p> <p>14 Q Does -- did SAS have an office?</p> <p>15 A In -- where?</p> <p>16 Q Anywhere.</p> <p>17 A I think there's office space in Cayman,</p> <p>18 Cayman Islands.</p> <p>19 Q Did you ever go there?</p> <p>20 A To the Cayman Islands?</p> <p>21 Q Uh-huh.</p> <p>22 A Yes.</p> <p>23 Q Did you ever go to SAS's office in the</p> <p>24 Caymans?</p> <p>25 A Yeah, once.</p> | 67 | <p>1 Q And what was the purpose of that trip?</p> <p>2 A We did business development-type stuff.</p> <p>3 Q What type of business development?</p> <p>4 A Meeting with attorneys, meeting with</p> <p>5 potential people -- or potential clients who could</p> <p>6 use the services that SAS would provide.</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 A I can agree to that, yeah.</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 A Yes.</p> <p>18 Q And it wasn't on behalf of Highland?</p> <p>19 A I don't know.</p> <p>20 Q Who paid for that trip?</p> <p>21 A I have no idea.</p> <p>22 Q Did you pay for that trip?</p> <p>23 A I did not, no.</p> <p>24 Q How long were you there?</p> <p>25 A I don't know.</p> |
| 66 | <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 A I don't believe so.</p> <p>4 Q When you went there, was there anybody</p> <p>5 else there?</p> <p>6 A Not the day I was there.</p> <p>7 Q What about the day before you were there?</p> <p>8 A I have no idea.</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I wasn't there.</p> <p>11 BY MS. TOMKOWIAK:</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 A I'm sure I was with Mr. Ellington.</p> <p>15 Q Oh, okay. So it was you and Mr. Ellington</p> <p>16 in the office that day?</p> <p>17 A Sorry. I thought you meant people there</p> <p>18 work -- like there working already when we showed</p> <p>19 up.</p> <p>20 Q Do you recall approximately when that was?</p> <p>21 A Sometime maybe late 2017, early 2018. I</p> <p>22 don't know exactly.</p> <p>23 Q Did Mr. Ellington ask you to come with him</p> <p>24 to the Cayman Islands?</p> <p>25 A Yes, he would have.</p> | 68 | <p>1 Q A week?</p> <p>2 A Probably less.</p> <p>3 Q A few days?</p> <p>4 A Sounds about right.</p> <p>5 Q Do you recall which attorneys you met</p> <p>6 with?</p> <p>7 A I don't.</p> <p>8 Q Did you get any new business as a result</p> <p>9 of that trip?</p> <p>10 A I want to say no, I don't believe so.</p> <p>11 Q Where did you stay?</p> <p>12 A At a house.</p> <p>13 Q Who owned that house, if you know?</p> <p>14 A I don't know.</p> <p>15 Q Did Mr. Ellington own that house?</p> <p>16 A I don't believe so.</p> <p>17 Q Was it a private house?</p> <p>18 A What do you mean?</p> <p>19 Q Well, it wasn't a hotel. Was it a hotel?</p> <p>20 A It was a house at a hotel, if that makes</p> <p>21 sense.</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 A Correct.</p> |

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| <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 A I don't believe he owns the house. 4 Q You don't believe he owns the house. Was 5 that your only trip to the Cayman Islands? 6 A In -- 7 Q During the time that you worked at 8 Highland. 9 A No. 10 Q When else did you travel to the Cayman 11 Islands? 12 A I don't know specific dates, but we'd go 13 one or two times a year probably. 14 Q Were those -- and when you say we, do you 15 mean you and Mr. Ellington? 16 A Yeah. Sorry. 17 Q Were those trips always for SAS? 18 A Not always. 19 Q What were the other purposes of those 20 trips? 21 A There was -- we had -- we had to go meet 22 with CIMA, the Cayman Islands Monetary Authority, 23 on behalf of Sentinel Reinsurance. 24 Q Any other purposes? 25 A Yes. We were exploring a -- launching a</p> | <p style="text-align: right;">71</p> <p>1 Q Those are the ones I'm interested in. 2 A And then we met on behalf of the bank -- 3 or with the banking division on exploring that 4 bank project. That's why I'm specifying. 5 Q Understood. So with respect to Sentinel, 6 what was the purpose of those meetings? 7 A CIMA performs inspections, routine 8 inspections every five years, as I understand it, 9 on at least insurance companies that operate in 10 Cayman. That was a part of that inspection. 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 A I believe twice. 16 Q Other than routine inspections, was there 17 any other purpose of those meetings? 18 A With CIMA? 19 Q Uh-huh. 20 A No. It was all related to the inspection. 21 Q Why did you go to those meetings? 22 A Why did I attend the meetings? I was a 23 director at Sentinel. 24 Q You weren't the only director, right? 25 A That's correct.</p> |
| <p style="text-align: right;">70</p> <p>1 potential bank -- or potentially launching a bank, 2 excuse me, and we met with a different department 3 at the Cayman Islands Monetary Authority with 4 respect to that project. 5 Q Did you ever launch that bank? 6 A We did not. 7 Q Why not? 8 MS. SMITH: Objection, form. 9 A I don't entirely know the reason why it 10 never got off the ground. 11 BY MS. TOMKOWIAK: 12 Q Do you partially know? 13 MS. SMITH: Objection, form. 14 A I don't. It wouldn't have been my 15 decision to go forward or stop. 16 BY MS. TOMKOWIAK: 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 A Which meetings? 22 Q How many different types of meetings did 23 you have with CIMA? 24 A Well, I said we went and met on behalf of 25 Sentinel Reinsurance.</p> | <p style="text-align: right;">72</p> <p>1 Q Did the other directors attend? 2 A One of them attended in person. 3 Q Did the other directors live in the Cayman 4 Islands? 5 A Yes. I don't know if full-time, but they 6 lived down there. They're European guys. I don't 7 know how much time they spend in Europe. 8 Q Did CIMA require a director to attend? 9 A I actually don't know. 10 Q Did Mr. Ellington ask you to attend? 11 A Yes. We went together. 12 Q And why did Mr. Ellington go? 13 A I don't know. 14 Q Was that in his role as an owner of 15 Sentinel? 16 MS. SMITH: Objection, form. 17 A You'd have to ask him why he attended. 18 I'm not entirely sure. 19 BY MS. TOMKOWIAK: 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 A No, I didn't. 24 BY MS. TOMKOWIAK: 25 Q You didn't say, hey -- you never asked him</p> |

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| <p style="text-align: right;">73</p> <p>1 what his role was at those meetings? 2 MS. SMITH: Objection, form. 3 A No. 4 BY MS. TOMKOWIAK: 5 Q Did CIMA ask why he was there? 6 A Not that I recall. 7 Q What did they ask about during those 8 meetings? 9 A We reviewed the inspection report, chatted 10 about the business. 11 Q What about the business? 12 A Just day-to-day, what -- you know, again, 13 it's a -- every five years they kind of look under 14 the hood and see if the companies that operate in 15 the Caymans actually have a presence there or that 16 sort of thing and are meeting the governance 17 requirements, that sort of thing. 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 A No. We went when we got the initial 23 report, if I remember correctly, around the -- or 24 a draft report, to discuss it with them and then 25 the company had a few housekeeping things to clean</p> | <p style="text-align: right;">75</p> <p>1 A No, not that I recall. 2 Q When, approximately, was the date of the 3 first report? 4 MS. SMITH: Objection, form. 5 A I think it was early 2019 maybe. 6 BY MS. TOMKOWIAK: 7 Q And then you and Mr. Ellington went to 8 meet with CIMA shortly after that? 9 A I don't remember the timing, but 10 subsequent to the report at some point. 11 Q When was the date of the final report? 12 A Later in the year at some point. I'm not 13 entirely sure. 14 Q To the best of your recollection, later in 15 2019? 16 A Yeah. That sounds right. 17 Q Did you and Mr. Ellington -- was your 18 second meeting after that second -- the final 19 report? 20 A I believe it was before. 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 A That sounds right.</p> |
| <p style="text-align: right;">74</p> <p>1 up and we went back and just spoke to them again 2 and said this is what we did, are you guys happy. 3 Q What were the housekeeping things to clean 4 up? 5 A For example, we had one board meeting one 6 year, we were supposed to have two, that sort of 7 thing. So we had to appoint one of the directors 8 as, I think it was an anti-money laundering 9 officer as a requirement and I think it was a 10 newer requirement that maybe had come up in the 11 last five years, so we just basically assigned one 12 of the board members that role. Or one of the 13 directors, excuse me, that role, stuff like that. 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 A I think so. 18 Q And then another issue was this anti-money 19 laundering officer as a requirement? 20 A Yeah. And I think it was a regulatory 21 change that had come up at some point in the 22 five years between inspections. It's my 23 understanding anyway. 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 A Not that I recall. 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 A I don't know. 8 BY MS. TOMKOWIAK: 9 Q Did you need to know that as a director of 10 Sentinel? 11 A I don't know. 12 Q So you were comfortable being the director 13 of a company without knowing who owned it? 14 MS. SMITH: Objection, form. 15 A Yeah, I was put on -- I was put on the 16 board as a director -- or made a director, excuse 17 me, and I did my job. I didn't really question 18 what was going on, who ultimately owned anything. 19 BY MS. TOMKOWIAK: 20 Q What do you mean by anything? 21 MS. SMITH: Objection, form. 22 A I mean I was doing my job in the context 23 of what had to be done as a director. I did not 24 really stop to think about who owned what or how. 25 BY MS. TOMKOWIAK:</p> |

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| <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 A Kind of. 5 BY MS. TOMKOWIAK: 6 Q You could do your job without knowing who 7 owned Sentinel? 8 A I could. 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 A I'm not an attorney. I don't know what 17 satisfies all points under fiduciary duty. But I 18 think if I'm looking out in the best interest of 19 the company as a director, which I was, then 20 ultimately that inures to the benefit of whoever 21 owns it. 22 BY MS. TOMKOWIAK: 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 A Not that I recall. 5 Q And you said that you were working for the 6 best interest of the company; is that right? 7 A Yeah, I believe so. 8 Q And who did you understand the company to 9 be? 10 A Sentinel Reinsurance -- 11 Q Right. 12 A -- was the company that I was a director 13 of, so that's the company I'm referring to. 14 Q And you didn't understand that company to 15 be comprised of any particular people? 16 MS. SMITH: Objection, form. 17 A Again, like I said before, I assumed there 18 was some ownership between Mr. Ellington and 19 Mr. Dondero, but I don't know how or what, other 20 than what I read in the -- I think it was a 21 complaint or said in court or something. 22 BY MS. TOMKOWIAK: 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 A Not particularly. Again, I'm not an 4 attorney. I did my job the best I could to what I 5 thought was the benefit of the company, which is 6 my very high-level understanding of fiduciary 7 duty. 8 BY MS. TOMKOWIAK: 9 Q Did Sentinel have attorneys? 10 A On staff? 11 Q That represented it. 12 A For -- at times, when necessary. 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 A I think it's safe to say that I've never 23 had that conversation with an attorney about what 24 my fiduciary duty was as a director of Sentinel. 25 BY MS. TOMKOWIAK:</p> | <p style="text-align: right;">80</p> <p>1 A I assume it does. I don't know who the 2 shareholders are. 3 BY MS. TOMKOWIAK: 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 A Not that I recall. 9 BY MS. TOMKOWIAK: 10 Q Did you ask any questions about Sentinel 11 before you agreed to be a director? 12 A I asked what it was, what sort of business 13 it was in, products it provided, what the 14 day-to-day responsibilities would be. 15 Q And what did they tell you -- well, who 16 did you ask? 17 A I would have asked JP Sevilla. 18 Q You would have -- did Mr. Sevilla ask you 19 to be a director? 20 A No. 21 Q So why did you ask him? 22 A Because in the -- my understanding was 23 that he handled kind of day-to-day stuff for 24 Sentinel if it came up, which at -- my 25 understanding at the time was there was not much</p> |

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| <p>81</p> <p>1 going on day to day. So that was passed off to 2 me. 3 MS. TOMKOWIAK: Let's take a break. 4 THE VIDEOGRAPHER: We are off the record 5 at 10:55 a.m. 6 (Recess taken from 10:55 a.m. CDT to 7 11:22 a.m. CDT) 8 THE VIDEOGRAPHER: The time is 11:22 a.m. 9 We are back on the record. 10 BY MS. TOMKOWIAK: 11 Q Mr. DiOrio, I understand that you recalled 12 another conversation that you had with Mr. Dondero 13 after you left Highland; is that right? 14 A That's correct. 15 Q Tell me about that conversation. 16 A He -- his admin asked me to come down to 17 his -- or come to his office and he asked me 18 where -- if I had heard from Mr. Ellington. It 19 was very brief. 20 Q When did that take place? 21 A Earlier this week. 22 Q Earlier this week? 23 A I think so. 24 Q What day? 25 A Monday or Tuesday.</p> | <p>83</p> <p>1 Q Why did he want to know if you had heard 2 from Mr. Ellington? 3 MS. SMITH: Objection, form. 4 A Not entirely sure, but he must -- I don't 5 know. 6 BY MS. TOMKOWIAK: 7 Q Did he say why he wanted to know if you 8 had heard from Mr. Ellington? 9 A Because I don't think anyone's heard from 10 Mr. Ellington since he's been gone, or in several 11 weeks anyway. 12 Q Okay. So did you -- what was your 13 response? 14 A I told him I would try to contact him. 15 Q Did you try to contact him? 16 A I did. 17 Q How? 18 A I sent an e-mail and a text message. 19 Q Did you receive an e-mail back? 20 A I did not. 21 Q Did you receive a text back? 22 A I did not. 23 Q Have you talked to anybody else about 24 whether they've been able to reach Mr. Ellington? 25 A Not specifically. It sounds like no one's</p> |
| <p>82</p> <p>1 Q Who is Mr. Dondero's admin? 2 A Her name is Tara. 3 Q Tara what? 4 A Was Loiben at Highland, but I think she 5 got married since. I'm not sure. 6 Q But Tara is his current assistant? 7 A One of. I think he has a couple. 8 Q When you say Mr. Dondero's office, which 9 office? 10 A His office on -- at the NexBank, I guess 11 corporate office. 12 Q So is that the same office building where 13 you're currently working? 14 A It's the same building we're temporarily 15 in, yes. Different floor. 16 Q So when you went to his office, you just 17 went to a different floor? 18 A That's right. 19 Q So you were already in the office that 20 day? 21 A Yes. 22 Q And you said that he wanted to know -- I 23 don't want to put words in your mouth -- if you 24 had heard from Mr. Ellington? 25 A That's correct.</p> | <p>84</p> <p>1 heard from him in a few weeks. 2 Q Did Mr. Dondero say anything else during 3 that conversation? 4 A No. 5 Q Did he tell you why he was trying to get 6 in touch with Mr. Ellington? 7 MS. SMITH: Objection, form. 8 A Just that he hadn't heard from him. 9 BY MS. TOMKOWIAK: 10 Q And then I understand that you also -- 11 right. And the last time that you heard from 12 Mr. Ellington was the e-mail that you received 13 from him you said a few weeks ago? 14 A Yeah. 15 Q And then I understand that you also 16 recalled another e-mail address that you used 17 while at Highland; is that right? 18 A Yes, that's correct. 19 Q What is that? 20 A It was mdiorio@ -- I think it was 21 ogventures.com. 22 Q What is OG Ventures? 23 A Mr. Ellington had a -- had a couple of 24 investments in oil and gas that predated my time 25 and I was tasked with monitoring, ultimately</p> |

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| <p>85</p> <p>1 selling one of them.</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>5 A No.</p> <p>6 Q Okay. Did you do that work out of your</p> <p>7 Highland office?</p> <p>8 A Partly probably.</p> <p>9 Q How did you know while at Highland which</p> <p>10 e-mail address to use?</p> <p>11 A For -- what do you mean?</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>14 A Well, the OG one, for example, I barely</p> <p>15 used. But generally if it was SAS-related items,</p> <p>16 offshore, I guess, another way I think of it, I'd</p> <p>17 use that. Everything else I would use Highland</p> <p>18 for distressed and private equity stuff.</p> <p>19 Q What about with respect to Sentinel?</p> <p>20 Which e-mail address would you use?</p> <p>21 A SAS.</p> <p>22 Q What is the relationship between Sentinel</p> <p>23 and SAS?</p> <p>24 A I don't believe there is one.</p> <p>25 Q Then why would you use your SAS e-mail</p> | <p>87</p> <p>1 I'm thinking org chart-type stuff.</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>5 A In the past, yes.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Do you recall what time frame?</p> <p>8 A My recollection is it ended at the end of</p> <p>9 2017.</p> <p>10 Q Did Sentinel have any other clients?</p> <p>11 A I'm not sure. What time -- sorry, what</p> <p>12 time frame?</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>16 A Yes.</p> <p>17 Q Okay. Any other non-Highland affiliated</p> <p>18 clients?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 A No, I don't believe so.</p> <p>21 BY MS. TOMKOWIAK:</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>25 A Not that I'm aware of.</p> |
| <p>86</p> <p>1 account for your work with Sentinel?</p> <p>2 A I never had a -- there's no Sentinel</p> <p>3 e-mail addresses.</p> <p>4 Q Why not use your Highland e-mail address?</p> <p>5 A Because I -- again, I think of it as kind</p> <p>6 of offshore, onshore-type stuff and that just fell</p> <p>7 into the offshore bucket since it was Cayman</p> <p>8 based.</p> <p>9 Q So to your knowledge, there is no</p> <p>10 relationship at all between Sentinel and SAS?</p> <p>11 A Not to my knowledge.</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>15 A Not to my knowledge.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Sentinel didn't provide any insurance</p> <p>18 services to any SAS companies, to your knowledge?</p> <p>19 A It used to.</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>22 A I would think it's more of a -- define</p> <p>23 relationship, I guess. I was thinking more they</p> <p>24 were a client -- those entities would be</p> <p>25 considered clients. When I think relationship,</p> | <p>88</p> <p>1 Q And you mentioned attorneys on staff. Did</p> <p>2 Sentinel have staff?</p> <p>3 A Not that I'm aware of.</p> <p>4 Q So if Sentinel needed to have paperwork</p> <p>5 submitted, who would do it?</p> <p>6 A What type -- paperwork? What do you mean?</p> <p>7 Q Like if Sentinel needed to submit a report</p> <p>8 to CIMA, who would do that?</p> <p>9 A It would be -- it depends, I guess.</p> <p>10 Sentinel would retain counsel if it was that sort</p> <p>11 of matter. It has auditors, it has -- you know,</p> <p>12 it's regulated by CIMA. There's a lot of</p> <p>13 different, I guess, agencies that would touch it,</p> <p>14 or businesses.</p> <p>15 Q Sorry, were you done?</p> <p>16 A Yes.</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>21 A No. Sorry, to back up. It has a</p> <p>22 registered office where it receives mail, but no</p> <p>23 physical office. I don't think I asked you to</p> <p>24 specify, but I'm just clarifying.</p> <p>25 Q Did any Highland employees ever do any</p> |

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| 89 | <p>1 work for Sentinel?</p> <p>2 A Yes.</p> <p>3 Q Which ones?</p> <p>4 A At what time?</p> <p>5 Q At any time during 2017 to 2021.</p> <p>6 A Yes, I think a good number of Highland</p> <p>7 employees.</p> <p>8 Q Which ones?</p> <p>9 A Do you want -- I don't know the specifics</p> <p>10 of time spent, anything like that. Do you just</p> <p>11 want names?</p> <p>12 Q I just want their names right now.</p> <p>13 A Okay. In some form or fashion,</p> <p>14 JP Sevilla, Katie Irving, Isaac Leventon,</p> <p>15 Dave Klos, Lauren Thedford, Thomas Surgent,</p> <p>16 Carter Chism. I think -- that's all I can really</p> <p>17 think of at the moment.</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 A A mix of both, I think. Also Stetson</p> <p>23 Clark. Sorry. Forgot a name.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q Who was that?</p> | 91 |
| 90 | <p>1 A Stetson Clark, like the hat.</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 A I believe Sentinel's counsel -- or</p> <p>6 third-party counsel, I guess, whatever you --</p> <p>7 Q External counsel?</p> <p>8 A Thank you.</p> <p>9 Q Which counsel?</p> <p>10 A Carey Olsen.</p> <p>11 Q Any other counsel?</p> <p>12 A That would have that report?</p> <p>13 Q Uh-huh.</p> <p>14 A No.</p> <p>15 Q What about Beecher Carlson? Would they</p> <p>16 have a copy of those reports?</p> <p>17 A Probably.</p> <p>18 Q What was Beecher -- can I just say</p> <p>19 Beecher?</p> <p>20 A You can.</p> <p>21 Q What was Beecher's role with respect to</p> <p>22 Sentinel?</p> <p>23 A Beecher was the insurance manager and also</p> <p>24 as part of that function, they would prepare</p> <p>25 financial statements, facilitated expenses being</p> | 92 |
| | <p>1 paid, advised on, you know, anything -- anything</p> <p>2 insurance-related.</p> <p>3 Q What about Maples? What was their role?</p> <p>4 A When?</p> <p>5 Q Any time during the 2017 to 2021 time</p> <p>6 frame.</p> <p>7 A Well, prior to my coming on board, I'm not</p> <p>8 sure what they did. But when I came on board,</p> <p>9 there were two directors -- the two directors that</p> <p>10 were on the board, excuse me, were from Maples. I</p> <p>11 assume in the past that's what they did, but I</p> <p>12 can't say for sure.</p> <p>13 Q Do you know when Sentinel was formed?</p> <p>14 A I believe 2012 or '13. I don't -- again,</p> <p>15 I don't know the exact date.</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 A I'm not entirely sure.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Do you know if he had one?</p> <p>22 A I would assume so.</p> <p>23 Q Do you know if he received monetary</p> <p>24 payments from SAS?</p> <p>25 A I don't.</p> | |
| | <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 A Are there -- should there be other pages I</p> <p>16 need to see on this or is it's -- it's 4 of 5.</p> <p>17 That's the reason I asked.</p> <p>18 BY MS. TOMKOWIAK:</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 A Oh, okay. I was just reading at the top</p> <p>23 that it's 4 of 5. That's the only reason I'm</p> <p>24 asking.</p> <p>25 Q That's a fair question.</p> | |

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| <p style="text-align: right;">93</p> <p>1 A Give me one more second. Sorry.</p> <p>2 Q No worries.</p> <p>3 (Witness reviews document.)</p> <p>4 A Okay.</p> <p>5 BY MS. TOMKOWIAK:</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 BY MS. TOMKOWIAK:</p> <p>11 Q Okay. Have you seen this document before?</p> <p>12 A I don't believe I've seen this page</p> <p>13 before, no.</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 A I have no idea.</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 A If it was on my desk -- I genuinely have</p> <p>22 no recollection of ever seeing this.</p> <p>23 BY MS. TOMKOWIAK:</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 checking account.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Did you ever receive payments from SAS</p> <p>4 Asset Recovery Ltd.?</p> <p>5 A I don't believe so.</p> <p>6 Q You don't believe so?</p> <p>7 A No. I don't believe I did, no.</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 A To my physical desk?</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Uh-huh.</p> <p>14 A I mean, it's an open floor plan. Nothing</p> <p>15 was locked up, but I generally think that no one</p> <p>16 bothered with it.</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 A I understand it's about a decade's old</p> <p>23 dispute about some sort of warehouse facility, but</p> <p>24 that's about all I know.</p> <p>25</p> |
| <p style="text-align: right;">94</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A I don't recall ever seeing his personal</p> <p>3 checking, no.</p> <p>4 BY MS. TOMKOWIAK:</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 A No.</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 A I see them, yes.</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 A I don't.</p> <p>20 BY MS. TOMKOWIAK:</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 A Again, I don't have access to his personal</p> | <p style="text-align: right;">96</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q When did you first obtain that</p> <p>3 understanding?</p> <p>4 A Probably around the time I came on to</p> <p>5 the -- sometime after I came on to the board at</p> <p>6 Sentinel -- or was appointed director, excuse me.</p> <p>7 Q So sometime around September 2017?</p> <p>8 A Probably after that.</p> <p>9 Q Is there any formal piece of paper</p> <p>10 appointing you to the board of Sentinel?</p> <p>11 A There would be. I don't have one. But if</p> <p>12 I remember correctly, there was a letter issued by</p> <p>13 CIMA just confirming that the appointment was</p> <p>14 accepted.</p> <p>15 Q Do you know who would have a copy of that?</p> <p>16 A Probably Carey Olsen.</p> <p>17 Q How did you come to have that</p> <p>18 understanding of the UBS litigation?</p> <p>19 A I don't recall specifically, but I think</p> <p>20 once I kind of figured out what I had to do as a</p> <p>21 director and I knew that the policy was in place,</p> <p>22 I said what's the underlying issue, but it was --</p> <p>23 I tried reading it once, but honestly it was a</p> <p>24 little above my head.</p> <p>25 Q You tried reading what?</p> |

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| <p style="text-align: right;">97</p> <p>1 A Some court document at some point. I 2 don't know if it was a complaint or what, but I 3 didn't make it all the way through. 4 Q And you said that you knew a policy was in 5 place. So you're referring to the policy that 6 Sentinel had issued to cover legal liability to 7 UBS in connection with that litigation? 8 MS. SMITH: Objection, form. 9 A Yes. 10 BY MS. TOMKOWIAK: 11 Q Are you aware there was a trial in that 12 matter in July of 2018? 13 A Yes. 14 Q And did you ever hear anybody in the legal 15 department at Highland express a view as to 16 whether UBS was likely to prevail in that case? 17 A Not that I recall. 18 Q Did you ever form a view? 19 A Again, it was a little above my head. I 20 had no idea. 21 Q Did you hear the legal people discussing 22 that case in the legal department? 23 A Not specifically with me, but it's an open 24 floor plan. Isaac talks on the phone a lot to 25 lawyers, so I'm sure I heard something.</p> | <p style="text-align: right;">99</p> <p>1 please? 2 BY MS. TOMKOWIAK: 3 Q Were you aware that the defendants in that 4 case were potentially going to be liable for over 5 a billion dollars? 6 MS. SMITH: Objection, form. 7 A Was I aware when? 8 BY MS. TOMKOWIAK: 9 Q When -- at any point in time. 10 MS. SMITH: Objection, form. 11 A I came to learn that. 12 BY MS. TOMKOWIAK: 13 Q When did you come to learn that? 14 A I think at some -- after the Phase 1 trial 15 was over. 16 Q So just to pin that down, was it after the 17 trial or after the judgment? 18 A I don't recall. 19 Q So did you recall hearing before UBS won a 20 \$1 billion, approximate, judgment, that they might 21 be liable, that the defendants in that case might 22 be liable for a billion dollars? 23 MS. SMITH: Objection, form. 24 A I can't say. I don't recall when, if it 25 was before or after.</p> |
| <p style="text-align: right;">98</p> <p>1 Q Were you aware that the defendants in that 2 case were potentially going to be liable for over 3 a billion dollars? 4 MS. SMITH: Objection, form. 5 And be careful here. Don't disclose any 6 privileged information. 7 MS. TOMKOWIAK: Well, do you mean that he 8 learned from any of Highland's lawyers? 9 MS. SMITH: I guess I need to go on the 10 record with my normal agreement with 11 Mr. Feinstein, that Mr. DiOrio can answer 12 questions regarding what lawyers at Highland or 13 outside counsel may or may not have told him in 14 his capacity at Highland without waiving 15 privilege. 16 MR. FEINSTEIN: I don't know if we have an 17 agreement, but certainly if I find that there's a 18 question as to which we want to assert 19 attorney-client privilege, you will hear me 20 object. I did not object to the last question so 21 the witness can answer. 22 MS. SMITH: Just wanted to make sure the 23 rules apply to all the deposition -- each 24 deposition individually. 25 A Would you mind restating the question,</p> | <p style="text-align: right;">100</p> <p>1 BY MS. TOMKOWIAK: 2 Q Okay. So when you first joined the board 3 of Sentinel, did you ask anybody what the 4 potential liability to UBS was? 5 A Possibly. 6 Q You just don't recall? 7 A I don't specifically recall. I don't 8 recall that conversation specifically. 9 Q And you didn't think that that was 10 relative to your -- to the policy? 11 MS. SMITH: Objection, form. 12 A The policy had a limit, so I think the 13 understanding was that the -- that was the most 14 the company would have to pay under the -- you 15 know, if the policy satisfied whatever. 16 BY MS. TOMKOWIAK: 17 Q Do you recall what the policy limit was? 18 A The policy limit's \$91 million. 19 Q You believe it was \$91 million? 20 A Yes. 21 Q And do you recall anybody forming a view 22 at any -- strike that. 23 Do you recall anybody expressing a view at 24 any point in time that the defendant's potential 25 liability in the case would be greater than</p> |

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| <p>1 \$100 million? 2 MS. SMITH: Objection, form. 3 A I don't recall. 4 BY MS. TOMKOWIAK: 5 Q Did you ask anybody whether Sentinel, the 6 company that you were a director of, was likely to 7 be on the hook for \$91 million? 8 MS. SMITH: Objection, form. 9 A Well, I think by issuing the policy, the 10 company was potentially on the hook for 11 \$91 million. So my assumption was any judgment 12 could probably be above that, yeah. But I just 13 don't remember specific -- I don't remember the 14 billion dollar number until I heard the billion 15 dollar number after the -- around the first 16 judgment or the trial or whatever it was. 17 BY MS. TOMKOWIAK: 18 Q Okay. But you believed as -- you believed 19 that Sentinel was -- would potentially pay out up 20 to \$91 million to UBS? 21 MS. SMITH: Objection to form. 22 A That's correct. 23 BY MS. TOMKOWIAK: 24 Q Do you know whether anyone at Highland put 25 together any analysis of potential damages to UBS?</p> | 101 | <p>1 A I don't remember if he was there or 2 Beecher -- sorry. I remember being involved with 3 speaking to him. I don't know if he was hired to 4 do anything prior to my being appointed on the 5 board. Does that make sense? 6 Q It does. 7 A Sorry. 8 Q Do you know whether anybody at Highland 9 was given the opportunity to review the analysis 10 that you received from Mr. Stubbs? 11 MS. SMITH: Objection, form. 12 A It would be in kind of an annual meeting. 13 Isaac Leventon and myself and Beecher Carlson 14 would get on the phone with Mr. Stubbs, and Isaac 15 would talk about the potential outcomes, give him 16 basically the in-house lawyer's view of the case 17 and then he would do whatever actuaries do from 18 there. 19 BY MS. TOMKOWIAK: 20 Q Were you the only director that 21 participated in those phone calls? 22 A Yes. 23 Q Why? 24 A The other two independent directors 25 weren't day to day. They would see the result and</p> | 103 |
| <p>1 A Not specifically. 2 Q In your capacity as a director of 3 Sentinel, did you ask for any of that type of 4 analysis? 5 A Any settlement analysis? 6 Q Any damages analysis. 7 A Damages analysis. No. I don't recall 8 doing that. 9 Q Did you ask for any settlement analysis? 10 A We came to -- one was kind of provided at 11 the end of each year by working with an actuary. 12 They would kind of fill out a table, basically -- 13 an actuarial table to see probabilities of, you 14 know, multiple outcomes. 15 Q Who was the actuary? 16 A His name was Jason Stubbs, I believe. 17 Q Who hired him? 18 A He would have been a referral from Beecher 19 Carlson, I believe. 20 Q When you joined Sentinel as a director, 21 had he already been hired? 22 A I don't know if he had done any work in 23 the past on Sentinel's prior business. I don't 24 know. 25 Q You weren't involved in hiring him?</p> | 102 | <p>1 have the rights to -- or the ability to set a new 2 meeting and follow up if they had questions, 3 but... 4 Q You weren't an independent director, 5 right? 6 A I guess not. 7 MS. SMITH: Objection, form. Sorry. 8 Objection, form. I wasn't quick enough there. 9 BY MS. TOMKOWIAK: 10 Q Did anybody ever tell you that you were 11 not an independent director? 12 A No. 13 Q So you just came to that conclusion 14 yourself? 15 A I don't know the specific -- the 16 classification, if I was classified as an 17 independent director, director, managing director. 18 I never thought of it. 19 Q Okay. Because you mentioned the other 20 independent directors, and so I didn't know if you 21 were drawing a distinction between them as 22 independent directors and you as an inside 23 director? 24 A The reason I say that is because they're 25 professional directors, that's their job and</p> | 104 |

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| <p style="text-align: right;">105</p> <p>1 they're just referred to as independent directors.</p> <p>2 For example, the guy on our board could serve on a</p> <p>3 hundred boards. They don't do day-to-day</p> <p>4 generally type stuff. So they're just referred to</p> <p>5 as independent directors.</p> <p>6 Q Was this the first board that you had ever</p> <p>7 served on?</p> <p>8 A I believe so.</p> <p>9 Q Do you know why you were asked to serve on</p> <p>10 the Sentinel board?</p> <p>11 A Not particularly.</p> <p>12 Q Did you have any experience with insurance</p> <p>13 prior to serving on the Sentinel board?</p> <p>14 A No, I don't. I didn't.</p> <p>15 Q So you said that you were aware that there</p> <p>16 was a trial in the UBS litigation in July 2018,</p> <p>17 correct?</p> <p>18 A Correct.</p> <p>19 Q And then at some point in time, you became</p> <p>20 aware that UBS won a \$1 billion judgment against</p> <p>21 the Highland funds in that matter?</p> <p>22 A Yes.</p> <p>23 Q Okay. And you don't know exactly when you</p> <p>24 became aware of that?</p> <p>25 A I can't say for certain.</p> | <p style="text-align: right;">107</p> <p>1 A No, not -- at what point in time?</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Prior to the bankruptcy.</p> <p>4 A No.</p> <p>5 Q What about prior to your termination from</p> <p>6 Highland?</p> <p>7 MS. SMITH: Objection, form.</p> <p>8 A I don't believe so.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Did that surprise you?</p> <p>11 A That a claim was not made?</p> <p>12 Q Yeah.</p> <p>13 A Not particularly.</p> <p>14 Q Why not?</p> <p>15 A It was my understanding that there was</p> <p>16 still a Phase 2 to the trial, so -- and I thought</p> <p>17 everything had been kind of stayed, due to the</p> <p>18 bankruptcy, so it seemed like it was just in a</p> <p>19 holding pattern to me.</p> <p>20 Q Did you expect a claim to be made on the</p> <p>21 policy in the future?</p> <p>22 A At some point.</p> <p>23 Q Did you discuss that possibility with the</p> <p>24 other Sentinel directors?</p> <p>25 A Yeah. They were aware of it.</p> |
| <p style="text-align: right;">106</p> <p>1 Q Was it prior to Highland going into</p> <p>2 bankruptcy?</p> <p>3 A Probably.</p> <p>4 Q How did you become aware of that judgment?</p> <p>5 A I genuinely don't know. I don't remember.</p> <p>6 Q Did somebody at Highland tell you?</p> <p>7 A Probably. Of the judgment?</p> <p>8 Q Uh-huh.</p> <p>9 A Yeah, probably.</p> <p>10 Q But you just don't recall who?</p> <p>11 A It may have come up during the actuary</p> <p>12 meeting, you know, that would have happened in</p> <p>13 Decemberish of that year, or '19, I guess. So</p> <p>14 probably around that time I think is a safe bet.</p> <p>15 Q Were your auditors aware of the</p> <p>16 judgment -- I'm sorry, let me be specific. Were</p> <p>17 Sentinel's auditors aware of that judgment?</p> <p>18 A Yes.</p> <p>19 Q Did you make them aware?</p> <p>20 A I don't know if it was myself or Beecher</p> <p>21 Carlson, but they would have been made aware</p> <p>22 during the audit process.</p> <p>23 Q And did the insureds make a claim on the</p> <p>24 policy after that judgment was entered?</p> <p>25 MS. SMITH: Objection, form.</p> | <p style="text-align: right;">108</p> <p>1 MS. SMITH: Objection. Don't get into</p> <p>2 privileged conversations with the other directors.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Okay. I mean, did -- how were they aware</p> <p>5 of it?</p> <p>6 A I believe I would have told them once I</p> <p>7 became aware of it.</p> <p>8 Q Okay. To your knowledge, did Mr. Dondero</p> <p>9 or Mr. Ellington make any investment in Sentinel?</p> <p>10 MS. SMITH: Objection, form.</p> <p>11 A Can you repeat the question? I'm sorry.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q To your knowledge, did -- let's break them</p> <p>14 up. Did Mr. Dondero make any investment in</p> <p>15 Sentinel?</p> <p>16 A I don't know specifically. When the</p> <p>17 company started up, it had -- I assume it was</p> <p>18 capitalized in some form or fashion, but I don't</p> <p>19 know who or how.</p> <p>20 Q Same question for Mr. Ellington. Do you</p> <p>21 know if he made any capital contribution to</p> <p>22 Sentinel?</p> <p>23 A It would be the same answer. I don't</p> <p>24 know.</p> <p>25 Q You assume that he did?</p> |

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| <p>1 MS. SMITH: Objection, form. 2 A Do I assume that Mr. Ellington did? 3 BY MS. TOMKOWIAK: 4 Q Yes. 5 A I don't know. 6 Q You don't know. 7 MS. TOMKOWIAK: I am handing the court 8 reporter what we will mark as Exhibit 77. 9 (Deposition Exhibit 77 marked for 10 identification.) 11 BY MS. TOMKOWIAK: 12 Q Take a couple of minutes to look at that 13 as well and let me know when you're ready. 14 (Witness reviews document.) 15 BY MS. TOMKOWIAK: 16 Q Have you seen this document before? 17 A Yes. 18 Q When have you seen it? 19 A I mean, probably around the time it was 20 issued. 21 Q And why did you see it? 22 A This was prepared as part of our 23 contemplated bank application that I mentioned 24 earlier. Part of the process is the person who 25 would ultimately own the bank license needed to</p> | 109 | <p>1 BY MS. TOMKOWIAK: 2 Q Understood. But thinking about it now, 3 would it possibly have been part of that same bank 4 application? 5 A Possibly. 6 Q And if you look at this statement of 7 assets, do you see the line where it says 8 investment in Sentinel Reinsurance Ltd.? 9 A Yes. 10 Q And it says 11,803,954? 11 A Uh-huh. 12 Q Were you aware at the time that you 13 received this statement that Mr. Ellington had a 14 \$11.8 million investment in Sentinel? 15 A If I remember correctly -- are you 16 characterizing investment as cash invested in the 17 business or just -- how are you characterizing -- 18 or how should I characterize investment here? 19 Q Well, all I have to go by is this line, 20 investment in Sentinel reinsurance. So do you 21 know how he invested \$11.8 million in Sentinel? 22 A If I remember correctly, it would have 23 been not capital contributed, but whatever the 24 shareholder equity line was on the balance sheet, 25 it would have been some percentage of that, not --</p> | 111 |
| <p>1 provide, among other things, a statement of net 2 worth. 3 Q And so to your recollection, Mr. Ellington 4 provided this to you in connection with that bank 5 application? 6 MS. SMITH: Objection, form. 7 A He provided this statement to me? 8 BY MS. TOMKOWIAK: 9 Q Yes. 10 A I believe I provided -- gathered some of 11 this info, sent it to the accounting firm and they 12 would have sent it back. 13 Q Okay. So if -- do you believe that's why 14 this document would have -- was also on your desk 15 at Highland? 16 MS. SMITH: Objection, form. 17 A Probably. 18 BY MS. TOMKOWIAK: 19 Q Does that refresh your mind at all as to 20 whether Mr. -- as to why you also had a copy of 21 Mr. Ellington's personal checking account 22 statement? 23 MS. SMITH: Objection, form. 24 A That seems to track. I just don't 25 remember seeing that particular --</p> | 110 | <p>1 not he invested \$11.8 million. Does that make 2 sense? 3 Q To my lawyer brain, slightly. So you're 4 saying that Mr. Ellington -- again, I'm not an 5 accounting expert, but I think the distinction 6 you're trying to make is that Mr. Ellington did 7 not contribute \$11.8 million of cash to Sentinel; 8 is that right? 9 A That's my understanding. I don't know if 10 he ever contributed a dollar, a million dollars, I 11 don't know. But that's how this number would have 12 been calculated. 13 Q Okay. But you knew -- when were you 14 putting together the application for this bank? 15 A During, I think, 2018, prior to October. 16 Q Okay. So you at least knew at that time 17 that Mr. Ellington had some financial interest in 18 Sentinel? 19 A That was my understanding. 20 Q And if I understood you correctly, some 21 type of equity in Sentinel? 22 A Yes. 23 Q As a shareholder? 24 MS. SMITH: Objection, form. 25 A Again, I don't know if it's in a</p> | 112 |

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| <p>113</p> <p>1 shareholder or in a personal capacity. I don't</p> <p>2 know.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q You just mentioned the shareholder equity</p> <p>5 line of the balance sheet is why I asked.</p> <p>6 A Right. But I don't know -- yes. Sorry.</p> <p>7 Yes, as a shareholder.</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>13 A That's not what I said.</p> <p>14 Q Yeah, what did you say?</p> <p>15 A I don't know why the project didn't move</p> <p>16 forward.</p> <p>17 Q Do you know whether an application was</p> <p>18 made?</p> <p>19 A I don't know.</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>24 A I didn't personally submit it to anyone.</p> <p>25</p> | <p>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>12 A Is it best if I review the whole thing or</p> <p>13 specific pages?</p> <p>14 Q Well, my first question is have you ever</p> <p>15 seen this document before?</p> <p>16 A I have not.</p> <p>17 MS. SMITH: You need to review the whole</p> <p>18 thing.</p> <p>19 THE WITNESS: Okay.</p> <p>20 A I have not.</p> <p>21 BY MS. TOMKOWIAK:</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>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>4 A Right. I can't be sure.</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>8 A There were a few items that he was</p> <p>9 responsible for collecting, personal</p> <p>10 recommendations, again, it was part of the</p> <p>11 application process, and we passed everything off</p> <p>12 to him and from there, I don't know.</p> <p>13 Q So you don't know if he submitted the</p> <p>14 application and it was denied?</p> <p>15 A I don't know --</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 A I don't know that.</p> <p>18 BY MS. TOMKOWIAK:</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>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>4 A Okay. Fair. Thank you.</p> <p>5 (Witness reviews document.)</p> <p>6 A Okay.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Have you ever seen this document before?</p> <p>9 A I have not.</p> <p>10 Q Do you know why a copy of it was found on</p> <p>11 your desk at Highland?</p> <p>12 A I do not.</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>17 A I don't.</p> <p>18 BY MS. TOMKOWIAK:</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>22 A I shared a file cabinet space with JP</p> <p>23 because we sat next to each other, but not my</p> <p>24 desk.</p> <p>25</p> |

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| <p>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 A Not this detailed, but I think I have a 7 general understanding of what a settlement would 8 have looked like. 9 Q What is that -- where did that general 10 understanding come from? 11 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. 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 A I don't. I apologize. 19 Q That's okay. That lengthy number at the 20 bottom. 21 A Yeah. 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 A Got it.</p> | <p>119</p> <p>1 defend themselves through the length of whatever 2 potential future litigation was on the horizon. 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 A I think so. I'm not entirely sure. Could 8 you repeat? Sorry. 9 BY MS. TOMKOWIAK: 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 A Right, yes. And I believe that's the 15 purpose of the policy. 16 BY MS. TOMKOWIAK: 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 A Some, yeah. Most. 21 Q How are you familiar with these? 22 A This looks like a list of assets used to 23 pay for the ATE policy. 24 Q When did you come to learn that there 25 was -- that these assets were used to pay for the</p> |
| <p>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 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. 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 A I didn't understand -- I don't think so. 14 BY MS. TOMKOWIAK: 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 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. 23 BY MS. TOMKOWIAK: 24 Q What do you mean by something like that? 25 A That the funds may not have been able to</p> | <p>120</p> <p>1 ATE policy? 2 A At some point after I was appointed as 3 director. 4 Q Who would be able to tell me whether 5 Sentinel owns each of these assets today? 6 A I would be able to. 7 Q You would? 8 A Uh-huh. 9 Q Okay. 10 A Not -- the ones I'm familiar with. Sorry. 11 Some of these I've never seen before. 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 A Yes. Here, let's try to -- I'll tell you 17 the ones -- 18 MS. SMITH: You can use that if you need 19 to. 20 THE WITNESS: Thank you. 21 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 -- 25</p> |

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| <p style="text-align: right;">121</p> <p>1 BY MS. TOMKOWIAK: 2 Q I understand. 3 A Maybe it's best to go one by one. I don't 4 want to draw this out, but I can't give you a good 5 answer. 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 A Okay. 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 A This particular document, no.</p> | <p style="text-align: right;">123</p> <p>1 MS. SMITH: Objection, form. 2 A I don't believe so. I don't know. 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 A I don't recall. I know it seems like it 8 says that here, but I don't recall hearing one way 9 or the other. 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 A Correct. As I remember, it would have 16 been more like a PowerPoint-type org chart and I 17 think these were one layer on a long, larger 18 structure is my understanding. So I didn't 19 specifically ask about who owned which of these. 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 A Uh-huh. 25 Q And you didn't ask which of these entities</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 A Not like this. 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 A I had a general understanding, again, of 10 the split, 70/30 split, I guess, but I've heard 11 the names Patten and Nimitz, but I don't -- I 12 can't -- other than that, I can't really speak to 13 it. 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 A I believe so. 19 Q And you said that you had heard of Patten 20 and Nimitz. Who did you hear that from? 21 A I had heard the names and I'm sure at some 22 point if it was on an org chart -- I've never seen 23 it laid out like this, is what I was getting at. 24 Q And did you hear at some point in time 25 that Mr. Dondero owned Patten?</p> | <p style="text-align: right;">124</p> <p>1 related to Mr. Ellington? 2 MS. SMITH: Objection, form. 3 A Probably not. 4 BY MS. TOMKOWIAK: 5 Q Did you consider Sentinel to be affiliated 6 with Highland? 7 MS. SMITH: Objection, form. 8 A I believe -- no, I believed it was not 9 affiliated direct -- with HCMLP? 10 BY MS. TOMKOWIAK: 11 Q Yes. 12 A Yeah. I believed it was not affiliated. 13 Q What was the basis for that belief? 14 A That it was a separate stand-alone 15 business based in Cayman. Now, I don't know the 16 legal definition of -- if there's a legal lawyer 17 term for affiliate or not affiliate, that's going 18 to be beyond me. 19 Q Okay. Did anybody ever tell you that 20 Sentinel and Highland were not affiliated? 21 A Yes, I believe at some point I was told 22 that. 23 Q When were you told that? 24 A At some point while I was a director. I 25 don't remember specifically when, but obviously</p> |

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| <p style="text-align: right;">125</p> <p>1 after my involvement with Sentinel. 2 Q Who told you that? 3 A I think it was -- I don't remember who 4 specifically said that, but Sentinel showed up on 5 a list in compliance of affiliates for owning one 6 of the assets that was on its balance sheet and I 7 remember there was a big to-do about someone made 8 a mistake and it was not an affiliate. 9 Q What was the big to-do? 10 A Again, I don't understand it. It was to 11 get it -- make sure it was classified as a 12 nonaffiliate as it always had been. Someone 13 changed it at some point on a spreadsheet, the 14 classification, as I understand it. 15 Q Why was it a big deal if it was classified 16 as an affiliate entity? 17 A That, I don't know. 18 Q What efforts did you make to separate out 19 the work that you were doing in your capacity as a 20 director for Sentinel from the work that you were 21 doing in your capacity as a Highland employee? 22 MS. SMITH: Objection, form. 23 A They didn't -- the work I did for Highland 24 and the work I did for Sentinel didn't really 25 overlap, in my opinion. In other words, the</p> | <p style="text-align: right;">127</p> <p>1 BY MS. TOMKOWIAK: 2 Q Did you pay for those trips? 3 A Personally? 4 Q Yes. 5 A No. 6 Q Did Sentinel pay for those trips? 7 A If-- they would have paid if it was 8 Sentinel related, yes. 9 Q And how do you know that? 10 A I would have had to submit expenses. 11 Q So when you went on those trips, who did 12 you submit those expenses to? 13 A So the process in general for expenses -- 14 this may help for other stuff. Any expense that 15 came through Sentinel would be sent to Beecher 16 Carlson with an invoice in detail and all that 17 stuff. They would load it into the banking 18 system. The -- never me, because the other two 19 directors would approve it. They would ask 20 questions, like what's this for, who's -- all that 21 stuff. Once they got comfortable with the 22 expense, they would approve it in the banking 23 system and it would go back to Beecher Carlson and 24 then they would release wires or payment or 25 whatever from there. So it was like a three-step</p> |
| <p style="text-align: right;">126</p> <p>1 distressed private equity stuff had nothing to do 2 with Sentinel and vice versa. 3 BY MS. TOMKOWIAK: 4 Q Well, did you do any of your work for 5 Sentinel from the Highland office? 6 A Yes. 7 Q Did you use your Highland phone? 8 A I don't have a Highland phone. 9 Q Did you make phone calls regarding 10 Sentinel matters while you were at the Highland 11 office? 12 A Yes. 13 Q Did you -- did you have e-mail 14 correspondence regarding Sentinel matters while 15 you were working at the Highland office? 16 A Yes. 17 Q Did you ever ask anybody to be compensated 18 for the time that you were spending on Sentinel 19 matters? 20 A No. 21 Q Did Highland pay for your trips to the 22 Cayman Islands on behalf of Sentinel? 23 MS. SMITH: Objection, form. 24 A I don't believe so. I doubt it. 25</p> | <p style="text-align: right;">128</p> <p>1 process. All I would do is submit expenses. 2 Q So the other -- so the independent 3 directors had to approve your expenses? 4 A Every penny, yes. 5 Q What is the -- you said there was like a 6 list in compliance of affiliates. What -- have 7 you ever seen that list? 8 A No. I think -- I don't know if it was a 9 specific general list of affiliates. This was 10 with respect to shares that Sentinel owned and I 11 think it was classified as an affiliate on the 12 spreadsheet, if that makes sense. It wasn't a 13 giant list of affiliates, nonaffiliates or 14 whatever. 15 Q Was it a list of investors in Multi Strat? 16 Does that sound familiar? 17 A It wouldn't have been Multi Strat. It was 18 something to do with real estate, if I remember 19 right. 20 Q I am handing you what's been previously 21 marked as Exhibit 28. You can set that other 22 exhibit to the side. 23 MS. SMITH: Do we have that one already? 24 MS. TOMKOWIAK: You should. 25</p> |

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| <p>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>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>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>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>1 know if it's even -- are we considering that an</p> <p>2 entity on here?</p> <p>3 Q Do you know what it is?</p> <p>4 A SeaOne is an investment held at</p> <p>5 SS Holdings, that predated my time at Sentinel. I</p> <p>6 believe the investment was made in 2014ish.</p> <p>7 Q SS Holdings is a wholly owned sub of</p> <p>8 Sentinel Reinsurance, right?</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I think so.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Do you know whether Sentinel, through</p> <p>13 SS Holdings, still has an investment in SeaOne, at</p> <p>14 least as of June when you resigned from the board</p> <p>15 of Sentinel?</p> <p>16 A As far as I know, yeah.</p> <p>17 Q Do you know whether that's a profitable</p> <p>18 investment?</p> <p>19 A I know it's -- well, it's largely</p> <p>20 illiquid, so no money has been made so profitable,</p> <p>21 I don't know if I would characterize it as that.</p> <p>22 Q What do you mean by illiquid? Do you know</p> <p>23 how Sentinel through SS Holdings is invested in</p> <p>24 SeaOne?</p> <p>25 A I don't know what -- the details of the</p> | <p style="text-align: right;">135</p> <p>1 purpose -- you know, what it was set up for.</p> <p>2 Q Do you know if it has operations?</p> <p>3 A I don't know -- I don't know if it has</p> <p>4 operations.</p> <p>5 Q How do you know the name?</p> <p>6 A As part of the CIMA cleanup inspection,</p> <p>7 all that good stuff, Sentinel was carrying some --</p> <p>8 some of the assets from that list that we looked</p> <p>9 at prior that were deemed worthless, but again</p> <p>10 they all came over. We are were instructed --</p> <p>11 Sentinel was instructed to remove those from its</p> <p>12 balance sheet because they were worthless and it</p> <p>13 was resulting in a qualification on the audit. So</p> <p>14 the assets were all sold to Sebastian Clarke for a</p> <p>15 dollar, just to warehouse them off Sentinel's</p> <p>16 books.</p> <p>17 Q So did CIMA ask Sentinel to remove those</p> <p>18 from its balance sheet?</p> <p>19 A CIMA instructed -- or dictated to Sentinel</p> <p>20 that it was no longer to submit an audit with a</p> <p>21 qualification. Do you know what that means?</p> <p>22 Generally?</p> <p>23 Q You mean a qualified audit?</p> <p>24 A Yes.</p> <p>25 Q Yeah.</p> |
| <p style="text-align: right;">134</p> <p>1 original transaction. Again, that was way before</p> <p>2 my time. But Sentinel had a third-party valuation</p> <p>3 done on it at some point during my time --</p> <p>4 Q Do you know what --</p> <p>5 A -- to ascertain the value. But you know,</p> <p>6 again, third party.</p> <p>7 Q Do you know what the third party concluded</p> <p>8 was the value of that investment?</p> <p>9 A This was pre-COVID and this is -- who</p> <p>10 knows what happened to it after that, I haven't</p> <p>11 seen anything, but it was about \$45 million, give</p> <p>12 or take.</p> <p>13 Q Pre-COVID, so early 2020?</p> <p>14 A Would have been a valuation done for the</p> <p>15 2019 audit. So it would have been as of year-end</p> <p>16 12/31/19.</p> <p>17 Q And if you look at the Offshore Fund</p> <p>18 Structure, which is the chart before that.</p> <p>19 A Okay.</p> <p>20 Q There's an entity in the lower right-hand</p> <p>21 corner called Sebastian Clarke. It's not the very</p> <p>22 last one to the bottom right, but one over.</p> <p>23 A I see it.</p> <p>24 Q Do you know what that is?</p> <p>25 A I know the name. I don't know what its</p> | <p style="text-align: right;">136</p> <p>1 A And that was one of the things that was</p> <p>2 leading to the qualified audit. So indirectly</p> <p>3 CIMA said get rid of these and then the audit was</p> <p>4 clean last year, or unqualified.</p> <p>5 Q Unqualified in 2020?</p> <p>6 A For the 2019 financials.</p> <p>7 Q 2019. Do you know whether the 2020 audit</p> <p>8 has been completed?</p> <p>9 A It has not.</p> <p>10 MS. SMITH: Is now a good time for a</p> <p>11 break?</p> <p>12 MS. TOMKOWIAK: Give me just one minute to</p> <p>13 see if I'm done with that Sebastian Clarke thing.</p> <p>14 Just a few more follow-up questions on that.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q What does it mean that the assets were</p> <p>17 deemed worthless?</p> <p>18 A A lot of the -- or a number of the assets</p> <p>19 that were still sitting on the -- that list</p> <p>20 basically sent the balance sheets of the insured</p> <p>21 funds, were crisis era instruments that no longer</p> <p>22 had -- was my understanding had no value. Like</p> <p>23 you would see on there there's some zeros next to</p> <p>24 them and they just were worthless and were never</p> <p>25 going to have value again.</p> |

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| <p style="text-align: right;">137</p> <p>1 Q Do you know who deemed them worthless?</p> <p>2 A There were -- Highland marks, internal</p> <p>3 valuation at Highland, and we sent -- Sentinel</p> <p>4 sent all this information -- what we had over to</p> <p>5 this third-party valuation firm and some of them</p> <p>6 they said there wasn't even enough information</p> <p>7 because they were so old to say that they're</p> <p>8 worthless. And then you can look some of them up</p> <p>9 on Bloomberg and they're worthless.</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 A That's correct.</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 A I don't know.</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 A What was the name?</p> <p>6 Q Christopher Watler?</p> <p>7 A I don't believe I've ever heard that name.</p> <p>8 Q You've never heard that name?</p> <p>9 A I don't think so. It's not ringing a</p> <p>10 bell.</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 A If he was, I never spoke to him or met</p> <p>14 with him.</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 A Yeah. I know for sure Lesley was. I</p> <p>20 don't know if she replaced Andrew Dean. I think</p> <p>21 that's his name. I'm not sure.</p> <p>22 Q Okay.</p> <p>23 A I just remember the only person I spoke to</p> <p>24 that I can recall was Lesley Thompson.</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 A That's correct.</p> <p>5 Q And you don't have any more precise</p> <p>6 recollection when in September?</p> <p>7 A I don't know the exact date.</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 A Yes.</p> <p>11 Q Anybody else?</p> <p>12 A No, not that I recall.</p> <p>13 Q Did you replace a director on the board?</p> <p>14 A I don't know if I directly replaced</p> <p>15 anyone, but I was appointed along with a gentleman</p> <p>16 by the name of Dilip Massand. And I think as I</p> <p>17 mentioned before, Maples, there were two directors</p> <p>18 from Maples.</p> <p>19 Q Who were the two directors from Maples at</p> <p>20 the time you joined the board?</p> <p>21 A One was named Lesley Thompson. I think</p> <p>22 the other was named Andrew something, Dean maybe.</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 A Yes.</p> <p>2 Q Dilip, where did he work?</p> <p>3 A He was based in the Middle East. He</p> <p>4 provided service to SAS.</p> <p>5 Q And why was he asked to join the board?</p> <p>6 A You'd have to ask Mr. Ellington. I don't</p> <p>7 know.</p> <p>8 Q What role did he play on the board?</p> <p>9 A Same as me, just a board -- a director.</p> <p>10 Q Did you have any interactions with him?</p> <p>11 A I did, yeah.</p> <p>12 Q Do you know how long he stayed on the</p> <p>13 board?</p> <p>14 A I believe we were appointed around the</p> <p>15 same time. I want to say early 2020 he might have</p> <p>16 come off.</p> <p>17 Q Do you know why?</p> <p>18 A He resigned.</p> <p>19 Q Do you know why?</p> <p>20 A I think he was exploring other</p> <p>21 opportunities and no longer wanted to serve.</p> <p>22 Q Did he tell you why he was resigning from</p> <p>23 the board?</p> <p>24 A No, not directly, that I recall.</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 A No, not that I recall.</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 A I don't know.</p> <p>7 BY MS. TOMKOWIAK:</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 A Not to my knowledge.</p> <p>11 Q Did Mr. Massand work at Highland ever?</p> <p>12 A I don't know.</p> <p>13 Q You don't know?</p> <p>14 A Huh-uh.</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 A They were not.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q When did they come off the board?</p> <p>22 A I believe sometime in the fall of 2017.</p> <p>23 Q And is that with respect to both</p> <p>24 Ms. Thompson and Mr. Dean?</p> <p>25 A Again, I'm not sure as to the status of</p> | <p style="text-align: right;">143</p> <p>1 A I don't. I don't remember.</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 A The latter.</p> <p>7 Q As you sit here today, you don't recall?</p> <p>8 A Yes.</p> <p>9 Q And both of those individuals worked at</p> <p>10 Maples as well, correct?</p> <p>11 A That's incorrect.</p> <p>12 Q Where did they work?</p> <p>13 A Mr. Neveril worked at a firm -- works, as</p> <p>14 far as I know still at a firm called Compass,</p> <p>15 based in Cayman.</p> <p>16 Q Compass like the compass?</p> <p>17 A Yeah.</p> <p>18 Q Okay.</p> <p>19 A And Mr. Austin worked at a firm called</p> <p>20 IMS, also based in Cayman.</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 A A certain number from the Cayman Islands</p> <p>25 specifically?</p> |
| <p style="text-align: right;">142</p> <p>1 Mr. Dean. When you said she replaced him, I never</p> <p>2 heard that before, so I can't speak to that.</p> <p>3 Q But you believe that Ms. Thompson came off</p> <p>4 the board in 2017?</p> <p>5 A At some point.</p> <p>6 Q So in 2018, who were the directors of</p> <p>7 Sentinel?</p> <p>8 A Was myself, Dilip Massand and then around</p> <p>9 whatever time Ms. Thompson left, two new -- two</p> <p>10 independent directors were also appointed to the</p> <p>11 Sentinel board.</p> <p>12 Q And what are their names?</p> <p>13 A Jan Neveril is one, J-a-n N-e-v-e-r-i-l,</p> <p>14 and the other gentleman is named Damien Austin.</p> <p>15 Q So Mr. Neveril and Mr. Austin joined the</p> <p>16 board when Ms. Thompson left?</p> <p>17 A I would assume around the same time, yeah.</p> <p>18 Q Do you know who appointed them to the</p> <p>19 board?</p> <p>20 A I remember, I think myself and Mr. Sevilla</p> <p>21 interviewed a few perspective board members.</p> <p>22 Q How were those candidates identified?</p> <p>23 A Referrals. I'm not entirely sure from</p> <p>24 who.</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 A That, I don't know.</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 A The only -- my understanding is that a</p> <p>7 minimum of two at all times.</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 A I don't know.</p> <p>13 BY MS. TOMKOWIAK:</p> <p>14 Q Where did you get that understanding from?</p> <p>15 A I had heard it over the years or at some</p> <p>16 point, that we can't have less than two directors,</p> <p>17 probably from an attorney at some point.</p> <p>18 Q You don't recall who?</p> <p>19 A No.</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 A Yes.</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 A Yes.</p> |

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| <p>145</p> <p>1 Q Do you understand why Mr. Neveril resigned 2 from the board? 3 A Specific reasons why? I don't know. 4 Q Do you have a general understanding of why 5 Mr. Neveril resigned from the board? 6 A I'd rather not speculate as to his 7 motives. I don't know. 8 Q Well, did he tell you why he resigned from 9 the board? 10 A No. 11 Q Did anybody else tell you why Mr. Neveril 12 resigned from the board? 13 A Not that I recall. 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 A I don't know. 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>147</p> <p>1 same day? 2 A That sounds -- sure. 3 Q Do you know why they did that? 4 A I don't. 5 Q Did you receive a resignation letter from 6 either of them? 7 A I don't know. 8 Q Was anything happening at Sentinel at this 9 time that would cause them to resign? 10 A I think there was a reconstitution of the 11 board. I was also resigning at some point. 12 Q Anything else? 13 A Not that I can think of. Excuse me. Not 14 that I can think of. 15 Q Do you know who replaced Mr. Neveril and 16 Mr. Austin? 17 A Yes, I do. 18 Q Who is that? 19 A A gentleman named Wade Kenny or Kenny or 20 Kenny. And then a gentleman named Casey McDonald. 21 Q Do you know how they were appointed? 22 A What do you mean, how they were appointed? 23 Q Who appointed them; do you know? 24 A I think that may be privileged. 25 Q Well, just who appointed them? Was it the</p> |
| <p>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 A I don't know. 13 BY MS. TOMKOWIAK: 14 Q What about with respect to Mr. Austin? 15 A I don't know. 16 Q He didn't tell you why he was resigning? 17 A Not that I recall. 18 Q And nobody else told you why he was 19 resigning? 20 A Not that I recall. 21 Q Do you have term limits on the Sentinel 22 board? 23 A I've never heard that. I don't know one 24 way or the other, but -- I don't know. 25 Q Are you aware that they resigned on the</p> | <p>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 A Yeah, can I ask them? 7 BY MS. TOMKOWIAK: 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 A I understand. 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 A He was referred by counsel and his</p> <p>10 appointment was approved by CIMA.</p> <p>11 Q Okay. And what about Mr. McDonald?</p> <p>12 A It was the same. Referred by counsel,</p> <p>13 approved by CIMA.</p> <p>14 Q What counsel?</p> <p>15 A Sentinel's counsel.</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 A It was --</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 A Yes.</p> <p>6 BY MS. TOMKOWIAK:</p> <p>7 Q Okay. What type of interactions did you</p> <p>8 have?</p> <p>9 A I would characterize it as onboarding for</p> <p>10 them for the new directors.</p> <p>11 Q Okay. Did you have a meeting with them?</p> <p>12 A A phone call.</p> <p>13 Q Phone call. Just one phone call?</p> <p>14 A In that time frame, I think, yes.</p> <p>15 Q Okay. Have there been phone calls since</p> <p>16 then?</p> <p>17 A No.</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 A I don't believe so.</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 A They are aware of the policy, yes.</p> |
| <p style="text-align: right;">150</p> <p>1 A Collas Crill.</p> <p>2 BY MS. TOMKOWIAK:</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 A Work -- can you -- sorry, can you be more</p> <p>8 specific what you mean?</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 A Between June -- sorry, between June 22nd</p> <p>14 and June 25th?</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 BY MS. TOMKOWIAK:</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 A Then it was privileged, I believe.</p> <p>7 BY MS. TOMKOWIAK:</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 A No, not Mr. Neveril.</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 A That's correct.</p> <p>16 Q And attorneys were on the phone?</p> <p>17 A Correct.</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>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 A Right. 6 Q -- before you resigned from the board? 7 A With counsel present, yes. 8 Q Okay. How many other conversations? 9 A One that I can recall. 10 Q And were both Mr. Kenny and Mr. McDonald 11 present? 12 A Yes. 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 A That's right. 19 Q Okay. Did you provide Mr. Kenny or 20 Mr. McDonald with any documents? 21 A I don't believe so. 22 Q Do you know anything else about their 23 onboarding process? 24 MS. SMITH: Objection to form. 25 A Nothing other than what I was involved</p> | 153 | <p>1 A They're aware a claim had been made, yes. 2 BY MS. TOMKOWIAK: 3 Q Did you make them aware? 4 MS. SMITH: Objection to form. 5 A I'm not sure who made them aware. 6 BY MS. TOMKOWIAK: 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 A Yes, they were. 14 BY MS. TOMKOWIAK: 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 A Yes. 21 BY MS. TOMKOWIAK: 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 A I received a claim letter, yes.</p> | 155 |
| <p>1 with. 2 BY MS. TOMKOWIAK: 3 Q And you were only involved with those two 4 phone calls? 5 A As best as I can remember, yeah. 6 Q What about e-mails? Did you have any 7 e-mail communication with either of them? 8 A Some. None that wasn't privileged. 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 A That's right. 16 Q And you were seeking advice from those 17 attorneys on those e-mails? 18 MS. SMITH: Objection to form. 19 A I don't -- I don't recall the nature of 20 the e-mail with respect to counsel. 21 BY MS. TOMKOWIAK: 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> | 154 | <p>1 BY MS. TOMKOWIAK: 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 A I forwarded it to counsel. 9 BY MS. TOMKOWIAK: 10 Q Did you do anything else? 11 A Not that I recall. 12 Q Did you discuss it with your -- the other 13 directors on the board outside of the presence of 14 counsel? 15 A No. 16 Q Did you discuss it with anybody at 17 Highland? 18 A No. 19 Q Did you discuss it with anybody at SAS? 20 A Not that I recall. 21 Q Did you discuss it with Mr. Ellington? 22 A Not that I recall. 23 Q Did you discuss it with Mr. Dondero? 24 A Not that I recall. 25 Q Other than forwarding it to counsel, did</p> | 156 |

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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 A No, not that I can recall. 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 A I don't remember e-mailing to Beecher 9 Carlson, no. 10 BY MS. TOMKOWIAK: 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 A It's my understanding. 17 BY MS. TOMKOWIAK: 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 A I believe the board. 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 A Yes. 8 Q -- that's the time frame I'm talking 9 about. 10 A Okay. And can you repeat the question? 11 Q Sure. Do you know how many -- do you know 12 approximately how many policies Sentinel wrote? 13 A I don't know the number. 14 Q Was it more than the -- more than one? 15 A Yes. 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 A Not that I'm aware of. 21 BY MS. TOMKOWIAK: 22 Q Do you know what an ATE policy is? 23 A I do. 24 Q What is it? 25 A It stands for after-the-event policy. An</p> |
| <p style="text-align: right;">158</p> <p>1 evaluate a claim that was made on a policy that 2 Sentinel wrote? 3 A No, I was not. 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 A Just the one you referenced earlier. 8 Q Do you know approximately how many 9 policies Sentinel wrote? 10 A At what point in time? 11 Q At the -- during the time you were a 12 director. 13 A Which specific time, time frame? 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 A Okay. 19 BY MS. TOMKOWIAK: 20 Q Whatever date that was. 21 A Yeah. 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 uninsured pays a premium in exchange for coverage 2 for -- that's based on the result of an event, not 3 specific to any -- I believe it's pretty broad 4 what you can write, as far as policies go. 5 Q How much time would you say that you spent 6 on Sentinel matters on a monthly basis? 7 A It depends on the month. 8 Q What about on a yearly basis? 9 A The percentage of my time? Is that what 10 you -- sorry, is that what you asked? 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 A Average for the year, probably, I don't 15 know, couple hours a week, three or four hours a 16 week. 17 Q What types of actions did the board -- the 18 Sentinel board need to approve? 19 A Anything that the company did. 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 A Yeah, that's what I'm saying.</p> |

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| <p style="text-align: right;">161</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Okay. So there was no -- there was</p> <p>3 nothing that specified that for a transaction over</p> <p>4 this particular limit, the board needs to approve,</p> <p>5 there was no materiality threshold whatsoever?</p> <p>6 A If there was, I wasn't aware of it. And</p> <p>7 like I said earlier, down to the penny, everything</p> <p>8 would go through the directors.</p> <p>9 Q And so when you say the board needed to</p> <p>10 approve, was that just referring to the</p> <p>11 independent directors or was your approval also</p> <p>12 needed?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A I had no approval authority that I'm aware</p> <p>15 of. Everything was sent to the other two</p> <p>16 independent directors.</p> <p>17 BY MS. TOMKOWIAK:</p> <p>18 Q Was that true with respect to -- was that</p> <p>19 all matters, not just financial matters but</p> <p>20 anything that needed to be approved was sent to</p> <p>21 the two other directors?</p> <p>22 A Yes.</p> <p>23 Q Did the board have regular meetings?</p> <p>24 A Well, as I mentioned earlier, we had one</p> <p>25 annual meeting the first year and then I believe</p> | <p style="text-align: right;">163</p> <p>1 Q Did you take notes during your meetings?</p> <p>2 A Probably not very many, if any. There's</p> <p>3 usually a presentation by Beecher that was up on</p> <p>4 the screen.</p> <p>5 Q Were you provided with your own copy of</p> <p>6 that presentation?</p> <p>7 A I don't recall. Probably, if I asked.</p> <p>8 They probably sent it. I just don't know for</p> <p>9 sure.</p> <p>10 Q So you just don't recall if they sent you</p> <p>11 a copy of the presentation by e-mail?</p> <p>12 A I don't.</p> <p>13 Q Do you recall if they printed out hard</p> <p>14 copies for you to have at the meeting?</p> <p>15 A They were all -- they were never in</p> <p>16 person, the meetings.</p> <p>17 Q Okay. Great. That was my next question.</p> <p>18 So all of the meetings took place by phone?</p> <p>19 A That's correct.</p> <p>20 Q Of -- well, who attended the meetings?</p> <p>21 A I would attend, Mr. Massand when he was on</p> <p>22 the board would attend via phone, Beecher Carlson</p> <p>23 ran the meetings, and then the other two directors</p> <p>24 would attend via phone. They were in Cayman, so</p> <p>25 they may have called in from the same place, but</p> |
| <p style="text-align: right;">162</p> <p>1 after that, CIMA instructed us we needed to have</p> <p>2 more. So two was generally the goal.</p> <p>3 Q And by the first year, so do you mean that</p> <p>4 in 2017, to the best of your memory, you had one</p> <p>5 meeting?</p> <p>6 A We may have had the 2017 meeting in early</p> <p>7 '18, because there was transition with the board.</p> <p>8 I don't remember the exact date.</p> <p>9 Q Did anybody take minutes at those</p> <p>10 meetings?</p> <p>11 A Beecher Carlson.</p> <p>12 Q So if we wanted to ask somebody for</p> <p>13 minutes of those meetings, that's who would have</p> <p>14 them?</p> <p>15 A I believe so.</p> <p>16 Q Did the board ever act by written consent?</p> <p>17 MS. SMITH: I'm going to caution you not</p> <p>18 to divulge privileged information.</p> <p>19 A I'm not sure what you mean by that either.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Well, then, maybe you didn't do it, but</p> <p>22 did the board ever -- instead of meeting, did the</p> <p>23 board ever take an action by just signing</p> <p>24 something in writing?</p> <p>25 A I don't recall.</p> | <p style="text-align: right;">164</p> <p>1 that's who would attend.</p> <p>2 Q If you were meeting by phone, then can you</p> <p>3 just explain how there was a presentation on the</p> <p>4 screen? What do you mean by that?</p> <p>5 A Like a Zoom-type meeting, where you can</p> <p>6 share screen, I guess.</p> <p>7 Q So your meetings were by videoconference,</p> <p>8 then?</p> <p>9 A I think so. Or they would send a</p> <p>10 presentation. Again, I'm not entirely sure. Like</p> <p>11 a Teams meeting you can just click on and</p> <p>12 everything shows up.</p> <p>13 Q Okay. And so again, you don't recall if</p> <p>14 they sent you an actual copy of the presentation</p> <p>15 or if it was just somehow shared with you via some</p> <p>16 type of web platform?</p> <p>17 A Right.</p> <p>18 Q And you don't recall if you took notes or</p> <p>19 not?</p> <p>20 A I don't.</p> <p>21 Q If you did take notes, where would those</p> <p>22 notes be now?</p> <p>23 A I have no idea.</p> <p>24 Q Did you have any regular practice with</p> <p>25 respect to notes?</p> |

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| <p style="text-align: right;">165</p> <p>1 A I had a few notebooks over the years.</p> <p>2 Q And what would you do with them?</p> <p>3 A I would -- it's one of those like reusable</p> <p>4 ones to take the insert out and put it somewhere.</p> <p>5 I never, ever remember going back and looking at</p> <p>6 an old notebook.</p> <p>7 Q Would you throw them away?</p> <p>8 A I don't know what happened to them.</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 A It looks like it, yes.</p> <p>17 Q Is that your signature?</p> <p>18 A That is my signature.</p> <p>19 Q You say, Dear Sirs. Who did you mean by</p> <p>20 that?</p> <p>21 A The two newly appointed directors.</p> <p>22 Q Mr. Kenny and Mr. McDonald?</p> <p>23 A That's right.</p> <p>24 Q Why did you resign from the board?</p> <p>25 A On advice of counsel.</p> | <p style="text-align: right;">167</p> <p>1 any privileged information.</p> <p>2 A I believe this letter was sent to the two</p> <p>3 directors you mentioned, probably Collas Crill as</p> <p>4 well.</p> <p>5 BY MS. TOMKOWIAK:</p> <p>6 Q Do you know whether anybody has replaced</p> <p>7 you on the board?</p> <p>8 A I don't.</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 A Okay. I have reviewed it.</p> <p>19 BY MS. TOMKOWIAK:</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 A Yes.</p> |
| <p style="text-align: right;">166</p> <p>1 Q Any other reason?</p> <p>2 A No.</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 A On advice of my attorneys here today.</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 A I believe that's right.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q Did anybody other than your counsel</p> <p>17 suggest that you resign?</p> <p>18 A No.</p> <p>19 Q Did you ask anybody other than your</p> <p>20 counsel if you should resign?</p> <p>21 A Not that I recall.</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 A I believe it does, yes.</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 A No. There was one actuarial analysis.</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 A At the time, yes.</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 A Yes, I do.</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 A Required by who? 5 Q Required by Sentinel. 6 MS. SMITH: Objection to form. 7 A He was never -- he was never required to 8 do anything, but he knew the case so he would 9 opine on the potential -- any updates with the 10 trial, all that stuff. 11 BY MS. TOMKOWIAK: 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 A About once a year. 16 Q What type of format? Was that like a 17 formal meeting or informally? 18 A It was generally around the time that we 19 had to meet with the actuary. 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 A No. 24 Q Just you? 25 A Myself, generally a representative from</p> | <p style="text-align: right;">171</p> <p>1 afterwards and they reviewed -- they would review 2 the report and if they had questions, they were 3 allowed to reach out to Mr. Stubbs and whoever. 4 Q And on this chart here it says Expected 5 Payout in the column to the right. Do you see 6 that? 7 A I do. 8 Q And that was referring to Sentinel's 9 expected payout, right? 10 A That's right. 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 A Yes. 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 A Which part, the percentage or the 91? 21 Q The 91. 22 A That was the full limit of the policy. 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 Beecher Carlson, Mr. Stubbs and Mr. Leventon. 2 Q Anybody else? 3 A Not that I recall. 4 Q Mr. Ellington? 5 A No. 6 Q Mr. Dondero? 7 A No. 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 A It was just generally any update on the 13 litigation, the trial and kind of Mr. Leventon's 14 thoughts on likely outcomes. 15 BY MS. TOMKOWIAK: 16 Q Why did Sentinel want to be kept up to 17 date on the trial? 18 A You have to -- this actuarial analysis has 19 to be done by -- mandated by CIMA, as part of the 20 year-end audit. 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 A Yes. They would see the work product</p> | <p style="text-align: right;">172</p> <p>1 MS. SMITH: Objection to form. 2 A That's what this says, yeah. 3 BY MS. TOMKOWIAK: 4 Q Did you agree with this? 5 A With the probabilities or -- 6 Q No, with the conclusion. 7 A Yeah. It was always -- there was always a 8 chance that the full policy would pay out, yes. 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 A The 1 million -- 14 Q One -- if I said 1 million, I misspoke. 15 Sorry, the \$1 billion judgment in the case. 16 A Sorry. I wanted to make sure we're 17 talking about the same thing. I was not aware of 18 that, no. 19 Q Do you know who drafted the ATE policy? 20 A I don't. 21 Q Was it already in place by the time you 22 became a director of Sentinel? 23 A Yes. 24 Q Do you know who negotiated the policy on 25 behalf of Sentinel?</p> |

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| <p>173</p> <p>1 A I don't.</p> <p>2 Q Do you know who negotiated the policy on</p> <p>3 behalf of the insureds?</p> <p>4 A I don't.</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 A I don't.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Did you ask when you became a director?</p> <p>11 A Did I ask what diligence had been done?</p> <p>12 Q Yes.</p> <p>13 A No, it was already in place, so I didn't</p> <p>14 think to -- think to look back like that.</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 A I don't recall specifically. Again, I</p> <p>21 think it's always -- was always a chance.</p> <p>22 BY MS. TOMKOWIAK:</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>175</p> <p>1 between the parties?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 A I don't believe so.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q You don't believe so?</p> <p>6 A I don't believe Sentinel had the right to</p> <p>7 approve any settlement.</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 A I'm not following. I'm sorry.</p> <p>14 BY MS. TOMKOWIAK:</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 A That's correct.</p> <p>19 Q And they were defendants in the UBS</p> <p>20 litigation?</p> <p>21 A That's correct.</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>174</p> <p>1 more likely than not that UBS would win the trial?</p> <p>2 A No.</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 A I guess it would be good information to</p> <p>8 have.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Did you ever ask anybody to give you an</p> <p>11 opinion on that?</p> <p>12 A No.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MS. TOMKOWIAK:</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 A I have no idea. I was not involved in any</p> <p>21 settlement discussions with UBS.</p> <p>22 BY MS. TOMKOWIAK:</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>176</p> <p>1 MS. SMITH: Objection to form, calls for a</p> <p>2 legal conclusion.</p> <p>3 A Yeah, I can't -- I can't make that</p> <p>4 conclusion. I don't know.</p> <p>5 BY MS. TOMKOWIAK:</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 A That's right.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MS. TOMKOWIAK:</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 A I follow now. And, yes, I think that</p> <p>21 would have been okay.</p> <p>22 BY MS. TOMKOWIAK:</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 A Well, sure. It wouldn't be anything</p> |

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| <p style="text-align: right;">177</p> <p>1 above -- you couldn't settle for more than the</p> <p>2 policy was for and expect Sentinel to pay anything</p> <p>3 above that.</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>8 A I believe so.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q You received a subpoena to produce</p> <p>11 documents in connection with this matter, right?</p> <p>12 A That's correct.</p> <p>13 Q What did you do to identify documents</p> <p>14 responsive to that subpoena?</p> <p>15 A I searched my e-mails.</p> <p>16 Q Which e-mails?</p> <p>17 A Wait, no, I didn't. I was thinking</p> <p>18 Highland. I didn't have my Highland e-mail</p> <p>19 anymore. I searched my personal e-mail. I</p> <p>20 searched the papers I took from my desk when I</p> <p>21 left and that was about all I had.</p> <p>22 Q What about your SAS Management e-mail?</p> <p>23 A I no longer had access to it.</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>4 A Both.</p> <p>5 Q What search terms did you use?</p> <p>6 A Sentinel, reinsurance. I think that was</p> <p>7 about it.</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>11 A Like papers or actual electronic</p> <p>12 documents? What do you mean?</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>17 A No. My desk was, you know, relatively</p> <p>18 messy. Sometimes I would leave stuff on my desk,</p> <p>19 but I generally didn't save much in the way of</p> <p>20 Sentinel-related documents.</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>24 A I did.</p> <p>25 Q Where was that?</p> |
| <p style="text-align: right;">178</p> <p>1 A It popped up as logged out of my phone one</p> <p>2 day and I could never get back in.</p> <p>3 Q Do you have a personal computer?</p> <p>4 A I do not.</p> <p>5 Q Did you check your phone?</p> <p>6 A I did.</p> <p>7 Q Did you check your text messages?</p> <p>8 A I did.</p> <p>9 Q Did you look to see if you still had your</p> <p>10 notebooks?</p> <p>11 A I did.</p> <p>12 Q Okay.</p> <p>13 A I have one notebook that I still use today</p> <p>14 and there was nothing in there Sentinel related.</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>18 A I used search terms and then just kind of</p> <p>19 scanned to see if anything might have fallen</p> <p>20 through.</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>24 A No. Everything I found I sent to counsel.</p> <p>25 Q Got it. And just to clarify, everything</p> | <p style="text-align: right;">180</p> <p>1 A It was on my computer.</p> <p>2 Q On your Highland computer?</p> <p>3 A It was, yeah.</p> <p>4 Q Was that on -- where was the folder?</p> <p>5 A There was a folder on my desktop of -- I</p> <p>6 had a tablet that was stolen out of my car in</p> <p>7 September of 2020, along with a notebook and a box</p> <p>8 of wine. And from then on, I -- yeah, there</p> <p>9 wasn't much going on Sentinel related, so I don't</p> <p>10 know that I had anything on my -- the new computer</p> <p>11 I got. And I have a few documents on my current</p> <p>12 computer that I produced to counsel.</p> <p>13 Q A box of wine or a case of wine?</p> <p>14 A Box, two bottles. Just came in the mail.</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>18 A Yes.</p> <p>19 Q Okay. So it wasn't backed up somewhere in</p> <p>20 the --</p> <p>21 A I saved -- bad habit. I save everything</p> <p>22 on my desktop generally.</p> <p>23 Q And to your knowledge that wasn't backed</p> <p>24 up anywhere on Highland's servers?</p> <p>25 A I don't think so.</p> |

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| <p>181</p> <p>1 Q What about in your Highland e-mail? Did 2 you have a folder for Sentinel? 3 A I don't believe so. 4 Q What about in your SAS e-mail? Did you 5 have a folder for Sentinel? 6 A I don't think so. I don't really file 7 much. 8 Q I'm handing you what we have previously 9 marked as Exhibit 58. 10 A Do you want me to review the whole thing? 11 Q You can if you want to, but this is one of 12 the documents that you provided to us, right? 13 A Yeah. 14 Q Okay. Are you familiar with it? 15 A I know what it is, yes. 16 Q I'm going to let your attorney find her 17 copy if she would like to, before I ask you other 18 questions about it. 19 A May I run to the restroom real quick 20 before we do this? Is that okay? Sorry. 21 Q Yeah. Take a break. 22 A Sorry. 23 Q That's okay. 24 THE VIDEOGRAPHER: Off the record at 25 2:20 p.m.</p> | <p>183</p> <p>1 A I don't think so. 2 Q I don't want to know any conversations 3 with counsel, but other than that, do you know if 4 Mr. Ellington is aware that you have resigned from 5 the board of Sentinel? 6 A I don't know. 7 Q Were the other Sentinel directors 8 compensated for the work that they did with 9 Sentinel? 10 A Yes. 11 Q Do you know how much? 12 A Each -- I think they were each paid about 13 \$10,000 a year. 14 Q Did you -- 15 A Give or take. It's in that ballpark. 16 Q Did you ever ask to be compensated for 17 your work as a director at Sentinel? 18 A No. 19 Q Why not? 20 A Never thought to. 21 Q And I think you said this, but I want to 22 be clear. In the time that you were a director at 23 Sentinel, the claim that was made on the 24 ATE policy with respect to the UBS litigation was 25 the only claim made on a Sentinel insurance policy</p> |
| <p>182</p> <p>1 (Recess taken from 2:20 p.m. CDT to 2 2:36 p.m. CDT) 3 THE VIDEOGRAPHER: The time is 2:36 p.m. 4 We are back on the record. 5 BY MS. TOMKOWIAK: 6 Q Before we get to that exhibit, I have a 7 few follow-up questions on some of the things that 8 we were talking about before the break. You said 9 earlier that Mr. Sevilla had some role in the 10 day-to-day with Sentinel. What was that role? 11 A I think it was kind of an unofficial -- 12 like he was the point person, I guess, for things 13 that had to happen with Sentinel. I don't know 14 exactly what, but -- 15 Q Do you know how he got that role? 16 A I think he was -- he helped with the 17 formation, as I understand it. He was part of the 18 team. 19 Q Do you know who asked him to do that? 20 A I don't. 21 Q Before you resigned from the Sentinel 22 board, did you tell Mr. Ellington that you were 23 going to do it? 24 A I don't recall if I told him or not. 25 Q Did you tell him afterwards?</p> | <p>184</p> <p>1 that you're aware of? 2 A That's correct. 3 Q So if you look at Exhibit 58. This is a 4 document that you found when you were searching 5 through your files; is that right? 6 A I believe so. 7 Q Was this a hard copy or an electronic 8 copy? 9 A I believe an electronic copy. 10 Q So you had it in your e-mail? 11 A I think so. 12 Q And this is the policy that we've been 13 talking about today, right? 14 A I believe it is, yes. 15 Q Okay. Again, you're not aware of any 16 other policy that Sentinel wrote that relates to 17 the UBS litigation, right? 18 A No, but I haven't looked at every single 19 page so far, but I believe it is, yeah. 20 Q Why don't you take a minute to look at it 21 because I'd like to know if you believe that this 22 is a full and complete version of the ATE policy 23 with all of the endorsements that you are aware 24 of. 25 A Okay.</p> |

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| <p>1 (Witness reviews document.)</p> <p>2 A Okay.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Is this a full and complete version of the</p> <p>5 ATE policy?</p> <p>6 A To the best of my knowledge, it is.</p> <p>7 Q Are you aware of any other endorsements to</p> <p>8 this policy?</p> <p>9 A I'm not.</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 A It was an attachment.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Okay. Did you provide the cover e-mail to</p> <p>20 your counsel?</p> <p>21 A What do you mean by cover e-mail?</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 A Did I send the -- like did I write the</p> | 185 | <p>1 outline. Page 26.</p> <p>2 A Bates 26?</p> <p>3 Q Yes.</p> <p>4 A Okay. I'm there.</p> <p>5 Q You're with the lingo now.</p> <p>6 A I'm getting there.</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 A That's what it says.</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 A This would be -- I wasn't really aware of</p> <p>15 it in August of 2017.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Did you have -- you said you sat in the</p> <p>18 legal department, right?</p> <p>19 A That's right.</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 A I don't recall, but Highland was engaged</p> <p>24 in litigation with a lot of people. So you'd hear</p> <p>25 a lot of different cases, I guess.</p> | 187 |
| <p>1 e-mail, in other words?</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 BY MS. TOMKOWIAK:</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 A I provided everything to counsel.</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 A Yeah, that's correct.</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> | 186 | <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 A I don't have any specific recollections of</p> <p>6 UBS being discussed in August of 2017.</p> <p>7 BY MS. TOMKOWIAK:</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 A I think after I was appointed to the board</p> <p>12 or I came on the board --</p> <p>13 Q How soon --</p> <p>14 A -- of Sentinel.</p> <p>15 Q I'm sorry. Were you done?</p> <p>16 A The board of Sentinel, sorry.</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 A I don't know specific dates. I'm going</p> <p>21 to -- yeah, I don't know.</p> <p>22 Q Do you believe it was shortly thereafter?</p> <p>23 Months thereafter?</p> <p>24 A I would say within a few months.</p> <p>25 Q Who provided you with a copy of the</p> | 188 |

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| <p>189</p> <p>1 policy?</p> <p>2 A Probably -- I don't know, actually.</p> <p>3 Q Was it somebody at Highland?</p> <p>4 A It probably would have been Beecher</p> <p>5 Carlson.</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 A I think when I came on board, I was</p> <p>10 provided several documents from Beecher at some</p> <p>11 point about what the company is, what it does,</p> <p>12 that sort of thing, the operations, the financial</p> <p>13 statements.</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 A The last -- like last completed set of</p> <p>17 financials was last year, so Beecher Carlson would</p> <p>18 probably --</p> <p>19 Q Beecher Carlson is the one who would keep</p> <p>20 those?</p> <p>21 A That's right.</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>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 A I don't know.</p> <p>6 Q Can you think of any, sitting here today?</p> <p>7 A I can't think of any.</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 A Probably.</p> <p>13 Q More likely than not?</p> <p>14 A More likely than not, yes.</p> <p>15 Q And do you see the Premium is \$25 million?</p> <p>16 A I do.</p> <p>17 Q Do you know who determined that?</p> <p>18 A I do not.</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 A Yes.</p> <p>22 Q That's Mr. Dondero's signature on behalf</p> <p>23 of the insureds; is that right?</p> <p>24 A It appears to be.</p> <p>25 Q And I see that it says Andrew Dean,</p> |
| <p>190</p> <p>1 A As best -- yeah, that's my understanding.</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 A That's right.</p> <p>5 Q And there's three funds here that are</p> <p>6 listed as the insureds, right?</p> <p>7 A That's right.</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 A That's right.</p> <p>12 Q And the Limit of Indemnity is 100 million.</p> <p>13 Do you see that?</p> <p>14 A I do.</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 A I don't. I wasn't involved with the</p> <p>20 transaction.</p> <p>21 BY MS. TOMKOWIAK:</p> <p>22 Q Do you know who made that decision?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A I don't.</p> <p>25</p> | <p>192</p> <p>1 director. Do you know whether, in fact, that's</p> <p>2 Mr. Dean's signature?</p> <p>3 A I don't know whether or not it is, but...</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 A I have no reason to believe it's not, no.</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 A No, it's not.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Do you know whose it is?</p> <p>14 A I don't.</p> <p>15 Q And do you know the significance of this</p> <p>16 Cayman Islands stamp at the bottom?</p> <p>17 A Just what it says. It's a government</p> <p>18 stamp, but nothing further.</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 A I know it was ultimately approved by CIMA,</p> <p>23 but I'm not sure if that came via paper copy,</p> <p>24 electronic copy.</p> <p>25</p> |

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| <p>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 I don't know. 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 I've never seen that stamp before. I 10 don't know what it means. 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 This stamp doesn't look like anything I've 15 ever seen anywhere before, is all I'm saying. 16 Q Okay. So you don't recall seeing it at 17 the time that you got this policy? 18 A I wasn't -- like when I received a copy of 19 the policy? 20 Q Yeah. 21 A I'm sure it was on there, but... 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>195</p> <p>1 this 2017 year-end audit, so early 2018 or first 2 half of 2018. 3 Q And how did it -- how would it have come 4 up in the audit? 5 A The assets that were transferred over -- 6 or as part of the ATE policy, needed to be valued 7 by a third party to perform the valuations. 8 Again, this is -- I think the auditors demanded 9 it, possibly Beecher as well. But when the 10 third-party valuations came back, they were higher 11 than 25 million, so the premium was adjusted 12 accordingly. 13 Q Who made the decision to adjust the 14 premium? 15 A It would have been between Beecher Carlson 16 and the auditors. Beecher prepares the financial 17 statements. 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 No. The -- no. 22 Q Do you recall who did the valuation? 23 A The third-party valuation was a company 24 called Valuation Research Corp. or corporation, 25 VRC we refer to them as.</p> |
| <p>194</p> <p>1 MS. SMITH: Objection to form. 2 A Would you mind rephrasing? 3 BY MS. TOMKOWIAK: 4 Q Is there something that you didn't 5 understand about the question? 6 A It was more of a statement than a 7 question, to me. 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 There was -- 14 MS. SMITH: Objection to form. 15 A No. It's a real policy, if that's what 16 you're asking. 17 BY MS. TOMKOWIAK: 18 Q If you look at the Endorsement No. 1, 19 which is Bates 27. 20 A Yes. 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 This would have been part of -- I don't 25 know exactly when, but would have come up during</p> | <p>196</p> <p>1 Q Did you receive a copy of that valuation? 2 A I would have, yeah. 3 Q Is that something that you looked for to 4 respond to the subpoena? 5 A It would have been in my SAS e-mail that I 6 no longer have access to. 7 THE REPORTER: Repeat that. 8 A It would have been in my SAS e-mail that I 9 no longer have access to. Excuse me. They would 10 have been. There are multiple valuations from 11 multiple securities. 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 There was a report for each security. 17 Q Do you recall approximately how many 18 reports you received? 19 A Maybe tenish. 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 I would think so. 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 A If she were still on the board, then yes.</p> <p>5 BY MS. TOMKOWIAK:</p> <p>6 Q Okay. And you just don't recall when</p> <p>7 Ms. Thompson was on the board?</p> <p>8 A I don't remember when she resigned from</p> <p>9 the board.</p> <p>10 Q Do you know why she resigned from the</p> <p>11 board?</p> <p>12 A I don't.</p> <p>13 Q So she didn't tell you?</p> <p>14 A I don't remember being given a reason.</p> <p>15 Q Did you think Ms. Thompson was good at her</p> <p>16 job?</p> <p>17 A In my limited interactions, yeah, she was</p> <p>18 competent.</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 A I don't remember anything adding up to</p> <p>25 that number. The only one I do remember was a</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 A It consisted of some CLO positions.</p> <p>6 Sentinel already had several CLO positions from</p> <p>7 several years prior so they were already on the</p> <p>8 balance sheet. But there was some new CLOs.</p> <p>9 There were some publicly traded equities, stocks</p> <p>10 and an interest in Multi Strat, Highland</p> <p>11 Multi Strat, I would assume as part of this</p> <p>12 number.</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 A I would assume it's part of the investment</p> <p>19 portfolio number, yeah.</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 A At that time, yes.</p> |
| <p style="text-align: right;">198</p> <p>1 receivable from the IRS, an income tax receivable,</p> <p>2 and that was approximately a half a million</p> <p>3 dollars.</p> <p>4 Q Do you know if Sentinel ever received</p> <p>5 that?</p> <p>6 A Not in full but in part, yes.</p> <p>7 Q Approximately how much of the half a</p> <p>8 million did it receive?</p> <p>9 A 430, 25, 30 grand.</p> <p>10 Q Was that because the IRS didn't refund as</p> <p>11 much as was expected?</p> <p>12 A I honestly don't know. It had been on the</p> <p>13 books, as I understood it, for quite some time.</p> <p>14 The books of whatever fund it came from. I'm not</p> <p>15 sure which one it sat on.</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 A Oh, it had nothing to do with -- it was</p> <p>22 just an asset that was transferred over as part of</p> <p>23 the payment for the policy. Whatever -- the IRS</p> <p>24 issue would have been with whatever fund it sat</p> <p>25 on.</p> | <p style="text-align: right;">200</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Did you -- were you personally involved in</p> <p>3 this endorsement; do you know?</p> <p>4 A I would have been involved in the audit</p> <p>5 and facilitating the valuations that would have</p> <p>6 led to this endorsement.</p> <p>7 Q Do you know who drafted this endorsement?</p> <p>8 A I do not.</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 A I'm not entirely sure.</p> <p>13 Q Would you have reviewed it before</p> <p>14 Ms. Thompson signed it?</p> <p>15 A I would have been aware of what was</p> <p>16 happening, yes.</p> <p>17 Q But would you have reviewed this</p> <p>18 endorsement specifically?</p> <p>19 A The actual letter? Possibly.</p> <p>20 Q Do you recall doing so?</p> <p>21 A Again, I know these numbers, I'm aware of</p> <p>22 these numbers. I don't specifically recall</p> <p>23 reviewing this exact document.</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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| 201 | <p>1 coverage stay the same?</p> <p>2 A I don't know.</p> <p>3 Q Did you ask?</p> <p>4 A I'm sure it came up, but for insurance</p> <p>5 matters like that, we generally rely on Beecher,</p> <p>6 the insurance manager. So if they didn't say the</p> <p>7 policy had to go up or the limit went up, then it</p> <p>8 wouldn't have gone up.</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 A Not that I'm aware of.</p> <p>13 Q Do you know why this is not signed by any</p> <p>14 of the insureds?</p> <p>15 A I don't know.</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 A I'm not sure.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Do you know whether or not they agreed to</p> <p>22 this?</p> <p>23 A The insureds?</p> <p>24 Q Yes.</p> <p>25 A I don't know whether or not they agreed.</p> | 203 | <p>1 A Not specifically. Again, I think it came</p> <p>2 up during an audit and I think Beecher -- since</p> <p>3 there was some cash that came over with the policy</p> <p>4 that was earmarked for litigation expense, they</p> <p>5 decided to enter it on the balance sheet like</p> <p>6 this, where -- they call it risk mitigation.</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 A It was a newly created line on the balance</p> <p>11 sheet specifically to cover all litigation-related</p> <p>12 costs for the insureds.</p> <p>13 BY MS. TOMKOWIAK:</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 A Again, I believe it was a suggestion by</p> <p>18 Beecher Carlson, to move this cash to a certain</p> <p>19 bucket on the balance sheet.</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> |
| 202 | <p>1 Q Do you know whether they had to agree?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 A I don't know.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q With respect to the second endorsement,</p> <p>6 are you familiar with that one?</p> <p>7 A Yes, I am.</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 A I would assume around the same time as</p> <p>12 Endorsement No. 1.</p> <p>13 Q Why would you say that?</p> <p>14 A They're related.</p> <p>15 Q Do you know why there's, then, two</p> <p>16 endorsements instead of just one?</p> <p>17 A I don't know why it's broken out, no.</p> <p>18 Q Okay. And why do you say that they were</p> <p>19 related?</p> <p>20 A Because it has to do with the premium</p> <p>21 that -- from Endorsement 1, that had obviously</p> <p>22 changed from the original premium in the policy.</p> <p>23 That's why I would say they're related.</p> <p>24 Q So do you recall what led to Endorsement</p> <p>25 No. 2?</p> | 204 | <p>1 A That's my understanding. Could have been</p> <p>2 with input from the auditor. I don't know, but...</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q So why did that reduce the premium?</p> <p>5 A My understanding is that that cash amount</p> <p>6 was taken away from -- or whatever the amount --</p> <p>7 the \$9 million reduced the coverage because part</p> <p>8 of the premium was being used -- was being spent</p> <p>9 by the insurance company to cover the costs, so it</p> <p>10 would reduce the -- dollar for dollar reduce the</p> <p>11 limit of the policy.</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 A Uh-huh.</p> <p>16 Q For \$100 million worth of coverage?</p> <p>17 A That's right.</p> <p>18 Q You agree with me that's not dollar for</p> <p>19 dollar, right?</p> <p>20 A What's not dollar for dollar?</p> <p>21 Q You're not paying \$1 for every \$1 of</p> <p>22 coverage, right?</p> <p>23 A Right. That's not what I said before.</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 A Right. 4 Q And that coverage amount was going to be 5 reduced dollar by dollar also by \$9 million. 6 A Right. 7 Q So I don't understand why that would be 8 appropriate? 9 MS. SMITH: Objection to form. 10 A My understanding is that since the policy 11 wasn't paid for all cash; in other words, whatever 12 the original 25 million, ideally you'd accept 13 payment in cash for the premium. But since the 14 funds did not have the cash, all their assets were 15 illiquid, junk, not junk, whatever, were 16 contributed as payment for the policy. 17 The cash portion of that -- I believe it's 18 a condition of the policy, but that the insurance 19 company had to pay the ongoing legal expenses for 20 the insureds. So it wouldn't accept cash, spend 21 the cash on their legal expenses and then not 22 reduce the coverage. Otherwise, I think you're 23 getting an extra -- extra dollar's worth of 24 coverage you didn't pay for is my understanding, 25 my interpretation of it.</p> | <p style="text-align: right;">207</p> <p>1 BY MS. TOMKOWIAK: 2 Q And that Sentinel issued the policy 3 regardless? 4 A That's correct, in exchange for this 5 basket of securities. 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 A That's correct. 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 A My understanding is that the insurer would 16 pay for ongoing costs associated with trial, 17 settlement, whatever. 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 A Yes. My understanding. 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 A Just my experience working through this 5 and whenever it happened with the audit and all 6 the valuations came in. 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 A I think this is specific to actual cash, 15 not the other assets that were part of the policy, 16 if that makes sense. 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 A I don't know what it required at the time, 23 but looking back, I know that the funds did not 24 have \$25 million in cash to pay for it. 25</p> | <p style="text-align: right;">208</p> <p>1 A Most, if not all. There might be, I don't 2 know, a million bucks left or so. I don't know 3 exactly, but most of it was spent. 4 Q Were you personally involved in dispensing 5 money to cover legal fees? 6 A It would have undergone the same procedure 7 I outlined earlier, where I'd submit it to Beecher 8 Carlson, they would send it to the directors, 9 directors would approve or not approve, ask 10 questions, whatever, and send it back to Beecher 11 and then they would release the wires. 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 A I would receive them from Isaac generally. 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 A They would have -- I assume a wire. Yeah. 22 Q Do you know how many bank accounts 23 Sentinel has? 24 A One, to my knowledge. 25 Q At what bank?</p> |

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| <p style="text-align: right;">209</p> <p>1 A It's at CIBC, Cayman.</p> <p>2 Q Is that where all of the cash was kept?</p> <p>3 A Yes.</p> <p>4 Q Do you know whether there were any</p> <p>5 litigation expenses or fees that Sentinel denied?</p> <p>6 A I don't remember any being denied, no.</p> <p>7 Q Do you know who would review those for</p> <p>8 reasonableness?</p> <p>9 A Well, Isaac would review any legal bill</p> <p>10 that came into Highland generally, generally</p> <p>11 speaking is my understanding, and then he'd send</p> <p>12 it to me. Again, I'd send it to Beecher. The</p> <p>13 directors generally had questions about is this</p> <p>14 correct, is this market, whatever, and then from</p> <p>15 there if they approved, which they did generally,</p> <p>16 it would -- then it would get paid.</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 A That's right.</p> <p>23 BY MS. TOMKOWIAK:</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 A I don't think so.</p> <p>3 Q Why not?</p> <p>4 A Same reason.</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 A Yeah, for the most part.</p> <p>10 BY MS. TOMKOWIAK:</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 A I didn't, no.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q Why not?</p> <p>17 A I was just, you know, doing what I was</p> <p>18 asked to do. I had no involvement in any sort of</p> <p>19 settlement talks, policy talks with Highland and</p> <p>20 UBS, anything like that.</p> <p>21 Q Did anybody instruct you to keep the</p> <p>22 Sentinel policy a secret?</p> <p>23 A No.</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 A Well, they -- the insureds -- one of the</p> <p>3 insureds made a claim this spring, but in the</p> <p>4 interim in between whenever that was issued and</p> <p>5 now, there was no claim that I saw.</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 A No. My only real discussions again were</p> <p>11 as part of this actuarial -- about the case</p> <p>12 where -- about this actuarial update with Isaac at</p> <p>13 the end of the year.</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 A No.</p> <p>18 Q Did you ever suggest to him that they</p> <p>19 should?</p> <p>20 A I don't think so.</p> <p>21 Q Why not?</p> <p>22 A I don't know that it was my place to</p> <p>23 suggest anyone make a claim or not make a claim</p> <p>24 with respect to the policy.</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 A No.</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 A To assess it, yes, if a claim was made.</p> <p>9 BY MS. TOMKOWIAK:</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 A My understanding was that it was -- there</p> <p>15 was always going to be a Phase 2 to the trial and</p> <p>16 that possibly appeal something down the line, so</p> <p>17 it wasn't strange to me, no.</p> <p>18 BY MS. TOMKOWIAK:</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 A Yes.</p> <p>24 BY MS. TOMKOWIAK:</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 A Yes. 4 Q And that occurred around January 2020; is 5 that right? 6 A That sounds right. 7 Q Can you identify who those board members 8 are? 9 A Jim Seery, a gentleman named, I think Russ 10 Nelms and John -- John something. I don't -- the 11 third gentleman's name escapes me unfortunately. 12 John Dubel. John Dubel. Sorry. Getting there. 13 Q Did you have -- did you have any 14 interaction with any of those board members? 15 MS. SMITH: Objection to form. 16 A At what point in time? 17 BY MS. TOMKOWIAK: 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 A Very little. 23 Q What do you mean by very little? 24 A I mean, I met Nelms and I believe Seery. 25 I don't know that I ever actually -- I met Dubel</p> | <p style="text-align: right;">215</p> <p>1 A Not for the remainder of the year, I 2 think. It was 2020, yeah. So I received an 3 e-mail from Greg Demo at the end of the year or 4 early 2021, I don't remember, and that was, I 5 think the only time I -- I don't think in the 6 interim I had any interactions at all. 7 Q Were you aware that the independent board 8 was negotiating a settlement with UBS? 9 A I assumed they were negotiating 10 settlements with any and all creditors of 11 Highland. So UBS would fall under that I guess. 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 A No. 20 BY MS. TOMKOWIAK: 21 Q Why not? 22 A Like I said, I had no involvement with any 23 settlement discussions. I barely spoke to the 24 board members at Pachulski. It was not my place, 25 not my -- I was busy with private equity stuff.</p> |
| <p style="text-align: right;">214</p> <p>1 as well. Had one meeting about private equity 2 portfolio companies with, I believe Dubel in 3 person and that was the last I believe I ever 4 spoke to him. Never spoke to Mr. Nelms after the 5 one time I met him. And I've only spoken to 6 Mr. Seery prior to when we -- when he terminated 7 me, once or twice about private equity. 8 Q What about counsel for the independent 9 board, the individuals at Pachulski? Did you have 10 any interaction with them? 11 A Initially I was asked to source D&O 12 coverage for the independent board, a task passed 13 to me I think by Mr. Sevilla and I did that. I 14 got a quote and handed it off, and then a few of 15 them came over I, think it was Mr. Pomerantz had 16 the piece of paper in his hand and said who did 17 this and I said I did. And he threw it on my desk 18 and said we don't need it. They were finding 19 coverage elsewhere so... 20 Q So the -- I'm sorry, what was the piece of 21 paper in his hand? 22 A It was a quote, like a D&O insurance 23 quote, something along those lines. 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 A That's right. 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 A I wouldn't be involved with any of the 11 settlement discussions. Whoever was most likely 12 would have known. 13 BY MS. TOMKOWIAK: 14 Q Most likely would have known of what? 15 A The policy. 16 Q Do you know who was involved in those 17 settlement discussions? 18 A Not specifically. 19 Q Do you think Mr. Ellington was involved? 20 A I'm sure on some level he was, yeah. 21 Q Do you think Mr. Leventon was involved? 22 A Possibly. 23 Q Do you think Mr. Dondero was involved? 24 MS. SMITH: Objection to form. 25 A I believe he was removed shortly</p> |

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| <p style="text-align: right;">217</p> <p>1 thereafter -- or shortly after the board was 2 appointed, so I doubt it. 3 BY MS. TOMKOWIAK: 4 Q Mr. Ellington was aware of the ATE policy, 5 right? 6 MS. SMITH: Objection to form. 7 A Yes. 8 BY MS. TOMKOWIAK: 9 Q So did you assume that he would tell the 10 independent board, hey, we might have \$100 million 11 worth of insurance coverage to help us settle with 12 UBS? 13 MS. SMITH: Objection to form. 14 A I didn't assume anything. That wasn't my 15 place. 16 BY MS. TOMKOWIAK: 17 Q Did you talk to Mr. Ellington about that? 18 A I don't recall doing that. 19 Q Did you ask him if he intended to inform 20 the independent board about the ATE policy? 21 A I don't think so. 22 Q You don't think so because you don't 23 remember? 24 A I don't think that's a question I would 25 have asked him.</p> | <p style="text-align: right;">219</p> <p>1 Q In the entire world. 2 MS. SMITH: Objection to form. 3 BY MS. TOMKOWIAK: 4 Q I mean, is that a long list of people? 5 A No, but it's -- we were talking about 6 Highland specifically. So can you repeat the 7 question? 8 Q Sure. At any time between January 2020 9 and your departure from Highland in February 2021, 10 did you have discussions with anybody about the 11 Sentinel policy? 12 MS. SMITH: Objection to form. 13 And you do not have to divulge privileged 14 conversations. 15 A I'm sure I spoke with the other board 16 members a time or two about the Highland 17 bankruptcy in general. 18 BY MS. TOMKOWIAK: 19 Q Anybody else? 20 A I don't think so. 21 Q What about Beecher Carlson? 22 A Discuss this specific policy? We probably 23 didn't -- we generally discussed more financial 24 statement-type stuff, like expenses being paid. 25 We didn't really chat much about the actual</p> |
| <p style="text-align: right;">218</p> <p>1 Q Okay. But you don't recall if you did one 2 way or the other? 3 A That's right. 4 Q Sitting here today, do you think that's 5 relevant information? 6 MS. SMITH: Objection to form. 7 A Relevant to who? 8 BY MS. TOMKOWIAK: 9 Q Relevant to the independent board 10 attempting to settle litigation with UBS. 11 MS. SMITH: Objection to form. 12 A I suppose. 13 BY MS. TOMKOWIAK: 14 Q Well, that was -- the whole purpose of the 15 policy, as we discussed, was to provide the funds 16 with coverage in connection with the UBS claim, 17 right? 18 A That's correct. 19 Q Anytime between January 2020 and your 20 departure from Highland in February 2021, did you 21 have discussions with anybody about the Sentinel 22 policy? 23 A Anybody? 24 Q Anybody. 25 A In the entire world?</p> | <p style="text-align: right;">220</p> <p>1 policy, which I believe was your question, right? 2 Q It was. What about your auditors at 3 Crowe? I think by that time they were just Crowe. 4 A Yeah. I don't believe I've ever directly 5 spoken to them about the policy. 6 Q So when I say spoken to, are you drawing 7 some distinction between having a face-to-face 8 conversation? 9 A No, communicated with. 10 Q Okay. And I believe the actuary, and this 11 is not meant to be a trick, but I believe the 12 actuary analysis that we looked at was in the time 13 period. Are you saying that's not about the 14 policy? 15 A It's about -- well, I guess it is, yeah. 16 That's fair. 17 Q Okay. So you would have also talked about 18 the policy with at least Mr. Leventon and the 19 actuary? 20 A Right. 21 Q And the auditors. Anybody else? 22 A Not that I can think of. 23 Q What about with Mr. Ellington? 24 A Doubtful. 25 Q Why is it doubtful?</p> |

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| <p>221</p> <p>1 A Was just not a topic that ever really came 2 up. 3 Q What about with Mr. Sevilla? 4 A Same thing, probably no discussions. 5 Q What about with Ms. Irving? 6 A Probably not. 7 Q Why not? 8 A Again, it's just not a topic that was 9 discussed very often. 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 A Again, I'm not sure if I can divulge the 16 actual conversations I would have had with the 17 other board members. 18 BY MS. TOMKOWIAK: 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 A They would check in generally for a</p> | <p>222</p> <p>1 high-level how is the bankruptcy going. 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 A Generally that it was going slow and 8 seemed to be no end in sight was my general 9 feeling on the bankruptcy. 10 BY MS. TOMKOWIAK: 11 Q Did you discuss the UBS claim? 12 A Not specifically that I remember. 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 A They were -- 17 MS. SMITH: Objection to form. 18 A They were aware that the proceedings had 19 been stayed, as you mentioned before, so it was 20 kind of a holding pattern with respect to that. 21 BY MS. TOMKOWIAK: 22 Q During this period of time, did you set up 23 a call between yourself, Beecher and Mr. Leventon? 24 A Which period of time? 25 Q The January 2020 to February 2021 period</p> | <p>223</p> <p>1 of time. 2 A Probably. 3 Q Do you recall what that was about? 4 A The only calls I would have arranged with 5 those people would have been with regards to the 6 actuarial analysis. 7 Q Do you recall when the first time is that 8 you saw that policy? 9 A Like I said before, probably after I came 10 on board in September of '17 and before the end of 11 the year. 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 A I think so. 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 A I would assume it was the policy just 23 without the two endorsements, yeah. 24 BY MS. TOMKOWIAK: 25 Q Okay. You can set that aside.</p> | <p>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 A I don't believe so. 13 Q What do you mean you don't believe so? 14 A I don't believe I have. 15 Q Can you recall any contact you've had with 16 Sentinel since you resigned? 17 A No. 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 A Yes. 23 Q And during those meetings, what did you 24 discuss? 25 A The actuarial table that we looked at</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> |

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| <p style="text-align: right;">229</p> <p>1 BY MS. TOMKOWIAK:</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>5 A I did, yes.</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>10 A I can't say for sure. I think I said</p> <p>11 late '19 or early '20, so that would fall in that</p> <p>12 time frame.</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>23 A Okay.</p> <p>24 (Witness reviews document.)</p> <p>25 A Okay.</p> | <p style="text-align: right;">231</p> <p>1 A Again, I was not involved in the</p> <p>2 transaction, but I believe so.</p> <p>3 Q If you turn to Schedule A.</p> <p>4 A First page?</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>10 A It appears so, yes.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Do you know why that was the case?</p> <p>13 A I don't.</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>17 A I don't.</p> <p>18 Q Do you know who negotiated this document</p> <p>19 for Sentinel?</p> <p>20 A I do not.</p> <p>21 Q Do you know who drafted this document?</p> <p>22 A I do not.</p> <p>23 Q Do you know who negotiated this document</p> <p>24 on behalf of the sellers?</p> <p>25 A I do not.</p> |
| <p style="text-align: right;">230</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Have you seen this document before?</p> <p>3 A I believe so.</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>8 A It looks like it.</p> <p>9 BY MS. TOMKOWIAK:</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>13 A Yes.</p> <p>14 Q And do you understand that those are the</p> <p>15 insured entities under the ATE policy?</p> <p>16 A Yes.</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>5 A I do not know.</p> <p>6 Q Did anybody ever tell you that Sentinel</p> <p>7 did?</p> <p>8 A Did diligence prior to?</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>13 A I don't remember one way or the other</p> <p>14 having that conversation, no.</p> <p>15 BY MS. TOMKOWIAK:</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>20 A Most of them.</p> <p>21 BY MS. TOMKOWIAK:</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>233</p> <p>1 date that you resigned. Okay?</p> <p>2 A As of June 25th?</p> <p>3 Q Correct.</p> <p>4 A Okay.</p> <p>5 Q Unless you have any more recent knowledge,</p> <p>6 but you --</p> <p>7 A No, I just wanted to be clear that's the</p> <p>8 date.</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 A That one in particular, I don't believe</p> <p>13 so.</p> <p>14 Q Why not?</p> <p>15 A I don't recall, but I just -- I know that</p> <p>16 that one was not part of -- it's not on Sentinel's</p> <p>17 balance sheet. I'm not entirely sure why.</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 A Right.</p> <p>22 Q Right. Okay. What about with respect to</p> <p>23 the Southfork CLO?</p> <p>24 A Yes.</p> <p>25 Q Yes, they took custody?</p> | <p>235</p> <p>1 A That was one of the worthless assets that</p> <p>2 was, I think sold to Sebastian Clarke for a</p> <p>3 dollar.</p> <p>4 Q So they took custody of it and then it was</p> <p>5 sold to Sebastian Clarke?</p> <p>6 A I believe so.</p> <p>7 Q What about the Greenbriar CLO?</p> <p>8 A There was an issue with the registration</p> <p>9 of that, but it is I believe on Sentinel's balance</p> <p>10 sheet.</p> <p>11 Q Does that mean that the issue with the</p> <p>12 registration was fixed?</p> <p>13 A It's not fixed, as far as I know.</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 A It was a paper certificate that I think</p> <p>18 got lost in the mail or something. I don't know,</p> <p>19 but it -- it's probably still registered to CDO</p> <p>20 Opportunity Master Fund, LP, or whatever is listed</p> <p>21 here.</p> <p>22 Q How did you come to learn that, unless it</p> <p>23 was through counsel?</p> <p>24 A How did I come to learn?</p> <p>25 Q That -- this issue with the paper</p> |
| <p>234</p> <p>1 A Yes.</p> <p>2 Q Do you know whether they still own that</p> <p>3 asset today?</p> <p>4 A As -- yeah.</p> <p>5 Q Let's --</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 A All my answers will be as of June 25th.</p> <p>8 Can we agree there?</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Yes.</p> <p>11 A Okay. Yes.</p> <p>12 Q That sounds great. What about with</p> <p>13 respect to the next Southfork CLO?</p> <p>14 A Yes.</p> <p>15 Q Yes, they took custody and, yes, they</p> <p>16 still own it?</p> <p>17 A That's right.</p> <p>18 MS. SMITH: That's a two-part answer.</p> <p>19 THE WITNESS: Okay.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Yes. What about with respect to the next</p> <p>22 Aberdeen asset?</p> <p>23 A Yes to custody, yes to ownership.</p> <p>24 Q What about with respect to GC -- GSC ABS</p> <p>25 CDO?</p> | <p>236</p> <p>1 certificate being lost.</p> <p>2 A There was issues with several. No one</p> <p>3 really works with paper certificates anymore.</p> <p>4 These things are very old. I think they're all</p> <p>5 like mid-2005, '6, '7ish. And some of them, you</p> <p>6 know, lost in the mail or someone didn't have</p> <p>7 them, something like that. So I don't believe</p> <p>8 this particular one ever arrived at Sentinel's</p> <p>9 custody account.</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 A No, I think it -- we would have found out</p> <p>15 when it never arrived at the custody account.</p> <p>16 Q Would that have been in connection with</p> <p>17 your audit, Sentinel's audit?</p> <p>18 A I don't know.</p> <p>19 Q What about with respect to Highland</p> <p>20 Financial Partners, LP?</p> <p>21 A Both of those interests I believe were</p> <p>22 deemed worthless. I don't know if it was included</p> <p>23 in -- it might have been written off, in all</p> <p>24 honestly. We had a valuation done on it -- or</p> <p>25 Sentinel had a valuation performed on it to say it</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 A The actual cash numbers? 2 Q Yes. 3 A I don't. It built up to the -- whatever 4 the loss reserve number was and it's generally 5 been around that 24, \$25 million. 6 Q That was going to be my next question. So 7 do you recall what the loss reserve was? 8 A It's -- yeah. The last -- well, I guess 9 in 2019, it was 25 million, or 25.3 million. 10 Q And just for the record, can you identify 11 which exhibit you're looking at? 12 A Bates 118, Exhibit 53. 13 Q So that 25.3, I think it says million at 14 the bottom of that table -- 15 A That's right. 16 Q -- that's the amount of Sentinel's loss 17 reserves as of that date? 18 A That's right. 19 Q Do you recall whether the milestones were 20 some type of lock step? Like did they increase by 21 the same percentage or dollar amount each quarter 22 or did it vary? 23 A I think it was -- I think it was evenly -- 24 you know, whenever we start -- wherever Sentinel 25 started and had to get to over those two years,</p> | <p style="text-align: right;">243</p> <p>1 BY MS. TOMKOWIAK: 2 Q How did you make that proposal? 3 A Probably via SAS e-mail. 4 Q How did you decide what to propose? 5 A There were very few liquid assets on 6 Sentinel's balance sheet; in other words, easy to 7 generate cash. So we -- I started with the -- 8 they were publicly traded equities that can be 9 sold and generate cash quickly. So that's kind of 10 where we started. 11 Q Were any of your proposals rejected? 12 A I don't believe so. 13 Q Have any of the assets that we've 14 discussed, I take it none of them were sold to 15 generate cash? 16 MS. SMITH: Objection to form. 17 A None that we've discussed so far. 18 BY MS. TOMKOWIAK: 19 Q Okay. As we go, if there is an asset that 20 you sold and you generated for cash, I would like 21 to know, but I'll try to ask that specifically if 22 I think that one would potentially qualify for 23 that. 24 Is there anything else that you did as 25 part of your responsibility to make investment</p> |
| <p style="text-align: right;">242</p> <p>1 the only variable would be if the loss reserve 2 number changed in the interim, which it did but 3 not materially so. I think it was just a step up, 4 if that makes sense, to get from wherever Sentinel 5 started to that 24, \$25 million number, whatever 6 it was. 7 Q So as part of your responsibility for 8 making investment decisions, were you responsible 9 for deciding whether or not Sentinel needed to 10 sell an asset to generate cash? 11 MS. SMITH: Objection, form. 12 A CIMA decided for Sentinel. In other 13 words, we -- if we -- Sentinel wanted to stay in 14 compliance, it had to sell something or sell 15 assets over the course of that -- those two years. 16 BY MS. TOMKOWIAK: 17 Q Would CIMA identify the specific asset? 18 A They just said get your cash balance up. 19 Q And then were you responsible for 20 identifying how to get the cash balance up? 21 MS. SMITH: Objection to form. 22 A I would propose what I thought was best 23 and submit it to the other two directors and then 24 they would say yes or no. 25</p> | <p style="text-align: right;">244</p> <p>1 decisions for Sentinel? 2 A No. Like I said, it was very inactive 3 with respect to investments, trading, whatever you 4 want to call it. 5 Q All right. So for the next one, the 2.1 6 promissory note from Governance Re and cash from 7 the NexPoint Multifamily Capital Trust Interest. 8 A Yes to custody; yes, Sentinel still holds. 9 It has been paid down. 10 Q Do you know what the note has been paid 11 down to? 12 A There's approximately \$750,000 left. 13 Q Governance Re is another insurance company 14 that provided insurance services to Highland; is 15 that right? 16 A It's an insurance company. I don't know 17 where it provides service. 18 Q You don't know who its clients are? 19 A I don't. 20 Q Do you know who owns Governance Re? 21 A I don't. 22 Q Do you know if it's affiliated with 23 Highland? 24 A I don't. 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 A That has been -- yes, Sentinel still holds</p> <p>3 its position, partially -- has been partially sold</p> <p>4 off to generate cash.</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 A Yeah, that paid a dividend.</p> <p>9 Q Do you recall approximately how often?</p> <p>10 A I think -- I believe quarterly.</p> <p>11 Q Do you recall approximately how much?</p> <p>12 A I don't. I don't.</p> <p>13 Q Do you know approximately how much of it</p> <p>14 was sold off to generate cash?</p> <p>15 A If I remember correctly, this -- these</p> <p>16 97,000 shares were -- you know, the value</p> <p>17 obviously changes month to month, but it was a</p> <p>18 little under \$2 million. I believe Sentinel has</p> <p>19 redeemed out approximately two-thirds of that. So</p> <p>20 there's, call it, 6, 700 grand left, last I saw.</p> <p>21 Hadn't seen a statement in a while.</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 A Yes.</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 A Yes.</p> <p>6 Q Do you know approximately what that</p> <p>7 balance is as of June 2021?</p> <p>8 A It's approximately -- I think it's</p> <p>9 approximately \$27 million in cash.</p> <p>10 Q So 27 million in cash and 25.3 in loss</p> <p>11 reserves?</p> <p>12 A No. That number satisfies the loss</p> <p>13 reserve requirement.</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 A It was -- yeah, it -- Sentinel has custody</p> <p>19 over that, but it's -- my understanding is it has</p> <p>20 no value.</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 A At the time and since.</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 A I don't know really what that is. That</p> <p>2 sounds like it would have been one of the</p> <p>3 worthless ones.</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 A I believe -- I believe that note was</p> <p>9 deemed worthless as it never paid anything and it</p> <p>10 was transferred to Sebastian Clarke.</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 A I'm not sure.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q You don't know?</p> <p>17 A I'm not sure.</p> <p>18 Q And do you know what the Survios Interest</p> <p>19 is?</p> <p>20 A I don't.</p> <p>21 Q What about the next asset, something 5X</p> <p>22 Floating?</p> <p>23 A Also a worthless asset.</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 A Right.</p> <p>2 Q And it still has it today, but it has no</p> <p>3 value?</p> <p>4 A I believe so.</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 A It's the same. It's some -- I forget why</p> <p>8 there's some designation 144A. It's not the same.</p> <p>9 It's the same asset. It's not two 750,000 shares,</p> <p>10 if that makes sense. I just don't remember -- I</p> <p>11 don't recall the specifics.</p> <p>12 Q With respect to the next, NexPoint asset?</p> <p>13 A Yes. I believe that was -- NHF would be</p> <p>14 the ticker.</p> <p>15 Q Okay. So this is a publicly traded --</p> <p>16 A That's right.</p> <p>17 Q And Sentinel took custody of that?</p> <p>18 A That's right.</p> <p>19 Q And still has it as of June?</p> <p>20 A This was one of the assets that was sold</p> <p>21 to generate cash.</p> <p>22 Q All of it?</p> <p>23 A That's right.</p> <p>24 Q And what about the next one?</p> <p>25 A That I believe is NexPoint Residential</p> |

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| 249 | <p>1 Trust, also public equity.</p> <p>2 Q So Sentinel took custody of that?</p> <p>3 A That's right.</p> <p>4 Q Was it sold to generate cash?</p> <p>5 A It was.</p> <p>6 Q All of it?</p> <p>7 A Yes.</p> <p>8 Q How about Stratford CL?</p> <p>9 A Yes to custody; yes, still owned.</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>12 A Right. I think that shows up a couple</p> <p>13 times in here. And again, I'm not entirely sure</p> <p>14 why, but it's one asset.</p> <p>15 Q Next is Highland Park?</p> <p>16 A I believe that was part of the worthless</p> <p>17 group.</p> <p>18 Q So took custody but worthless?</p> <p>19 A I think so. It may have been part of the</p> <p>20 asset -- you know, the transfer to Sebastian</p> <p>21 Clarke.</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>25 A Right. Same, also transferred to</p> | 251 | <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>3 A Yeah. So all of these, I can save us a</p> <p>4 few minutes, are -- were part of the -- so Delphi</p> <p>5 down to Vertical, worthless; if Sentinel took</p> <p>6 custody, would have been transferred to Sebastian</p> <p>7 Clarke.</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>12 A Yes.</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>16 A Around 430. Again, I'm not sure of the</p> <p>17 actual number and would have written off whatever</p> <p>18 the difference was.</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>23 A I don't know.</p> <p>24 Q Do you know if that was the intent?</p> <p>25 MS. SMITH: Objection to form.</p> |
| 250 | <p>1 Sebastian Clarke, never paid, was deemed to have</p> <p>2 no value.</p> <p>3 Q Do you know what CLO Holdco is?</p> <p>4 A I don't.</p> <p>5 Q Do you know if it's affiliated with</p> <p>6 Highland in any way?</p> <p>7 A I don't know for sure.</p> <p>8 Q Do you know not for sure?</p> <p>9 A I don't know.</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>13 A I don't know specifically what that is. I</p> <p>14 assume the -- I mean, just reading it, the fund</p> <p>15 was owed a dividend from HCMLP, but I don't know</p> <p>16 any more details. And I don't know if it paid or</p> <p>17 not.</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>22 A Yeah, it may have. I don't remember</p> <p>23 seeing it ever.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q And going down to Highland SOHC, the first</p> | 252 | <p>1 A I assumed that all assets were</p> <p>2 contributed, but I don't know for sure.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Why did you make that assumption?</p> <p>5 A To me, it wouldn't make sense to hold</p> <p>6 anything back if you're trying to pay for coverage</p> <p>7 and you can't pay it.</p> <p>8 Q Did you reach that conclusion on your own?</p> <p>9 A I did.</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>19 A I don't know.</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 A I don't know.</p> <p>22 BY MS. TOMKOWIAK:</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 A Yes.</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 A I've reviewed it.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Are you familiar with this document?</p> <p>20 A Yes.</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 A I believe it does, yes.</p> | <p style="text-align: right;">255</p> <p>1 to go.</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 A I don't. I just assumed it was part of a</p> <p>7 big, again, illiquid basket of securities used to</p> <p>8 pay for the policy.</p> <p>9 BY MS. TOMKOWIAK:</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 A I don't know.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q Were you aware of any other clients that</p> <p>17 did that?</p> <p>18 A I was not aware of any others, no.</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 A Not to my knowledge.</p> <p>24 BY MS. TOMKOWIAK:</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 A I'm not aware of any other agreements.</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 A The assets were causing Sentinel's audit</p> <p>10 to have a qualification and Sentinel was</p> <p>11 instructed by CIMA, as part of its -- I think as</p> <p>12 part of the inspection or at some point in a prior</p> <p>13 audit, to no longer submit financials with</p> <p>14 qualifications. So this was what the board</p> <p>15 thought best to do to remove the worthless assets</p> <p>16 from Sentinel's balance sheet.</p> <p>17 BY MS. TOMKOWIAK:</p> <p>18 Q Who had deemed them worthless?</p> <p>19 A These were assumed to be worthless when</p> <p>20 they were transferred over. I think, like I</p> <p>21 mentioned before, we tried to have that valuation</p> <p>22 company value some of them and we couldn't even</p> <p>23 provide enough information for them to make a</p> <p>24 determination because some of them are really old.</p> <p>25 So the board kind of agreed that these things need</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 A Not to my knowledge.</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 A I don't recall why.</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 A My understanding is they're still sitting</p> <p>10 at Sebastian Clarke.</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 A Yes.</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 BY MS. TOMKOWIAK:</p> <p>20 Q Strike that.</p> <p>21 Do you know if they signed this agreement?</p> <p>22 A I seem to recall it being executed, yes.</p> <p>23 Q Do you know by who?</p> <p>24 A Sebastian Clarke has independent directors</p> <p>25 of its own. They work at Summit Management.</p> |

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| <p style="text-align: right;">257</p> <p>1 Q What is Summit Management?</p> <p>2 A I believe it's similar to the two</p> <p>3 companies that Sentinel's independent directors</p> <p>4 worked at we mentioned earlier, a professional</p> <p>5 director services business.</p> <p>6 Q Is it affiliated with Highland in any way?</p> <p>7 A I don't believe so.</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 A I don't generally -- I don't have an</p> <p>12 understanding of why. I just assume that they're</p> <p>13 still there.</p> <p>14 Q So you don't know for sure, you just</p> <p>15 assume?</p> <p>16 A Correct.</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 A I'm sure you could write them off, maybe.</p> <p>22 I don't know. I'm not an accountant.</p> <p>23 BY MS. TOMKOWIAK:</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 A There was generally one report per</p> <p>4 security.</p> <p>5 Q And so in 2018, you received one report</p> <p>6 per security?</p> <p>7 A I believe so.</p> <p>8 Q And same thing in 2019?</p> <p>9 A I believe so.</p> <p>10 Q And 2020?</p> <p>11 A I believe so.</p> <p>12 Q Had you received those reports prior to</p> <p>13 your resignation in 2021?</p> <p>14 A I don't remember seeing them this year.</p> <p>15 Q How did Sentinel identify VRC?</p> <p>16 A I don't know. I assume a referral from</p> <p>17 someone, but I don't know.</p> <p>18 Q If you turn to page 3, is that your</p> <p>19 handwriting?</p> <p>20 A Looks like it.</p> <p>21 Q Do you know what the handwriting means?</p> <p>22 Do you know what that notation means?</p> <p>23 A Looks like wire instructions and I'll -- I</p> <p>24 believe that \$2,000 -- or 2,000 number was the</p> <p>25 price per security valued.</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 A Okay.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Are you familiar with this document?</p> <p>9 A Not particularly.</p> <p>10 Q Well, you signed it. So were you familiar</p> <p>11 with it at the time?</p> <p>12 A I'm sure I was.</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 A Yes.</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 A It became an annual exercise.</p> <p>23 Q So annually, VRC performed a valuation?</p> <p>24 A That's right. And I -- yeah.</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 A That sounds -- yeah, I believe so.</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 A That probably would have been -- I</p> <p>23 probably would have coordinated that.</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</p> <p>2 extent that it requires you to divulge privileged</p> <p>3 communications with counsel.</p> <p>4 A I can't speak to the specific list, but we</p> <p>5 provided them information to perform the</p> <p>6 valuation.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q That information came from you?</p> <p>9 A I would have gathered it, yeah.</p> <p>10 Q How would you have provided it to them?</p> <p>11 By mail? By e-mail?</p> <p>12 A Probably via e-mail.</p> <p>13 Q Would that have come from your SAS</p> <p>14 Management account?</p> <p>15 A Most likely.</p> <p>16 Q Do you know who you sent that information</p> <p>17 to?</p> <p>18 A Generally there were multiple people on</p> <p>19 the e-mail, but my contact's name was Shane</p> <p>20 Newell.</p> <p>21 Q And can you spell that?</p> <p>22 A I think it's N-e-w-e-l-l, but don't hold</p> <p>23 me to that.</p> <p>24 Q Was Shane your contact throughout the</p> <p>25 entire period of time from 2017 through 2020?</p> | <p style="text-align: right;">263</p> <p>1 (Deposition Exhibit 80 marked for</p> <p>2 identification.)</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q And then I'm also going to ask the court</p> <p>5 reporter to mark this as Exhibit 81.</p> <p>6 (Deposition Exhibit 81 marked for</p> <p>7 identification.)</p> <p>8 BY MS. TOMKOWIAK:</p> <p>9 Q So Exhibit 81 is a color copy of the page</p> <p>10 that's Bates-stamped UBSPROD2752264. Couldn't get</p> <p>11 it to print in color with the Bates stamp, so --</p> <p>12 but I thought having the color version available</p> <p>13 might be helpful.</p> <p>14 A Okay.</p> <p>15 Q So that's what that is. If you can review</p> <p>16 Exhibits 80 and 81 and let me know when you're</p> <p>17 ready.</p> <p>18 (Witness reviews document.)</p> <p>19 A Okay.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Okay. Are you -- do you recall seeing</p> <p>22 this e-mail before? Do you recall seeing -- do</p> <p>23 you recall seeing the e-mail in Exhibit 80 or do</p> <p>24 you recall what's being discussed in Exhibit 80?</p> <p>25 A I don't recall the e-mail specifically,</p> |
| <p style="text-align: right;">262</p> <p>1 A Yes.</p> <p>2 Q And did you ask VRC to evaluate the CLO</p> <p>3 assets that Sentinel held even prior to</p> <p>4 August 2017?</p> <p>5 A Yes.</p> <p>6 Q Did you provide -- once Sentinel received</p> <p>7 the valuation report, did Sentinel provide them to</p> <p>8 anybody else?</p> <p>9 A They would have been provided to Beecher</p> <p>10 Carlson so they could prepare financial</p> <p>11 statements.</p> <p>12 Q And anybody else?</p> <p>13 A I don't think so.</p> <p>14 Q So earlier we looked at -- we looked at</p> <p>15 two endorsements to the ATE policy that contained</p> <p>16 a valuation of the assets that were provided to</p> <p>17 Sentinel. Was that number based on a valuation by</p> <p>18 VRC?</p> <p>19 A I believe so. And I think at the year-end</p> <p>20 audit, VRC did a valuation as of August and as of</p> <p>21 December; so as of the time of transfer and as of</p> <p>22 the year end, if I remember correctly.</p> <p>23 Q You can set that aside. Okay. I'm</p> <p>24 handing you what I will ask the court reporter to</p> <p>25 mark as Exhibit 80.</p> | <p style="text-align: right;">264</p> <p>1 but I kind of understand what's being discussed,</p> <p>2 yes.</p> <p>3 Q All right. So taking a look at it, who is</p> <p>4 Tom Adamczak?</p> <p>5 A He works for Beecher Carlson.</p> <p>6 Q And do you understand why he's reaching</p> <p>7 out to Mr. Swadley here?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 A It looks like he's trying to gather</p> <p>10 information on the -- I think that's the tax</p> <p>11 refund we discussed earlier.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Do you know why he copied you?</p> <p>14 A No.</p> <p>15 Q Okay. He says in his e-mail: I</p> <p>16 understand from discussion with Matt DiOrio that</p> <p>17 the tax refund receivable of 477,637 for Highland</p> <p>18 Financial Corp. was included and relates to a</p> <p>19 carryover of tax credits to 2017 tax return of</p> <p>20 Highland Financial Corp. (see attached).</p> <p>21 Do you recall this discussion with Mr. --</p> <p>22 am I pronouncing his name right; do you know?</p> <p>23 A Adamczak, I think is right.</p> <p>24 Q Adamczak. Okay.</p> <p>25 A I don't recall the specific discussion,</p> |

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| <p style="text-align: right;">265</p> <p>1 but we would have discussed this at some point.</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 A I assumed having to do with the audit.</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 A Yes.</p> <p>10 Q Do you know who put this list together?</p> <p>11 A I don't.</p> <p>12 Q Do you know who marked it up and</p> <p>13 highlighted it?</p> <p>14 A I don't.</p> <p>15 Q Was it you?</p> <p>16 A I don't believe it was.</p> <p>17 Q Do you recognize whose handwriting that</p> <p>18 is?</p> <p>19 A I don't.</p> <p>20 Q Do you have any idea what H&C stands for?</p> <p>21 A I don't.</p> <p>22 Q Could it be Hare & Co; do you know?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A Probably. Could be, yeah.</p> <p>25</p> | <p style="text-align: right;">267</p> <p>1 MS. SMITH: Objection, form.</p> <p>2 A I don't know.</p> <p>3 BY MS. TOMKOWIAK:</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 A It's Paul Broadus.</p> <p>10 Q Broadus.</p> <p>11 A Worked in tax with Rick Swadley.</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 A I don't.</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 A Nothing outside of what the notes say.</p> <p>8 Green, original, transfer docs, not executed;</p> <p>9 Orange, Original, H&C -- which I guess is Hare &</p> <p>10 Co.</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 A Do I understand that?</p> <p>15 Q Do you know that?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 A I don't know one way or the other.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Same thing with respect to the GSC?</p> <p>20 A I don't know.</p> <p>21 Q Same thing with respect to Highland -- I</p> <p>22 assume Financial Partners?</p> <p>23 A I don't know.</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 A I don't believe I did.</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 A I don't believe so.</p> <p>9 BY MS. TOMKOWIAK:</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 A Not that I recall.</p> <p>15 BY MS. TOMKOWIAK:</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 A Not that I recall.</p> <p>23 BY MS. TOMKOWIAK:</p> <p>24 Q You can set that aside.</p> <p>25 A Both?</p> |

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| 269 | <p>1 Q Both. I'm handing you what we have</p> <p>2 previously marked in this case as Exhibit 3. I</p> <p>3 see that you're already reviewing it. Just let me</p> <p>4 know when you're ready.</p> <p>5 A Yeah. I've never seen this before.</p> <p>6 (Witness reviews document.)</p> <p>7 MS. SMITH: Sarah, what was the number on</p> <p>8 this one again?</p> <p>9 MS. TOMKOWIAK: It's No. 3.</p> <p>10 Do you have another one?</p> <p>11 MS. SMITH: Yeah, Shannon, if you have</p> <p>12 another one. Thank you.</p> <p>13 (Witness reviews document.)</p> <p>14 A Okay. I didn't read every word, but I</p> <p>15 think I get the gist of it.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Have you ever seen this document before?</p> <p>18 A I have not.</p> <p>19 Q Had you ever heard at Highland that any</p> <p>20 analysis had been done regarding the tax</p> <p>21 consequences of the Sentinel acquisition of those</p> <p>22 assets?</p> <p>23 MS. SMITH: Objection.</p> <p>24 I'm going to caution you not to divulge</p> <p>25 any privileged information.</p> | 271 | <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Did that change at some point in time?</p> <p>3 A Yes.</p> <p>4 Q And it changed through those endorsements</p> <p>5 that we looked at earlier?</p> <p>6 A That's right.</p> <p>7 Q Is that how you would characterize it,</p> <p>8 that Sentinel paid \$25 million for the assets?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 A That's not how I would -- I think of it,</p> <p>11 but...</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q How do you think of it?</p> <p>14 A That Sentinel accepted a number of assets,</p> <p>15 a basket of securities, whatever you want to call</p> <p>16 it, in exchange for a liability policy.</p> <p>17 Q The next sentence says: The aggregate</p> <p>18 fair market value of the assets on the date of the</p> <p>19 transaction was 105,647,679.</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q Have you ever seen that figure before?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A I believe it was -- I believe I learned of</p> <p>25 it in reviewing the complaint, if I remember</p> |
| 270 | <p>1 A I never heard that at Highland, no.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Did you ever hear that at Sentinel?</p> <p>4 A No.</p> <p>5 Q Do you know who Shawn Raver is?</p> <p>6 A I've heard the name.</p> <p>7 Q But you don't know who he is?</p> <p>8 A I've never met him before.</p> <p>9 Q Okay. Do you know that he worked with</p> <p>10 Mr. Swadley?</p> <p>11 A That sounds right.</p> <p>12 Q If you look at page 2 of the document, and</p> <p>13 if you look at the last paragraph, it says: The</p> <p>14 aggregate purchase price paid by Sentinel for the</p> <p>15 assets was \$25 million.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Do you agree with that?</p> <p>19 A Do I agree that Sentinel paid \$25 million</p> <p>20 for the assets?</p> <p>21 Q Yeah.</p> <p>22 MS. SMITH: Objection, form.</p> <p>23 A I guess when the policy was put in place,</p> <p>24 yeah.</p> <p>25</p> | 272 | <p>1 correctly, that we were allowed to review.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Prior to reviewing the complaint, did you</p> <p>4 ever receive any documentation or any</p> <p>5 communication indicating that the fair market</p> <p>6 value of the assets that were transferred to</p> <p>7 Sentinel in exchange for the insurance policy was</p> <p>8 approximately 105 million?</p> <p>9 A No.</p> <p>10 MS. SMITH: Objection.</p> <p>11 You can answer if it does not reveal any</p> <p>12 privileged information from counsel for Sentinel.</p> <p>13 A No.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Do you know where Mr. Raver would have</p> <p>16 gotten this number?</p> <p>17 A I have no idea.</p> <p>18 Q In your capacity as Sentinel's director,</p> <p>19 if the insureds believed that the fair market</p> <p>20 value of the assets that were transferred were</p> <p>21 over \$105 million, would you have wanted to know</p> <p>22 that?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 A In my capacity as a director, would I have</p> <p>25 wanted to know if the insureds believed their</p> |

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| <p style="text-align: right;">273</p> <p>1 assets were worth 105 million?</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Yes.</p> <p>4 A I think it would have been irrelevant</p> <p>5 after we had our own third-party valuation done.</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>11 A I'm not sure.</p> <p>12 BY MS. TOMKOWIAK:</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>17 A I'm not aware of any, no.</p> <p>18 BY MS. TOMKOWIAK:</p> <p>19 Q Are you okay to keep going?</p> <p>20 A Yeah.</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>3 A That's right.</p> <p>4 Q And then did you send it to somebody?</p> <p>5 A I mean, it had to be submitted somewhere.</p> <p>6 I just don't recall where.</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>9 A I'm sure it would have been an e-mail</p> <p>10 scan.</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>13 A I would have done it myself.</p> <p>14 Q Did you have an assistant at Highland?</p> <p>15 A No.</p> <p>16 Q Did you have an assistant that -- well,</p> <p>17 for SAS?</p> <p>18 A No.</p> <p>19 Q Or for Sentinel?</p> <p>20 A No.</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>24 A To the redemption letter? I don't recall.</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>7 A Okay. I've reviewed.</p> <p>8 BY MS. TOMKOWIAK:</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>14 A Yes.</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>18 A Those and the rest of Sentinel's</p> <p>19 investment in Multi Strat, yes.</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>23 A Yes, it looks like it.</p> <p>24 Q Is that your handwriting?</p> <p>25 A I believe it is.</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>3 A I don't recall receiving anything.</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>14 A Yes.</p> <p>15 Q Do you know what documentation would exist</p> <p>16 in that respect?</p> <p>17 A If you'll recall, there was -- that</p> <p>18 Sentinel Re Holdings that's mentioned in this</p> <p>19 e-mail also held some interest in Multi Strat and</p> <p>20 I don't remember the specifics, I just remember</p> <p>21 trying to sort it out and have it all registered</p> <p>22 into Sentinel Reinsurance's name. So if they were</p> <p>23 looking for Sentinel Reinsurance and it was</p> <p>24 actually in Sentinel Re, because the names are</p> <p>25 similar, Sentinel Re Holdings, or whatever it's</p> |

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| <p style="text-align: right;">277</p> <p>1 called, that could be it.</p> <p>2 Q Okay. But to the best of your belief,</p> <p>3 that transfer did happen in August 2017?</p> <p>4 A Yes.</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>10 A I believe a full -- fully signed filled</p> <p>11 out form was submitted.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q And did you keep a copy of that?</p> <p>14 A I don't think so.</p> <p>15 Q Do you know whether you would have signed</p> <p>16 this?</p> <p>17 A I may have or it may have been another</p> <p>18 director, other directors. They may have filled</p> <p>19 it out, provided and signed. I just don't recall.</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>23 A Yes.</p> <p>24 BY MS. TOMKOWIAK:</p> <p>25 Q How did Sentinel decide that it -- without</p> | <p style="text-align: right;">279</p> <p>1 payments.</p> <p>2 Q Did Sentinel ever try to renegotiate the</p> <p>3 terms of those notes with anyone?</p> <p>4 A Not that I recall.</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>7 A It was a year's worth of nonpayment.</p> <p>8 Q Were any of those notes past due?</p> <p>9 A I don't believe so.</p> <p>10 Q Okay. So Sentinel deemed them to be</p> <p>11 worthless before the maturity date?</p> <p>12 A I think so.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Why?</p> <p>16 A Again, there was no -- there were no</p> <p>17 payments coming in. Sentinel knew nothing really</p> <p>18 about the substance of the notes.</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>23 A I don't recall.</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>4 A It was an idea I had, just uncertainty</p> <p>5 with bankruptcy, with Highland filing bankruptcy,</p> <p>6 what would happen with Multi Strat. So I flagged</p> <p>7 it for the directors and suggested that we redeem</p> <p>8 and they agreed.</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>23 A Yes.</p> <p>24 Q And how -- how were they deemed worthless?</p> <p>25 A I don't believe they ever paid, made any</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>3 A I'm not sure.</p> <p>4 BY MS. TOMKOWIAK:</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>10 A Conceptually, sure.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Does Sentinel still hold those notes</p> <p>13 today?</p> <p>14 A Which notes?</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>19 A I believe that was transferred to</p> <p>20 Sebastian Clarke.</p> <p>21 BY MS. TOMKOWIAK:</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>1 A I believe so.</p> <p>2 BY MS. TOMKOWIAK:</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>11 A Okay.</p> <p>12 Q Let me know when you're ready.</p> <p>13 (Witness reviews document.)</p> <p>14 A I'm sorry. The second set is just the</p> <p>15 same stuff but in color; is that correct?</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q Yeah.</p> <p>18 A Okay. Does it matter which one I look at?</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>25 A Sorry, should have started with these.</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>3 A I don't know.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Do you know if Starck, Ltd., for example,</p> <p>6 was a Highland affiliate?</p> <p>7 A I don't believe I ever heard of Starck,</p> <p>8 Ltd., before.</p> <p>9 Q What about The Dugaboy Investment Trust?</p> <p>10 A I've heard the name.</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>14 A I don't know much about it, so I don't</p> <p>15 know.</p> <p>16 BY MS. TOMKOWIAK:</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>20 A He was a former owner or co-owner.</p> <p>21 BY MS. TOMKOWIAK:</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>25 A I don't believe it was.</p> |
| <p style="text-align: right;">282</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q That's okay.</p> <p>3 (Witness reviews document.)</p> <p>4 A Okay. I think I'm good.</p> <p>5 BY MS. TOMKOWIAK:</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>10 A I don't recall ever seeing any of these</p> <p>11 charts before.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Do you recall seeing any other breakdown</p> <p>14 of investors in Multi Strat?</p> <p>15 A I don't.</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>18 A Yeah, I have it open.</p> <p>19 Q Okay. Are you able to discern what the</p> <p>20 shading on this chart means?</p> <p>21 A I'm not.</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>1 BY MS. TOMKOWIAK:</p> <p>2 Q Okay. Why not?</p> <p>3 A Why do I believe it wasn't an affiliate?</p> <p>4 Q Yes.</p> <p>5 A As I think I said earlier -- well,</p> <p>6 Sentinel Re Holdings also doesn't exist anymore.</p> <p>7 Is that what you were talking about?</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>11 A Yes, but -- yes, it did.</p> <p>12 Q Okay. So at the time was that a Highland</p> <p>13 affiliate?</p> <p>14 A I don't --</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 A I don't think it was.</p> <p>17 BY MS. TOMKOWIAK:</p> <p>18 Q And why not?</p> <p>19 A Again, not an attorney, but it's, you</p> <p>20 know, a stand-alone Cayman company.</p> <p>21 Q Is that your same answer with respect to</p> <p>22 Sentinel Reinsurance?</p> <p>23 A Yes.</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 A This is not what I was referring to. 10 Q Okay. What were you referring to? 11 A I think as I stated earlier, it had 12 something to do with one of the real estate 13 investments Highland -- sorry, Sentinel held. 14 Q Okay. And just to refresh, since that was 15 this morning, what was the big to-do? 16 A That it was classified on some spreadsheet 17 as an affiliate and ultimately through compliance, 18 it was determined it was not an affiliate. 19 Q And when you say through compliance, who 20 are you referring to? 21 A I believe it was Lauren Thedford and 22 Tom Surgent. 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 A Again, just that it was on a sheet or 4 something that said Sentinel was listed as an 5 affiliate. 6 Q Did you see the sheet? 7 A Probably. 8 Q Do you have any other details about the 9 sheet? 10 A I don't, none that I can recall. 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 A None that I recall. 16 BY MS. TOMKOWIAK: 17 Q Do you know why that mattered? 18 MS. SMITH: Objection to form. 19 A I don't. 20 BY MS. TOMKOWIAK: 21 Q Did you ask? 22 A Probably not. 23 Q Why not? 24 A I don't recall. 25 Q Well, did you think it was important for</p> |
| <p style="text-align: right;">286</p> <p>1 A I don't recall how it came to my 2 attention. 3 Q Do you recall approximately when this was? 4 A Probably summer of maybe -- '18, maybe. 5 Maybe '19. I'm not entirely sure. 6 Q Do you recall who told you about it? 7 A I don't. 8 Q Do you recall anything at all about how 9 you came to learn about this? 10 MS. SMITH: Objection to form. 11 A I don't remember how it started, but I 12 know it ultimately -- there was a conversation, I 13 believe I spoke to Ms. Thedford and then 14 Mr. Surgent at some point. 15 BY MS. TOMKOWIAK: 16 Q So why were you speaking to Ms. Thedford 17 about this? 18 A I think because she knew I worked -- 19 provided service to Sentinel. 20 Q So was she informing you of this 21 conclusion? 22 A Informing me of what conclusion? 23 Q That Sentinel was not an affiliated 24 investor. 25 A I don't believe so.</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 A Yeah. My general understanding is that it 4 was not an affiliate. 5 Q Okay. But you don't know why that 6 mattered? 7 MS. SMITH: Objection to form. 8 A Why it mattered whether it was or was not 9 an affiliate? I don't know why it matters. 10 BY MS. TOMKOWIAK: 11 Q Did Ms. Thedford tell you why that 12 mattered? 13 A I don't believe so. 14 Q Did Mr. Surgent tell you why that 15 mattered? 16 A I don't believe so. 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 A Generally anything compliance related 21 would lead up to Mr. Surgent. He was the chief 22 compliance officer. 23 BY MS. TOMKOWIAK: 24 Q So did you approach him about this? 25 A I don't remember.</p> |

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| 289 | <p>1 Q Did he approach you?</p> <p>2 A Probably not.</p> <p>3 Q Okay. So you probably approached him?</p> <p>4 A Ms. Thedford may have approached him, I</p> <p>5 may have approached him. I don't recall.</p> <p>6 Q Was Ms. Thedford there when you spoke to</p> <p>7 Mr. Surgent?</p> <p>8 A I don't recall.</p> <p>9 Q And what did Mr. Surgent say to you?</p> <p>10 A I think the ultimate outcome was that</p> <p>11 Sentinel Reinsurance was not an affiliate, if I</p> <p>12 remember correctly.</p> <p>13 Q Was this a meeting in his office?</p> <p>14 A Maybe, but I sat right outside his office,</p> <p>15 so people were in and out.</p> <p>16 Q But you recall this being in person?</p> <p>17 A I believe so.</p> <p>18 Q And do you know how long that conversation</p> <p>19 lasted?</p> <p>20 A I don't.</p> <p>21 Q Five minutes? An hour? Two hours?</p> <p>22 A It was probably short.</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 I don't recall.</p> | 291 | <p>1 with Ms. Thedford or Mr. Surgent?</p> <p>2 A Not that I recall.</p> <p>3 Q Did you discuss that with Scott Ellington?</p> <p>4 A When?</p> <p>5 Q Any time.</p> <p>6 A I had heard him say it's not an affiliate.</p> <p>7 Q When did you hear him say that?</p> <p>8 A I heard it -- I don't remember</p> <p>9 specifically, but something I had heard before.</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 Most likely.</p> <p>14 Q And you don't recall any other context?</p> <p>15 A I don't.</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> |
| 290 | <p>1 Q Did he ever provide you with that</p> <p>2 conclusion in writing?</p> <p>3 A I don't remember. I don't know.</p> <p>4 Q Did you ask for it to be in writing?</p> <p>5 A I don't know.</p> <p>6 Q Did you do anything with that information?</p> <p>7 A Not that I recall.</p> <p>8 Q So then do you know why it was being</p> <p>9 provided to you?</p> <p>10 A Why it was being provided to me? Why what</p> <p>11 was being provided to me?</p> <p>12 Q Why did you need to know whether or not</p> <p>13 Sentinel was an affiliate?</p> <p>14 A Again, I think it was a question that came</p> <p>15 up somehow and I think it was generally known that</p> <p>16 I worked on Sentinel -- or provided service for</p> <p>17 Sentinel Reinsurance, so...</p> <p>18 Q And you don't recall how the question came</p> <p>19 up?</p> <p>20 A I don't.</p> <p>21 Q Did you ever ask whether or not Sentinel</p> <p>22 was an affiliate?</p> <p>23 A It was my understanding that it was not.</p> <p>24 Q And was that understanding based on</p> <p>25 anything other than the conversations that you had</p> | 292 | <p>1 A Okay.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Okay. Do you -- are you familiar with</p> <p>4 these documents?</p> <p>5 A I just refamiliarized myself, yes.</p> <p>6 Q Okay. Is that your signature on the</p> <p>7 signature of transfer?</p> <p>8 A I believe it is.</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 I believe this was to register -- or to</p> <p>14 make it so the cash distributions went directly to</p> <p>15 CIBC.</p> <p>16 Q Okay. Prior to this time, where were the</p> <p>17 cash distributions going to?</p> <p>18 A They would be received at some custody</p> <p>19 account in somewhere -- I think State Street, I</p> <p>20 think is where it went.</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 A That's right.</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 A This is a different amount of Greenbriar.</p> <p>5 I'm not sure if it's the same share class or not.</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 A I don't know where the actual shares went,</p> <p>10 but I believe this paperwork was to just directly</p> <p>11 make sure the cash distributions directly went to</p> <p>12 Sentinel's custody account.</p> <p>13 BY MS. TOMKOWIAK:</p> <p>14 Q And did they, in fact, at this time go to</p> <p>15 Sentinel's CIBC account?</p> <p>16 A I believe they did.</p> <p>17 Q Do you know whose signature that is,</p> <p>18 witness to signatures of transfer?</p> <p>19 A I don't.</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 A I don't.</p> <p>24 BY MS. TOMKOWIAK:</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 A Right.</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 A No.</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 A None that I can think of.</p> <p>11 BY MS. TOMKOWIAK:</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 A I don't.</p> <p>16 Q You don't? Are you?</p> <p>17 A I haven't -- I don't think so. I haven't</p> <p>18 paid anything.</p> <p>19 Q Okay. And you don't know if you will have</p> <p>20 to pay anything?</p> <p>21 A That's right.</p> <p>22 Q Is your employer paying for your counsel's</p> <p>23 fees?</p> <p>24 A My current employer?</p> <p>25 Q Yes.</p> |
| <p style="text-align: right;">294</p> <p>1 2021?</p> <p>2 A I don't.</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 A The par value?</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q Uh-huh.</p> <p>9 A I believe it's determined when the</p> <p>10 securities are established.</p> <p>11 Q Okay. So where would you have gotten that</p> <p>12 information?</p> <p>13 A It may say it on the certificates. I</p> <p>14 think it says it on there.</p> <p>15 Q Okay. So do you recall going to look at</p> <p>16 the certificates for that information?</p> <p>17 A I don't recall going to look at it, but I</p> <p>18 think all the CLOs had the same one cent par</p> <p>19 value.</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 A I don't.</p> <p>25</p> | <p style="text-align: right;">296</p> <p>1 A I don't know.</p> <p>2 Q What about your former employer?</p> <p>3 A I don't know.</p> <p>4 Q Do you know when you're going to find out?</p> <p>5 A I don't.</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 A Okay.</p> <p>15 BY MS. TOMKOWIAK:</p> <p>16 Q Have you seen a version of this</p> <p>17 presentation before?</p> <p>18 A Yes.</p> <p>19 Q Do you know who drafted it?</p> <p>20 A I believe it was a collaborative effort.</p> <p>21 Q Who was involved in the collaboration?</p> <p>22 A It would have been myself and Mr. Sevilla</p> <p>23 and possibly Katie Irving.</p> <p>24 Q Okay. What was Katie Irving's role with</p> <p>25 respect to Sentinel?</p> |

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| <p>297</p> <p>1 A She didn't really have one, generally.</p> <p>2 Q Why is she helping to put together this</p> <p>3 presentation?</p> <p>4 A I'm not entirely sure.</p> <p>5 Q You --</p> <p>6 A I don't remember.</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>11 A No.</p> <p>12 Q Who's Lauren Baker?</p> <p>13 A She is -- she was at one point an admin at</p> <p>14 Highland now I think, and then she moved to PR,</p> <p>15 marketing, something like that.</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>21 A I believe so.</p> <p>22 BY MS. TOMKOWIAK:</p> <p>23 Q Do you believe that this is the final</p> <p>24 version of the presentation?</p> <p>25 A I can't say one way or the other. It</p> | <p>299</p> <p>1 asking her to print something.</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>5 A More so than I would have, yeah.</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>10 A That's right.</p> <p>11 Q And do you -- did you -- did you actually</p> <p>12 give this presentation to CIMA?</p> <p>13 A I believe we did, yes.</p> <p>14 Q Okay. And who is we?</p> <p>15 A I believe myself and Mr. Sevilla.</p> <p>16 Q Anybody else?</p> <p>17 A I don't recall if anyone else was in</p> <p>18 there.</p> <p>19 Q And was this an in-person meeting?</p> <p>20 A Yes.</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>25 A He did on this one, yes.</p> |
| <p>298</p> <p>1 doesn't indicate draft or otherwise.</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>4 A Generally, I think so.</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>8 A She --</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A She may have just been helping us get it</p> <p>11 bound. If Lauren Baker, now Short, wasn't doing</p> <p>12 it -- or was doing it, that would mean that the</p> <p>13 legal group admin was out.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Was Katie Irving in the legal group at the</p> <p>16 time?</p> <p>17 A Yes. In private equity.</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>22 A I don't want to speak for Mr. Sevilla, but</p> <p>23 the only admin I knew at Highland was Sarah</p> <p>24 Goldsmith, and I wouldn't have felt comfortable</p> <p>25 just randomly e-mailing a different admin and</p> | <p>300</p> <p>1 BY MS. TOMKOWIAK:</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>10 A No. I mentioned before, we met with CIMA</p> <p>11 twice so he would have attended both meetings.</p> <p>12 BY MS. TOMKOWIAK:</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>18 A Yes. And you didn't ask before, which is</p> <p>19 why I didn't offer it. Katie Irving would have</p> <p>20 been on those trips as well.</p> <p>21 Q Okay. Anybody else?</p> <p>22 A I believe that's it.</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>25 A She really didn't have one.</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 A I don't know. 4 Q Just wanted to go to the Cayman Islands? 5 A I don't -- 6 MS. SMITH: Objection to form. 7 A I don't set the roster for trips. 8 BY MS. TOMKOWIAK: 9 Q Okay. Who did? 10 A Generally Mr. Ellington. 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 A I don't know. 16 BY MS. TOMKOWIAK: 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 A I don't want to assume. I didn't hear an 21 invite. I didn't hear an invite extended. She 22 most likely didn't just show up at the airport. 23 BY MS. TOMKOWIAK: 24 Q You didn't ask her, hey, why are you here? 25 A No.</p> | <p style="text-align: right;">303</p> <p>1 that, were those expenses submitted to Sentinel's 2 independent directors for approval? 3 A I never processed an expense for 4 Ms. Irving that I can remember or submit an 5 expense. 6 Q What about for Mr. Sevilla? 7 A Same. 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 A Once I had one expense. Generally 14 Mr. Ellington would pay for everything and just -- 15 he would be reimbursed. 16 BY MS. TOMKOWIAK: 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 A That was for a dinner. 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 A That's the only one I can think of, yeah.</p> |
| <p style="text-align: right;">302</p> <p>1 Q Okay. Did she attend the meeting? 2 A I believe so. 3 Q Okay. Did she just sit there? 4 MS. SMITH: Objection to form. 5 A I believe so. 6 BY MS. TOMKOWIAK: 7 Q Who spoke at these meetings? 8 A Myself and Mr. Sevilla. 9 Q Mr. Ellington didn't speak? 10 A I don't remember him speaking. 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 A I'm not -- I'm not entirely sure who paid 15 for her -- 16 BY MS. TOMKOWIAK: 17 Q Is that -- sorry. Go ahead. 18 A I'm not sure who paid for her 19 specifically. 20 Q Is that an expense that was submitted to 21 Sentinel's directors for approval, for their 22 approval? 23 A Was what an expense? 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 A That's correct. 5 Q And you don't know if he also paid 6 Mr. Sevilla's expenses? 7 A I believe he paid for the group or -- paid 8 for the group. 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 A How would I be mistaken? 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 A Right. 20 Q Okay. So were these trips -- these trips 21 to talk to CIMA about Sentinel were not Sentinel 22 related? 23 A They were. 24 Q Okay. 25 A Mr. Ellington would pay and be reimbursed.</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 A He would submit them to me and then I 4 would submit them to -- again, the same process we 5 outlined earlier. 6 Q Okay. 7 A And it was all up to the directors to 8 approve them. 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 A I believe so. 13 Q And during both of those meetings, were 14 you and Mr. Sevilla the only persons who 15 presented? 16 A That's my recollection, yeah. 17 Q How long did those meetings last? 18 A Probably an hour or so. 19 Q Okay. How long were you in the Cayman 20 Islands for? 21 A I don't recall. 22 Q Did you fly in for the meeting and fly out 23 that same day? 24 A No. 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 A I went once with Mr. Ellington and 4 Mr. Surgent. 5 Q Okay. And what was the purpose of that 6 trip? 7 A A conference. 8 Q For what? 9 A Like alternative investments. 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 A No one outside of the group we mentioned. 14 Q Okay. So Ms. Irving is sending this to 15 Ms. Baker on Tuesday, August 6th. Do you see 16 that? 17 A Yes. 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 A Possibly. 23 Q Do you recall taking presentations with 24 you on the plane to CIMA? 25 A Yes.</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 A I see that. 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 A I think so. 12 Q And August 7th was the second meeting? 13 A I think so. 14 Q And were there any other meetings with 15 CIMA in the Cayman Islands that year? 16 A Not that I'm aware of. 17 Q Did CIMA ask you to come back to the 18 Cayman Islands for a follow-up meeting? 19 A I don't recall if they asked or not. 20 Q Who was present at this meeting from CIMA? 21 A I'm not going to remember their names, but 22 people from the insurance division. 23 Q How many? 24 A Three or four. 25 Q And did you put your presentation on a</p> | <p style="text-align: right;">308</p> <p>1 screen for them? 2 A I think we had printouts. 3 Q Bound printouts? 4 A (Nods head.) 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 A Yes. 10 Q Okay. Who would have put the -- who would 11 have drafted this slide? 12 A This slide, probably Mr. Sevilla. 13 Q You don't recall drafting any part of 14 this? 15 A This particular slide? 16 Q Yes. 17 A I wouldn't have written this slide. 18 Q Where would Mr. Sevilla have gotten this 19 information? 20 MS. SMITH: Objection, form. 21 A Not sure. 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 A I think in the actuarial table, I think I</p> <p>9 had seen something around that number.</p> <p>10 BY MS. TOMKOWIAK:</p> <p>11 Q Okay. And then you're conveying that to</p> <p>12 CIMA, right?</p> <p>13 A It looks like it, yeah.</p> <p>14 Q Okay. Do you recall any analysis of how</p> <p>15 high insured damages could be?</p> <p>16 A With respect to Sentinel, it would have</p> <p>17 been the limit of the policy.</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 A I don't recall specifics.</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 A The entire presentation?</p> <p>3 Q No, this slide.</p> <p>4 A I mean, I'm better than him at PowerPoint.</p> <p>5 It's easy for me to do.</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 A I don't remember specifics. We were just</p> <p>9 filling out kind of bubbles on a slide.</p> <p>10 Q Bubbles on -- I'm sorry, go ahead.</p> <p>11 A It's more about getting the presentation</p> <p>12 done. I didn't ask follow-up questions to every</p> <p>13 bullet point provided.</p> <p>14 Q Well, were you the person in charge of</p> <p>15 presenting the slide?</p> <p>16 A We presented the presentation together. I</p> <p>17 don't recall who spoke to which slide.</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 A That's correct.</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 A I believe this was a result of the</p> <p>2 inspection -- or part of the inspection that I</p> <p>3 mentioned earlier.</p> <p>4 Q Okay. And this was their five-year</p> <p>5 inspection?</p> <p>6 A Yes.</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 A Yes.</p> <p>12 Q Okay. Who would have put this together?</p> <p>13 A I would have put most of this together.</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 A I think it's referring to when this</p> <p>18 ATE policy may have been contemplated.</p> <p>19 Q Well, where did you get that information?</p> <p>20 A Probably Mr. Sevilla.</p> <p>21 Q Probably Mr. Sevilla. So do you recall</p> <p>22 one way or the other?</p> <p>23 A I don't.</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 A I would have asked further questions if I</p> <p>2 was presenting by myself, but things I didn't</p> <p>3 know, I knew Mr. Sevilla could speak to.</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 A That's right.</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 A I came to -- you know, when I was</p> <p>12 appointed, the policy was in place. So I don't</p> <p>13 think I went and had a look back of however many</p> <p>14 months prior.</p> <p>15 BY MS. TOMKOWIAK:</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 A I think anything prior to the January 2018</p> <p>23 bullet on the -- or portion of the timeline would</p> <p>24 have come from Mr. Sevilla.</p> <p>25 Q Well, you became a director of Sentinel in</p> |

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| <p>1 September of 2019 -- of 2017, right?</p> <p>2 A That's right.</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 A That's right.</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 A That's right.</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 A I didn't. The policy was active and as I</p> <p>18 understood it, already approved by CIMA.</p> <p>19 BY MS. TOMKOWIAK:</p> <p>20 Q Do you know when CIMA approved the policy?</p> <p>21 A I don't.</p> <p>22 Q Do you know how they approved the policy?</p> <p>23 A I don't.</p> <p>24 Q Who told you that they had approved the</p> <p>25 policy?</p> | <p>313</p> <p>314</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 A I believe so.</p> <p>9 Q Does this help refresh your recollection</p> <p>10 as to when Endorsement No. 1 was executed?</p> <p>11 A It doesn't.</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 A Possibly. I just don't recall when it was</p> <p>17 actually completed.</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 A That's right.</p> <p>25 Q Okay. But that -- you still don't know if</p> | <p>315</p> <p>316</p> |
| <p>1 A I'm not entirely sure.</p> <p>2 Q You just at some point came to know it?</p> <p>3 A Right. At least after Sentinel was</p> <p>4 audited for the year of 2017, had there been an</p> <p>5 issue with CIMA with the policy, we would have --</p> <p>6 Sentinel would have heard about that.</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 A I'm not sure.</p> <p>11 Q Would that be Mr. Sevilla?</p> <p>12 A I'm not sure.</p> <p>13 Q Did anybody besides Mr. Sevilla or</p> <p>14 Ms. Irving help you put together this deck?</p> <p>15 A I don't believe so.</p> <p>16 Q Okay. So it was either Ms. Irving or</p> <p>17 Mr. Sevilla?</p> <p>18 A Oh, I'm sorry, I thought you were asking a</p> <p>19 different question. I thought you were -- yes.</p> <p>20 Mr. Sevilla would have provided this August '17</p> <p>21 bullet.</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 A That's right.</p> | <p>314</p> | <p>1 Endorsement No. 2 was executed around this time?</p> <p>2 A I don't.</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 A Sat on, what do you mean?</p> <p>7 BY MS. TOMKOWIAK:</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 A Oh. Generally, no.</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 A Yes.</p> <p>18 Q Okay. Was that a special audit outside of</p> <p>19 an annual audit?</p> <p>20 A No, it was late that year. It was a</p> <p>21 June 30th deadline and if it was filed in July,</p> <p>22 Sentinel would have had to request an extension</p> <p>23 from CIMA.</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> | <p>316</p> |

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| <p>317</p> <p>1 MS. SMITH: Objection to form. 2 A I don't recall. 3 BY MS. TOMKOWIAK: 4 Q Do you know why this information was 5 important to convey to CIMA? 6 A Possibly they may have asked for it. I'm 7 not sure. We could have been proactive in 8 preparing this deck, thinking it useful for them 9 to see it laid out like this. 10 Q So to the best of your recollection, CIMA 11 hadn't asked any questions about the timeline for 12 the policy? 13 A I don't recall. 14 Q If you look at the next slide, this slide 15 is entitled Business Rationale, The Insureds. Who 16 would have provided the information for this 17 slide? 18 A Probably Mr. Sevilla. 19 Q Okay. So is it your understanding that 20 Mr. Sevilla negotiated the policy on behalf of the 21 insureds? 22 MS. SMITH: Objection to form. 23 A No. 24 BY MS. TOMKOWIAK: 25 Q Okay. And you don't know who did?</p> | <p>319</p> <p>1 insureds? 2 BY MS. TOMKOWIAK: 3 Q Yes. 4 A Sorry, the insureds' ability to satisfy a 5 judgment? I only considered this in the lens 6 of -- through the lens of the policy, so the 7 insureds could satisfy up to the limits of the 8 policy. 9 Q Were you told -- was there any reason that 10 Sentinel was better at liquidating the assets than 11 the funds? 12 MS. SMITH: Objection to form. 13 A I don't think that's what this is saying. 14 BY MS. TOMKOWIAK: 15 Q I'm just asking. 16 A I don't know that. 17 Q Okay. If you look at the next slide, do 18 you know who would have provided this information 19 regarding the business rationale from Sentinel's 20 point of view? 21 A This probably would have been myself and 22 Mr. Sevilla together. 23 Q Okay. And so Mr. Sevilla provided both 24 sides' rationale, for the insureds and Sentinel? 25 A In part.</p> |
| <p>318</p> <p>1 A I don't. 2 Q So how would Mr. Sevilla had known what 3 the insureds' business rationale was? 4 MS. SMITH: Objection to form. 5 A I don't know. 6 BY MS. TOMKOWIAK: 7 Q Did you ask him? 8 A I don't remember asking him. 9 Q Did he prepare this slide or did you? 10 A He probably sent me the language and I had 11 the pen on the deck, I guess. 12 Q In the third bullet point here it says: 13 Essentially turned an illiquid portfolio into a 14 liquid one. Future cash generation to pay counsel 15 and potentially satisfy a judgment was, prior to 16 the ATE policy, questionable at best. Avoided a 17 fire sale of assets. 18 Do you see that? 19 A I do. 20 Q And after the portfolio was transferred to 21 Sentinel, did you believe that the potential to 22 satisfy a judgment was no longer questionable? 23 MS. SMITH: Objection to form. 24 A Did I believe the potential to satisfy a 25 judgment in court, like in -- on behalf of the</p> | <p>320</p> <p>1 Q And how did you get the information 2 regarding the business rationale? 3 A How did I receive the information? 4 Q How did you get it? You weren't there 5 when the policy was entered into, you didn't 6 negotiate it. You told me earlier today that you 7 didn't know who did. So who would you have 8 reached out to to understand Sentinel's business 9 rationale for entering into the policy? 10 A Well, I would have discussed that most 11 likely with Mr. Sevilla. 12 Q What about the independent directors? 13 Would you have discussed that with them? 14 A The business rationale? 15 Q Yes. 16 A With the current directors? 17 Q Yeah. 18 A No, probably not. 19 Q In that last bullet it says that the board 20 and advisory committee were satisfied that this 21 was an economically feasible transaction even if 22 the policy limits were ultimately reached. 23 Did you understand that even if Sentinel 24 had to pay out the full policy limit, it would 25 still be solvent? Is that what that means?</p> |

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| <p style="text-align: right;">321</p> <p>1 A That's what that's saying, that Sentinel</p> <p>2 could pay the policy and survive.</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>5 A This probably -- again, I prepared all the</p> <p>6 slides, but this information probably would have</p> <p>7 come from Katie.</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>13 A That's right.</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>17 A I don't know. This is -- I know this is</p> <p>18 what it was -- what CIMA asked for. I don't know</p> <p>19 if the work had been done yet.</p> <p>20 Q How long did this presentation last?</p> <p>21 A Probably an hour or so.</p> <p>22 Q And what actions, if any, did CIMA take</p> <p>23 after this presentation?</p> <p>24 A Actions, I'm not entirely sure.</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>9 A Did I ever come to know that he had an</p> <p>10 ownership interest? Yes.</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>15 A Yes.</p> <p>16 BY MS. TOMKOWIAK:</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>2 A To -- again, as part of the inspection</p> <p>3 process.</p> <p>4 Q So did they complete their inspection</p> <p>5 after this?</p> <p>6 A At some point in 2019 they did. I believe</p> <p>7 it was after this.</p> <p>8 Q Would you have received a copy of that</p> <p>9 inspection?</p> <p>10 A Probably.</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>15 A Not specific questions, but I know they</p> <p>16 did. There was a conversation.</p> <p>17 Q And who responded to those questions?</p> <p>18 A Myself or Mr. Sevilla.</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>1 A Okay.</p> <p>2 BY MS. TOMKOWIAK:</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>8 A Yes.</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>13 A Which e-mail? There seems to be a lot on</p> <p>14 here.</p> <p>15 BY MS. TOMKOWIAK:</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>19 A Is that back --</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>24 A Yeah.</p> <p>25 Q Okay. And did you know that prior to</p> |

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| <p>1 January 21st, 2021?</p> <p>2 A Yes. Probably -- yes.</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 A I do.</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 A That's what he's saying.</p> <p>15 BY MS. TOMKOWIAK:</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 A I believe his original -- are you</p> <p>20 referring to the e-mail about I must have</p> <p>21 understood the original ask or --</p> <p>22 BY MS. TOMKOWIAK:</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 A Initially, I don't see it on here, but I</p> | <p>325</p> | <p>1 since obviously the shares never made it to</p> <p>2 Sentinel, that they were still actually in CDO</p> <p>3 Fund's name.</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 A Not something I really considered.</p> <p>11 BY MS. TOMKOWIAK:</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 A I didn't have a plan for informing</p> <p>17 Sentinel.</p> <p>18 BY MS. TOMKOWIAK:</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 A I don't remember considering what to do</p> <p>23 with respect to Sentinel.</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>327</p> |
| <p>1 believe he reached out to ask something about a</p> <p>2 custody account with regards to Greenbriar.</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 A Yes. I think if that's what I wrote,</p> <p>15 that's probably what I meant.</p> <p>16 BY MS. TOMKOWIAK:</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 A I don't believe I did.</p> <p>22 Q Okay. Why not?</p> <p>23 A Because my task, as I understood it, was</p> <p>24 to assist in issue -- helping issue, getting new</p> <p>25 paper certificate shares issued and I believe</p> | <p>326</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 A A conflict between who?</p> <p>5 BY MS. TOMKOWIAK:</p> <p>6 Q An inner conflict, a conflict between the</p> <p>7 two hats that you wear.</p> <p>8 A Again, I didn't --</p> <p>9 MS. SMITH: Objection, form.</p> <p>10 A I was trying to do this job and did not</p> <p>11 consider other things that might impact it at the</p> <p>12 time.</p> <p>13 BY MS. TOMKOWIAK:</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 A No.</p> <p>21 BY MS. TOMKOWIAK:</p> <p>22 Q Why not?</p> <p>23 A It's, again, not what I was asked to do.</p> <p>24 Q So did you tell Mr. Demo that CDO Fund was</p> <p>25 still the owner of these shares?</p> | <p>328</p> |

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| <p style="text-align: right;">329</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 A I don't know.</p> <p>3 BY MS. TOMKOWIAK:</p> <p>4 Q Did you think that reissuing these shares</p> <p>5 in the name of CDO Fund would be acting in the</p> <p>6 best interest of Sentinel?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 A Again, I did not consider it.</p> <p>9 BY MS. TOMKOWIAK:</p> <p>10 Q Okay. So when you were responding to</p> <p>11 Mr. Demo's e-mails, you just weren't acting at all</p> <p>12 in your capacity as Sentinel's director?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 A I was trying to answer the questions</p> <p>15 Mr. Demo was asking.</p> <p>16 BY MS. TOMKOWIAK:</p> <p>17 Q And he didn't ask you if CDO Fund had</p> <p>18 tried to transfer the Greenbriar shares to</p> <p>19 Sentinel, so you didn't feel like you had to</p> <p>20 answer that question?</p> <p>21 MS. SMITH: Objection to form. Ms. --</p> <p>22 MS. TOMKOWIAK: Tomkowiak.</p> <p>23 MS. SMITH: -- Tomkowiak, there's</p> <p>24 extensive e-mails on this exhibit, and if you --</p> <p>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</p> <p>2 working with State Street to reissue physical</p> <p>3 certificates and will keep everyone in the loop on</p> <p>4 timing.</p> <p>5 How did -- prior to this, had you already</p> <p>6 tried working with State Street to reissue</p> <p>7 physical certificates?</p> <p>8 A I don't remember the exact timing, but at</p> <p>9 some point I would have reached out to State</p> <p>10 Street.</p> <p>11 Q Okay. But was that in connection with</p> <p>12 trying to reissue the physical certificates to</p> <p>13 Sentinel?</p> <p>14 A No.</p> <p>15 Q No. Okay. So prior to this e-mail, you</p> <p>16 had not reached out to State Street to try to</p> <p>17 reissue the physical certificates to Sentinel</p> <p>18 because they had been lost?</p> <p>19 A I may had years -- several years prior,</p> <p>20 but I don't have a specific recollection of that.</p> <p>21 Q Then later in your e-mail you say: The</p> <p>22 certificates were transferred in error in 2017 by</p> <p>23 Carter Chism, who no longer works at HCM, and the</p> <p>24 recipients never took delivery.</p> <p>25 Do you see that?</p> |
| <p style="text-align: right;">330</p> <p>1 question without focusing on the one paragraph on</p> <p>2 the page that you are talking about.</p> <p>3 MS. TOMKOWIAK: Okay. I noted your</p> <p>4 objection. I have limited time left on the</p> <p>5 record, so if we could limit the speaking</p> <p>6 objections so we can get through this and we can</p> <p>7 just get through the document.</p> <p>8 BY MS. TOMKOWIAK:</p> <p>9 Q You have the whole document in front of</p> <p>10 you. I have told you that you can always look at</p> <p>11 another part of the document if you need to to</p> <p>12 answer my question.</p> <p>13 A Okay.</p> <p>14 Q Okay. So my question is, and he didn't</p> <p>15 ask you if CDO Fund had tried to transfer the</p> <p>16 Greenbriar shares to Sentinel so you didn't feel</p> <p>17 like you had to answer that question, right?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 A I think that's right.</p> <p>20 BY MS. TOMKOWIAK:</p> <p>21 Q Okay. And if you look at your e-mail on</p> <p>22 Wednesday, January 27th, that's at the Bates</p> <p>23 number ended 4478. It's at 2:10 p.m. on</p> <p>24 Wednesday, January 27th.</p> <p>25 A Okay.</p> | <p style="text-align: right;">332</p> <p>1 A I do.</p> <p>2 Q Okay. What did you mean by transferred in</p> <p>3 error?</p> <p>4 A Well, if they never arrived where they</p> <p>5 were supposed to and were lost, I call that an</p> <p>6 error.</p> <p>7 Q Okay. So you don't mean that Mr. Chism</p> <p>8 wasn't supposed to transfer them, you just mean he</p> <p>9 didn't do it right?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 A I can't really speculate on what Carter</p> <p>12 Chism did or did not do. I just know that</p> <p>13 certificates ended up lost.</p> <p>14 BY MS. TOMKOWIAK:</p> <p>15 Q Right. These are -- but these are your</p> <p>16 words and I just want to make sure I understand</p> <p>17 the error. The error was that he didn't execute</p> <p>18 the transfers properly?</p> <p>19 A I believe so.</p> <p>20 Q Not that he transferred them by mistake or</p> <p>21 tried to transfer them by mistake?</p> <p>22 A I believe so.</p> <p>23 Q And the recipient never took delivery. By</p> <p>24 recipient, you mean Sentinel, right?</p> <p>25 A That's right.</p> |

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| <p>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 A I believe if you follow the e-mail chain</p> <p>4 when I was asked, I offered that up.</p> <p>5 BY MS. TOMKOWIAK:</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 A No. My task was to find and help reissue</p> <p>10 the certificates. If they were lost, they were</p> <p>11 lost. And when I was directly asked, I answered.</p> <p>12 BY MS. TOMKOWIAK:</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 A I don't recall.</p> <p>18 BY MS. TOMKOWIAK:</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 A When asked, I answered.</p> <p>23 BY MS. TOMKOWIAK:</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>335</p> <p>1 BY MS. TOMKOWIAK:</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 A Which is what I said.</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 A It's my understanding.</p> <p>11 BY MS. TOMKOWIAK:</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 A I do.</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 A Yeah. I don't generally -- my</p> <p>24 understanding of the high-level ownership does not</p> <p>25 mean I know how it's owned, meaning what structure</p> |
| <p>334</p> <p>1 first place?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 A Not that I recall.</p> <p>4 BY MS. TOMKOWIAK:</p> <p>5 Q Okay. So then Mr. Romey -- is it Romey or</p> <p>6 Romey?</p> <p>7 A I think it's Romey.</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 A I do.</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 A Just like -- I think if you look back at</p> <p>20 the power of attorney with CIBC with those other</p> <p>21 shares, you don't transfer directly to the</p> <p>22 company; you transfer the certificates to a</p> <p>23 custodian. So that was a meaningful -- you should</p> <p>24 call it a qualification, but that's a meaningful</p> <p>25 fact.</p> | <p>336</p> <p>1 it sits in and all that stuff.</p> <p>2 BY MS. TOMKOWIAK:</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 A Yes.</p> <p>7 BY MS. TOMKOWIAK:</p> <p>8 Q You knew that it was owned at least in</p> <p>9 part by Mr. Ellington?</p> <p>10 A That's right.</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 A He did ask those -- I'm sorry, I'm not</p> <p>16 following. He did ask those questions.</p> <p>17 BY MS. TOMKOWIAK:</p> <p>18 Q Well, he asked who owns Sentinel</p> <p>19 Reinsurance, right?</p> <p>20 A Yeah.</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 A Right.</p> <p>24 Q Why not?</p> <p>25 A They don't, as I understand it, personally</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> |

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| <p style="text-align: right;">341</p> <p>1 A I see that.</p> <p>2 BY MS. TOMKOWIAK:</p> <p>3 Q Was that true?</p> <p>4 A I believe so.</p> <p>5 Q Why?</p> <p>6 A Any record I would have had of</p> <p>7 subscription or redemption most likely would have</p> <p>8 been in my SAS e-mail or on my old tablet that was</p> <p>9 stolen out of my car.</p> <p>10 Q Did you not have access to your SAS e-mail</p> <p>11 at this time?</p> <p>12 A I don't believe I did.</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 A He said can you please send us the</p> <p>18 documents, and I said I don't have them.</p> <p>19 BY MS. TOMKOWIAK:</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 A No. I assumed they were on -- whoever</p> <p>24 does the shareholder registration would have had</p> <p>25 them, whoever at Highland does that.</p> | <p style="text-align: right;">343</p> <p>1 Highland funds liability to UBS?</p> <p>2 A I did not.</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 A I believe so.</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 A I believe so.</p> <p>12 BY MS. TOMKOWIAK:</p> <p>13 Q Did you authorize your counsel to enter</p> <p>14 into this agreement on your behalf?</p> <p>15 A I believe so, yes.</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 A I think so.</p> <p>20 Q Have you abided by them?</p> <p>21 A I believe I have.</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 A No.</p> |
| <p style="text-align: right;">342</p> <p>1 BY MS. TOMKOWIAK:</p> <p>2 Q Whoever at Highland does the shareholder</p> <p>3 registration for who?</p> <p>4 A Or the subscriptions and redemptions,</p> <p>5 excuse me, for Multi Strat.</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 A I didn't.</p> <p>11 BY MS. TOMKOWIAK:</p> <p>12 Q Is that because he didn't ask you?</p> <p>13 A Yes.</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 A No. I had very little interaction with</p> <p>20 the independent board.</p> <p>21 BY MS. TOMKOWIAK:</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

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|--------------------|-----------------------|-------------------|----------------------|
| aberdeen | accountant | 232:17, 232:24, | adjust |
| 233:9, 234:22, | 257:22 | 235:15, 238:5, | 195:13 |
| 266:11 | accountants | 249:11, 260:24, | adjusted |
| abided | 88:18 | 276:24, 293:7, | 195:11 |
| 343:20 | accounting | 299:11, 311:24, | adjusting |
| ability | 48:13, 110:11, | 315:17, 316:10, | 315:3 |
| 104:1, 319:4 | 112:5, 240:22 | 321:15, 327:2, | adjustment |
| able | accounts | 328:16 | 315:15 |
| 83:24, 118:25, | 6:13, 208:22 | actuarial | admin |
| 120:4, 120:6, | accurate | 102:13, 117:11, | 27:5, 81:16, |
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| 276:8, 282:19 | acknowledge | 210:11, 210:12, | 298:13, 298:23, |
| above | 345:3 | 223:6, 224:25, | 298:25 |
| 96:24, 97:19, | acknowledgment | 226:25, 240:13, | administerial |
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**CONTAINS HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER
INFORMATION**

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

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| <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 § No. 21-03020-sgj 14 HIGHLAND CAPITAL § 15 MANAGEMENT, L.P., § 16 Defendant. § 17 18 CONTAINS HIGHLY CONFIDENTIAL 19 SUBJECT TO PROTECTIVE ORDER 20 INFORMATION 21 Videotaped Deposition of 22 SCOTT BYRON ELLINGTON 23 Conducted Virtually 24 Thursday, July 29, 2021 25 10:39 a.m. EST 26 27 Job No.: 386794 28 Pages: 1 - 407 29 Reported by: Lisa M. Barrett, RPR, CRR, CRC, CSR 30</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 & 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 & 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>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>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 & 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 & 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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| 1 APPEARANCES CONTINUED 2 3 ON BEHALF OF THE WITNESS: 4 Debra A. Dandeneau 5 Michelle Hartmann 6 BAKER & MCKENZIE, LLP 7 452 Fifth Avenue 8 New York, New York 10018 9 (212) 626-4875 10 Debra.dandeneau@bakermckenzie.com 11 Michelle.hartmann@bakermckenzie.com 12 13 Videographer: Robert Leonard 14 Remote Technician: Nate Riveness 15 16 17 18 19 20 21 22 23 24 25 | 1 DEPOSITION EXHIBITS 2 SCOTT B. ELLINGTON 3 July 29, 2021 4 (Retained by counsel) 5 NUMBER DESCRIPTION MARKED 6 Exhibit 86 Notice of Transfer of Claim 41 7 Other Than for Security 8 Case. No. 19-34054-sgj11 9 Two pages 10 Exhibit 87 Email from Isaac Leventon to 265 11 Scott Ellington, September 12 9, 2019, Bates Nos. 13 UBSPROD2502008 to -2009 14 with attachment, NREF Timeline 15 Exhibit 88 Email from Stephanie Vitiello 313 16 to Isaac Leventon, dated April 17 11, 2017 showing attachment 18 UBS_Settlement Structure (SV) 19 UBSPROD4837429 20 Exhibit 89 Email from JP Sevilla to Scott 315 21 Ellington dated 11 August 2017 22 with forwarded email 23 Bates Nos. USBPROD2632632-33 24 25 |
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| 1 INDEX 2 SCOTT B. ELLINGTON 3 JULY 29, 2021 4 PAGE 5 APPEARANCES 11 6 7 PROCEEDINGS 11 8 9 EXAMINATION OF SCOTT B. ELLINGTON 10 BY MR. CLUBOK 11 11 MARKED HIGHLY CONFIDENTIAL 28 12 13 REPORTER'S CERTIFICATION 407 14 15 16 17 18 19 20 21 22 23 24 25 | 1 DEPOSITION EXHIBITS CONTINUED 2 SCOTT B. ELLINGTON 3 July 29, 2021 4 NUMBER DESCRIPTION MARKED 5 6 Exhibit 90 Email from Stephanie Vitiello 383 7 to Isaac Leventon dated 8 11 April 2017 with attachments 9 Bates Nos. UBSPROD4837429-7444 10 Exhibit 91 Email from Stephanie Vitiello 387 11 to Isaac Leventon, dated 12 12 April 2017, Bates Nos. 13 UBSPROD4837505-7524 14 Exhibit 92 Email from Stephanie Vitiello 391 15 to Isaac Leventon, dated 16 12 April, 2017, Bates Nos. 17 UBSPROD4837593-7610 18 19 20 21 22 23 24 25 |

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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 &</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 & 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> |
| 10 | 12 |
| <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 Good morning, Mr. Clubok.</p> <p>15 Q Can you state your full name, please?</p> <p>16 A Scott Byron Ellington.</p> <p>17 Q What is your home address?</p> <p>18 A I currently don't have a home address.</p> <p>19 I recently sold the place I was living.</p> <p>20 Q Where are you living right now?</p> <p>21 A I'm staying between my father's house</p> <p>22 and my girlfriend's house.</p> <p>23 Q And today, you are taking the</p> <p>24 deposition at your girlfriend's house.</p> <p>25 A Correct.</p> |

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| <p style="text-align: right;">13</p> <p>1 Q And that is Stephanie Archer.</p> <p>2 A That is.</p> <p>3 <-- HIGHLY CONFIDENTIAL</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 --></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 <-- 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 --></p> | <p style="text-align: right;">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 style="text-align: right;">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 <-- HIGHLY CONFIDENTIAL --></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 style="text-align: right;">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 a 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> |

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| <p>17</p> <p>1 anywhere right now?</p> <p>2 A No, I do not.</p> <p>3 Q Does anybody who works for -- how many</p> <p>4 employees does Skyview have?</p> <p>5 A I believe there is right around 40. I</p> <p>6 don't know the exact headcount.</p> <p>7 Q Do any of them work in an office?</p> <p>8 A They all work remotely, as far as</p> <p>9 I know.</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 A I believe they work remotely, yes. I</p> <p>14 don't know where they work from on a daily basis.</p> <p>15 Q Who owns Skyview?</p> <p>16 A I do.</p> <p>17 Q You are the sole owner of Skyview?</p> <p>18 A Yes.</p> <p>19 Q Does anyone else have any economic</p> <p>20 stake in Skyview?</p> <p>21 A No.</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 A I believe that some people come in</p> | <p>19</p> <p>1 Q Well, who made the agreement?</p> <p>2 A The agreement was negotiated by several</p> <p>3 parties and representatives of Skyview, and I</p> <p>4 personally was not involved in those negotiations.</p> <p>5 Q Who was? Who negotiated your comp for</p> <p>6 Skyview?</p> <p>7 A I think it wasn't my comp; it was an</p> <p>8 overall consulting fee and then the comp was set</p> <p>9 by senior people at Skyview, Frank Waterhouse and</p> <p>10 Brian Collins.</p> <p>11 Q As best you know, what is your</p> <p>12 compensation for this year going to --</p> <p>13 A Commensurate --</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 A Commensurate --</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>18</p> <p>1 there to use those facilities on a -- on an ad hoc</p> <p>2 basis, yes.</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 A Not that I'm aware of it being</p> <p>7 permanent, no.</p> <p>8 Q Do you have any connection whatsoever</p> <p>9 with NexBank?</p> <p>10 A I am a very --</p> <p>11 -- (overspeaking) --</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 A No.</p> <p>24 Q What is your compensation from Skyview?</p> <p>25 A I would have to look at the agreement.</p> | <p>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 A It would be commiserate to what it</p> <p>6 should have been in the calendar year 2020 at</p> <p>7 Highland Capital Management Company. (inaudible)</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 A I don't know if it was what I believed,</p> <p>13 but I was, again, set by Mr. Collins and</p> <p>14 Mr. Waterhouse.</p> <p>15 Q And what was your compensation for</p> <p>16 Capital -- Highland Capital Management in 2020?</p> <p>17 A I believe it was around \$3 million,</p> <p>18 according to Highland Capital.</p> <p>19 Q Is that all in, bonus, deferred comp,</p> <p>20 equity, any other source of compensation?</p> <p>21 A It would be every source --</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> |

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| <p>1 as reflected in their award letters from all in of 2 everything that you could put as compensation, 3 including free lunches and cell phone 4 reimbursement and parking and that kind of thing. 5 BY MR. CLUBOK: 6 Q And did you actually receive that 7 \$3 million? 8 A I did not. 9 Q How much of it did you receive, 10 roughly? 11 A I received just my base salary in 2020. 12 Q Which was roughly? 13 A \$450,000. 14 Q And are you contesting the fact that 15 you did not receive roughly \$2.5 million that you 16 believe you are entitled to? 17 A Yes. 18 MS. SMITH: Objection. I'm going to 19 object to the extent that it requires you to 20 divulge any privileged conversations with your 21 attorneys. 22 BY MR. CLUBOK: 23 Q Yeah, all -- all of my questions are 24 intended to -- are not intended to seek privileged 25 communications with your attorneys.</p> | 21 | <p>1 member of the bar? 2 A Yes. 3 Q Which bar or bars? 4 A The Texas bar. 5 Q Do you have any other bar memberships, 6 other than Texas, state court or Supreme Court? 7 A I do not. 8 Q Any federal court bar memberships? 9 A No. 10 Q Where did you go to law school? 11 A Pepperdine University. 12 Q What year did you graduate? 13 A Sorry? 14 Q Sorry. What year did you graduate? 15 A 2000. 16 Q Have you ever had any disciplinary 17 actions taken against you since you became a 18 lawyer? 19 A No. 20 MS. SMITH: Objection to form. 21 BY MR. CLUBOK: 22 Q Have you ever had any complaints to the 23 bar, as far as you know? 24 A As far as I know, no. 25 Q Do you have any other professional</p> | 23 |
| <p>1 So when I say contesting, I mean to 2 Highland Capital Management in some form or 3 another, not what you might be personally saying 4 to your attorney in a privilege setting. 5 A Without divulging any privileged 6 communications, the general answer is yes. 7 Q In what form are you contesting that or 8 have you -- have you made that -- have you -- in 9 what form have you expressed that disagreement? 10 Do you have a claim? Have you given notice? 11 A I follow the advice of counsel. 12 Q Right. But how have you communicated, 13 if you have communicated, your challenge to your 14 compensation for 2020 to Highland Capital 15 Management? 16 A Again, without divulging privileged 17 communication with counsel, I believe a proof of 18 claim has been filed. 19 Pardon me? 20 Q The question or the answer? 21 A I said a proof of claim has been filed. 22 Q You're an attorney authorized to 23 practice law? 24 A Yes. 25 Q Are you -- are you currently an active</p> | 22 | <p>1 licenses, other than law degree? 2 A I do not. 3 Q What does Skyview Group do? 4 A Skyview Group advises and consults with 5 its clients. 6 Q On what matters? 7 A Anything that we're contracted to 8 consult and advise upon. 9 Q What do you -- what -- what area 10 generally do you advise and consult on? 11 A Middle and back office functions to 12 money managers and family offices and related 13 parties. 14 Q Anything else? 15 A No. 16 Q And how many clients do you have? 17 A I'd have to think of the number of 18 entities. 19 I'm not certain, but I would say around 20 probably -- let me think. I'd have to look at the 21 agreements to give you an exact number, but I'd 22 say less than a dozen. 23 Q And of those, are any completely 24 unaffiliated with Jim Dondero, yourself or other 25 current or former employees of Highland Capital</p> | 24 |

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| <p>1 Management? 2 MS. SMITH: Objection to form. 3 THE WITNESS: Yes. 4 BY MR. CLUBOK: 5 Q How many? 6 A Three. 7 Q Who are they? 8 A There is confidentiality agreements 9 with who the clients are. I believe I would 10 violate those contracts if I disclose. 11 Q We -- we can designate this part of the 12 transcript as confidential. 13 CONFIDENTIAL 14 THE WITNESS: I'd have to look at the 15 agreements to tell you the entity names. 16 BY MR. CLUBOK: 17 Q Okay, well, we'll ask you to do that, 18 then, at the (inaudible) 19 You believe there's a confidentiality 20 agreement that prohibits you, in response to this 21 subpoenaed deposition that was court ordered, from 22 disclosing those names, even under the protective 23 order in this case? 24 MS. SMITH: Objection to form. He's 25 already -- he's already answered the question</p> | 25 | <p>1 THE WITNESS: I will -- I will take 2 advice from counsel, and, like you said, they can 3 be provided under some kind of a confidentiality 4 agreement under this deposition. I'm not saying 5 that I -- that I don't have to disclose them. 6 I'll just take the advice of counsel. 7 MR. CLUBOK: Okay. Why don't we go off 8 the record. 9 -- Off-record discussion -- 10 THE VIDEOGRAPHER: We're going off the 11 record at 10:56 a.m. 12 (Recess taken 10:56 a.m. to 11:05 a.m.) 13 THE VIDEOGRAPHER: We're going back on 14 the record at 11:05 a.m., eastern time. 15 BY MR. CLUBOK: 16 Q Okay. Sir, to the -- my understanding 17 that Ms. Smith, on your behalf, is going to 18 designate this next answer highly confidential and 19 myself, the other lawyers reasoning UBS and 20 debtor's counsel will all abide by the orders in 21 this case with respect to confidentiality. So 22 with that said -- 23 MR. FEINSTEIN: That's agreed. 24 MR. CLUBOK: Thank you, Mr. Feinstein. 25 BY MR. CLUBOK:</p> | 27 |
| <p>1 saying -- 2 MR. CLUBOK: Yeah. 3 MS. SMITH: -- he thinks it's 4 confidential. 5 BY MR. CLUBOK: 6 Q Well, no, let me just be clear. You 7 understand you are here testifying under a 8 subpoena; correct? 9 A Yes. 10 Q And you understand that you contested 11 that subpoena and litigated in court to try to 12 quash this deposition; correct? 13 A Correct. 14 Q You understand you've been court 15 ordered to sit for this deposition; right? 16 A Yes. 17 Q And you are a lawyer; correct? 18 A Yes. 19 Q Okay. And you believe that you have a 20 binding, private contract with your clients that 21 protects you from disclosing them even in this 22 deposition setting? As you sit here today, that's 23 your legal belief? 24 MS. SMITH: Objection, calls for legal 25 conclusion.</p> | 26 | <p>1 Q Let's just ask you again. To the bet 2 of your ability, can you identify any clients of 3 Skyview Group that are not affiliated with 4 Mr. Dondero or some other current or former 5 employee of Highland Capital Management? 6 A Yes. 7 MS. SMITH: Objection as to -- 8 objection as to form, and this is to be marked 9 highly confidential. 10 You can answer to the extent you know. 11 HIGHLY CONFIDENTIAL 12 THE WITNESS: The first one I'm aware 13 of is a real estate developer in Austin. I do not 14 know the entity name. I know generally that they 15 have a distressed situation that involves 16 litigation. And they do not have any resources 17 in-house, so they wanted to retain Skyview and 18 have retained Skyview to generally manage 19 litigation in a distress workout situation on a 20 project -- real estate project in Austin, Texas. 21 MR. CLUBOK: Who is the human being 22 that you deal with there? 23 THE WITNESS: I have never dealt with 24 anyone. I was informed by JP Sevilla that they 25 had signed an agreement and agreed to a fee</p> | 28 |

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| <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 A I do not. I know that someone at 7 Skyview was contacted that had a personal 8 relationship with this person, and said "Do you 9 guys have these resources." 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 A I really don't. 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 A To manage the employee base, originates 5 new business, and consult, advise clients. 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 A I don't know. 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 A Yes. 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 A I really don't know. 7 Q And what's the third one? 8 A The third one is a Swiss-based 9 commodities broker that was looking for fund 10 accounting work -- fund accounting help and 11 compliance help in opening a U.S. operation. 12 From what I understand, that's under an 13 LOI, and there is not agreement to fees. 14 Q What's the name of that Swiss Bank? 15 A I do not know. 16 Q What's your job title at Skyview? 17 A I believe they -- they have given me 18 the title of president. 19 Q Well, you own the company; right? 20 A Correct. 21 Q So ultimately you make any final 22 decisions about the company? 23 A Correct. 24 MS. SMITH: Objection as to form. 25</p> | <p style="text-align: right;">32</p> <p>1 A Early June. 2 Q And how often have you gone there since 3 forming Skyview Group? 4 A I think I've been there three times. 5 Q Do you -- is there an office designated 6 for you there? 7 A No. 8 Q Do you plan to remain the sole owner of 9 Skyview Group? 10 A The plan is to distribute equity to 11 senior and employees in general. 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 A I would highly assume so. 22 Q And Mr. DiOrio? 23 A I would highly assume so. 24 Q And what about Ms. Irving? 25 A I don't know about Ms. Irving, because</p> |

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| <p style="text-align: right;">33</p> <p>1 I don't know what Ms. Irving's ability to work</p> <p>2 looks like in the future.</p> <p>3 Q And what about Mr. Leventon?</p> <p>4 A I would highly assume so.</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>8 A I agree.</p> <p>9 Q When did you get the idea to form</p> <p>10 Skyview?</p> <p>11 A Five years ago.</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>21 A Yes, for many years before that.</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> | <p style="text-align: right;">35</p> <p>1 wouldn't consider it as operating out of NexBank's</p> <p>2 offices.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q Have any Skyview employees given the</p> <p>5 NexBank offices as their business address as far</p> <p>6 as you know?</p> <p>7 A I have no idea what they've given as a</p> <p>8 business address.</p> <p>9 Q When you worked out agreements with</p> <p>10 your clients, did you ever include a business</p> <p>11 address for Skyview Group in any of those</p> <p>12 agreements?</p> <p>13 A I haven't been involved in working out</p> <p>14 those agreements.</p> <p>15 Q Has Skyview ever represented to any</p> <p>16 clients that its business address was the NexBank</p> <p>17 office?</p> <p>18 A I--</p> <p>19 MS. SMITH: Objection as to form.</p> <p>20 THE WITNESS: Sorry. I don't know.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q If they did so, that would be false;</p> <p>23 correct?</p> <p>24 MS. SMITH: Objection as to form.</p> <p>25 THE WITNESS: That would be false, in</p> |
| <p style="text-align: right;">34</p> <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>7 A That would be my assumption, yes.</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>11 A No.</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> | <p style="text-align: right;">36</p> <p>1 my opinion, yes.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q So if a Skyview employee was</p> <p>4 representing that his or her business address was</p> <p>5 the NexBank office, that would be a false</p> <p>6 statement; correct?</p> <p>7 MS. SMITH: Objection as to form.</p> <p>8 THE WITNESS: To me, it would be</p> <p>9 because I don't consider that where Skyview's</p> <p>10 offices are since a very small number of</p> <p>11 employees, as far as I know, worked there on an ad</p> <p>12 hoc basis.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q Do you have any other employment</p> <p>15 currently? And I apologize if I asked that</p> <p>16 already, but...</p> <p>17 A I do not. You already asked, and I do</p> <p>18 not.</p> <p>19 Q Do you have any other source of income,</p> <p>20 other than the income you get from Skyview Group?</p> <p>21 A Well, I have shares in the REITs that</p> <p>22 are granted by the independent board members to</p> <p>23 myself. But I don't know if you would consider</p> <p>24 that income or not.</p> <p>25 Q The REITs that Skyview Group manages?</p> |

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| <p style="text-align: right;">37</p> <p>1 A Skyview Group does not manage anything.</p> <p>2 Q All right. Are these REITs that are</p> <p>3 clients of Skyview Group?</p> <p>4 A NexPoint Advisors --</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 A Yes.</p> <p>14 Q And you are allocated shares in the</p> <p>15 REITs that NexPoint Advisors manages; correct?</p> <p>16 A Yes. And -- by the independent board</p> <p>17 members, as they see fit.</p> <p>18 Q Do you have any other source of income?</p> <p>19 A No.</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 A I believe it's an entity that holds</p> <p>2 claims that the former Highland employees</p> <p>3 potentially have against the debtor.</p> <p>4 Q Did you assign your claim to CPCM?</p> <p>5 A I believe I did.</p> <p>6 Q For what consideration?</p> <p>7 A My employment.</p> <p>8 Q Your employment with whom?</p> <p>9 A My employment with Skyview.</p> <p>10 Q You own Skyview; correct?</p> <p>11 A Correct.</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 A No.</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 A I believe it was my employment with</p> <p>25 Skyview.</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 A I would -- I would have to have</p> <p>11 somebody update the org chart. I know that that's</p> <p>12 been considered, but I don't know what's been</p> <p>13 implemented.</p> <p>14 Q Have you ever heard of an entity called</p> <p>15 Skyview Legal PC?</p> <p>16 A I know that something was being</p> <p>17 discussed about a legal PC. I don't know what the</p> <p>18 gentlemen working on it decided to name it or if</p> <p>19 it's been implemented.</p> <p>20 Q Who's the gentlemen working on it?</p> <p>21 A I believe JP Seery and Isaac Leventon</p> <p>22 were the people in charge of that.</p> <p>23 Q Do you know what CPCM LLC is?</p> <p>24 A I do.</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 A Yeah, I would agree with that.</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 A I don't remember the agreements in</p> <p>20 detail. I'd have to look at the agreements</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 A Not that I can recall, but there may be</p> |

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| 41 | <p>1 some.</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 A I have a folder of (inaudible) yes,</p> <p>5 sir, I do.</p> <p>6 Q Okay. Take a look at Exhibit 1.</p> <p>7 A Give me a second to find it.</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 A I believe that they end at 84.</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 A Okay.</p> <p>24 MS. SMITH: Andy, since we are not</p> <p>25 copied on the exhibits, could someone please load</p> | 43 | <p>1 A I see that written on the document,</p> <p>2 yes.</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 A I do.</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 A And, again, I'd have to see the --</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 A I don't know what's out there related</p> <p>24 to this. I'm being shown two pages. I wasn't</p> <p>25 involved in negotiation or drafting of these. I</p> |
| 42 | <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> | 44 | <p>1 don't know what else is relatable.</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 A No.</p> <p>6 Q Were you involved at all in the</p> <p>7 approval of those transfers?</p> <p>8 A No.</p> <p>9 Q Did you have any involvement at all?</p> <p>10 A None.</p> <p>11 Q You just -- who told you about it?</p> <p>12 A I believe counsel.</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 No. 5 Q CPCM is wholly owned by Skyview Group? 6 A I'd have to look at an org chart or 7 related documents. I'm not certain, but that's my 8 understanding. 9 Q So you have all the economic interest 10 in CPCM; correct? 11 A Again, I'd have to look at how it was 12 structured. 13 I don't -- I just know anecdotally what 14 I was told. 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 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. 22 Q CPCM is represented by Ross and Smith 23 and Baker MacKenzie. 24 A That's my understanding, yes. 25 Q And these are the attorneys who are</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 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. 9 Q Who hired them? 10 A Who hired whom? 11 Q Who hired Ross and Smith to represent 12 you and your colleagues? 13 A Well, I personally hired them to 14 represent me. I would assume each individual 15 hired them on their own behalf. 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;">46</p> <p>1 sitting here today with you during this 2 deposition? 3 A Yes. 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 That's my understanding, yes. 8 Q Who is paying the legal fees for Ross 9 and Smith? 10 A I'm not certain. 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 No, I don't. 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 No, I don't. 23 MS. SMITH: Objection -- objection, 24 calls for speculation and potentially privileged 25 communications.</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 Currently, no. 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 Yes. 19 MS. SMITH: Objection to form. 20 BY MR. CLUBOK: 21 Q And who -- and what was your 22 understanding? 23 A At the inception, I believe it was an 24 entity called Gov Re. 25 Q So when you first hired Ms. Smith, you</p> |

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| <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 A That's my understanding, but I don't 5 have any transparency in the operations of Gov Re. 6 Q Who runs Gov Re? 7 A I don't know. 8 Q What connection -- 9 -- (overspeaking) -- 10 A Bermuda Directors (?) would be my 11 assumption. 12 Q What connection do you have with Gov 13 Re? 14 A None. 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 A I don't know. 24 Q Who is Mr. Collins, I think you 25 mentioned?</p> | <p style="text-align: right;">51</p> <p>1 A No. 2 Q All the -- who hired Baker MacKenzie, 3 as far as you know? 4 A For whom as a client? 5 Q For you. 6 A Me. 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 A Oh, I don't -- I don't know how that's 20 broken down. 21 Q Well, does Baker MacKenzie represent 22 Skyview Group and CPCM? 23 A I believe so. 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 A Brian Collins, he's the chief 2 administrative officer of Skyview. 3 Q Was he a former Highland Capital 4 Management employee? 5 A He was. 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 A Yes. 16 Q What is -- were you told? 17 A I was told by Mr. Seery that I had 18 worked against the estate. 19 Q Anything else? 20 A Not that I recall. 21 Q What did you say in response? 22 A "I don't know what you're talking 23 about. Can you please tell me -- give me an 24 example"? And he said "No." 25 Q Anything else?</p> | <p style="text-align: right;">52</p> <p>1 A That's my understanding, but I have not 2 seen those engagement letters. 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 A I don't know at this point. 13 Q Was it originally your anticipation 14 that Gov Re would pay Baker MacKenzie's bills as 15 well? 16 A That was my understanding. 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 A No. 22 Q Who handles making sure that those 23 firms get paid? 24 A It's -- 25 MS. SMITH: Objection.</p> |

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| <p>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 A Assigning -- 9 Q Excuse me -- (overspeaking) -- 10 assigning things with CPCPM? 11 A No, only discussed with counsel. 12 Q When were you first employed by 13 Highland Capital Management? 14 A May of 2007. 15 Q How did you start working for Highland 16 Capital Management? 17 A I was in the syndications group, the 18 real estate group of Wells Fargo. Highland bought 19 into those syndicated levels, and they asked me to 20 come interview to work in-house with them. 21 Q Prior to Wells Fargo, where did you 22 work? 23 A Countrywide Home Loans. 24 Q Doing what? 25 A In the syndications group, and in the</p> | <p>55</p> <p>1 Countrywide? 2 A It would have been about 2002, I 3 believe. 4 Q Okay. Going back to your employment 5 with HCM, when you first started there, what was 6 your job title? 7 A In-house counsel. 8 Q And eventually you became the general 9 counsel? 10 A Yes. 11 Q When was that? 12 A I'd have to go back and look. I don't 13 recall. But I believe it was around 2010. 14 Q So, after the -- you remember that UBS 15 filed a lawsuit against Highland in roughly 16 2000 -- in early 2009? 17 A Yes. 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>54</p> <p>1 -- ultimately in the bankruptcy group. 2 Q Doing legal work? 3 A Yes. 4 Q Prior to -- sorry, Countrywide, you 5 said? 6 A Yeah, Countrywide Home Loans. 7 Q What did you do prior to working at 8 Countrywide? 9 A I worked at a talent agency in Los 10 Angeles. 11 Q In what capacity? 12 A It was an assistant. 13 Q What year? 14 A The year would have been starting in 15 2000. 16 Q So when did you graduate law school? 17 A 2000. 18 Q And your first job was as an assistant 19 at a talent agency. 20 A Yes. 21 Q Why did you do that? 22 A Because to get into the top talent 23 agencies, you had to have a law degree with an 24 MBA, and I wanted to work in the film industry. 25 Q Okay. And when did you move to</p> | <p>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 A Yes. 18 Q Do you understand the consent? 19 A Yes. 20 Q So you became general counsel after UBS 21 filed its lawsuit against Highland in New York? 22 A Yes. 23 Q And in addition to being general 24 counsel, were you a partner in Highland Capital 25 Management?</p> |

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| <p style="text-align: right;">57</p> <p>1 A Ultimately, yes.</p> <p>2 Q When was that?</p> <p>3 A I don't remember the date.</p> <p>4 Q Roughly?</p> <p>5 A I want to say around '13, maybe '12 --</p> <p>6 2012 or 2013.</p> <p>7 Q Okay. And you remained a partner until</p> <p>8 the bankruptcy?</p> <p>9 A Until my termination, yes.</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 Yes.</p> <p>14 Q Who did you report to at Highland?</p> <p>15 A Jim Dondero.</p> <p>16 Q Where did you work?</p> <p>17 A In the offices at the Crescent.</p> <p>18 Q Were you physically near Jim Dondero,</p> <p>19 your office?</p> <p>20 A No, I was not physically near Dondero.</p> <p>21 Q Same floor?</p> <p>22 A Same floor, yes. There was only one</p> <p>23 floor.</p> <p>24 Q And you had your own private office?</p> <p>25 A I did.</p> | <p style="text-align: right;">59</p> <p>1 A Reported to Mr. Sargent.</p> <p>2 Q When he was the chief compliance</p> <p>3 officer?</p> <p>4 A Yeah, they -- they were in</p> <p>5 compliance-based roles at the end of my tenure.</p> <p>6 Q When Mr. Sargent was the chief</p> <p>7 compliance officer, who did he report to?</p> <p>8 A Jim Dondero.</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 Sarah Bell, my executive assistant,</p> <p>13 reported to me. I believe she may have reported</p> <p>14 to Mr. Collins. I believe she reported to</p> <p>15 Mr. Collins, technically.</p> <p>16 Q Anyone else in the Highland Capital</p> <p>17 Management legal department?</p> <p>18 A Not that I can recall.</p> <p>19 Q Prior to becoming general counsel, were</p> <p>20 you the assistant general counsel?</p> <p>21 A I was.</p> <p>22 Q And did you ever hold a title of</p> <p>23 portfolio manager?</p> <p>24 A I did.</p> <p>25 Q When?</p> |
| <p style="text-align: right;">58</p> <p>1 Q And you spoke with Mr. Dondero on an</p> <p>2 average of a daily basis?</p> <p>3 A Yes.</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 Yes.</p> <p>11 Q Who?</p> <p>12 A I'll try my best to give an exhaustive</p> <p>13 list.</p> <p>14 Thomas certainly reported to me in his</p> <p>15 deputy general counsel role, but not in his chief</p> <p>16 compliance officer role.</p> <p>17 JP Sevilla, Ms. Irving, Mr. DiOrion,</p> <p>18 Ms. Vitiello, Ms. Leventon -- I mean, Mr.</p> <p>19 Leventon, sorry. I think that was the direct</p> <p>20 reports upon determination, but at different</p> <p>21 times, it's been various other people.</p> <p>22 Q What about Lauren Thedford?</p> <p>23 A She did not report to me. She reported</p> <p>24 to Mr. Sargent.</p> <p>25 Q And what about Jason Post?</p> | <p style="text-align: right;">60</p> <p>1 A I'd have to go back and think about</p> <p>2 that, Mr. Clubok. I apologize. But it was, I</p> <p>3 want to say, '08 and '09, maybe in '10.</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 I communicated verbally in-person as</p> <p>8 well as telephonically.</p> <p>9 Q How about by text message?</p> <p>10 A Very limited.</p> <p>11 Q When you would text message with</p> <p>12 Mr. Dondero, which phone would you use?</p> <p>13 A 214-649-5475.</p> <p>14 Q Did you use any other messenger systems</p> <p>15 to communicate with Mr. Dondero, like --</p> <p>16 A No.</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 No, I exclusively communicated with</p> <p>20 Mr. Dondero on iMessage.</p> <p>21 Q iMessage on your iPhone?</p> <p>22 A Yes.</p> <p>23 Q Did he have an iPhone?</p> <p>24 A Yes.</p> <p>25 MS. SMITH: Objection, form.</p> |

Conducted on July 29, 2021

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| <p>61</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Did you ever email with him?</p> <p>3 A Yeah, there was -- there was emails</p> <p>4 with Mr. Dondero.</p> <p>5 Q Who set your compensation at HCM?</p> <p>6 A I believe there was a compensation</p> <p>7 committee, but the ultimate arbiter was</p> <p>8 Mr. Dondero.</p> <p>9 Q Did you have responsibilities for any</p> <p>10 other HCM-affiliated or managed entities while you</p> <p>11 were the general counsel at Highland Capital</p> <p>12 Management?</p> <p>13 A I believe that I was a managing member</p> <p>14 or officers of various entities at different</p> <p>15 times.</p> <p>16 Q Did any of those entities separately</p> <p>17 compensate you for the work you did?</p> <p>18 A No.</p> <p>19 Q So all of the compensation you received</p> <p>20 came -- even if you did it on behalf of some of</p> <p>21 these other entities came directly from Highland</p> <p>22 Capital Management LP?</p> <p>23 A Yes.</p> <p>24 Q Was there ever a time when one of</p> <p>25 Highland's affiliated or managed funds paid you</p> | <p>63</p> <p>1 Q So I can get it clean for the record.</p> <p>2 And when you say -- it's like if I said</p> <p>3 it's not raining range outside and you said "No,"</p> <p>4 you're meaning yes, it's not raining, but it says</p> <p>5 no. So, anyway, I'm just going to ask you that</p> <p>6 again just not to make you repeat, but just so you</p> <p>7 can answer. Whatever your answer is I don't care.</p> <p>8 I just want to --</p> <p>9 A Yes, I understand that.</p> <p>10 Q Okay. So is it true that other than</p> <p>11 the NexPoint advisor-managed REITs in which you</p> <p>12 were granted shares, there was never a Highland</p> <p>13 Capital Management affiliate or managed fund that</p> <p>14 paid you directly while you were working at HCM;</p> <p>15 correct?</p> <p>16 MS. SMITH: Objection to form.</p> <p>17 THE WITNESS: That is my understanding,</p> <p>18 yes.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q When you were at Highland, you used</p> <p>21 email addresses that ended in "hcmlp.com" and</p> <p>22 "highlandcapital.com?"</p> <p>23 A Yes.</p> <p>24 Q Did you ever use any other email to</p> <p>25 conduct any business for Highland or any of its</p> |
| <p>62</p> <p>1 directly?</p> <p>2 A Again, only with --</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: Again, only with the</p> <p>5 exception of the NexPoint Advisor-managed REITs</p> <p>6 when I was granted shares.</p> <p>7 BY MR. CLUBOK:</p> <p>8 Q So other than NexPoint Advisor-managed</p> <p>9 REITs in which you were granted shares, there was</p> <p>10 never a Highland Capital Management affiliate or</p> <p>11 managed fund that paid you directly; is that</p> <p>12 correct?</p> <p>13 A That paid me directly, no.</p> <p>14 Q Is that correct?</p> <p>15 A That's what -- that's my belief, yes.</p> <p>16 Q And by the way, that was an example of,</p> <p>17 I think, a double negative.</p> <p>18 The only reason I reiterated that</p> <p>19 question is if I say -- if you say -- I said was</p> <p>20 there -- I said was there never.</p> <p>21 I put in a negative. And you said</p> <p>22 "No," and so it became a little confusing. So</p> <p>23 I am just going to ask that question again without</p> <p>24 the negative.</p> <p>25 A Please.</p> | <p>64</p> <p>1 affiliates?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: For Highland or its</p> <p>4 affiliates, no.</p> <p>5 MR. CLUBOK: I'm sorry. What was the</p> <p>6 form objection to that, Ms. Smith?</p> <p>7 MS. SMITH: That was a -- that was a</p> <p>8 compound question.</p> <p>9 MR. CLUBOK: Okay. I'm trying to --</p> <p>10 one second here. My wife just nicely brought me a</p> <p>11 cup of coffee.</p> <p>12 MS. SMITH: I wish I had someone</p> <p>13 bringing me coffee.</p> <p>14 MR. CLUBOK: It's very nice. You guys</p> <p>15 may regret that I have coffee. I don't know.</p> <p>16 Sorry, let me back to it.</p> <p>17 BY MR. CLUBOK:</p> <p>18 Q When you conducted business for</p> <p>19 Highland Capital Management, did you ever use any</p> <p>20 other email, other than the HCMLP.com or the</p> <p>21 HighlandCapital.com?</p> <p>22 A No, not for business related to</p> <p>23 Highland Capital Management.</p> <p>24 Q While you were employed at Highland</p> <p>25 Capital Management, did you ever use any email for</p> |

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| <p>1 any other business-related purpose? 2 A Yes. 3 Q And what emails -- what email or emails 4 were that? 5 A WWWSA -- or my name, sorry, 6 "sasgmt.com." 7 Q Under what circumstances would you use 8 the sasmanagement.com email? 9 A In things related to SAS or Sentinel or 10 its related entities. 11 Q Why? 12 A Because we were instructed by 13 compliance that all aspects of those businesses 14 should be conducted on their own servers and 15 completely separate from Highland Capital 16 Management LP. 17 Q Okay, other than that email address and 18 the Highland-related email addresses that you've 19 already mentioned, was there ever any other email 20 that you used for any business purposes while you 21 were employed at Highland Capital Management? 22 A Not that I recall. 23 Q Did you ever -- what is Blackland 24 Associates? 25 A Consulting firm.</p> | <p>65 67 1 A OG Ventures? No. 2 Q Were you surprised when you were hired 3 from Highland Capital Management? 4 A Yes. 5 MS. SMITH: Objection as to form. 6 BY MR. CLUBOK: 7 Q Did you have a chance to clean out your 8 office? 9 A No. 10 Q Have you performed any services for any 11 HCM-related entities since your termination? 12 A Other than in my employment with 13 Skyview, but I don't know that it's considered 14 related anymore due to the bankruptcy. 15 Q When was the last time you spoke with 16 Jim Dondero? 17 A About 32 days ago. 18 Q And prior to that, how frequently were 19 you speaking to him? 20 A Once every couple to three days. 21 Q When's the last time you spoke with 22 Isaac Leventon? 23 A About 35 days ago. 24 Q And prior to that, how often did you 25 speak with Mr. Leventon?</p> |
| <p>66 1 Q When was that -- what -- does that have 2 any connection with Highland Capital Management? 3 A None. 4 Q Did you ever use emails with the 5 blacklandassociates.com? 6 A No. 7 Q Did you ever -- what's your sister's 8 name. 9 A I have two sisters. 10 Q What are their names? 11 A Sharon Ellington and Marcia Maslow. 12 Q Have either of those individuals ever 13 done any work in connection with Highland Capital 14 Management? 15 A My sister Marcia assisted on some IT 16 projects. 17 Q Any other work that either of them ever 18 did in connection with your work at Highland 19 Capital Management? 20 A My -- my other sister is an estate 21 planning attorney, and she's helping me with my 22 personal finances. 23 Q Anything else? 24 A Not that I -- not that I recall. 25 Q Have you ever heard of OG Ventures?</p> | <p>68 1 A Maybe a couple of times a week. 2 Q When's the last time you spoke with 3 JP Sevilla? 4 A Close to 40 days ago, I believe. 5 Q And how often did you speak to him 6 prior to that? 7 A A couple of times a week. 8 Q When was the last time you spoke with 9 Matt DiOrio? 10 A I would say about 30 days ago. 11 Q How often did you speak with him prior 12 to that? 13 A Two or three times a week. 14 Q When was the last time you spoke with 15 Ms. Irving? 16 A Two plus months ago. 17 Q What did Ms. Irving do for 18 Skyview Group? 19 A Ms. Irving has never worked for 20 Skyview Group because she is on medical leave. 21 Q Is Skyview Group paying her any 22 compensation at all for 20 -- for -- strike that. 23 Has Skyview Group agreed to pay her any 24 compensation at all for 2021? 25 A I have no idea.</p> |

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| <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 Yeah, 26 days. 14 Q And when did you return? 15 A I returned about 30 hours ago, 36 hours 16 ago, something like that. 17 Q During the time -- who were you in 18 Africa with? 19 A My father. 20 Q Just you and your father, that's it? 21 A Some of my family -- 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 I found out I was going to be deposed 4 today, I believe, before I left. 5 My dad had a -- about a 6 ten-generational iPad that I would try to get 7 emails on, and I think I received some calendar 8 notices when I had Wi-Fi. 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 No. I said I knew I was going to be 13 deposed. I didn't know the date. 14 I was able to get some calendar invites 15 through a personal email account off my dad's 16 iPad, but it was incredibly difficult. 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 Literally none. 22 Q Did you -- how did you spend yesterday? 23 A How did I spend yesterday? 24 MS. SMITH: Objection to form. 25 THE WITNESS: I went to AT&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 I don't believe so. And I didn't 6 communicate with my attorneys either, that I 7 recall. 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 No, someone decided to politely -- I -- 14 when I signed up for the international phone plan, 15 what I was told by AT&T is that the email went to 16 my former executive admin at Highland and someone 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 Nothing. 7 Q Do you have -- you have files of 8 documents that you took from Highland Capital? 9 A No, I didn't. 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 That is -- 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> |

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| <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 A No, I did not. 11 Q And you have not searched them since 12 you got back; correct? 13 A That is wrong. 14 Q When did you search them? 15 A The day I got back, I searched through 16 the boxes until 3:00 o'clock in the morning until 17 I found them. 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 A No, there was absolutely nothing. 22 The notebooks were only a few months 23 old. I mean, they mostly went back to December. 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 A Not that I can recall. 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 A Yes. 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 A I-- I don't understand how I can 22 answer that, Mr. Clubok, because in my role as 23 Highland, I was involved in forming numerous 24 entities. I've formed entities for my own estate 25 and tax planning on advice of counsel, so --</p> |
| <p style="text-align: right;">74</p> <p>1 A Sit on the board of any companies? 2 I believe I still may be on a real estate 3 transaction that was relative to the NexPoint 4 Advise funds called "GEN," but I don't know if 5 I'm still on the board there or not. 6 Q Anything else? 7 A No. 8 Q Have you ever served as a director for 9 any company affiliated with Highland Capital 10 Management or Jim Dondero? 11 A That's -- 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 A No, I think I was on -- I can't 24 remember, but I -- I serve a short stint when Tray 25 Parker resigned on a motion, I believe.</p> | <p style="text-align: right;">76</p> <p>1 I'm -- I'm trying my best to answer that. 2 Maybe you if you could give me a 3 timeframe or a limitation. 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 A Again, other than relative to estate or 9 tax planning on advice of counsel, no, or 10 investment in these. 11 I was involved in private investing 12 with my own firms. 13 Q What about Sentinel? 14 A I did not form Sentinel. 15 Q Who formed Sentinel? 16 A Maples and Calder. 17 Q Okay, you were an original equity owner 18 of Sentinel; correct? 19 A I would have to look at the original 20 documentations. I don't know how that was held or 21 structured. 22 Q Well, you had an equity stake in 23 Sentinel; correct? 24 A Maybe ultimately. Again, I don't 25 remember how it was structured.</p> |

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| <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?</p> <p>5 A Potentially. I would have to look how 6 that's held.</p> <p>7 Q And what about an entity called SAS?</p> <p>8 A Same. That was formed by Maples and 9 Calder.</p> <p>10 Q Formed by Maples and Calder. 11 But -- and that one you have all of the 12 equity interest; correct?</p> <p>13 A Not true.</p> <p>14 MS. SMITH: Object to the form.</p> <p>15 BY MR. CLUBOK:</p> <p>16 Q Roughly, how much of the equity 17 interest in SAS do you have?</p> <p>18 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.</p> <p>23 Q And who has the other 70 percent of 24 SAS?</p> <p>25 A Entities --</p> | <p style="text-align: right;">79</p> <p>1 BY MR. CLUBOK:</p> <p>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?</p> <p>6 A That's related to me somehow, yes.</p> <p>7 Q And you personally, whether directly or 8 indirectly, have a roughly 30 percent economic 9 interest in SAS; correct?</p> <p>10 A Again, in some way related to me, yes.</p> <p>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?</p> <p>15 A No, not that I'm aware of, except for 16 entities related to those two global monikers of 17 SAS and Sentinel.</p> <p>18 Q What is Millennium Risk Management?</p> <p>19 A I have no idea.</p> <p>20 Q What is TT3 Partners?</p> <p>21 A Never heard of it.</p> <p>22 Q What is BSN Ventures LLC?</p> <p>23 A I don't know.</p> <p>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:</p> <p>5 Q Okay. And is that same 30/70 6 proportion apply to Sentinel, as far as you know?</p> <p>7 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.</p> <p>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?</p> <p>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:</p> <p>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?</p> <p>7 A Not that I recall, no.</p> <p>8 Q How about same question with respect to 9 Mr. DiOrio.</p> <p>10 A No, not that I recall.</p> <p>11 Q Same question with respect to William 12 T. Reid of Reid Collins.</p> <p>13 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.</p> <p>18 Q Sorry. What is a deer lease?</p> <p>19 A You pay money to a rancher to lease 20 property to hunt upon.</p> <p>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?</p> <p>24 A Exactly the same --</p> <p>25 MS. SMITH: Objection to form. And</p> |

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| <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> | 81 | <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> | 83 |
| <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> | 82 | <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> | 84 |

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| <p>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 A No. 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 A Mr. Leventon knew about it since 10 inception. 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 A Yes. 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>87</p> <p>1 Mr. Leventon because it was my idea. 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 A Yes. 7 Q And when you initially had that idea, 8 you discussed it fully with Mr. Leventon? 9 A Well, I discussed with Mr. Leventon 10 because the idea came from a matter called 11 Cornerstone that Highland Capital Management, its 12 funds brought against Nautic, a private equity 13 advisor. And I had never heard of an ATE policy 14 before. And we discovered in that litigation that 15 they had made a payment out of their funds for a 16 premium. And they had bought an ATE policy, and 17 it produced a large settlement that the debtor and 18 Highland Capital Management funds benefited from. 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 A Mr. Leventon, Mr. Sevilla, Mr. Surgent 24 were the initial people that I had the 25 conversation with.</p> |
| <p>86</p> <p>1 part of that process? 2 A It went to a process that was solely 3 compliance and finance and some individuals from 4 tax, if I remember correctly, and a couple of guys 5 in accounting and training. 6 Q When did it go to that? 7 A After about the second and third week 8 of discussing it as a possibility. 9 Q And Mr. Leventon never had anything 10 whatsoever to do with it after that? 11 A Not that I recall. 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 A I had that initial conversation with</p> | <p>88</p> <p>1 Q All three of those equally in terms of 2 being involved? 3 A They were all sitting -- 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 A Yes. 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 A That's my memory, yes. 17 Q How long did you discuss it in the 18 initial meeting? 19 A Less than five minutes. 20 Q Okay. And then after that, did you 21 ever talk to Mr. Leventon again about the idea? 22 A I'm sure I did, yes. Or in a larger 23 group, because then it went through an approval 24 process and that became run by compliance. 25 Q And was Mr. Leventon aware that the</p> |

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| <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 A I'm sure that I have. I don't recall 10 it specifically, but, you know, it's like every 11 person in the firm knew. 12 Q Every person in what firm knew? 13 A In Highland Capital Management, I'd be 14 surprised if anyone didn't know especially above a 15 certain level because they were involved or their 16 team members were involved. 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 A That the ATE policy was being 21 considered because it went through its normal 22 process that involved almost every group in the 23 firm. 24 Q So, every single person who did an ATE 25 policy was being considered.</p> | <p>1 A I did not. 2 Q And you never told Judge Nelms about 3 it; correct? 4 A I did not. 5 Q You never told John Dubel about it; 6 correct? 7 A I did not. 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 A Correct. 21 Q Did you ever make any effort to collect 22 on that policy? 23 A I-- 24 MS. SMITH: Objection to form. 25 THE WITNESS: No.</p> |
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| <p>1 And roughly when was that? 2 A Several months before it was put in 3 place. 4 Q And how many people knew it was 5 actually put in place? 6 A I would say the entire group that was 7 part of the process. 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 A That's my understanding. I'd be 12 shocked if they didn't. Because, again, we're 13 talking two dozen people involved in the process. 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 A I-- I don't -- 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> | <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 A Yes, I believe that is the main entity, 17 but I'd have to see an org chart. I don't know 18 what it looks like now. 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> |

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| <p style="text-align: right;">93</p> <p>1 Q And -- and if I talk about it -- if I 2 generally refer to it as Sentinel, will you 3 understand it to be the collective organization, 4 unless it's necessary to identify a specific sub 5 or a specific entity; is that okay? 6 A Yeah, yeah, that's fine with me. And 7 if I get into any specificity, I may need to see 8 an org chart. 9 Q When was Sentinel formed, roughly? 10 A My best recollection is 2012. 11 Q What was the purpose of forming 12 Sentinel, as far as you understood? 13 A To create a reinsurer. 14 Q For whom? 15 A It was -- the instruction of 16 Mr. Dondero was to make every attempt to originate 17 and structure a Cayman-based reinsurer. 18 Q So the idea for forming Sentinel, as 19 far as you know, was Jim Dondero's. 20 A Yes. 21 Q And is he -- did he -- is he the one 22 who explained to you the purpose behind forming 23 Sentinel? 24 A Yes. 25 Q Was there anyone else in that</p> | <p style="text-align: right;">95</p> <p>1 interest in Sentinel if it was established. 2 A No. 3 Q When did he -- did he ever speak to you 4 about the economics of Sentinel? 5 A When you mean the economics, who would 6 ultimately the potential beneficial owners? 7 Q Yes. 8 A At a much later date after it was 9 established? 10 Q Roughly when? 11 A I would say probably six to nine 12 months, if not a year, after it was established. 13 I really can't remember. 14 Q And what was the nature of that 15 conversation, as best you can remember? 16 A That because me and my team had been 17 able to pull it off, that I would have some 18 beneficial ownership. 19 Q Because you were able to pull off 20 establishing this full-service reinsurer? 21 A Yes. 22 Q And when you say "some beneficial 23 ownership" ultimately you obtained about 24 30 percent; correct? 25 A Again, or entities somehow related to</p> |
| <p style="text-align: right;">94</p> <p>1 conversation when he initially told you about it? 2 A I don't recall. I think it was just me 3 and him. 4 Q And what -- what else did he tell you 5 about the kind of business that he expected 6 Sentinel to engage in? 7 A He wanted Sentinel to be a 8 full-serviced reinsurer, not just a captive. 9 Q Why? 10 A Because he had attempted to do that 11 with Gov Re, and due to regulatory issues, again, 12 beyond my knowledge, he thought that Cayman was a 13 better place to domicile a new reinsurer. 14 Q Was the idea that -- when you say -- 15 when you say a full-service reinsurer, not just a 16 captive, what's the distinction that you 17 understood him to be making? 18 A That captive reinsurers serve a limited 19 set of counter-parties and ensure a limited set 20 where a full service, it serves any and all 21 potential parties. 22 Q And did he talk to you about the 23 economics during this initial conversation? 24 A Meaning what? 25 Q Meaning who would have the economic</p> | <p style="text-align: right;">96</p> <p>1 me. 2 Q At what point did he tell you that 3 that's the percentage you would get? 4 A I don't recall. 5 Q Well, roughly, how long after it was 6 formed before -- 7 A I don't know. I'm sorry, I didn't let 8 you finish your question. 9 Q Sure. Was it, you know, within the 10 first year that it was formed? Was it five years 11 later? Just your best estimate. 12 A Oh, within the first year. That's a 13 very long due diligence period from the regulator. 14 Q So within the first year of Sentinel 15 being formed, it was established that you would, 16 at least indirectly, if not directly, have a 17 roughly 30 percent economic interest in Sentinel; 18 correct? 19 A Correct. 20 Q And Mr. Dondero would retain the other 21 roughly 70 percent economic interest, as far as 22 you understood; correct? 23 A As far as -- 24 MS. SMITH: Objection to form. 25 THE WITNESS: As far as I understood,</p> |

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| 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 A Not that I'm aware of. 9 Q Did Sentinel ever have an office? 10 A Did it have an office? Yes. 11 Q Where was its office? 12 A Grand Pavilion in the Cayman Islands. 13 Q Is that a mailbox or is it an actual 14 physical office? 15 A It is an actual physical office. 16 Q Was it dedicated just to Sentinel? 17 A Part of the office space was dedicated 18 to Sentinel. Part of the office space was 19 dedicated to SAS Management and its related 20 entities. 21 Q And so SAS is another entity that you 22 had, directly or indirectly, roughly 30 percent 23 economic interest in; correct? 24 A Or entities related to me and entities 25 related to SAS Management subs.</p> | 99 | <p>1 which I don't know if you'd call them employees, I 2 don't know that it ever had employees, but I would 3 have to see how the independent directors employed 4 people, whether it is vendors or employees. I'm 5 not certain. 6 Q Okay. But other than the independent 7 directors, you are not aware of any employees of 8 Sentinel Reinsurance; correct? 9 A Not to my knowledge, no. 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 A Other than the independent directors, 18 again, unless they hired people as employees or 19 vendors, that's -- that's their decision. And to 20 my knowledge, I don't think they did. 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 A The independent directors and Beecher 25 Carlson.</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 A No, an office was established for SAS, 11 and then in the inception of Sentinel, they leased 12 part of the space. 13 Q When was SAS established? 14 A I want to say 2009. 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 A Other than the independent directors,</p> | 100 | <p>1 Q What's Beecher Carlson? 2 A They are a service provider that is the 3 originator of the policies. 4 Q Where are they based out of? 5 A I believe they're based globally. I'm 6 not really certain. 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 A I never dealt with them, so I don't 12 know their names. 13 Q Who did deal with them? 14 A The independent directors. 15 Q Anybody else other than independent 16 directors ever deal with them? 17 A I'm sure other vendors, auditors, 18 counsel. 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 A Not to my knowledge. 24 Q Was there anyone at Highland -- strike 25 that.</p> |

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| <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 A I believe for a period of time, 15 Mr. DiOrio was. 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> | 101 | <p>1 Highland -- with Highland Capital, when was the 2 last time you discussed the insurance policy with 3 anyone in the world? 4 A Anyone in the world? 5 Q Yes. 6 A Other than counsel? 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 A Okay. 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> | 103 |
| <p>1 A I don't know -- I don't know when that 2 ended. 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 A That ran the day-to-day, no one in 16 particular, no. 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 A I'd say months. 21 Q Is that after you were terminated from 22 Highland Capital Management? 23 A I don't -- I don't recall discussing it 24 after I was terminated, no. 25 Q So prior to your termination with</p> | 102 | <p>1 A Yes. 2 Q And in great a detail as you can, 3 describe that conversation. 4 A I don't remember much about the 5 conversation. I just remember discussing the 6 existence of the policy with Mr. Leventon. 7 Q What did -- what did you say to him? 8 A I was discussing what the independent 9 directors may or may not do. 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 A I said, "What do you think the 14 independent directors are going to do relative to 15 the policy"? 16 Q What did he say? 17 A "Your guess is as good as mine." 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 A Not in -- not in -- not generally. 22 That was -- that was pretty much the limitation. 23 Q What -- what sparked that conversation? 24 Did you start that conversation or did 25 he start that conversation?</p> | 104 |

Conducted on July 29, 2021

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| 105 | <p>1 A I did.</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>6 A Because Mr. Leventon handled the matter</p> <p>7 for UBS for years, and I wanted to get his</p> <p>8 thoughts on it.</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>12 A I said, "Hey, what do you think the</p> <p>13 independent directors do relative to the ATE</p> <p>14 policy?"</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>18 A Pretty much.</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>22 A The directors of Sentinel knew about</p> <p>23 the policy? No, I wouldn't, because it's obvious</p> <p>24 they know about a policy they issued.</p> <p>25 Q Oh, I'm sorry. Your -- I apologize. I</p> | 107 | <p>1 light of the judgment?</p> <p>2 A No.</p> <p>3 Q Did you ever discuss the policy ever</p> <p>4 with any of the independent directors?</p> <p>5 A Never.</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> |
| 106 | <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>5 A Yes.</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>9 A No.</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>19 A Correct.</p> <p>20 Q And he said in words or substance "Your</p> <p>21 guess is as good as mine"?</p> <p>22 A Yes.</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> | 108 | <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> |

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| <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 A Yes.</p> <p>11 Q And who were the independent directors</p> <p>12 of Sentinel at the time?</p> <p>13 A I don't know. I know one of them's</p> <p>14 name was Jan. I don't know their names.</p> <p>15 Q When was the last time you spoke to any</p> <p>16 independent director at Sentinel?</p> <p>17 A I believe it was August of '19.</p> <p>18 Q And why did you speak to them in August</p> <p>19 of 2019?</p> <p>20 A A required meeting with Cayman's --</p> <p>21 Cayman Islands Monetary Authority.</p> <p>22 Q Did you discuss the UBS litigation at</p> <p>23 all during that conversation?</p> <p>24 A Not with the independent directors, but</p> <p>25 with CIMA.</p> | 109 | <p>1 A No, I was not.</p> <p>2 Q So why were you the one having that</p> <p>3 meeting?</p> <p>4 A As a representative of the</p> <p>5 shareholders. I wasn't having the meeting; it was</p> <p>6 requested by CIMA.</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 A Correct.</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 A No, not true.</p> <p>20 Q Okay. You had indirect interest in the</p> <p>21 equity value of Sentinel.</p> <p>22 A Like I said, or entities related to me.</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> | 111 |
| <p>1 Q What's CIMA?</p> <p>2 A Cayman Islands Monetary Authority.</p> <p>3 Q And this is after the trial in the UBS</p> <p>4 litigation?</p> <p>5 A No, previous to the trial.</p> <p>6 Q You said it was August of 2019.</p> <p>7 A Oh, yeah, sorry. I'm sorry, Andy, I</p> <p>8 was -- I thought you meant the verdict. Sorry,</p> <p>9 yes, after the trial.</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 A Correct.</p> <p>14 Q And what was the nature of that</p> <p>15 investigation?</p> <p>16 A They wanted an update as to the status</p> <p>17 of the litigation.</p> <p>18 Q Why?</p> <p>19 A Because they have minimum annual</p> <p>20 meetings with the, at least, a director and other</p> <p>21 functions of the reinsurer to get a status on the</p> <p>22 portfolio.</p> <p>23 It is just an annual review that is</p> <p>24 required by CIMA.</p> <p>25 Q Well, were you a director of CIMA?</p> | 110 | <p>1 A Yes.</p> <p>2 Q Was anyone else involved in that</p> <p>3 meeting?</p> <p>4 A Yes.</p> <p>5 Q Who?</p> <p>6 A Mr. Sevilla was there. Mr. DiOrion was</p> <p>7 there. The director's first name is Jan -- I</p> <p>8 don't know his last name -- independent director</p> <p>9 of Sentinel, and Sentinel's counsel.</p> <p>10 Q Who was Sentinel's counsel?</p> <p>11 A Her first name was Simone. I don't</p> <p>12 remember her last name.</p> <p>13 Q From what firm?</p> <p>14 A I believe she was from Soloman Harris,</p> <p>15 but I don't know that for a fact.</p> <p>16 Q Was she a Cayman attorney?</p> <p>17 A Yes.</p> <p>18 Q And was this meeting in the Cayman</p> <p>19 Islands?</p> <p>20 A Yes.</p> <p>21 Q And about how long did it last?</p> <p>22 A The portion I was involved in lasted</p> <p>23 about half an hour.</p> <p>24 Q Now, Katie Irving was also at that</p> <p>25 meeting; correct.</p> | 112 |

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| <p>113</p> <p>1 A I believe so, but I'm not certain.</p> <p>2 I cant remember, but I believe se may have been.</p> <p>3 Q And why was she there?</p> <p>4 A She was along on the trip to do other</p> <p>5 business with us, and she attended the meeting.</p> <p>6 Q What business was Ms. Irving doing that</p> <p>7 was unrelated to Sentinel?</p> <p>8 A Relative to SAS Management.</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 A Yes.</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 A Yes.</p> <p>17 Q Why?</p> <p>18 A Because she asked if she should come</p> <p>19 and listen, and I said sure.</p> <p>20 Q Why?</p> <p>21 A I guess she had a curiosity. I don't</p> <p>22 know.</p> <p>23 Q Did you report to anyone about this</p> <p>24 meeting who was not at the meeting?</p> <p>25 A No.</p> | <p>115</p> <p>1 you?</p> <p>2 A I did not speak at the meeting.</p> <p>3 Q Who did?</p> <p>4 A Mostly Cayman counsel. I remember Jan</p> <p>5 discussing the portfolio, and potentially</p> <p>6 Mr. DiOrio. I don't recall if he spoke or not.</p> <p>7 Q Did anyone give any details about what</p> <p>8 had happened at the trial?</p> <p>9 A No.</p> <p>10 Q Did anyone talk about the merits of the</p> <p>11 UBS litigation in any way?</p> <p>12 A No.</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 A Yes, I did.</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 A I didn't have an -- idea as to damages,</p> <p>23 but I thought the -- there was a likelihood that</p> <p>24 the defendants would lose.</p> <p>25 Q And you thought there was a likelihood</p> |
| <p>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 A To my knowledge, that's the only people</p> <p>6 that were informed, yes.</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 A I believe so, yeah.</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 A I do.</p> <p>17 Q What's that?</p> <p>18 A Yes, I do.</p> <p>19 Q Did you tell CIMA about that</p> <p>20 development at trial?</p> <p>21 A I did not tell CIMA anything about the</p> <p>22 developments at trial.</p> <p>23 Q Did they ask?</p> <p>24 A No, they did not.</p> <p>25 Q Who spoke at the meeting, other than</p> | <p>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 A Again, I had no insight into what</p> <p>4 damages or how they would be calculated, but I</p> <p>5 thought the defendants would lose.</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 A Correct.</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 A Yes.</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 A Myself, no.</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 A Am I personally aware of it? No.</p> <p>25 Q Were you made -- did you get any --</p> |

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| <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 A Yes.</p> <p>7 Q Describe the nature of that belief and</p> <p>8 the circumstances.</p> <p>9 A I believe, and I was told anecdotally,</p> <p>10 that Cayman counsel was following the matter very</p> <p>11 closely and updating the directors in their</p> <p>12 capacity.</p> <p>13 Q And Cayman counsel being Simone?</p> <p>14 A Yes. And I believe there may have been</p> <p>15 other Cayman counsel that Sentinel directors</p> <p>16 retained, but I don't know that.</p> <p>17 Q Who told you that Cayman counsel was</p> <p>18 following it very closely?</p> <p>19 A Simone.</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 A Never.</p> | <p>117</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 A Not confused. But it's certainly very</p> <p>20 difficult to remember what I said to every human</p> <p>21 in the world, well over a period of five years.</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>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 A A general statement as we were walking</p> <p>5 from the car into CIMA.</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 A Yes.</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 A No.</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>119</p> <p>1 ATE policy with anybody else at all that you can</p> <p>2 think of, sitting here today?</p> <p>3 A Not that I recall.</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 A Not that I specifically recall.</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 A Not that I recall.</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 A No, not Mr. Leventon.</p> <p>20 Q With anyone?</p> <p>21 A Maybe I didn't understand your</p> <p>22 question. I'm sorry.</p> <p>23 Could you ask -- could you please ask</p> <p>24 it again?</p> <p>25 Q Did you ever recall discussing with</p> |

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| <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 A I remember having a conversation with 5 Cayman counsel in regards to that. 6 Q Who at Cayman counsel? 7 A Sam Dawson. 8 Q And when was that discussion? 9 A Sometime post the filing. I don't 10 remember when. Post the debtor filing bankruptcy. 11 Q So at that time you were the general 12 counsel for Highland; correct? 13 A Yes. 14 Q And Highland was in bankruptcy? 15 A Yes. 16 Q And the Pachulski firm was representing 17 Highland in the bankruptcy? 18 A The Pachulski firm notified us in 19 writing that they weren't representing Highland, 20 they were representing the independent board. 21 Q Okay. Pachulski was representing the 22 independent board. 23 So the board had already been named in 24 the bankruptcy; correct? 25 A Yes.</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 A I did not. 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 A I don't recall if it was me or him. 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;">122</p> <p>1 Q In the discussion with Mr. Dawson? 2 A Yes, that's my recollection. 3 Q And his name is Dawson, D-A-W-S-O-N? 4 A Yes. 5 Q And you were -- you say that at the 6 time, Pachulski was not representing the debtor. 7 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. 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 A That's my recollection of the 24 correspondence. 25 Q So let's get back to this conversation</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 A I believe he was Sentinel's counsel at 5 that point. 6 Q And you believed when you had this 7 discussion you were acting with your Sentinel hat 8 on exclusively? 9 A I believe this discussion I was having 10 a conversation on an unrelated matter and the 11 issue arose. 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 A No, I didn't report to the independent</p> |

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| <p style="text-align: right;">125</p> <p>1 board. I believe I reported to Jim Seery at that 2 point. 3 Q At that point, you reported to Mr. 4 Seery? 5 A I believe so, yes. 6 Q And did you discuss with Mr. Dawson 7 whether to disclose the ATE policy to Mr. Seery? 8 A Matter of fact, I may have just been 9 reporting to Mr. Dondero at this time. I just 10 don't remember the timeframe. 11 Q Okay. 12 A Because it's kind of fuzzy of when 13 Mr. Seery became the CEO and when Mr. Dondero was 14 the CEO. 15 Q What did Mr. -- what did Mr. Dawson 16 tell you what to do in terms of whether or not to 17 disclose the ATE policy to Mr. Seery? 18 A He was not -- 19 MS. SMITH: Objection. 20 THE WITNESS: -- not disclosing it to 21 the board, he was discussing ATE policies in 22 general. 23 BY MR. CLUBOK: 24 Q In my opinion, he was just talking 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 2 different hat on? 3 A It was no hat. It was a social call. 4 His wife had recently passed away from cancer, and 5 I was calling to give him my condolences. 6 Q So you are saying this is privileged 7 advice. 8 Whose privilege is it? 9 A Well, the other matters we talked about 10 was an SAS matter. 11 Q I'm not asking about any other matter. 12 I'm asking what's the portion of that conversation 13 about whether or not to disclose the ATE policy 14 that was taken out in connection with the UBS New 15 York litigation to the directors that were 16 appointed on the restructuring. That's the only 17 part of this conversation I'm asking about. 18 MS. SMITH: Objection, form. 19 BY MR. CLUBOK: 20 Q Okay. With respect to the part of the 21 conversation where Mr. Dawson gave you advice as 22 to whether or not to disclose the ATE policy to 23 the ORG members who had been appointed in the 24 restructuring case, whose privilege are you 25 asserting for not disclosing what he said? Who</p> |
| <p style="text-align: right;">126</p> <p>1 ATE policy? 2 A Correct. 3 Q And -- okay. This kind of -- this line 4 of questioning began when I asked you if you 5 recall discussing with anybody whether or not the 6 ATE policy should be disclosed to anybody in 7 connection with the bankruptcy, and you said you 8 had a conversation with Sam Dawson in regards to 9 that. 10 A About generally in a matter of practice 11 under Cayman law if the ATE policy should be 12 disclosed and when. 13 Q What did he tell you? 14 MS. SMITH: Objection, privileged. 15 THE WITNESS: Yeah, I think I'm clearly 16 into privileged conversation. 17 BY MR. CLUBOK: 18 Q Sorry, and you -- because you were at 19 the time not getting advice -- were you -- were 20 you at the time seeking advice on behalf -- well, 21 at the time you were general counsel still of 22 Highland; right? 23 A Correct. 24 Q And are you saying that -- when you 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? 2 A It was going to be Sentinel's privilege 3 since he was, I believe, Sentinel's counsel at the 4 time. 5 Q So you were speaking to him in that -- 6 with that -- respect to that part of the 7 conversation, just on behalf of Sentinel and not 8 on behalf of Highland Capital Management; is that 9 what you're saying? 10 A I didn't sit there -- I didn't sit 11 there and parse through an extemporaneous 12 conversation of what hat I was wearing. But since 13 he's Sentinel counsel, I think it's their 14 privilege because since he was having legal 15 advice. 16 Q Right. But at the time you were 17 general counsel of Highland Capital Management. 18 And I'm going to ask again -- and I believe 19 Mr. Feinstein clearly by his silence is not 20 asserting any privilege that you obtained while 21 you were still being paid by Highland Capital 22 Management -- what was the advice Mr. Dawson gave 23 you as to whether or not you should disclose that 24 ATE policy to the directors who were appointed in 25 the bankruptcy?</p> |

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| <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> | 129 | <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> | 131 |
| <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> | 130 | <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> | 132 |

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| <p>1 THE WITNESS: I generally knew that 2 they were -- they were looking at the assets of 3 those entities, yes. 4 BY MR. CLUBOK: 5 Q And you knew that the trigger for the 6 ATE policy had already occurred as of the date of 7 the judgment? 8 MS. SMITH: Objection to form. 9 BY MR. CLUBOK: 10 Q Correct? 11 A I disagree. 12 Q Why do you disagree with that? 13 A It was intimated to me that the trigger 14 would be a perfection of a judgment from New York 15 to the Cayman Islands. 16 Q Who intimated that to you? 17 A CIMA. 18 MS. SMITH: Objection. 19 BY MR. CLUBOK: 20 Q CIMA did? 21 A Yes. 22 Q When? 23 A In the meeting aforementioned in August 24 of '19. 25 Q So it was intimated to you that until</p> | 133 | <p>1 would also trigger the policy; correct? 2 MS. SMITH: Objection to form. 3 THE WITNESS: I don't have the 4 expertise to say whether that triggers a policy or 5 not. That's not a determination I could make. 6 BY MR. CLUBOK: 7 Q Isn't it true that Mr. Leventon at some 8 point consulted with you about whether or not he 9 should disclose the policy to either Mr. Seery or 10 the lawyers at the Pachulski firm? 11 A I don't know. 12 MS. SMITH: Objection to form. 13 BY MR. CLUBOK: 14 Q Sorry, can you answer the -- I think 15 your answer came in over Ms. Smith's objection, so 16 I'll ask the question again. 17 Is it true that Mr. Leventon at some 18 point consulted with you about whether or not he 19 should disclose the ATE policy to either Mr. Seery 20 or the lawyers at the Pachulski firm? 21 A I don't recall. 22 Q Between -- other than this meeting with 23 CIMA and the discussion you had with Mr. Leventon, 24 did you ever discuss the ATE policy with anyone 25 else in the world since the bankruptcy that you</p> | 135 |
| <p>1 the judgment was perfected in the Cayman Islands, 2 there was no trigger for paying ATE? 3 A Yes. 4 Q Who specifically intimated that to you? 5 A CIMA. 6 Q Who, name of a human being. 7 A I don't know the human being's name. 8 There was five people from CIMA in the room. It 9 was three years ago. 10 Q When you say it was intimated, what do 11 you mean? 12 A They said there is not a claim on the 13 policy to perfect the judgment here. 14 Q Was it a man or a woman who said that? 15 A It was a man. 16 Q Was it the man who was the -- was there 17 one person who was the principal spokesperson for 18 CIMA at this meeting? 19 A Yes. 20 Q And you just don't remember his name? 21 A No. 22 Q Did you have any documents, records of 23 this meeting? 24 A No. 25 Q And now if there is a settlement, that</p> | 134 | <p>1 can recall other than -- 2 A Not that I recall. 3 Q -- other than Ms. Smith? 4 A Not that I recall. 5 Q Did you ever discuss -- when was the 6 last time you spoke to Mr. Dondero about the ATE 7 policy? 8 A I would say at least two years. 9 Q And what was the nature of that 10 conversation? 11 A I believe that Mr. Dondero asked me if 12 it was still in place. 13 Q Roughly when was that? 14 A I would say sometime in 2018. 15 That's -- that's my best guess. 16 Q Was it before or after the trial? 17 A Before. 18 Q So before the trial, he asked you if 19 the ATE policy was still in place? 20 A Yes. 21 Q And what did you say? 22 A I said as far as I know, yes. 23 Q And after the trial, but before the 24 judgment, did you ever speak with Mr. Dondero 25 again about the ATE policy?</p> | 136 |

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| <p>137</p> <p>1 A Not that I recall.</p> <p>2 Q And after the judgment, did you ever</p> <p>3 talk to Mr. Dondero about how the ATE policy could</p> <p>4 somehow be used to satisfy the judgment or settle</p> <p>5 the case?</p> <p>6 A No.</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: Not that I recall.</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Right before the bankruptcy, you tried</p> <p>11 to settle the claims against CDO Fund, SOHC and</p> <p>12 HFP; correct?</p> <p>13 A Yes, I approached you to try to</p> <p>14 structure a settlement.</p> <p>15 Q And you claimed at the time that those</p> <p>16 funds were ghost funds, in your words; correct?</p> <p>17 A Yes.</p> <p>18 Q And you -- basically, you said, in</p> <p>19 substance, though, they had no assets left, but if</p> <p>20 there was a settlement, that Mr. Dondero could</p> <p>21 come up with funds from some other source to</p> <p>22 satisfy a relatively small settlement on behalf of</p> <p>23 those funds; is that true?</p> <p>24 A On behalf of all defendants, yes.</p> <p>25 Q Well, you specifically talked about --</p> | <p>139</p> <p>1 A Absolutely. It is my fault, and there</p> <p>2 is some slight delay on my end, so I think that's</p> <p>3 part of the problem. I apologize.</p> <p>4 Q That's okay. I appreciate -- again,</p> <p>5 like I said, I appreciate your effort to just</p> <p>6 answer these questions clearly, but you overshot</p> <p>7 that by a scooch.</p> <p>8 A I apologize to both you and Ms. Smith</p> <p>9 and the court reporter. I'm not trying to do that</p> <p>10 at all.</p> <p>11 Q No, no, I understand. I understand.</p> <p>12 A Yeah.</p> <p>13 Q So let me just ask it one more time.</p> <p>14 You never disclosed in the course of</p> <p>15 any settlement discussions with UBS's counsel that</p> <p>16 there was an ATE policy that could satisfy a</p> <p>17 potential settlement of the claims against CDO</p> <p>18 Fund, SOHC and HFP; correct?</p> <p>19 A The only person I discussed it with was</p> <p>20 you, and, no, I did not disclose that.</p> <p>21 Q I apologize if I've asked this earlier:</p> <p>22 Did Sentinel ever have a shared services agreement</p> <p>23 with Highland Capital Management?</p> <p>24 A Not that I'm aware of.</p> <p>25 Q Does it have one today with Skyview?</p> |
| <p>138</p> <p>1 you specifically talked about settling the</p> <p>2 non-HCM-related claims for a relatively small</p> <p>3 amount and then separately agreeing to an allowed</p> <p>4 claim for HCM; isn't that true?</p> <p>5 A That was one of the options you and I</p> <p>6 discussed. We discussed many options.</p> <p>7 Q And you never disclosed the fact that</p> <p>8 there was an ATE policy that could satisfy a</p> <p>9 potential settlement of the claims against CDO</p> <p>10 Fund, SOHC and HFP; correct?</p> <p>11 A Correct.</p> <p>12 -- (overspeaking) --</p> <p>13 MS. SMITH: Objection, form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q I want to make sure the court reporter</p> <p>16 got the -- okay. There was simultaneous speakers,</p> <p>17 so I don't think she heard your answer even though</p> <p>18 the audio will capture it.</p> <p>19 And do me a favor, Mr. Ellington.</p> <p>20 Since Ms. Smith is objecting sometimes, if you</p> <p>21 could -- I really appreciate you giving answers</p> <p>22 quickly on the one hand. On the other hand, if</p> <p>23 you could just take one more beat so that you are</p> <p>24 not talking over her as she's making her</p> <p>25 objections, that will be helpful.</p> | <p>140</p> <p>1 A Not that I'm aware of.</p> <p>2 Q Does it have a client relationship with</p> <p>3 Skyview?</p> <p>4 THE WITNESS: Not that I'm --</p> <p>5 MS. SMITH: Object to the form.</p> <p>6 THE WITNESS: Sorry, not that I'm aware</p> <p>7 of.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Let's turn to what's behind tab 2,</p> <p>10 Exhibit 50.</p> <p>11 I think we do have here -- we've asked</p> <p>12 you before about the ownership interest, and you</p> <p>13 said you had seen some documents. Hopefully this</p> <p>14 will help refresh your recollection.</p> <p>15 A You want me to go ahead and open the</p> <p>16 envelope, Mr. Clubok?</p> <p>17 Q Yeah, open Exhibit 50. Exhibit 50 --</p> <p>18 while you're opening it, I'll just describe -- is</p> <p>19 an email exchange that starts with an email from</p> <p>20 Mr. Sevilla to SEI-IS-Highland and that appears to</p> <p>21 be to someone named Daniel Bowen, and there is</p> <p>22 some back and forth that continues through the</p> <p>23 email chain between these two individuals.</p> <p>24 Do you have Exhibit 50 in front of you?</p> <p>25 A I do.</p> |

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| <p>1 Q Do you know who Mr. Bowen is? 2 A I do not. 3 Q Do you know what SEIC is? 4 A Say that again. I'm sorry. 5 Q Do you know what SEIC is? 6 A I do not. 7 Q Or SEI-IS? 8 A I do not. 9 Q Okay. So, in this email Mr. Sevilla -- 10 this is August 28th, 2017 and the subject is 11 "Highland Multi-track Transfer." 12 Do you see that? 13 A Yes. 14 Q And it says, "SEI. Please see transfer 15 documents attached from Multi Strat firm. Please 16 let me know if you have any questions." 17 Do you see that? 18 A I do. 19 Q And you don't know who SEI is in that 20 context? 21 A I do not. 22 Q And you see Mr. Bowman responds and 23 says, "We are in the process of reviewing the 24 attached and still require additional 25 documentation. Can you please provide" and there</p> | 141 | <p>1 to look at the whole exhibit. 2 THE WITNESS: No, I have not. 3 BY MR. CLUBOK: 4 Q I have a very specific question. 5 MR. CLUBOK: And I'd appreciate no 6 speaking objections or instructions like that when 7 they're not necessary. 8 BY MR. CLUBOK: 9 Q Sometimes, Mr. Ellington, if it's 10 necessary to read a whole document, that's fine, 11 obviously. But I'm going to just ask -- and I'll 12 ask my question more clearly: Just with respect to 13 this particular statement that Sentinel Re 14 Holdings is a limited partner in the fund and 15 Sentinel Reinsurance Limited is 100 percent owned 16 by Sentinel Re Holdings, do you have any basis to 17 disagree with those statements? 18 A I don't have any basis to agree or 19 disagree. I don't have enough information to... 20 Q Is this the kind of -- yeah, is this 21 the kind of information you would trust JP Sevilla 22 to report on accurately during this time period? 23 A I don't have any reason to believe that 24 Mr. Sevilla would be inaccurate. 25 Q Why -- was Mr. Sevilla tasked with</p> | 143 |
| <p>1 are a number of things that they list. 2 Do you see that? 3 A Yes, I do. 4 Q And one of them that's shaded out 5 that's maybe hard for you to read. And it says, 6 "List of beneficial owners with 25 percent or more 7 interest. Additional AML required." 8 Do you see that? 9 A I do. 10 Q And Mr. Sevilla says, "Please note that 11 you already have the items I've highlighted in 12 yellow. Sentinel Re Holdings is a limited partner 13 in the fund already and Sentinel Reinsurance 14 Limited is 100 percent owned by Sentinel Re 15 Holdings." 16 Do you see that? 17 A I do. 18 Q And do you have any reason to disagree 19 with what Mr. Sevilla says here? 20 A I don't have -- 21 MS. SMITH: Objection, form. 22 And, Mr. Ellington, please review the 23 whole exhibit before you answer specific 24 questions. 25 I don't think he's had an opportunity</p> | 142 | <p>1 dealing with the Highland Multi Strat transfer? 2 A I don't know. 3 Q August 28, 2017 is around the time 4 shortly there -- shortly after the time that the 5 ATE policy was purchased; correct? 6 A I don't know. 7 Q Well, there was a highly Multi Strat 8 transfer in connection with the purchase of the 9 ATE policy; correct? 10 A I really don't know. 11 Q You do know that the intent of 12 purchasing the policy was to transfer all or 13 substantially all of the assets of CDO Fund, SOHC 14 and HFP; correct? 15 MS. SMITH: Objection to form. 16 THE WITNESS: The purpose of purchasing 17 the policy was to transfer? 18 BY MR. CLUBOK: 19 Q No, no, sorry, let me -- let me ask 20 again. 21 You know, sir, that in the -- the part 22 of the -- strike that. 23 As part of the purchase of the ATE 24 policy, you understood that it was the intent of 25 the purchasers of that policy to transfer all or</p> | 144 |

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| <p>1 substantially all of the assets of CDO Fund, SOHC 2 and HFP to Sentinel as payment for that policy; 3 correct? 4 A I knew that -- 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 A I wasn't involved in those 13 conversations. 14 Q Who set that premium? 15 A From my understanding, the -- the level 16 of the premium was ultimately set by CIMA. 17 Q How was it initially set? 18 A I was not involved in any of those 19 conversations, so I don't know. 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 A No. 24 Q You do know that before the actual 25 dollar amount was settled on for what the premium</p> | <p>145 1 to be; correct? 2 A I was involved -- 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 A I don't know. I'd have to see that 15 communication. Your question was: Was I involved 16 in discussions. Being copied on a communication 17 to me is not discussions. 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 A No. 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>146 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>147 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 A From the very beginning -- strike that. 5 Well, let's be clear. You had the 6 initial idea of the ATE policy; correct? 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 A That's my understanding. I was 13 involved at the beginning, and then it went 14 through a formal process I was not involved in. 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 A Yes. But it's my understanding that 20 was in response to the premium set by CIMA. 21 Q You -- you -- 22 A I was not intimately involved in any of 23 those discussions with CIMA or otherwise. 24 Q You are saying as you sit here today, 25 that it is your understanding that CIMA first set</p> |

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| <p>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 A No, I'm telling you, you're asking if I 5 was aware of how it happened. My understanding is 6 that was the amount required for the premium. I 7 wasn't involved in any of the discussions, none of 8 the mechanics of setting how much, none of the 9 mechanics of valuation, none of the aspects of 10 transfer. 11 That's all a formal process that was 12 directed by compliance, and it went through all 13 the proper channels. 14 Q Okay. Then break down -- and please 15 answer my questions I'm asking you. 16 A I'm trying. 17 Q And we'll do it in little pieces. 18 Don't jump ahead, please. 19 A Okay. 20 Q True that at some point, it came to 21 your attention that the idea -- 22 A Sorry. 23 Q Let me strike that. I'll start over. 24 A Okay. Sorry. 25 Q At some point, it came to your</p> | <p>151</p> <p>1 A I have no idea. 2 MS. SMITH: Objection to form. 3 BY MR. CLUBOK: 4 Q What's that? 5 A I have no -- 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 A No, entities related to me were. I was 14 not. 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 A Correct. 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>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 A Anecdotally -- 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 A I have no idea because I don't know 13 when the premium price was set by CIMA because I 14 wasn't involved. 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>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 A And he says, "Thanks. Yes, correct." 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 A I do. 20 Q And I'm going to ask you to turn and 21 look at Exhibit 26 -- 22 A Okay. 23 Q -- which I will tell you is the 24 attachment -- 25 A Okay. I don't have 26, I don't</p> |

Conducted on July 29, 2021

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| <p style="text-align: right;">153</p> <p>1 believe. Let me see.</p> <p>2 Q You should.</p> <p>3 A I think I do. Sorry. Yes, I have it.</p> <p>4 May I open it now?</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>13 A Investor Sentinel Reinsurance Limited,</p> <p>14 yes.</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>19 A Yes.</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>24 A I do.</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>11 A Without the documents, I cannot say</p> <p>12 it's inaccurate.</p> <p>13 Q What further documents would you need</p> <p>14 to know whether or not this is accurate?</p> <p>15 A Well, I would have to see the documents</p> <p>16 of all these entities.</p> <p>17 Q Okay. Did you ever contribute capital</p> <p>18 to Sentinel?</p> <p>19 A Excuse me?</p> <p>20 Q Did you ever contribute any capital to</p> <p>21 Sentinel?</p> <p>22 A Did I ever contribute any capital to</p> <p>23 Sentinel? No, I do not believe so.</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>8 A I see that, yes.</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>20 A I'd have to see the org chart at the</p> <p>21 time that this was generated. I just don't</p> <p>22 remember.</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>3 A I don't know.</p> <p>4 Q You don't know?</p> <p>5 A I don't know. It could have been</p> <p>6 capitalized in a way that I -- I personally did</p> <p>7 not, no.</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>22 A I do.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And the second page references an</p> <p>25 entity called Seville Dodge and Company; do you</p> |

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| <p>157</p> <p>1 see that?</p> <p>2 A I do.</p> <p>3 Q Who are they?</p> <p>4 A An accounting firm.</p> <p>5 Q And they're your accounting firm.</p> <p>6 A They assist along with outside counsel</p> <p>7 in tax preparation.</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 A That seems to be what 7359 is.</p> <p>13 Q Why did they do that?</p> <p>14 A I was applying for a Cayman banking</p> <p>15 license, and this was requested by CIMA.</p> <p>16 Q Okay. And so you had to make sure you</p> <p>17 provided accurate information to CIMA?</p> <p>18 A Yes.</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 A I trust that they --</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>159</p> <p>1 other professionals did the valuation.</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 A At the request of CIMA, yes.</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 A Myself or other -- those are other</p> <p>21 entities because I couldn't provide information on</p> <p>22 Sentinel. The independent directors would have to</p> <p>23 do that.</p> <p>24 Q Did you take any affirmative obligation</p> <p>25 to do everything reasonably possible to ensure</p> |
| <p>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 A Yes, I do. And Sentinel Reinsurance</p> <p>7 Limited, yes.</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 A No, it does not. I don't -- I don't</p> <p>12 know what that's referencing.</p> <p>13 I never invested personally \$11 million</p> <p>14 in anything?</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 A That's what my belief is, yes.</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 A Yes. But, I mean, I didn't provide any</p> <p>25 valuation to them. They -- I presume them or</p> | <p>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 A Yes, I provided any information I had</p> <p>4 access to and requested that other entities that</p> <p>5 were controlled by directors or others would</p> <p>6 provide the information to Sevilla Dodge.</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 A They are a reputable accounting firm</p> <p>12 with highly trained professionals, so I relied on</p> <p>13 their expertise.</p> <p>14 Q And why would Matt DiOrio have a copy</p> <p>15 of this?</p> <p>16 A I don't know.</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 A Not that I recall, no.</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> |

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| <p>161</p> <p>1 be?</p> <p>2 A It may have been a function, but I</p> <p>3 don't know, I don't know why he would have it.</p> <p>4 Q Matt DiOrio at the time was reporting</p> <p>5 to you before you were terminated?</p> <p>6 A Yes.</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 A No.</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>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 A I don't know.</p> <p>6 Q Yes, so Scott, let's take just one more</p> <p>7 beat before you --</p> <p>8 A It's okay. Sorry.</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 A Okay.</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 A Thank you. Sorry again to everyone.</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>162</p> <p>1 A No.</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 A Not that I'm aware of.</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 A I have no idea.</p> <p>11 Q Do you have any idea if it's 1 million</p> <p>12 or 100 million?</p> <p>13 A I certainly don't think it's</p> <p>14 100 million, but I don't know.</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 A I don't know.</p> | <p>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 A Yeah.</p> <p>12 Q Okay.</p> <p>13 A But, again, it's just -- its just a</p> <p>14 schedule of certain cash investments, and it</p> <p>15 doesn't reflect any liabilities.</p> <p>16 Q Yeah, it doesn't reflect liabilities.</p> <p>17 A I take net worth, I think the term</p> <p>18 "net" nets out liabilities.</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> |

Conducted on July 29, 2021

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| <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 No idea whatsoever. 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 I don't, because this is the only time 19 I've ever seen a reflection of valuation as to, 20 quote, my portion of Sentinel. 21 Q Have you ever received any dividends 22 from Sentinel? 23 A No. 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;">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 Did I? No. 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 No one at Highland that I'm aware of, 10 no. 11 Q Are you aware of anybody, a broker, a 12 third party, anybody at all ever -- 13 A I recall -- I recall Beecher Carlson 14 going to the market to see if an ATE policy could 15 be achieved before it went to Sentinel. 16 Q Who at Beecher Carlson did that? 17 A I don't know their names. I've never 18 spoken to them. 19 Q And how did you learn about that? 20 A Someone at the time told me. I don't 21 remember who. Someone internally at Highland. 22 Q And what did they tell you about those 23 efforts? 24 A That Beecher Carlson had put out, for 25 lack of a better term, bids to other known</p> |
| <p style="text-align: right;">166</p> <p>1 2017 with respect to the ATE policy? 2 A To my knowledge, they still have 3 everything that was transferred to them. 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 No. 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 No. 14 Q Do you know whether or not Sentinel has 15 the financial ability to satisfy \$50 million? 16 A No. 17 Q Do you know whether Sentinel has the 18 financial ability to satisfy \$10 million? 19 A No. 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 No, I don't have any transparency into 25 Sentinel's balance sheet.</p> | <p style="text-align: right;">168</p> <p>1 reinsurers about an ATE policy. 2 Q And... 3 A That there were no takers or that the 4 premium they wanted was even higher than what was 5 being requested by CIMA. 6 Q What was the ultimate premium requested 7 by CIMA for the ATE policy? 8 A I don't recall. 9 Q Roughly. 10 A I really don't recall. 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 No. 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> |

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| <p>169</p> <p>1 A No. I was --</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 A That was my general awareness, yes.</p> <p>13 Q And when you say "substantial portion"</p> <p>14 you mean more than 90 percent; correct?</p> <p>15 A I didn't know if it was 90 percent, but</p> <p>16 I knew it was more than, say, 70 percent.</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 A I don't know --</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>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 A None.</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 A That's correct.</p> <p>11 Q Who made the decision about who would</p> <p>12 be the independent directors?</p> <p>13 A I don't know.</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 A Yes.</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 A I didn't tell him he had to be</p> <p>25 anything.</p> |
| <p>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 A I don't know what --</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 A That's my understanding. But again, I</p> <p>15 wasn't involved in the process at that point.</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 A What do you mean set the price?</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>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 A It was an opportunity that I thought</p> <p>4 fit his skill set. It was something that he had</p> <p>5 expressed an interest in learning. And my</p> <p>6 recollection is that CIMA said we needed to add</p> <p>7 more members to the board.</p> <p>8 Q Was Mr. DiOrio compensated for his role</p> <p>9 as director?</p> <p>10 A No.</p> <p>11 Q When did you learn that Matt DiOrio had</p> <p>12 resigned from the Sentinel board?</p> <p>13 A I don't know that I had learned he had</p> <p>14 resigned from the Sentinel board.</p> <p>15 Q Oh, did you know he resigned on</p> <p>16 June 25th, this year?</p> <p>17 A No.</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 A I didn't know if he was on the board or</p> <p>23 not.</p> <p>24 Q Do you know Andrew Dean?</p> <p>25 A No.</p> |

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| <p>1 Q Do you know Christopher Watler? 2 A No. 3 Q Do you know Lesley Thompson? 4 A No. 5 Q Do you know Dilip Masand? 6 A Yes. 7 Q Who is Dilip Masand? 8 A He was a consultant that was retained 9 by, I believe, Highland Capital Management LP. 10 Q To do what in connection with the 11 Sentinel? 12 A I don't know that he was retained by 13 Highland Capital Management to do anything with 14 Sentinel. 15 Q He was, though, named as a director for 16 Sentinel; correct? 17 A I believe so, yes. 18 Q And that was your decision; correct? 19 A I do not think that was my decision, 20 no. 21 Q You suggested him as a director. 22 A I suggested him as a potential 23 director, yes. 24 Q To whom? 25 A To Mr. DiOrio and I believe to</p> | 173 | <p>1 A You broke -- 2 MS. SMITH: Objection, form. 3 THE WITNESS: You broke up, Andy. I'm 4 sorry. 5 BY MR. CLUBOK: 6 Q Do you know who Jan Neveril is? 7 A No, I do not. 8 Q I don't know if Jan is a man or woman, 9 but -- or is that Jan? 10 A That could possibly be Jan. 11 Q Oh, someone named J-A-N Neveril, you 12 believe that may be Jan? 13 A Potentially. I never knew his surname 14 or her surname. 15 Q Was it -- was Jan a man or a woman? 16 A Jan was a man? 17 Q So -- and Jan -- was Jan Neveril still 18 a director during that bankruptcy matter? 19 A As far as I know, yes. 20 Q Do you know if Jan is still on the 21 board? 22 A I do not. 23 Q Did you know that Matt DiOrio 24 recommended Jan? 25 A No, I have -- I have no idea who</p> | 175 |
| <p>1 Mr. Dondero, but I don't recall doing that. 2 Q You told -- 3 A But I could have, possibly. 4 Q You told Mr. Dondero about your 5 recommendations to make Mr. Masand and Mr. DiOrio 6 directors of Sentinel; correct? 7 MS. SMITH: Objection to form. 8 BY MR. CLUBOK: 9 Q And he -- he could have said no if he 10 had wanted to; right? 11 A Yeah, he could have said no if he 12 wanted to, but it's not his decision of who became 13 the directors; it's the other -- it's the 14 independent directors that approved. And CIMA has 15 to approve each individual director. So 16 Mr. Dondero's vote of "yes" or "no" is not the 17 ultimate arbiter. 18 Q You -- you asked DiOrio and Sevilla to 19 identify new board members; is that correct? 20 A At what time period? 21 Q Some point prior to the bankruptcy. 22 A No. 23 Q Well, then, you asked DiOrio and 24 Sevilla to work together to identify directors 25 like Mr. Neveril?</p> | 174 | <p>1 recommended Jan. 2 Q What about Damien Austin? 3 A I don't know who that is. 4 Q Casey McDonald? 5 A Don't know who that is? 6 Q Wade Kenny? 7 A Don't know who that is. 8 Q Okay. 9 MR. CLUBOK: Why don't we take a break. 10 THE VIDEOGRAPHER: We're going -- we're 11 going off the record at 2:18 -- 2:19 p.m. eastern 12 time. 13 MR. CLUBOK: Okay. 14 (Lunch Recess taken 2:19 p.m. to 3:16 15 p.m.) 16 THE VIDEOGRAPHER: Am I going on the 17 record, counsel, or waiting... 18 MR. CLUBOK: We don't need it 19 videotaped. We'll just -- the court reporter, you 20 can take this following thing down and we are not 21 going to count it on the videotape so go ahead -- 22 and court reporter, if you don't mind, you can go 23 on the record. Ms. Smith will make her statement 24 and I will respond, and then we'll resume the 25 deposition.</p> | 176 |

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| <p>177</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>179</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>178</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>180</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> |

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| <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 A As long as we're talking about your 18 characterization of SAS and related entities, 19 subs, affiliates as the SAS umbrella, directly -- 20 or actually indirectly with entities associated 21 with SAS. 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 A I don't really know how they flow, but 2 it would be something similar to that or generally 3 like that, yes. 4 Q Okay. And SAS, what does that stand 5 for? 6 A It stands for sword and shield. 7 Q And who came up with that name? 8 A Me. 9 Q What does SAS do? 10 A It provided litigation, financing 11 and/or claim purchasing. 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 A I don't know how Mr. Dondero holds any 17 of those equitable positions. 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 A Yes, he could have done with those 23 shares as he chose. I don't know if he donated 24 them or what. I just don't know. 25 Q And how are you involved in SAS?</p> |

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| <p>185</p> <p>1 A I was one of the -- other than being an 2 indirect owner, for lack of a better term, with 3 more affiliated entities related to me, I was the 4 person that came up with the idea to form it and 5 provided services through related entities to it. 6 Q Well, you were the CEO of SAS; right? 7 A I don't know that that was ever a 8 title. I just -- I don't know. 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 A Not that I'm aware of, no. It may have 13 been that at some point, but certainly not in 14 years. 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 A Potentially. I just don't remember 20 that being the case. 21 Q And SAS used to share a phone number 22 with HCM? 23 A No. 24 Q Did SAS have its own bank accounts? 25 A Yes.</p> | <p>187</p> <p>1 A Yes, I know Summit Management. 2 Q What's Summit Management? 3 A I believe they are a Cayman-based 4 fiduciary services company. 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 A I know they had in the past. I don't 9 know if they are still the directors or not. 10 Q Is SAS a client of Skyview? 11 A No, not to my knowledge. 12 Q Why would HCM employees ever work for 13 SAS? 14 A There was -- 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>186</p> <p>1 Q And your sister Marcia Maslow worked 2 for SAS? 3 A No. 4 Q Isn't it true she provided project 5 management consulting services? 6 A Yes. She provided some IT setup of -- 7 of case management tracking devices. 8 Q So she was paid by SAS for that work? 9 A Yes. 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 A No. 17 Q If we emailed to sellington at 18 sasmgt.com today, would it go through? 19 A I have no idea. 20 Q Do you know the directors of SAS? 21 A No, I don't. 22 Q Do you know who David Eggleshaw is or 23 John Collier (?) 24 A No. 25 Q Do you know Summit Management Limited?</p> | <p>188</p> <p>1 Q Did you ever get any distribution from 2 SAS? 3 A No. 4 Q Have you ever gotten any payments from 5 SAS at all? 6 A No, other than expense reimbursement, 7 no. 8 Q Expense reimbursement? 9 A Yes. 10 Q For what? 11 A Where there would be marketing costs 12 and otherwise. I mean, somebody has to be an 13 individual that pays, and very often that would be 14 me. 15 Q What's the rough magnitude of that 16 expense or reimbursement? 17 A I have no idea. You're talking about 18 12 -- 12 plus years. 19 Q You're saying you haven't gotten any 20 expense reimbursement for SAS in 12 plus years? 21 A You're asking for -- 22 MS. SMITH: Objection to form. 23 THE WITNESS: Sorry, Frances. My 24 apologies. 25 MS. SMITH: Object to form.</p> |

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| <p>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 A No idea.</p> <p>7 Q Is it tens of thousands, ones of</p> <p>8 thousands, hundreds of thousands, millions?</p> <p>9 A I would say you are probably in tens of</p> <p>10 thousands to low hundreds of thousands.</p> <p>11 Q For what?</p> <p>12 A Travel. Hotel rooms. I would pay for</p> <p>13 any and every one professional and otherwise that</p> <p>14 were conducting business on behalf of SAS.</p> <p>15 Q What's the relationship between SAS</p> <p>16 management and SAS asset recovery.</p> <p>17 A I'd have to look at an org chart.</p> <p>18 Q What's the relationship between SAS and</p> <p>19 Sentinel?</p> <p>20 A There is no direct relationship.</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>191</p> <p>1 A Do I see where it says what? I'm</p> <p>2 sorry.</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 A Yeah.</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 A Yes.</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>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 A I'd have to look at a org chart. I</p> <p>7 don't know.</p> <p>8 Q You have no idea what Sebastian Clarke</p> <p>9 is as you sit here today?</p> <p>10 A No, I know -- I remember the entity</p> <p>11 name, but I don't know what it's relative to.</p> <p>12 Q You owned Sebastian Clarke, didn't you?</p> <p>13 A I have no idea.</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 A I do. Can I go ahead and open it,</p> <p>17 Mr. Clubok?</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 A I see an org chart. I do.</p> <p>24 Q And do you see where it talks about USP</p> <p>25 (inaudible)?</p> | <p>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 A Bottom right? Yes, I do.</p> <p>7 Q Does that ring a bell for you what</p> <p>8 Sebastian Clarke is?</p> <p>9 A No idea what it is.</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 A I do.</p> <p>18 It says it corresponds to slide 1, but</p> <p>19 I don't see what's labeled as slide 1.</p> <p>20 BY MR. CLUBOK:</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 A Yes.</p> |

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| <p>193</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 A Yes. 7 Q Okay? 8 A That seems to be -- that's the 9 assumption, yes. 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 A I do. 17 Q And it -- and it, again, has a 18 reference to USP1, and USP2. 19 Do you see that? 20 A On the CFC restructure? 21 Q Yes. 22 A Yes. 23 Q When you see how USP1 goes down to an 24 entity called Nimitz? 25 A Yes, I do.</p> | <p>195</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 A I see that line. 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 A I don't remember the document that you 14 are referring to. But if you go further in the 15 chart, it shows that there is foreign individuals 16 who have specific values. And like I said, this 17 is for a draft for preliminary discussions only. 18 This looks to be a proposed restructuring. And 19 furthermore, it's Mr. Dondero's international tax 20 questions from Deloitte, so I don't know that this 21 is relevant to me at all. And I don't know if 22 this was something that was put together for 23 discussion or actually got put in place. I have 24 no idea. 25 Q Okay. So listen to my question.</p> |
| <p>194</p> <p>1 Q At a 30 percent value? 2 A Yes. 3 Q And USP goes down ultimately to an 4 entity called Patton, which has a 70 percent 5 value? 6 A I do. 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 A I can see -- I can see the whole thing 15 on the hard copy. 16 BY MR. CLUBOK: 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>196</p> <p>1 A Okay. 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 A Can you refer to me what document that 10 was, Mr. Clubok, because we've looked at, as far 11 as I know, three exhibits. 12 If you are referring to the chart 13 prepared by SCI IC, again, I don't know where they 14 got that information. And it may be a general 15 summary, but it's not further reflected in this 16 chart. Because if you get behind Nimitz, it is 17 not 30 percent because there is a value that goes 18 to each individual on both sides of the chart. 19 And again, this is a proposed restructure, so I 20 don't know if this was put in place or how it was 21 handled because it is a conversation with Deloitte 22 about Mr. Dondero, Dondero TY17 international 23 questions. 24 Q Yeah, you -- you are the hundred 25 percent beneficial owner of Nimitz, which has a</p> |

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| <p>197</p> <p>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</p> | <p>199</p> <p>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 --</p> |
| <p>198</p> <p>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?</p> | <p>200</p> <p>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> |

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| <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 A Let's let me read. Yes, I see that, 9 along with other entities. 10 Q Yeah. And she says, "I believe we 11 discussed some of these liquidations last year." 12 A Yes. And from the two charts there's a 13 mixture of SAS-related entities and 14 Sentinel-related entities, too. 15 Q Right. From the charts, it's clear 16 that Sentinel and SAS are connected in some way; 17 correct? 18 A No, I think Ms. Irving is talking about 19 overall what has CIMA's asked for and her primary 20 responsibilities on the SAS platform. 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 A Yes, I see that. But again, I don't</p> | <p style="text-align: right;">203</p> <p>1 BY MR. CLUBOK: 2 Q Yeah. My question is much simpler. 3 A Okay. 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 A "Upon further discussion with Montage 18 Anthem Management." 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 A Correct. 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 know what that org chart looked like. There's -- 2 doesn't seem to be anything attached, other than 3 another attachment that says, "For Preliminary 4 Discussion Purposes Only," draft. 5 Q Right. And then she -- she towards -- 6 try to follow my questions, just answer my 7 question. 8 A Sure. 9 Q You said before that Ms. Irving had not 10 -- did not do work on Sentinel, as far as you 11 know? 12 A As far as I know, I don't know that she 13 did work on Sentinel. 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 A It is also in regards to Montage, 3 Elderflower, Brave -- 4 Q Yep. 5 A Anthem and Main Spring, which are on 6 the SAS structure, so it looks like CIMA had -- 7 had instructions to those. 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 A That's true. Maybe I'm mistaken. I 19 thought your question was the email's in regards 20 to, and that's not all it's in regards to. 21 Q I didn't say that's all it's in regards 22 to. I said -- 23 -- (overspeaking) -- 24 A Okay. Maybe I made a mistake. 25 Q And then Katie passes this e-mail on to</p> |

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| <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 A He gave advice on ATE policies on 5 Sentinel, yes. 6 Q And did he also give legal advice on 7 SAS? 8 A Yes, he did. 9 Q So -- and who is Dylan? Someone who 10 works with him? 11 A Yeah, I don't know who Dylan is, but it 12 seems from the e-mail address he works with Sam. 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 A Discussion from legal perspective, 18 I believe the impact of the GP structure, the 19 (indiscernible) previously. I don't know what her 20 nomenclature is there. "Understand option to move 21 away from existing trust structure." Again, I 22 don't know what that is, so I don't know what 23 she's really asking here. 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 A Yes, it says 30 percent value, it says. 4 I don't know if that means shares or something 5 else. 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 A Again, I don't know whether she was t; 10 tasked to do anything on behalf of Sentinel. But 11 my assumption would be that the directors asked 12 her to do this. 13 Q The directors of what? 14 A Probably the directors of both since, 15 at least according to Katie, CIMA called out 16 entities that are related to both. 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 A No.</p> |
| <p style="text-align: right;">206</p> <p>1 Structure as of 9 April, 2019 PowerPoint;" 2 correct? 3 A Yeah, that's what that title says, yes. 4 But it's not just -- this isn't Sentinel, it's 5 also SAS structure as of 9th April, 2019. And I 6 find it interesting that if it's a final 7 structure, both are marked "draft." 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 A On both slide 1 and 2 as you referred 18 to them as, and they do seem in terms of a number 19 of boxes more simplified. 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 A Yes. 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 A As far as I know, yes. 21 Q And you were her supervisor; correct? 22 A Correct. 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> |

Conducted on July 29, 2021

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| <p style="text-align: right;">209</p> <p>1 doing this work on restructuring Sentinel and SAS. 2 Do you see that? 3 A I do see that. 4 Q Is that something she was authorized to 5 do during her employment with HCM? 6 A To work on SAS, absolutely. To work on 7 Sentinel, I don't know that she is, because she 8 asked Sam and Dylan here about the GP structure 9 for these top coast previously. 10 Q Okay. 11 A It doesn't say Sentinel, it doesn't say 12 SAS. You need to also understand the accounts 13 structure. I don't know what she's referring to. 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 A I didn't -- 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 A I don't remember working -- oh, yes, I 2 did -- I did work on some matters relative to that 3 entity. 4 Q What do you mean? 5 A Pardon me? 6 Q What do you mean you worked on some 7 matters relative to that entity? 8 A Meaning that I worked on matters 9 relative to that entity. 10 Q Were you paid for that work? 11 A No, I was not paid for that work. 12 Q Why would you do work for SAS Loan 13 Service Limited for no compensation? 14 A Because Mr. Dondero instructed me as 15 the person paying my pay check to continue 16 incubating this business and see if I could get it 17 to a specific gravity and robust enough that it 18 could stand on its own. 19 Q So Mr. Dondero specifically directed 20 your work on SAS Loan Services Limited? 21 A No, on SAS structure -- 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 A Yes. Actually, it doesn't have a line 3 to it. So it's on the chart, there is no line 4 connecting it to Flagstone Management Limited. 5 Q Right. And that it just shows up there 6 in the bottom right in its own little box; right? 7 A Yes, it's in its own little box. 8 Q Do you have any idea what Sebastian 9 Clarke is based on this chart? 10 A No idea, no idea. 11 Q Do you know SAS R -- SAS AR Limited in 12 the left-most box or -- 13 A No. 14 Q -- central box? 15 A No, I don't. 16 Q Do you know SAS Loan Services limited, 17 what that is? 18 A I recall that that, I believe, was used 19 as a loan servicing entity for an engagement that 20 SAS had. 21 Q Is that something you established? 22 A I don't believe I established it. That 23 would have been done by Maples and Collier or 24 whoever counsel was at the time. 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 A See if it could be a standalone 5 business. 6 Q Did you achieve that? 7 A For a period of time, yes. 8 Q And what was that period of time? 9 A I would say from inception for about 10 the first four to five years. 11 Q Until when? 12 A Call it '14, '15. 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 A I don't understand your question. 24 Q Did you ever make any money on SAS? 25 A Me personally?</p> |

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| <p>1 Q Yeah.</p> <p>2 A No.</p> <p>3 Q Did you lose any money on SAS?</p> <p>4 A Me personally?</p> <p>5 Q Yeah.</p> <p>6 A No.</p> <p>7 Q Did Mr. Dondero make any money on SAS?</p> <p>8 A Not that I'm aware of.</p> <p>9 Q Did anybody make any money from SAS, as</p> <p>10 far as you're aware?</p> <p>11 A Outside counsel on a bunch of matters.</p> <p>12 Q Anybody else?</p> <p>13 A Not that I'm aware of, no.</p> <p>14 Q Do you know if Patton and Nimitz still</p> <p>15 exist today?</p> <p>16 A I don't know.</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 No. An affiliate or non-affiliate is</p> <p>21 the sole decision of the Chief Compliance Officer</p> <p>22 Thomas Surgent, who, through date of inception of</p> <p>23 Sentinel, through my date of termination, formally</p> <p>24 declared is not an affiliate.</p> <p>25 Q What is the -- sorry, when was --</p> | 213 | <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 Compliance, Mr. Surgent and his staff</p> <p>6 and Mr. Surgent's predecessors would have asked</p> <p>7 questions when having ownership and other relevant</p> <p>8 information that they demanded and asked for.</p> <p>9 They may ask questions. Sometimes they didn't.</p> <p>10 And the determination was made.</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 No and, again, my understanding is SEC</p> <p>16 regs and the RAA, I have no right to do so.</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 No, other than repeating what</p> | 215 |
| <p>1 Sentinel was created in 2012; right?</p> <p>2 A Correct.</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 I don't remember if it was Mr. Surgent</p> <p>7 as chief compliance officer yet or not. It may</p> <p>8 have been his predecessor, but I'm not certain on</p> <p>9 the date.</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 Yes, that's the only person that makes</p> <p>15 that determination, and they don't have to answer</p> <p>16 to anyone in that determination, other than</p> <p>17 themselves.</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 Zero.</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 No, and I had no right to.</p> | 214 | <p>1 compliance's determination had been made when we</p> <p>2 inquired upon.</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 Yes.</p> <p>17 Q And what was your understanding?</p> <p>18 A My understanding is it was not an</p> <p>19 affiliate of HCM.</p> <p>20 I don't know if a determination was</p> <p>21 made it was affiliate of Jim Dondero. And that</p> <p>22 determination was made by the chief compliance</p> <p>23 officer and continued to be the same determination</p> <p>24 through my entire tenure.</p> <p>25 Q And was there a determination as to</p> | 216 |

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| <p style="text-align: right;">217</p> <p>1 whether or not Sentinel would be considered an 2 affiliate of you ever made? 3 A I don't know. I don't know if that 4 announcement was done or if it was required to be 5 done or not. 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? 9 A No, that's solely a compliance 10 function. 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? 23 A No. Again, that would be a compliance 24 function. 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? 12 A Yes. 13 Q And did you make such an assessment in 14 connection with the purchase of the ATE policy? 15 A No. 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? 6 A Yeah. But my assessment is irrelevant 7 because it is compliance's role and compliance's 8 sole purvey to make that determination, not mine. 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? 15 A Then I misunderstood your question. I 16 thought you said did I ever consider if something 17 was a fraudulent transfer. Again, if I was to 18 make a determination, my determination is not 19 relevant. 20 Q Right. So let's -- let me -- let me 21 say my question. I'll say it more slowly. 22 A Okay. 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? 17 A I didn't feel the need to because Mr. 18 Surgent is more than capable of identifying that 19 issue and analyzing. 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> |

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| <p style="text-align: right;">221</p> <p>1 a fraudulent transfer given the facts and 2 circumstances? 3 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. 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 A That is correct. Due to the process 10 put in place, that was not my right or place to do 11 so. 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 A Yes. 16 Q And there was a very fulsome process 17 specifically with respect to the purchase of the 18 ATE moi? 19 A Yes, that's correct. 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 A I'm not saying I knew that for a fact.</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 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. 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 A Yes, I thought about it. 10 I -- I didn't know. 11 Q Did you ask anybody for their advice? 12 A No, because again, I'm not supposed to 13 by design stick my nose into a compliance process. 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 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. 23 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</p> |

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| <p style="text-align: right;">225</p> <p>1 understanding of how these things are analyzed by 2 compliance. 3 Q Yeah. But you had questions in your 4 mind at the time as to whether or not the ATE 5 transaction could be considered a fraudulent 6 transfer; correct? 7 A I considered it might be, yes. 8 Q And you never specifically asked Anyone 9 like Mr. Surgent to specifically look into that 10 issue; correct? 11 A No, Mr. Surgent had plenty of his plate 12 to handle running through this process. He didn't 13 need me. 14 Q Did you ever -- did you ever discuss 15 with Mr. Dondero, in any way, shape or form, your 16 concerns that perhaps this transaction could be 17 considered a fraudulent transfer? 18 A Not that I recall. Again, that's Mr. 19 Surgent's role in this set of circumstances. 20 Q So you never raised any kind of yellow 21 flag or red flag or, hey, just FYI we should 22 wonder whether this transaction could be 23 considered fraudulent transfer with Mr. Dondero? 24 A No. Again, that's Mr. Surgent's role 25 in this set of circumstances.</p> | <p style="text-align: right;">227</p> <p>1 is one guy in an organization, like an RAA, that 2 makes that determination, and his word is final. 3 If Mr. Surgent at any point says we are 4 not doing this, the idea is dead. 5 The machinations of that are a 6 compliance function. And I don't necessarily know 7 every little twist and turn, but to my 8 understanding, this is went on for weeks if not 9 months. 10 Q Okay. So let's talk very specifically 11 not what you understand is supposed to happen or 12 could happen with the transaction, but what you 13 know happened with this transaction. 14 First, you said there were numerous 15 meetings with a large group. And you said 16 something like as we've discussed before. But I 17 think the only -- I don't know if you've talked 18 about any meeting before other than the 19 five-minute discussion you had and maybe one other 20 meeting. 21 But when you say that you -- 22 A Let me -- let me stop there, Mr. 23 Clubok, because you asked me how many meetings 24 of -- with the whole large group did Isaac 25 Leventon attend, and I said after the first one or</p> |
| <p style="text-align: right;">226</p> <p>1 Q Describe -- you've testified there was 2 a fulsome process that Mr. Surgent specifically 3 went through with respect to the ATE policy. 4 A That's my understanding and my 5 recollection, yes. 6 Q And I'd like the basis for that 7 understanding or recollection by you describing in 8 as much detail as you can remember what you claim 9 was the, quote, Fulsome process with respect to 10 the ATE policy transaction. 11 A The -- there was numerous meetings, as 12 we've discussed before, with a large group 13 consisting of people from finance, tax, fund 14 accounting, compliance, legal, trading and 15 settlement. 16 There were concerns raised by different 17 factions within those various groups. 18 Then compliance, Mr. Surgent and his 19 staff go through a process that, as far as I 20 understand is reviewed by a conflicts committee; 21 is reviewed generally for the kind of issues 22 you've discussed, is this a fraudulent transfer, 23 is this in some way within violation of the 24 codified law, is this in some way provide a risk. 25 And when it comes down to the determination, there</p> | <p style="text-align: right;">228</p> <p>1 two, he never attended again and was not part of 2 the process, to my knowledge. So, you asked me 3 about meetings that either you knew existed or you 4 extrapolated from me, and that's what I thought. 5 Q So let's talk about what you say are 6 there were numerous meetings with a large group. 7 How many? 8 A I would say that I was personally 9 involved in? Six. And then I dropped out of the 10 process when it started going down the compliance 11 route, and the machinations of how this would take 12 place if it was approved by compliance. 13 Q So let's start with, first, there were 14 six large group meetings that you were involved in 15 about the purchase of the ATE policy, or roughly 16 six; correct? 17 A I'd say a minimum of four that I 18 personally attended at the genesis of the idea 19 until it started this compliance analysis. 20 Q There was a minimum of four large group 21 meetings that you were personally involved with 22 about the purchase of the ATE policy? 23 A Over a period of weeks, I would say 24 four is my recollection. It could have been as 25 many as six, but more like four.</p> |

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| <p style="text-align: right;">229</p> <p>1 Q And who specifically were in these four 2 to six meetings? 3 A I may not remember every -- 4 Q Excuse me. Name every human being that 5 you can remember who were in these national 6 compliance meetings. 7 A I honestly cannot remember everyone 8 because we're talking about five years ago and 9 there were a lot of people on it, in my opinion. 10 Mr. Waterhouse, Mr. Stoops, representatives from 11 training -- I mean, from settlement, which would 12 have been Carter Chism, potentially other people 13 from his group. I remember Hunter cavities being 14 in some, Mark Patrick, Mr. Surgent, Mr. Post, 15 maybe -- 16 Q Wait, wait, wait. Hold on. Slow down. 17 A Sorry. 18 Q Mr. Patrick? 19 A Mr. Patrick. 20 Q Yep. Mr. Surgent? 21 A Mr. Surgent. Mr. Post. 22 Q Yep. 23 A And I'm talking about the initial 24 meetings I attended. After that, I don't know who 25 attended.</p> | <p style="text-align: right;">231</p> <p>1 here -- at least a majority, if not all the ones 2 that I attended. 3 Q Was Carter Chism in one meeting or a 4 majority of the meetings? 5 A I don't recall. I just remember either 6 him or other members of his team having a role 7 because they were would be, you know, mechanically 8 moving assets if they were inside of my compliance 9 where they were (inaudible). 10 Q And you remember him or his team being 11 in four to six meetings? 12 A I'm telling you I was in four to six. 13 You are asking me that -- sorry, 14 Mr. Clubok, I just can't recall all the members of 15 the meetings five years ago. 16 Q Well, that's why I don't want you to 17 make up things. I asked you -- 18 A So you asked who attended any or all 19 the meetings. And you said every human being that 20 I could possibly recall which I tried to do that 21 for you. I'm just telling you, I can't remember 22 if we had a 15-minute meeting and an update if 23 everyone showed up. I don't -- I just don't know. 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 Mr. Surgent, Mr. Post, potentially 4 Ms. Thedford, Mr. Sevilla, myself. That's all I 5 can recall with a decent degree of specificity. 6 Q And Mr. Waterhouse was in all four or 7 six of those meetings with you? 8 A I don't know if he was at all of them. 9 I remember him being in those initial meetings, 10 but there were members of his team that were -- 11 that were there. 12 Q Was Mr. Waterhouse in all those 13 meetings? 14 A I don't -- I can't tell you if he was 15 in all of them. 16 Q Was he in more than one? 17 A Again, you are asking me to recall 18 something from five years ago. I would assume he 19 would have been in more than one. 20 Q But you don't remember him being in -- 21 A I do not remember. 22 Q Do you remember Mr. Stoops being in 23 more than one such meeting? 24 A I think I remember Mr. Stoops being 25 in -- again, you are really testing my memory</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 I don't remember Mr. Surgent being in 7 any that I -- not being in every one that I -- in 8 other words, if I was in there, he was in there, 9 is my memory. 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 The five-minute initial discussion was 15 an idea. It was literally throwing out an idea 16 and there was very little banter about it at all. 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 If there was four to six, it included 21 the entire group. There may have been meetings 22 that were a subset. I was personally in my skill 23 set. 24 Q Right. But in the four to six that you 25 were in, you remember Mr. Surgent being in every</p> |

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| <p style="text-align: right;">233</p> <p>1 one?</p> <p>2 A That's to the best of my recollection.</p> <p>3 It could have been a subset meeting that I was in</p> <p>4 and he wasn't, but since it was a compliance</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 A I don't know. Unless I was there, I</p> <p>11 wouldn't know they occurred.</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 A No, I don't, because I didn't attend</p> <p>16 them. Therefore I don't know for a fact that</p> <p>17 (inaudible).</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 A I believe the next step -- and I'm not</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 A No, this was the -- the meetings I was</p> <p>7 involved in were based around could this be done,</p> <p>8 period, as an idea.</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 A Oh, I don't know if it was never</p> <p>14 mentioned.</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 certain of this -- would have been running it</p> <p>2 through conflicts committee.</p> <p>3 Q And what is a conflict committee?</p> <p>4 A A committee of people that review</p> <p>5 potential conflicts and make a decision based on</p> <p>6 vote if they believe there's a conflict or not.</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 A It's not my --</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 A At the time I was involved, I don't</p> <p>5 even think anyone had discussed anything with</p> <p>6 Beecher Carlson.</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 A That's --</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 A You didn't ask me about this process</p> <p>24 at all.</p> <p>25 Q I understand. But you are saying</p> |

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| <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? 6 A I don't know because I'm not everybody 7 else. I never talked to Beecher Carlson about it. 8 Q Right. 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. 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? 25 A I don't recall. But I would -- my</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 -- 12 A You said did anyone talk to Beecher 13 Carlson. 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>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. 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? 18 A I don't know -- 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? 13 A No, I do not recall anyone raising 14 that. 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? 19 A That is my recollection, yes. 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? 25 A No, because I was not a part of those</p> |

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| <p style="text-align: right;">241</p> <p>1 meetings by design.</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>21 A Okay.</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>1 process.</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>9 A Me personally, no.</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>16 A No, I do not have any personal</p> <p>17 knowledge of what Mr. Surgent received, document</p> <p>18 or otherwise, in his analysis.</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>23 A I'll try my best.</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>4 A No, I have no objection to them. I</p> <p>5 just want to make sure I answer the question.</p> <p>6 Q Answer my piece, please.</p> <p>7 A Okay.</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>15 A I don't know if any --</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>24 A I do not have an awareness of what was</p> <p>25 provided to Mr. Surgent as I am not part of the</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>3 A I'll restate my answer. I'll restate</p> <p>4 my answer to make the record clean.</p> <p>5 Q Yeah, let me just ask that question --</p> <p>6 A I do not know of anything Mr. Surgent</p> <p>7 received, document or otherwise, to perform his</p> <p>8 analysis. I don't know.</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>13 A No, it was the set group of people that</p> <p>14 served on it from time to time.</p> <p>15 I don't know who they were at that</p> <p>16 time.</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>23 A They convened on for -- as far as</p> <p>24 I know, on every individual transaction or if</p> <p>25 there was a set of things that weren't urgent,</p> |

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| <p style="text-align: right;">245</p> <p>1 they would convene and decide if there was a 2 conflict and then compliance dealt with 3 investigating those conflicts and ultimately the 4 chief compliance officer made a determination. 5 Q And who was on the conflicts committee 6 at the time? 7 A I don't know. 8 Q How many members were there in the 9 conflicts committee? 10 A I don't know. 11 Q All right. Can you identify a single 12 member of the conflicts committee who was apprized 13 of the transaction with Sentinel? 14 A No. But it would be -- it would be in 15 the debtor's records. I mean, it's a set 16 committee that they set over a period of time. 17 Q But you have no personal knowledge of 18 the conflicts committee weighing in on the ATE 19 transaction; correct? 20 A No, I don't. But it's standard 21 practice for them just to be involved. 22 Q So it's correct, sir, that you have no 23 personal knowledge of the conflict committee 24 weighing in on the ATE transaction; right? 25 A Correct.</p> | <p style="text-align: right;">247</p> <p>1 to me, I don't know. 2 BY MR. CLUBOK: 3 Q And when you say he approved the 4 transaction, the -- you mean a written approval? 5 A I don't know what approval process he 6 has. 7 I would assume it's a written approval. 8 Maybe reflected in a compliance memo. I don't 9 know what process he has. Again, because of the 10 design, it got us to the SEC. I'm not involved in 11 compliance. 12 Q Well, wait a second. When you say you 13 know that he approved the transaction, did he tell 14 you personally he was approving the transaction? 15 A Yes. 16 Q And what were the -- was this a later 17 meeting. Because you mentioned the four to six 18 meetings. And I -- maybe I should have asked this 19 question. After those initial four to six 20 meetings, did you ever discuss the transaction 21 with Mr. Surgent again? 22 A Not that I recall until he said the ATE 23 policy is going forward to me in passing in the 24 hallway. 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 2 right. What you have personal knowledge as you 3 can testify to with respect to the ATE transaction 4 and the process that was followed is you know that 5 you were in four to six meetings with Mr. Surgent, 6 but you don't recall the fact that Sentinel would 7 be issuing the policy ever coming up; correct? 8 A Correct. 9 Q And you have no idea if Mr. Surgent 10 ever received any documentation about the 11 transaction; correct? 12 A My personal knowledge, I have no idea 13 of what he received. 14 Q And you don't know if any member of the 15 conflict committee was apprized of the Sentinel 16 transaction; correct? 17 A Me personally? No. 18 Q And you don't know whether Mr. Surgent 19 was ever specifically told that Sentinel would be 20 the one issuing the policy prior to its issuance; 21 correct? 22 A I don't know that he -- 23 MS. SMITH: Objection to form. 24 THE WITNESS: I don't know he 25 specifically told me he approved the transaction</p> | <p style="text-align: right;">248</p> <p>1 can approve that type of transaction. 2 Q I'm sorry, he told you it -- so you had 3 those initial four to six meetings. 4 A Yeah. 5 Q You never had another meeting with Mr. 6 Surgent about the ATE policy. But he told you in 7 passing in the hallway that the transaction was 8 going forward? 9 A Yes, that's my recollection. 10 Q And did -- is that the only other 11 communication you had with Mr. Surgent, other than 12 what you've described thus far? 13 A Yes, because by design compliance runs 14 its own process. 15 Q And when Mr. Surgent in passing told 16 you it was going forward, did he say compliance 17 approved the transaction? 18 A Yeah, he approved it. Compliance 19 doesn't approve it. The chief compliance officer 20 approves it. 21 Q And he specifically told you -- and how 22 long was this conversation that you had in passing 23 in the hallway? 24 A Ten seconds. 25 Q And what specific -- what were the</p> |

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| <p style="text-align: right;">249</p> <p>1 exact words that Mr. Surgent used, to the best of 2 your recollection? 3 A To the best of my recollection from 4 five years ago, he said the ATE thing is going 5 forward. 6 Q That's it? 7 A That's it. 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 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. 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 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. 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 A Me personally, no, because I was by 18 design, not part of the process. 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 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. 8 Q Did the ATE transaction implicate the 9 Adviser's Act? 10 A I don't know. 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 A Untrue. 24 Q Ah, okay. So then please explain. 25 A Mr. Surgent knew from inception or when</p> | <p style="text-align: right;">252</p> <p>1 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. 7 Q You talked -- you talked with 8 Mr. Leventon about whether or not Sentinel should 9 be considered a affiliate investor; correct? 10 A Mr. Leventon? 11 Q Yeah? 12 A Not that I recall having Mr. Leventon's 13 opinion about that. It's not really relevant. It 14 is solely compliance. 15 Q Did you ever talk to Mr. DiOrio about 16 whether Sentinel would be considered an affiliate 17 of any other entity? 18 A Not that I recall. Again, that 19 determination would only be me repeating what is 20 determined by compliance. 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 A I don't recall. 25 Q Did you ever consider whether Sentinel</p> |

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| <p>1 was an affiliate of Multi Strat? 2 A Did I? No. 3 Q Did you ever discuss with anybody 4 whether Sentinel should be considered an 5 affiliated investor with respect to its Multi 6 Strat ownership interest? 7 A Not that I recall. 8 MS. SMITH: Objection. 9 THE WITNESS: But again, that analysis 10 is done by compliance and determined by a chief 11 compliance officer. 12 BY MR. CLUBOK: 13 Q If a question came up as to whether or 14 not Sentinel should be treated as an affiliate for 15 any other entity that Highland was involved with, 16 would it have been the appropriate process to 17 maybe turn that over to compliance? 18 A Yes. They would inquire to compliance 19 about their determination. 20 Q And you would never have any role in 21 that assessment? 22 A No, other than repeating what 23 compliance had decided, I had no role. 24 Q Would you -- okay. Do you consider 25 Sentinel to be an affiliate of yours?</p> | 253 | <p>1 A Yes. 2 MS. SMITH: Objection. 3 BY MR. CLUBOK: 4 Q Would you say your management style was 5 to frequently yell at people? 6 A In the past, yes. 7 Q How about in the 2017 timeframe? 8 A I wouldn't say frequently. I would say 9 more infrequently, but yes, I did it. 10 Q Did you ever yell at Taylor Colbert 11 about his use of the phrase "affiliated investor" 12 with respect to Sentinel? 13 A I don't recall who Taylor Colbert is. 14 Q Did you ever yell at Trey Parker about 15 that? 16 A I don't ever remember yelling at Trey 17 Parker. 18 Q Did you ever yell at Carter Chisholm or 19 Chris Dunn with respect to this subject? 20 A I don't think I've ever yelled at 21 Carter Chism, and I don't know who Chris Dunn is. 22 Q Let's take a look at Exhibit 61. 23 It is an email chain with an 24 attachment. And I'm going to just focus you first 25 on the email cover before we look at the</p> | 255 |
| <p>1 A I don't -- 2 MS. SMITH: Objection to form. 3 THE WITNESS: I don't know what that 4 analysis entails. I would say it's an affiliated 5 entity -- to entities that I am involved with, I 6 don't know enough about how to analyze something 7 that's affiliated by law. 8 BY MR. CLUBOK: 9 Q Did you ever ask anybody to talk to you 10 specifically about whether or not Sentinel was an 11 affiliated investor without going first to 12 compliance? 13 A Please repeat that. I want to make 14 sure I understand what you're asking. 15 Q Did you ever ask anybody at Highland to 16 speak with you directly about whether or not 17 Sentinel should be labeled an affiliated investor 18 without first speaking to compliance? 19 A Not to my knowledge. No, again, 20 compliance is the ultimate arbiter. 21 Q Did you ever yell at anybody for, in 22 your view, improperly labelling Sentinel as an 23 affiliated investor? 24 A Yell at anyone? Not that I recall. 25 Q Do you ever yell at work?</p> | 254 | <p>1 attachment. And it's an email exchange that 2 the bottom starts with an email from Taylor 3 Colbert to a number of folks and eventually works 4 up to an email from you to Isaac Leventon and JP 5 Sevilla. 6 Do you see Exhibit 61? 7 A I've got Exhibit 61. 8 BY MR. CLUBOK: 9 Q And you can see here that -- if we go 10 down to the -- you have to read backwards on the 11 email. 12 A Okay. 13 MR. CLUBOK: And Nate, if you can give 14 me that. Thank you. 15 BY MR. CLUBOK: 16 Q The email starts with Taylor Colbert 17 saying, "Hi, Trey. Please see the attached for 18 cash projection, distribution, allocation as 19 requested. There are several estimates in the 20 file that we will continue to sharpen over the 21 next couple of days." 22 And the subject is "Multi Strat Cash 23 Projection." 24 Do you see that? 25 A I do.</p> | 256 |

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| <p>257</p> <p>1 Q And then if you work up the chain, you 2 will see Taylor then sending another email to Trey 3 and this time he copies some additional people, 4 including Thomas Surgent. And Taylor says, "Trey, 5 as discussed, please see the updated file with 6 Sentinel being presented as an affiliated 7 investor. Please let me know if you would like to 8 see any changes made." 9 Do you see that? 10 A Yes. 11 Q And then Mr. Surgent forwards to you 12 and says "Let's discuss." 13 A Yes. 14 Q Did you discuss this with him ever? 15 A I'm sure I did. If he asked me to 16 discuss something, I almost always discussed it 17 with him. I can't think of any instance where I 18 didn't. 19 Q And that same day, it looks like about 20 50 minutes after Thomas Surgent sent you that 21 email, you forward it to Isaac Leventon and JP 22 Sevilla and said, "See below and attached and call 23 me tomorrow on this." 24 Do you see that? 25 A I do.</p> | <p>259</p> <p>1 investor with respect to Multi Strat; isn't that 2 true? 3 A No, that's not true. I don't know what 4 I'm -- I may have received instructions from 5 Mr. Surgent. I don't recall anything about this. 6 They were my two most senior guys. 7 Very often I would have them handle things, so 8 very easily Mr. Surgent could have given me 9 instructions. But I said okay, I'll have JP and 10 Isaac handle it. I just don't recall what 11 happened here, but the characterizing is I drug 12 them into the determination of what's an 13 affiliated investor is, I'm sorry, that's silly 14 because that determination is exclusively Mr. 15 Surgent's. 16 Q What was the discussion you had with 17 Mr. Surgent when he forwarded this to you? 18 A I have zero recollection of this. 19 Q So, Mr. Surgent -- okay. You have zero 20 recollection of what you guys discussed; is that 21 correct? 22 A You are asking me to remember a phone 23 conversation from five years ago. No, I don't 24 know. Or four years ago, sorry. 25 Q If you look at the attachment and the</p> |
| <p>258</p> <p>1 Q Do you remember this exchange? 2 A Not at all. 3 Q You said before you don't know why 4 Isaac Leventon would be involved at all in 5 affiliate investor determination. 6 Do you remember that? 7 MS. SMITH: Objection to form. 8 THE WITNESS: And I don't -- from this, 9 I don't see that he is. 10 Mr. Surgent involved me. 11 BY MR. CLUBOK: 12 Q Right. But then you immediately sent 13 an email to -- to Leventon and Sevilla and say, 14 "Let's" -- you know, "call -- call tomorrow on 15 this." 16 Do you see that? 17 A I do. 18 Q You brought Leventon and Sevilla into 19 this exchange, didn't you? 20 A I didn't bring them in into any 21 exchange. I asked them to call to discuss -- to 22 call me on this tomorrow. 23 Q You brought Mr. Leventon and 24 Mr. Sevilla into this subject of whether or not 25 Sentinel should be presented as an affiliated</p> | <p>260</p> <p>1 first page, you can see that it identifies 2 entities in shade if they are non-affiliated and 3 not in shade if they are affiliated. 4 Do you do see that? 5 A I see shaded and non-shaded entities. 6 Where do you get the key that the 7 shaded are non-affiliates? 8 Q Oh, I'm sorry. Well, you can see the 9 percent of non-affiliate? 10 A Okay. 11 Q Right? And you can see where the 12 percentage of non-affiliate, for example, Master 13 Fund, Highland Credit Opportunities Fund adds up 14 to 100 percent with three different entries. 15 Do you see that? 16 A Okay. 17 Q And then for the Highland Credit 18 Opportunities Fund, the same thing. You can see 19 the one's that are shaded add up to 100 percent 20 for -- sorry, add up to -- there's percentages 21 associated with non-affiliated entities and there 22 is no percentages associated with the others, for 23 non-affiliate. 24 Do you see that? 25 A I do.</p> |

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| <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 A I do. 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 A I don't recall that -- I mean, that 13 could be, I just don't remember. 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 A Mm-hmm. 19 Q At some point, it changed its name to 20 Multi Strat. 21 Do you -- does that ring a bell? 22 A It does ring a bell. I just -- I just 23 don't want to say 100 percent I remember that, but 24 that sounds right to me. 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 A In other words, this table prepared by 4 Mr. Colbert to -- I don't know what his goal 5 was -- oh, a fund analyst. Sorry, I just saw his 6 signature block. If it was correct, why would Mr. 7 Surgent say "Let's discuss." 8 It's Mr. Colbert's determination, 9 again, who had zero relevance in determining what 10 was an affiliated investor or not. If that was 11 correct, why would Mr. Surgent need to discuss 12 something with me. 13 Q And you don't remember what you did 14 discuss after this? 15 A No, I don't. But I just find it 16 interesting that, you know, at 6:00 o'clock at 17 night, he needs to discuss with me on something 18 that is correct. Usually people don't say, hey, 19 use this table. It's correct. 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 A No, I don't. 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 A He can be put on here anything. It is 6 not his determination. 7 Q This whole -- 8 A If Mr. Surgent said let's discuss and 9 it was right, I have to doubt he would have needed 10 to discuss anything with me. 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 A No, no, unless Mr. Surgent told me to 9 remind people that it -- they don't need to be 10 making determinations for what affiliated 11 investors are or not. I just don't remember the 12 circumstances. 13 Furthermore, if I yelled at somebody ad 14 nauseam, it doesn't change Mr. Surgent's 15 determination. 16 Q At some point, Sentinel was referred to 17 as an affiliate; correct? 18 A Not to my knowledge. 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> |

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| <p style="text-align: right;">265</p> <p>1 as an affiliate; correct?</p> <p>2 A Were any of those people Mr. Sargent?</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 A When you said people, I was just trying</p> <p>7 to understand...</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 A I don't recall.</p> <p>17 Q It was specifically brought to your</p> <p>18 attention by Isaac Leventon, wasn't it?</p> <p>19 A I don't recall.</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 A I believe it is a fund managed by</p> <p>12 NexPoint Advisors.</p> <p>13 Q And what did -- what was Highland's</p> <p>14 connection to it?</p> <p>15 A Connection to it? Highland was a</p> <p>16 sub-adviser to NexPoint Advisors and provided</p> <p>17 shared services.</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 A I do.</p> <p>22 Q And then Isaac -- do you remember Isaac</p> <p>23 sending you this information?</p> <p>24 A No, I don't.</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 A Well, I can't see the whole email chain</p> <p>4 so I don't even understand that -- if there is</p> <p>5 emails further down that I'm not being shown.</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 A Okay.</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 A It obviously -- that obviously has</p> <p>15 context?</p> <p>16 Q It may have been a premature sending,</p> <p>17 who knows?</p> <p>18 A Okay.</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> |

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| <p style="text-align: right;">269</p> <p>1 A Yes.</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 A I do.</p> <p>9 Q Who's Dio?</p> <p>10 A He is referring to Mr. DiOrio. That's</p> <p>11 his nickname.</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 A I do.</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 A Yes.</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 A Yes.</p> <p>20 Q And what happened?</p> <p>21 A What do you mean what happened?</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 A Was there any resolution?</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 A I do.</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 A I do.</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 A I do.</p> | <p style="text-align: right;">272</p> <p>1 Q Yeah.</p> <p>2 A To what?</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 A No, I instructed Mr. Leventon to</p> <p>9 construct this timeline.</p> <p>10 Q Oh. Why?</p> <p>11 A Because Mr. McGraner who is the</p> <p>12 portfolio manager for the funds managed by</p> <p>13 NexPoint Advisors, had asked me to understand why</p> <p>14 Sentinel had put in a redemption request. And I</p> <p>15 said I wasn't aware that they had.</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 A No, not at all.</p> |

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| <p>1 Q That was certainly a concern, wasn't 2 it?</p> <p>3 A No, it was not.</p> <p>4 MS. SMITH: Objection to form.</p> <p>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 A Which one are you referring to?</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 A Okay.</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 A Okay.</p> | <p>273</p> <p>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 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."</p> <p>13 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.</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q CIMA told you --</p> <p>20 A -- (overspeaking) --</p> <p>21 Q I'm sorry, CIMA told you to redeem out 22 of this fund on behalf of Sentinel?</p> <p>23 A Yes. In their annual portfolio review 24 they instructed the independent directors to 25 redeem out of this fund.</p> |
| <p>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&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 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?</p> <p>18 MS. SMITH: Objection to form.</p> <p>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.</p> <p>25 They could have written, "UBS is our</p> | <p>276</p> <p>1 Q Yeah and -- (overspeaking) --</p> <p>2 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."</p> <p>8 The only email that matters on this 9 whole thing is hers. She's the only person 10 qualified to make that determination.</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 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.</p> <p>23 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.</p> |

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| <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 A Absolutely not. 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 A My personal knowledge, I don't know but 18 here is hers in writing. Sentinel is good, not 19 part of JD's group. Not an affiliate. 20 If you look up above, this actually got 21 Mr. Sargent and Mr. Post on 6/26/2019. The 22 "NexPoint Repurchase Event," along with 23 Ms. Thedford and Mr. Sargent and Mr. Post, the 24 three most senior people in compliance, including 25 the chief compliance officer.</p> | <p style="text-align: right;">279</p> <p>1 followed for CDO Funds during this timeframe? 2 A Yes, for anything that's -- 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 A Yes, and again my experience with 17 working with Mr. Sargent for 15 years, he was 18 incredibly diligent, incredibly careful CCO. 19 Q Is Mr. Sargent honest? 20 A In my opinion, yes. 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 A Yes, and the 33 Act, 34 Act, 40 Act, 15 the RAA, other codified laws, SEC letter rulings, 16 etcetera. 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 A I do not know. That's a question for 23 Mr. Sargent and his staff. 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 A I don't know what his reputation was, 7 but I would assume he did. 8 Q Did you have a reputation for honesty 9 around Highland Capital Management? 10 A I believe so. 11 Q Did Isaac Leventon have a reputation 12 for honesty? 13 A Yes. 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 A What community? 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> |

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| 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 A I know that people --</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 A No, I don't.</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 A I do.</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 A I do.</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 A No.</p> <p>20 Q You had no idea about this?</p> <p>21 A I've never seen this. To my</p> <p>22 recollection, I've never seen this.</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 A Do I know about these steps? Obviously</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 A No. I do not recall seeing this,</p> <p>7 period, much less relative to the ATE policy.</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Okay, I'm going to flip through it?</p> <p>10 A Okay.</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 I understand the steps, but I don't know who</p> <p>2 drafted these or where they came up with these</p> <p>3 steps.</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 A Yep.</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 A Yeah.</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 A I'm sorry, you broke up. Are you</p> <p>15 talking about the conclusion?</p> <p>16 Q Yep.</p> <p>17 A You already asked me that. Yes.</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 A I do.</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 A I've never seen this. I didn't -- I</p> <p>25 had no knowledge of this.</p> |

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| <p>1 Q Even though you never saw this 2 document, did you know there was at some time a 3 plan that's consistent with what you see here on 4 page 8 of Exhibit 47? 5 A I certainly didn't know this was the 6 plan because I never saw this. I was never told 7 of this. I don't know who drafted it. I don't 8 know who the audience was. No idea. 9 Q Did you know that there was a plan to 10 buy \$100 million ATE policy from Sentinel by HFP 11 and CDO Fund? 12 MS. SMITH: Objection to form. 13 THE WITNESS: I knew there was a plan 14 at some point to buy a policy from Sentinel by the 15 ultimate insureds. I didn't know what they were 16 paying for that policy. 17 BY MR. CLUBOK: 18 Q And you know that it was ultimately a 19 \$100 million policy that was purchased from 20 Sentinel; correct? 21 A I don't think I ever knew the policy 22 amount. I don't even know that I've ever seen the 23 policy. 24 Q You are a 30 percent owner in Sentinel 25 and you never knew what the policy amount was?</p> | <p>285</p> <p>1 true? 2 MS. SMITH: Objection to form. 3 THE WITNESS: No, I didn't discuss 4 anything with CIMA because I don't think I spoke 5 in the meeting. 6 BY MR. CLUBOK: 7 Q It was discussed in a meeting where you 8 were present with CIMA -- strike that, the ATE 9 policy was specifically discussed in a meeting 10 that you were present with the CIMA 11 representatives? 12 A It was generally discussed when Jan was 13 discussing the litigation. 14 Q There was actually a PowerPoint 15 presentation presented by your colleagues in that 16 meeting; isn't that true? 17 A I don't recall. 18 Q In any event, did you know that there 19 was a \$100 million -- 20 When is the first time that you learned 21 that the ATE was a \$100 million face value? 22 A I don't remember. 23 Q How long ago? 24 A I don't know. A couple of years ago, 25 maybe longer.</p> <p>287</p> |
| <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: I don't think I ever knew 3 the final policy amount, no. 4 BY MR. CLUBOK: 5 Q Did you ever hear it being discussed as 6 being a roughly \$100 million ATE policy? 7 A Best of my recollection it was a number 8 lower than that, but no, I never knew the final 9 amount. 10 Q What was the number, best of your 11 recollection, it was? 12 A I thought was around 80 million, but 13 obviously I was wrong. 14 Q All right. After the policy was 15 purchased -- well, strike that. 16 You know the policy was purchased 17 sometime in approximately August of 2017; correct? 18 A I knew that that was roughly the 19 timeframe, yes. 20 Q And by the way, you had a meeting with 21 CIMA about this policy two years later, right? 22 A I had a meeting with CIMA about the 23 litigation; not about this policy. 24 Q Well, you specifically discussed the 25 ATE policy during that 2019 meeting, isn't that</p> | <p>286</p> <p>1 Q Okay, so after the policy you found -- 2 after the purchase and -- 3 A I still don't recall it being 4 100 million. I thought it was less, but obviously 5 my memory is faulty with that. 6 Q Sorry, did you ever know it was 7 100 million? 8 A I can't recall. 9 Q All right. You knew that the premium 10 was going to equal all the assets in the HFP and 11 CDO Fund, correct? 12 MS. SMITH: Objection to form. 13 THE WITNESS: No, as I've testified 14 numerous times today, I don't know what was 15 finally transferred. 16 BY MR. CLUBOK: 17 Q Well, you knew that the cash from all 18 those entities were transferred; correct? 19 MS. SMITH: Objection to form. 20 THE WITNESS: I did not know what was 21 transferred. 22 BY MR. CLUBOK: 23 Q Okay, you knew that all of the cash 24 from CDO Fund was transferred as part of the 25 overall consideration for the ATE policy that was</p> <p>288</p> |

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| <p>1 purchase and sent to Sentinel; correct?</p> <p>2 A Not true. I don't know what was</p> <p>3 transferred.</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> | 289 | <p>1 know what was going on with the case, even though</p> <p>2 they had no involvement.</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 A Not that I recall and I don't recall</p> <p>16 ever seeing this, so if I tasked them with it,</p> <p>17 it's strange, they never sent it to me.</p> <p>18 Q Who, on behalf of CDO Fund, negotiated</p> <p>19 the terms of the ATE policy?</p> <p>20 A I don't know.</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 A No idea.</p> | 291 |
| <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 A I never had a discussion with anybody</p> <p>5 about what's being transferred because I wasn't</p> <p>6 involved with that process and had no knowledge of</p> <p>7 what was finally transferred.</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 A No.</p> <p>12 Q Did you ever look at any Sentinel</p> <p>13 financial statement ever?</p> <p>14 A Never.</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 A By whom?</p> <p>19 Q By anyone?</p> <p>20 A I'm sure somebody asked me.</p> <p>21 Q Who?</p> <p>22 A I don't -- I don't recall who.</p> <p>23 Mr. Dondero, I know, asked me several times. I</p> <p>24 can't tell you when. I was asked one time by the</p> <p>25 retail fund board out of curiosity they wanted to</p> | 290 | <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 A No, I cannot.</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 A No I cannot.</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 A I don't know.</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> | 292 |

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| <p style="text-align: right;">293</p> <p>1 A Yes, I do.</p> <p>2 Q How do you know that?</p> <p>3 A I'm the one that told him. After</p> <p>4 Surgent told me it was going through, I was</p> <p>5 walking towards Mr. Dondero's office and said</p> <p>6 Surgent told me it's going through.</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 A No, I think I spoke to him about it</p> <p>11 infrequently after that, but it wasn't very often.</p> <p>12 Q What did he say since then about it?</p> <p>13 A Since when?</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 A Yeah.</p> <p>18 Q I might have changed the words.</p> <p>19 A Yeah.</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 A Surgent just told me that he greenlit</p> <p>24 or approved, I don't remember what I said,</p> <p>25 something to that effect, the ATE policy.</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 A I think I mentioned earlier today that</p> <p>4 I remembered Mr. Dondero oddly asking me if it was</p> <p>5 still in place a couple of years after it was put</p> <p>6 in place.</p> <p>7 Q And that's the only conversation you</p> <p>8 recall ever having with him?</p> <p>9 A That I remember with any kind of</p> <p>10 specificity. I remember talking to him countless</p> <p>11 times about trying to settle with you guys.</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 A I don't know.</p> <p>17 Q Who negotiated on behalf of Sentinel</p> <p>18 the purchase for the ATE policy?</p> <p>19 A I don't know.</p> <p>20 Q Who negotiated on behalf of Sentinel,</p> <p>21 any term in the policy?</p> <p>22 A I don't know.</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 A I had absolutely zero transparency to</p> |
| <p style="text-align: right;">294</p> <p>1 Q And what did Mr. Dondero say?</p> <p>2 A I don't remember. I don't remember</p> <p>3 exuberance or anything; it just seems like it was,</p> <p>4 you know, due course.</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 A Many, many times.</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 A I don't remember specifically saying</p> <p>14 that, but I mean that was a known fact. I didn't</p> <p>15 know that I had to remind him.</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 A I don't recall specifically or</p> <p>23 generally bringing it up after that time period.</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 that process. I don't know.</p> <p>2 Q Do you know who would know?</p> <p>3 A Directors of Sentinel.</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 A Well, the independent directors, I</p> <p>9 believe, were the only people that were the</p> <p>10 directors at the time this was put in place and</p> <p>11 I -- you had asked me who may know. I would</p> <p>12 assume, being the directors, they would know, but</p> <p>13 you asked me to speculate.</p> <p>14 Q Who were the independent directors at</p> <p>15 the time that the policy was issued?</p> <p>16 A I don't recall.</p> <p>17 Q Does it ring a bell, Andrew Dean and</p> <p>18 Christopher Watler?</p> <p>19 A Doesn't ring a bell. I want to say it</p> <p>20 was people at Maples FS, but I could be wrong.</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> |

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| <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 A Maybe Mr. Surgent. Since he was the</p> <p>4 final approver of the transaction, maybe he knows.</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 A Potentially. You know, again, you are</p> <p>9 asking me to speculate. I just I learned it</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 A Yes.</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 A Compliance ran the process of approving</p> <p>25 this transaction, which I'm assuming would be the</p> |
| <p style="text-align: right;">298</p> <p>1 A Yes.</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 A Correct.</p> <p>5 Q And he said --</p> <p>6 A And you said that "he said." I don't</p> <p>7 know that Mr. Leventon drafted this document.</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 A Correct.</p> <p>13 Q And in fact \$100 million ATE policy was</p> <p>14 purchased from Sentinel; correct?</p> <p>15 A I'll take your word for it. I'd have</p> <p>16 to look at the policy to tell you the amount, but</p> <p>17 if that's what you say it is, okay.</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 analysis of that.</p> <p>2 I certainly didn't do that analysis nor</p> <p>3 would I have the skills to analyze what these</p> <p>4 securities would be worth at some point in the</p> <p>5 future.</p> <p>6 BY MR. CLUBOK:</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 A No idea.</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 A No, I don't. I'd have to look at the</p> <p>16 policy.</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> |

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| <p>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 A No, again, that would be part of, I 7 would assume, compliance's process and not my job. 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 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. 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 A It's supposed to be the sole 23 responsibility of compliance and not due to 24 outside influence. 25 Q What SEC guidance says that?</p> | <p>303</p> <p>1 specifically prohibited you from engaging in a 2 fraudulent transfer analysis with respect to the 3 ATE policy? 4 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. 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 A Yes, solely compliance. You can ask it 20 a thousand times. Solely compliance. 21 Q Okay, and Mr. Surgent told you that 22 there was such SEC guidance. 23 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</p> |
| <p>302</p> <p>1 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. 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 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. 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 A Solely responsibility of compliance, it 23 is not me to generate that analysis. 24 Q And you are saying that you were told 25 by Mr. Surgent that there is SEC guidance that</p> | <p>304</p> <p>1 ask you. 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 A When Mr. Surgent -- 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 A No. 25 Q -- testified here?</p> |

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| <p style="text-align: right;">305</p> <p>1 A No. He didn't given training seminars</p> <p>2 on SEC guidance.</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>13 A I don't know.</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>22 A No, I don't know what it told its</p> <p>23 investors. I'm not an HFP investor.</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>9 A Oh, absolutely. I informed you that I</p> <p>10 had been told, that there were people that took</p> <p>11 tax deductions, and if HFP had value past some</p> <p>12 date certain it would unwind those tax deductions.</p> <p>13 What you asked me if I knew -- if I</p> <p>14 knew a letter was sent to those investors, of what</p> <p>15 deductions they took, I have no knowledge of any</p> <p>16 of that.</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>20 A No, I don't remember having that</p> <p>21 discussion with Mr. Seery or Pachulski, no.</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>2 A I don't know what the debtor decided to</p> <p>3 make a determination of those entities. I know</p> <p>4 they did their own analysis.</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>9 A Me personally, no. I believe they did</p> <p>10 an evidence and document-based search and did</p> <p>11 their own analysis is my understanding.</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> |

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| <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 A I have no idea. I don't know -- I</p> <p>15 don't have any training in how to assess that.</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 A I was not involved in this process.</p> <p>13 I had no transparency in the process and the</p> <p>14 answer is no.</p> <p>15 Q And sorry, you said you'd never seen</p> <p>16 this before today?</p> <p>17 A I said I don't recall seeing it. I</p> <p>18 don't believe I ever have.</p> <p>19 Q If you take a look at Schedule A, you</p> <p>20 see all the assets listed.</p> <p>21 A I'm sorry, take a look at what?</p> <p>22 Q Schedule A.</p> <p>23 A Yes, Schedule A, sorry.</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 A CDO master, opportunity -- yes I do.</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 A Yes.</p> <p>13 Q And did Mr. Dondero negotiate the terms</p> <p>14 of all of these entities?</p> <p>15 A I don't know.</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 A No.</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 A No, I was not involved in this process</p> <p>23 at all.</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 A I do.</p> <p>2 Q Including cash in some cases.</p> <p>3 A Yes.</p> <p>4 Q Did you know that all these assets were</p> <p>5 consideration for the purchase agreement?</p> <p>6 A I see that now.</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 A The what document?</p> <p>17 Q The settlement structure document that</p> <p>18 I showed you earlier.</p> <p>19 A Oh, the PowerPoint presentation?</p> <p>20 Q Yeah.</p> <p>21 A Yes.</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> |

Conducted on July 29, 2021

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| <p>1 structure in April of 2017, around the time of 2 that document? 3 A Not that I recall, no. 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> | 313 | <p>1 and how long ago, but I have a pretty good memory. 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 A I do. 7 Q Do you remember saying that you're 8 certain you never knew that? 9 A That's not what I said. I said I don't 10 recall. 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 A Okay. 24 Q And we'll have it up here in a second. 25 It's Exhibit 89. I am going to make it</p> | 315 |
| <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 A No. 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 A No. 20 Q Do you consider yourself to have a good 21 memory? 22 A Depends. 23 Q Do you consider yourself to have a good 24 memory? 25 A It depends on what we're talking about</p> | 314 | <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 A I do. 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 A I do. 20 Q And this is money that's all wired to 21 Bank of New York Mellon; correct? 22 A That's what it looks like, yes. 23 Q And the account name is MaplesFS 24 Limited. 25 A Correct.</p> | 316 |

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| <p>317</p> <p>1 Q And it is for Sentinel reinsurance 2 Limited, correct? 3 A Correct. 4 Q And that is all the cash from HFP funds 5 and all CDO Funds, according to this, correct? 6 MS. SMITH: Objection to form. 7 THE WITNESS: No, it actually says: 8 "Please confirm this serves as instructions to 9 wire cash from all (the funds) and all CDO Funds." 10 BY MR. CLUBOK: 11 Q Okay. 12 A Also you've asked me over and over if 13 Mr. Sargent knew that Sentinel involved in the 14 transaction; he's on this email. 15 BY MR. CLUBOK: 16 Q Right. 17 A And he didn't know if it was Sentinel. 18 That clears that up. 19 Q And then this email's forwarded to you 20 by JP Sevilla and it says "FYI," do you see that? 21 A I did. 22 Q You just started shouting a little 23 bit -- 24 A I didn't shout; I was speaking. 25 Q Well, we have an audio, so we'll see</p> | <p>319</p> <p>1 before I am, and Cliff Stoops and Frank Waterhouse 2 and many others. 3 Q Right. Is there a -- all right. 4 A It also says "wiring info," if you 5 noticed that. 6 It doesn't say anything -- unless you 7 read down in the chain of what is being wired, so 8 I highly doubt if I saw "Sentinel wiring info" 9 that I would go and ... (inaudible) into what I 10 received. I don't remember this at all. 11 Q Right, so you get this email that says 12 "Privileged and Confidential, Sentinel wiring 13 info." 14 A Yes. 15 Q And scrolling down just a little bit it 16 says: 17 "Please confirm this serves as instruction 18 to wire cash from all HFP funds and all CDO Funds 19 to the account listed in the instructions below." 20 It's not a long email; it's one sentence 21 under a subject that says in big bold caps, 22 "Privileged and confidential" and then says in 23 bold "Sentinel wiring info." 24 A It's not one sentence. It is further 25 on in the chain and it supposedly has an</p> |
| <p>318</p> <p>1 that you raised your voice there. 2 A I also leaned in closer to the 3 microphone, maybe that was the issue. 4 Q Yeah, well this confirmed the 5 instruction to wire cash from all HFP funds and 6 all CDO Funds; do you see that? 7 A Yeah, I see that. 8 Q And it's sent to you, so you certainly 9 were aware of that, correct? 10 A I was aware of it? I don't even know 11 that I read it. 12 MS. SMITH: Objection, that 13 mischaracterizes this. That first email was not 14 sent to him. 15 THE WITNESS: Also you asked me if I 16 knew all the cash was sent and that's not even 17 what this email said. Wire cash from all HFP 18 funds and all CDO. 19 BY MR. CLUBOK: 20 Q Right, first of all -- 21 A There's is no schedule of what was 22 said. It doesn't say "all the cash" so you 23 mischaracterized or your question was different. 24 Q Okay. 25 A And, again, Mr. Sargent is on this</p> | <p>320</p> <p>1 attachment and furthermore, I got at this time 2 period, between 400 and 500 emails a day, so when 3 I saw something that is wiring info and, again, 4 you kept asking, I knew, I knew, all the cash, 5 that's not even what this says. This is wire 6 cash. That could be \$5. I don't know. There's 7 nothing on this email that even says how much cash 8 is being sent. 9 Q Looking at this email, it's forwarded 10 to you and it says FYI. 11 Then there is an email that is 12 forwarded to you that has one sentence that says, 13 "Please confirm" etc; isn't that true? 14 A That is not true because then there's 15 from Katie Irving. 16 Q Sorry -- just -- 17 -- (overspeaking) -- 18 A Chism and JP Sevilla was on the same 19 chain. And it is "Sentinel wiring instructions 20 from cash arising from transaction..." Doesn't 21 say what transaction. "...are below, thank you." 22 So, no, what you're saying is not true. 23 Q Right, but the -- I'm sorry, when you 24 are forwarded an email that has one sentence that 25 says, "Confirm this serves as instructions to wire</p> |

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| <p>321</p> <p>1 cash from all HFP funds and all CDO Funds 2 etcetera..."</p> <p>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.</p> <p>7 That's the entirety of the substance of 8 this email.</p> <p>9 A Totally agree. It doesn't have an 10 amount of what was wired or anything or cash -- I 11 don't know if they said \$100 or I don't know if 12 they sent it all. It is completely 13 non-informative of what's being sent, other than 14 cash, generally.</p> <p>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?</p> <p>19 A No, I do not know what was transferred. 20 I do not know what was contemplated to be 21 transferred in the process.</p> <p>22 Q Okay.</p> <p>23 A As you can tell, when the mechanics 24 were being put here, I'm not included by anyone. 25 JP decides to send me an FYI, which certainly</p> | <p>323</p> <p>1 THE WITNESS: I do.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q And Mr. Dondero knew about this too, 4 right?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: Mr. Dondero knew about 7 what?</p> <p>8 BY MR. CLUBOK:</p> <p>9 Q Mr. Dondero knew that Sentinel had 10 tried to redeem an interest in Multi Strat; 11 correct?</p> <p>12 A I don't know what Mr. Dondero knew and 13 when he knew it?</p> <p>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?</p> <p>17 A I'm sorry, you broke up. Did I ever 18 what?</p> <p>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?</p> <p>23 A No, not that I'm aware of.</p> <p>24 Q Would that be a mistake if it was 25 listed that way?</p> |
| <p>322</p> <p>1 doesn't say I need to take action or approve 2 anything.</p> <p>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?</p> <p>6 A Of the ultimate beneficial ownership 7 of entities I'm associated with.</p> <p>8 Q Have you ever received any compensation 9 in any form from Sentinel?</p> <p>10 A No.</p> <p>11 Q Have you ever had a valuation done of 12 Sentinel since the one we looked at?</p> <p>13 A No.</p> <p>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?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: No, I don't know what was 20 transferred.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q You know that there was a redemption 23 purportedly by Sentinel with respect to Multi 24 Strat; correct?</p> <p>25 MS. SMITH: Objection to form.</p> | <p>324</p> <p>1 A I believe it would be a mistake because 2 SAS certainly never owned it to my knowledge.</p> <p>3 Q Do you know anything about -- well, 4 does Sentinel today own any interest in Multi 5 Strat, as far as you know?</p> <p>6 A I don't know what Sentinel owns in 7 Multi Strat today.</p> <p>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?</p> <p>12 MS. SMITH: Objection to form.</p> <p>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.</p> <p>16 BY MR. CLUBOK:</p> <p>17 Q You had Mr. Leventon working -- strike 18 that.</p> <p>19 Did you ever tell Isaac Leventon that 20 the ATE policy was Mr. Dondero's idea?</p> <p>21 A Not that I recall, no.</p> <p>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> |

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| <p>1 SOHC? 2 A Yes. 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 A Not that I recall. 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> | 325 | <p>1 Q Were you responsible for managing 2 Sentinel reinsurance and monitoring it? 3 A Managing its portfolio? 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 A No. 9 Q Were you responsible for managing 10 Sentinel reinsurance in any way? 11 A No. 12 Q Did you negotiate on behalf of HFP with 13 respect to the purchase agreement that I showed 14 you? 15 A No, I was not involved in the purchase 16 agreement at all. 17 Q Did you ever direct SOHC's legal 18 strategy? 19 A Objection to form. 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> | 327 |
| <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 A No. 8 Q Did you craft the ATE policy? 9 A No. 10 MS. SMITH: Objection to form. 11 BY MR. CLUBOK: 12 Q Did you describe the ATE policy fully 13 to Mr. Dondero? 14 A What do you mean by that? 15 Q Did you explain the ATE policy in any 16 detail to Mr. Dondero? 17 A No, because I didn't know the detail of 18 the ATE policy. 19 Q Did you make any efforts to get the ATE 20 policy through the compliance process? 21 A No. 22 MS. SMITH: Objection to form. 23 BY MR. CLUBOK: 24 Q Can you answer the question, please? 25 A No.</p> | 326 | <p>1 A Of the insureds? That would have been 2 coming from the directors. I don't know what they 3 did. 4 Q Did you provide any legal advice with 5 respect to the Sentinel transaction? 6 A No. 7 Q Did you give any advice on behalf of 8 HCM in any way, in connection with the Sentinel 9 transaction? 10 A No, I wasn't involved in the process 11 other than the idea. 12 Q Did you give legal advice any party 13 at all with respect to the Sentinel transaction? 14 A No, other than the idea and the initial 15 couple, three meetings, I wasn't involved. 16 Q Were there any lawyers that you are 17 aware of who gave advice with respect to the 18 Sentinel transaction? 19 A I don't know because I wasn't involved. 20 Q Mr. Surgent is not a lawyer; correct? 21 A Mr. Surgent is a lawyer. 22 Q Oh, Mr. Surgent is a lawyer. Was Mr. 23 Surgent giving legal advice in his role as chief 24 of compliance? 25 A I don't know what Mr. Surgent was doing</p> | 328 |

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| <p style="text-align: right;">329</p> <p>1 because I wasn't privy to what he was doing.</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>8 A Yes, I do have it.</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>15 A I'm sorry, which page?</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>21 A Yes, I do see it. Sorry; they were</p> <p>22 stuck together.</p> <p>23 Q And have you ever seen this before?</p> <p>24 A I do not believe I have.</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>2 A Yes.</p> <p>3 Q And you don't remember anything else at</p> <p>4 all about that?</p> <p>5 A No.</p> <p>6 Q Do you remember who told you?</p> <p>7 A No.</p> <p>8 Q Do you remember who you ever discussed</p> <p>9 that issue with, if anyone?</p> <p>10 A I don't remember discussing it with</p> <p>11 anyone?</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>20 A Don't know.</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>3 A Yes, I do.</p> <p>4 Q Do you know whose handwriting that is?</p> <p>5 A I do not.</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>13 A Because I think it was listed as a</p> <p>14 redeemer at some point.</p> <p>15 I think I saw on a table or something</p> <p>16 it was listed as a redeemer.</p> <p>17 Q You saw on a table that Sentinel was</p> <p>18 listed as a redeemer of Multi Strat.</p> <p>19 A I recall that, but I don't have</p> <p>20 certainty of where I saw it, but I thought maybe I</p> <p>21 was told they were a redeemer.</p> <p>22 Q Sorry, you say you saw a document or</p> <p>23 you were told; which is it?</p> <p>24 A I'm sorry, Andy, I don't remember.</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>3 A How long a break?</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> |

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| 333 | <p>1 A I do.</p> <p>2 Q And December 31st, 2019 was after the</p> <p>3 bankruptcy had already started, right?</p> <p>4 A Yes.</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 A I do.</p> <p>10 Q And you -- were you aware of this</p> <p>11 transaction?</p> <p>12 A No, I was not aware of this transaction</p> <p>13 that I recall.</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 A I do.</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 A You broke up Andy, how come what?</p> <p>21 Q Why did Matt DiOrio sign this as</p> <p>22 opposed to any of the independent directors.</p> <p>23 A I don't (inaudible)...</p> <p>24 Q What's that?</p> <p>25 A I don't know.</p> | 335 | <p>1 independent directors in Sentinel?</p> <p>2 A I don't.</p> <p>3 Q Do you know if the compliance group at</p> <p>4 Highland was advised about this transaction?</p> <p>5 A I don't, but since they're not</p> <p>6 regulating or the compliance group of Sentinel or</p> <p>7 SAS, I don't think they would have been, but I</p> <p>8 don't know.</p> <p>9 Q Do you know who Summit Management</p> <p>10 Limited is?</p> <p>11 A Again, that's a fiduciary services</p> <p>12 group in Cayman, as far as I know.</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 A No, all I've seen is what you've shown</p> <p>16 me and it does not look like anyone signed.</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> |
| 334 | <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 A I could be wrong but wasn't those</p> <p>17 draftings from Deloitte from 2017?</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 A No, I don't.</p> <p>22 Q Do you know if Mr. Dondero did?</p> <p>23 A I don't.</p> <p>24 Q Do you have any idea -- well, do you</p> <p>25 know if this transaction was identified to the</p> | 336 | <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 A No I don't.</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 A Not that I recall, no.</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 A Yes I was --</p> <p>20 -- (overspeaking) --</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> |

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| <p style="text-align: right;">337</p> <p>1 A I believe Mark Patrick told me about it 2 after the fact, that it had been part of the 3 assets transferred, but I can't say that with 4 certainty. 5 Q And do you know the economic status of 6 the DAF today? 7 A No, I do not. 8 Q Do you know if that note -- do you know 9 how DCO fund came to hold a note from the DAF? 10 A No idea. 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 A I do not. 15 Q Who would have been responsible for 16 monitoring that between 2009 and 2017? 17 A Monitoring what? 18 Q Monitoring what happened with CDO 19 Fund's assets? 20 A Oh, I don't know. 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 A I do not. Let's look at Exhibit 55 5 which also happens to be tab 55, by a happy 6 coincidence. That is -- I think you have that in 7 the binder in front of you. Hold, please. I do 8 have 55. 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 A Okay. 16 Q And this is an email from Kim Willey to 17 Paul Scrivener and Neil Horner; do you see that? 18 A Paul Scrivener and Neil Horner, yes. 19 Q Do you know any of those people? 20 A I don't know any of those people. 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 A I don't know who came up with any of 10 the assets to be transferred to Sentinel. 11 Q Who had the economic interest in the 12 DAF, as far as you know? 13 A Charities, but from what I understand, 14 that's a DAF donor-advised fund, so there was some 15 type of contribution made and then it's managed, I 16 believe, by outside entities and then the monies 17 were given away, donated to qualifying charities. 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 A No.</p> | <p style="text-align: right;">340</p> <p>1 A I do. 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 A Yes. 7 Q And Lesley Thompson then writes to JP 8 and Katie and that would have been Katie Irving; 9 correct? 10 A Umm... 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 A No, but I don't know that there may be 21 a Katie at these other entities. I just don't 22 know. 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> |

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| <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 A Yes.</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 A I do.</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 A I do.</p> <p>20 Q And that -- he does copy Katie Irving</p> <p>21 on it; do you see?</p> <p>22 A Oh, yeah, yeah. I see it now, yes.</p> <p>23 Q Okay, and that's the subject is</p> <p>24 "Sentinel Reinsurance Proposed ATE policy," right?</p> <p>25 A Yes.</p> | <p style="text-align: right;">343</p> <p>1 Q Is that an accurate statement?</p> <p>2 A Yeah, that's an accurate statement. I</p> <p>3 don't recall having this conversation with JP</p> <p>4 about a fundamental commitment of the shareholders</p> <p>5 both physically and governance-wise, no.</p> <p>6 Q No, no, no. Is the statement that Mr.</p> <p>7 Sevilla makes to Lesley Thompson --</p> <p>8 A Yeah, that's what I'm reading. "The</p> <p>9 shareholders made a fundamental commitment both</p> <p>10 physically and governance-wise to Sentinel</p> <p>11 Reinsurance for the long-term, including the</p> <p>12 situation of adverse loss. Many thanks." [As</p> <p>13 read.]</p> <p>14 No, I don't remember having that</p> <p>15 conversation with him.</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 A He could have talked to other</p> <p>25 shareholders. I do not remember talking to him</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 A Yes.</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 A Not that I recall, no.</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 A Not that I recall.</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 A No.</p> <p>23 Q Did you authorize Mr. Sevilla to make</p> <p>24 that statement?</p> <p>25 A Not that I recall.</p> | <p style="text-align: right;">344</p> <p>1 about this, but we surely had a commitment</p> <p>2 long-term to the reinsurer.</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 A Yes, correct.</p> <p>7 Q And Mr. Dondero was a shareholder at</p> <p>8 the time, right?</p> <p>9 A Yes.</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 A No, but if the shareholders are</p> <p>15 entities at directors and trustees, he could have</p> <p>16 talked to them and not me. He also could have</p> <p>17 talked to Mr. Dondero who had the controlling</p> <p>18 70 percent shares either directly or indirectly</p> <p>19 held through entities associated with him, and</p> <p>20 that would be plenty for him to make this</p> <p>21 assessment without ever speaking to me.</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> |

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| <p>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 A Okay. 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 A You asked me entities who had human 10 beings either as directors or trustees that he 11 could have spoken to, not -- (overspeaking) -- 12 (inaudible) Mr. Dondero. 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 A Me, personally, but I don't have any 22 transparency of who -- how Mr. Dondero could have 23 (inaudible) this. 24 Q I didn't ask you that question, okay? 25 And this is where -- like, we're in the last --</p> | <p>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 A I don't know if Mr. Sevilla has a 5 perfect memory, but I -- I would not say that he 6 would purposely not tell the truth. 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 A Solely me? 11 Q Solely you. 12 A I don't see how he could be bound by 13 me, since Mr. Dondero or his related entities 14 owned twice what I did. 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 A I would say that that's true to Mr. 21 Sevilla's memory. I do not have a memory of ever 22 speaking to him about this issue. 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>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 A I'm trying my best to answer. That I 6 personally know of, no. 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 A Yes. 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 A That I know of? No. 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 A I can only say he didn't speak to me, 22 to my recollection, about any of this. 23 Q If Mr. Sevilla -- is Mr. Sevilla an 24 honest person? 25 A I find him to be, yes.</p> | <p>348</p> <p>1 long-term, including in the situation of an 2 adverse loss. 3 A No, I've not made a commitment to 4 adverse loss, which is the question she'd answered 5 at the bottom and I don't know if Mr. Sevilla even 6 answered her question because he doesn't say, 7 "We'll inject the necessary --" If he had that 8 conversation with Mr. Dondero, that certainly 9 didn't (inaudible) to my knowledge. 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 A Okay. 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 A No. No. 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> |

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| <p>1 you see that?</p> <p>2 A I do.</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 A Yes, just like they call people other</p> <p>9 shorthand, yes.</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 A Yeah, but this entity is not signed by</p> <p>17 Mr. Dondero, only by the directors or a director.</p> <p>18 Q Yeah.</p> <p>19 A Sorry, the directors, my apologies.</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 A No.</p> | 349 | <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 A No, but, again, if Mr. Dondero gave him</p> <p>7 that my approval or (inaudible) --</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> | 351 |
| <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 A I don't recall any conversation with</p> <p>6 Mr. Dondero about the purchase agreement or the</p> <p>7 policy. Again, I wasn't involved in this process,</p> <p>8 so I wouldn't even have anything to talk to him</p> <p>9 about.</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 A I don't recall one way or the other.</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> | 350 | <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 A Well, first of all, Mr. Clubok, I don't</p> <p>8 know whether he makes it on my behalf. He doesn't</p> <p>9 say my name, so I think that, in itself, I don't</p> <p>10 agree with. He doesn't say I said it.</p> <p>11 Q No, Mr. --</p> <p>12 -- (overspeaking) --</p> <p>13 A You said made on my --</p> <p>14 -- (overspeaking) --</p> <p>15 Q -- Mr. Ellington --</p> <p>16 -- (overspeaking) --</p> <p>17 A Sorry, I'm still speaking.</p> <p>18 -- (overspeaking) --</p> <p>19 Q Stop that. That's --</p> <p>20 -- (overspeaking) --</p> <p>21 A -- on my behalf. He doesn't make --</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> | 352 |

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| <p style="text-align: right;">353</p> <p>1 A Yeah you did. You asked me -- 2 Q No, no, no. 3 -- (overspeaking) -- 4 A -- if the statement which Mr. Sevilla 5 made to Lesley was a true statement on my behalf, 6 made on my behalf. 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 A I do. 14 Q My simple question is this: Did you 15 authorize Mr. Sevilla to make that statement on 16 your behalf? 17 A No. 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 A No. 2 Q You never looked -- you've never seen 3 this request before today; is that what you're 4 saying? 5 A No, but the request that you and others 6 made would go to presumably Pachulski and then 7 they were tasked to the Highland employees to try 8 to meet those requests but we were never given the 9 direct document request. 10 Q Whose the "We" in that statement? 11 A The Highland employees. 12 Q You say Isaac Leventon never saw this 13 document either. 14 A I don't know if Isaac saw it or not but 15 very commonly we were told what to go and retrieve 16 or search for without the actual document request. 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 A I don't know because I never reviewed 23 all their emails. 24 Q Were you aware of this request? 25 A No.</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 A No. 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 A Number 69? Oh, yes I see it. Sorry. 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 A I do. 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 A I'd have to read the entire request and 5 remember if I was ever tasked with any of these 6 items. 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 A I do. 24 Q It's request number 8 and it's on page 25 -- starts on the bottom of the unnumbered page,</p> |

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| <p>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 A Yes, for a 12-year period, yes. 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 A I do. 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>359</p> <p>1 would have been still been in existence under the 2 seven-year retention; correct? 3 A In '11, sure, yes. But this request 4 was made in '20 so the documents aren't 5 necessarily on the system; they've been put on 6 backup tapes and moved to offsite storage. 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>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 A Yeah, but that's not what's asked for. 8 It's asking starting with seven. 9 You can't just start mid stream and 10 fulfill these, in my opinion. 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 A Correct, correct. 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 A No, I was not. No, Michael Colvin was 20 at the beginning of the litigation. 21 Q At the beginning of the litigation. At 22 what point did you become general counsel? 23 A It was, I believe in either '10 or '11. 24 I can't remember. 25 Q And in 2010 or '11, all the documents</p> | <p>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 A No, that's not common practice. The 7 document hold is it in place until it is 8 terminated. 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 A That's the difficulty. Is getting -- 24 and also, the document holds aren't necessarily 25 some of these items, mapping a trial balance of</p> |

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| <p style="text-align: right;">361</p> <p>1 account and requested items. Some of these things 2 you requested, from what I understand, never 3 existed in the first place. 4 Second of all, they were in offsite or 5 backup tape storage and there was essentially one 6 person that -- or including Ms. Vitiello, two, so 7 Mr. Leventon and Ms. Vitiello, that could search 8 for these and we had competing agendas that were 9 being assigned to us by the independent board, 10 Pachulski and others, so it wasn't the only 11 request we were working on. 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 A There's protocols in place where 10 nothing is destroyed -- (inaudible) 11 -- (overspeaking) -- 12 (Court reporter clarification) 13 A There's protocols in place that nothing 14 is destroyed and that's why they were moved to 15 backup tapes and put into secure offsite storage 16 so they are readily available. 17 Q When did you do that or cause that to 18 be done? 19 A I didn't cause it to be done. There's 20 protocols in place that were put in place by 21 compliance. Compliance is who oversees how these 22 documents are handled. 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 A I don't run the IT system and there is 5 a finite amount of space for physical documents, 6 so readily available I believe is subjective. 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 A I have no idea. I don't work there. 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 A It was stored by Iron Mountain. 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 A I believe that was absolutely done. 10 Q Did you personally make any efforts to 11 do that? 12 A No, me personally, no -- 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 A Yes. 20 Q What -- 21 A Yes. 22 Q What exactly did you personally do to 23 try to meet these requests from -- 24 -- (overspeaking) -- 25 A -- the head of IT and Mr. Leventon, who</p> |

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| <p>365</p> <p>1 runs the discovery efforts, and said pull back 2 anything you need to fulfill these requests that 3 we are being asked for from the board and 4 Pachulski. 5 Q Okay. And what you did know at the 6 time was that there had been a significant 7 transfer of assets from these funds to Sentinel in 8 August of 2017; correct? 9 A Correct. 10 Q And did you mention that in any way in 11 response to these document requests, to anybody? 12 A No, I did not. 13 Q Did you cause that to be communicated 14 in any way to Mr. Seery or the debtor's counsel, 15 once you knew about this request for documents 16 pertaining to the assets and liabilities of HFP, 17 CDO Fund and SOHC? 18 A I did not. 19 Q Okay. We're going to turn to 20 Exhibit 70, which is tab 45. 21 Oh, strike that. Sorry, one more thing 22 on this exhibit before we turn it... 23 Sorry, that's fine. Let's go to 24 Exhibit 70, tab 45. 25 A Okay.</p> | <p>367</p> <p>1 correct? 2 A Let's see, hold on here. Thursday, 3 August 6. August 6. 4 The farthest back I see is August 6th, 5 so... 6 Q Right. And on August 6th they're 7 talking about giving stuff to UBS today and before 8 they do that, they have to track down some more 9 information, so fair to say that the request came 10 in certainly no later than August 6th? 11 A Yeah, that's fair to say. 12 Q Okay, and Romey sends this email to 13 Leventon and copies some other folks, and then the 14 email gets forwarded -- there is an exchange that 15 continues and if you flip the page, we're going to 16 try to find the first time that you get introduced 17 into it, and it looks like it is on the page 18 that's marked Bates number 115 and Isaac Leventon 19 says in response to an email that Greg Demo sent: 20 "Guys, I don't think this is a prerequisite 21 to delivering materials to UBS in satisfaction of 22 our concerns. I am prepping the documents set for 23 delivery tomorrow. Dave has not worked on this, 24 so I will just call Greg and James. However, this 25 is the current status."</p> |
| <p>366</p> <p>1 Q That is an email from Scott Ellington 2 to Greg Demo, copying Mr. Leventon, Mr. Romey, 3 Mr. Klos and Mr. Seery; do you see that? 4 A Mr. Klos and Mr. Seery, yes, I do. 5 Q That's the top email and that is a 6 response to a long chain that goes on for several 7 pages and begins with an email that starts on the 8 page marked 17 at the end; do you see that? 9 A 117, yes, I do. 10 Q And this is: "UBS diligent request 11 about Highland credit opportunities, CDO Ltd. 12 Importance: High." And this is from August 2020 13 before those formal requests were sent; do you see 14 that? 15 A Let's see. I don't know the date of 16 when your formal request was sent. 17 Q Well, we just looked at the document 18 that was dated September 2020. 19 A Oh, yeah, I see that now, yes, we 20 looked at it before. 21 Q Right. So the previous -- the formal 22 requests were dated September 28th, 2020. 23 These -- this information request was 24 called UB -- I assume they mean UBS diligence 25 request, came in to prior to August 6th, 2020;</p> | <p>368</p> <p>1 Do you see that? 2 A Yes. 3 Q And all of this was about -- before 4 they're trying to figure out what's the assets on 5 CDO Fund's books with respect to an interest in 6 Multi Strat. That was the subject of the previous 7 emails. And Greg says: 8 "Scott and Isaac, I spoke to Jim about this 9 issue this morning. It is a high priority at this 10 point and we need to do what we can to push to 11 conclusion. 12 I understand that it is going to take some 13 work. 14 Can we schedule a time Wednesday morning to 15 discuss progress and where we're at. I am 16 generally available so whatever works for you will 17 work for me." 18 Do you see that? 19 A I do. 20 Q And that's August 15th, 2020; correct? 21 A Yes. 22 Q And in response you then write your 23 email that starts with: 24 "I don't think there is any need for a call. 25 I can tell you where we are currently."</p> |

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| <p>1 Do you see that?</p> <p>2 A Yes.</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 A I do.</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 A I do.</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> | 369 | <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 A I'm giving an update here, Andy. If</p> <p>9 you are going to ask me a question I'd like the</p> <p>10 opportunity to answer. I am giving a full update</p> <p>11 here to Mr. Demo, and this is an update about how</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> | 371 |
| <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> | 370 | <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 A Yes.</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> | 372 |

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| <p style="text-align: right;">373</p> <p>1 non-responsive.</p> <p>2 A No, you asked me if I addressed the</p> <p>3 litigation hold, so it is responsive in my</p> <p>4 opinion.</p> <p>5 Q My question to you, and I'd like a</p> <p>6 direct answer to this question, is: In this email</p> <p>7 you mention a seven-year document retention policy</p> <p>8 but you don't mention anything about what, if any,</p> <p>9 efforts you've taken to comply with litigation</p> <p>10 hold requirements with respect to UBS; isn't that</p> <p>11 true?</p> <p>12 A Yes.</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q Okay. Continuing on this email, you</p> <p>16 say that -- when you talk about ghost funds you</p> <p>17 don't simply say that they don't have directors or</p> <p>18 officers. You also say they don't have bank</p> <p>19 accounts. They sit dormant and in all caps:</p> <p>20 "No one knows what they truly retain,</p> <p>21 etc."</p> <p>22 Correct?</p> <p>23 THE WITNESS: Yes, it's about the 6,000</p> <p>24 ghost funds in totality, digital description of</p> <p>25 the situation, of various 6,000 ghost funds that</p> | <p style="text-align: right;">375</p> <p>1 A Correct.</p> <p>2 Q And Mr. Sevilla was another person who</p> <p>3 knew that; correct?</p> <p>4 A Correct.</p> <p>5 Q And Mr. DiOrio was another person who</p> <p>6 knew that; correct?</p> <p>7 A Correct. Mr. Surgent, Mr. Waterhouse,</p> <p>8 Carter Chism, Cliff Stoops, we could list them</p> <p>9 all.</p> <p>10 Q You say then:</p> <p>11 "Isaac and myself have spent in excess of a</p> <p>12 hundred hours trying to piece together everything</p> <p>13 we can to create a true and accurate</p> <p>14 document-based record of what happened with these</p> <p>15 target entities."</p> <p>16 So is it true that you and Isaac together</p> <p>17 spent in excess of 100 hours trying to piece</p> <p>18 together everything you could to create a true and</p> <p>19 accurate document-based record of what happened</p> <p>20 with CDO Fund's assets?</p> <p>21 A Yes.</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: Yes, starting in 2005,</p> <p>24 which we were tasked to do, as you can see in my</p> <p>25 second paragraph.</p> |
| <p style="text-align: right;">374</p> <p>1 KPMG came and told me about. Yes.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q But there were people at Highland who</p> <p>4 specifically did know that substantially all of</p> <p>5 the assets of these funds had been transferred to</p> <p>6 Sentinel on or about August 2017; correct?</p> <p>7 A Yes, I'm not talking about just</p> <p>8 Sentinel. I'm talking about 6,000 funds and the</p> <p>9 commonalities they have.</p> <p>10 Q Right. But with respect to HFP, CDO</p> <p>11 Fund, and SOHC, with respect to those three</p> <p>12 specific funds, there were lots of people, you</p> <p>13 said before, at HCM who fully knew that</p> <p>14 substantially all of the assets of those three</p> <p>15 funds had been transferred to Sentinel Reinsurance</p> <p>16 in August 2017; correct?</p> <p>17 A Essentially true and right before the</p> <p>18 break you showed me an email with a bunch of those</p> <p>19 people copied showing wires out of Sentinel -- I</p> <p>20 mean to Sentinel.</p> <p>21 Q And you were one of those people who</p> <p>22 knew that; correct?</p> <p>23 A Correct.</p> <p>24 Q And Mr. Leventon was another one of</p> <p>25 those people who knew that; correct?</p> | <p style="text-align: right;">376</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q But you knew completely that all of CDO</p> <p>3 Fund's assets had been transferred, or</p> <p>4 substantially all of them had been transferred in</p> <p>5 August 2017 to Sentinel Reinsurance; correct?</p> <p>6 A I did not --</p> <p>7 -- (overspeaking) --</p> <p>8 MS. SMITH: Objection, asked and</p> <p>9 answered.</p> <p>10 THE WITNESS: I did not -- sorry. I</p> <p>11 did not know they had been transferred and that's</p> <p>12 not what we were asked to do.</p> <p>13 We were asked to start back in 2005, as</p> <p>14 you can see in the email chain and specifically</p> <p>15 give information on CDO Opportunity Master Fund,</p> <p>16 which became MSCF or MBCDO, and go through that,</p> <p>17 from 2005. That's where we were told to start by</p> <p>18 Mr. Seery.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q You knew when you wrote this email that</p> <p>21 substantially all of CDO Fund's assets had been</p> <p>22 transferred in August 2017 to Sentinel</p> <p>23 Reinsurance; correct?</p> <p>24 A I knew that something was transferred</p> <p>25 and it was a substantial portion.</p> |

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| <p>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?</p> <p>6 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.</p> <p>11 Q Well, actually, you told him that a 12 large majority of your efforts was based in 13 educated "guess work." You --</p> <p>14 A Yes, starting --</p> <p>15 Q -- you specifically said that that is 16 what you were doing; isn't that right?</p> <p>17 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.</p> <p>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?</p> <p>24 A Yes.</p> <p>25 Q That was only possible due to your long</p> | <p>379</p> <p>1 MS. SMITH: Objection to form --</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Correct?</p> <p>4 A This task was starting from 2005, go 5 from there.</p> <p>6 Q Sorry, you keep answering over 7 Ms. Smith's objections and I --</p> <p>8 A My apologies.</p> <p>9 Q -- think the court reporter could not 10 get your answer. So I'm going to say it again.</p> <p>11 A Okay.</p> <p>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?</p> <p>16 A Correct.</p> <p>17 Q And you did not mention that in any way 18 to Mr. Demo, Mr. Seery or anybody else; correct?</p> <p>19 A Correct.</p> <p>20 Q And you did not cause that information 21 to be shared with them by any of your colleagues 22 at HCM; correct?</p> <p>23 A Correct, and I didn't stop anyone from 24 sharing it either.</p> <p>25 Q Okay. And is it true that you did --</p> |
| <p>378</p> <p>1 tenure with the debtor; correct?</p> <p>2 A Yes, because we knew, anecdotally, 3 things that people had told us about what went on 4 in 2005.</p> <p>5 Q And you're claiming that Mr. Seery, 6 though, specifically told you not to engage in any 7 educated guess work?</p> <p>8 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?</p> <p>15 Q Did Mr. Seery tell you not to engage in 16 educated guess work?</p> <p>17 A Exactly. He said I want documented 18 evidence. I don't care what you guys think you 19 know, I want documented evidence.</p> <p>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>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.</p> <p>4 You also knew specifically that 5 Sentinel Reinsurance had obtained a redemption 6 interest in Multi Strat from CDO Fund; correct?</p> <p>7 MS. SMITH: Objection to form.</p> <p>8 THE WITNESS: I became aware of that at 9 some point.</p> <p>10 BY MR. CLUBOK:</p> <p>11 Q And that awareness came before you sent 12 this email; correct?</p> <p>13 A I don't know.</p> <p>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?</p> <p>17 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.</p> <p>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?</p> <p>24 A I don't know what was provided to you 25 in terms of that.</p> |

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| <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 A Yeah, that there had been a redemption 5 but -- 6 -- (overspeaking) -- 7 Q -- redemption -- 8 -- (overspeaking) -- 9 A -- I think that was prepared by 10 Mr. Klos and I believe given to you by 11 Mr. Dondero. 12 Q Did that presentation show that 13 Sentinel Reinsurance had made a redemption? 14 A I don't know. I'd have to see it. 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 A Mr. Dondero wrote an email to me</p> | <p>383</p> <p>1 Multi Strat? 2 A Absolutely not that I'm aware of. 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>382</p> <p>1 wanting to put something together for a phone call 2 with you and he had already asked David Klos for 3 it and David Klos produced it before I was 4 involved. 5 Q And -- 6 A Or maybe he called me, I can't 7 remember, but -- I think he called me, now that I 8 remember, but he had already tasked Klos with it. 9 Q Where does David Klos work now? 10 A Highland, as far as I know. 11 Q What's that? 12 A As far as I know. I don't know if he's 13 still there or not. 14 Q Did David Klos at the time that he made 15 that presentation know your connection with SAS? 16 A Yes. 17 Q Did he know Mr. Dondero's connection 18 with SAS? 19 A Yes. 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>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 A Yes. 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 A I see the words on the page. 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>1 A Sure.</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>15 A I do.</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>19 A Yeah, I do but the subject line says</p> <p>20 "UBS Settlement Structure v2."</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>24 A I see that now in the attachment.</p> <p>25 Okay.</p> |
| <p style="text-align: right;">386</p> <p>1 A Yes.</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>16 A No.</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>20 A I don't remember having this discussion</p> <p>21 at all.</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>2 A Yes.</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>16 A I do.</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>22 A I do.</p> <p>23 Q And it talks about this allowing HCMLPs</p> <p>24 to avoid a \$50 million-plus tax liability.</p> <p>25 A Yes.</p> |

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| 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?</p> <p>5 A I do.</p> <p>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?</p> <p>9 A Ms. Vitiello.</p> <p>10 Q -- Ms. Vitiello that is reflected in 11 Exhibit 91 on the page that ends in 508.</p> <p>12 A Yes.</p> <p>13 Q Okay.</p> <p>14 A Stop. Did you ask if it refreshed my 15 recollection; is that your question?</p> <p>16 Q Yes.</p> <p>17 A No, it does not.</p> <p>18 Q Oh, but you remember having that 19 discussion?</p> <p>20 A No, I do not.</p> <p>21 Q Oh, I'm sorry, what did you say "Yes" 22 to?</p> <p>23 A I thought you were asking me if I saw 24 the language in number 5.</p> <p>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.</p> <p>3 MS. SMITH: Are we on Exhibit 2 now -- 4 Exhibit 92?</p> <p>5 MR. CLUBOK: We're on Exhibit 92 and it 6 ends [sic] in Bates number 593.</p> <p>7 MS. SMITH: Begins at 593?</p> <p>8 MR. CLUBOK: Yes. 9 (Ellington Exhibit 92 was marked for 10 identification.)</p> <p>11 BY MR. CLUBOK:</p> <p>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?</p> <p>20 A Yes.</p> <p>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?</p> <p>5 A No.</p> <p>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?</p> <p>9 A I don't remember it happening.</p> <p>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?</p> <p>13 A I don't recall that it happened.</p> <p>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?</p> <p>17 MS. SMITH: Objection to form. Asked 18 and answered.</p> <p>19 THE WITNESS: I have no memory of the 20 meeting. I don't know how else to answer the 21 question.</p> <p>22 (Deposition Exhibit 92 was marked for 23 identification.)</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Okay. So the last exhibit in this</p> | 392 | <p>1 Exhibit 90; is that correct?</p> <p>2 A Yes.</p> <p>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?</p> <p>11 A I only see half of a cover page.</p> <p>12 Q Scott, I'm sorry, you froze for a 13 second or maybe it was me.</p> <p>14 Do you see --</p> <p>15 A Oh no, it's me. It says my internet 16 connection is unstable. Is it back to normal?</p> <p>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?</p> <p>20 A Okay.</p> <p>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> |

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| <p>393</p> <p>1 A I apologize, Mr. Clubok, I can still 2 only see the cover page. 3 Q Yeah, I'm only showing that one slide 4 right now. 5 A Okay. 6 Q So right now I'm -- I'll just make it a 7 little smaller so you can see it. 8 A Okay. 9 Q I just looked, showing -- this first 10 slide -- "Settlement Analysis," that looks 11 familiar to you, right? 12 A Correct. 13 Q That was the version that we looked at 14 later -- 15 A Yes. 16 Q -- earlier today, I mean? 17 A Yes. 18 Q 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>395</p> <p>1 Q 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 A I do. 10 Q 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 A Yes. 16 Q 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 Q Well, if you look here on the list of 25 tax liabilities, it has got 50 million-plus for</p> |
| <p>394</p> <p>1 On the page that ends at 595 for 2 Exhibit 92; do you see that? 3 A Yes. 4 Q 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 A Yes. 9 Q 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 A Correct. 14 Q 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 Q 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 A Yes.</p> | <p>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 A I can see why that assumption would be 9 made but I don't know if they're the same. 10 Q Okay. And then it talks about residual 11 assets now up to 50 million staying at Sentinel; 12 right? 13 A Yes. 14 Q 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 A Yes. 21 MS. SMITH: Objection to form. 22 BY MR. CLUBOK: 23 Q 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> |

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| <p>397</p> <p>1 policy from Sentinel in exchange for all the 2 assets in HFP/CDO Fund; do you see that? 3 A Yes. 4 Q And in the span of this 24 hours, did 5 Ms. Vitiello have any discussions with the 6 independent directors of Sentinel as far as you 7 know? 8 A I don't know. 9 Q Was Ms. Vitiello authorized to call the 10 independent directors of Sentinel and discuss this 11 matter with them on this day? 12 A She could easily have done that. I 13 don't know. 14 Q Did you authorize her to do that? 15 A Not that I recall, no. 16 Q Did you authorize Mr. Leventon to have 17 any discussions with the independent directors of 18 Sentinel to see if they were good with this 19 proposed settlement structure reflected on page -- 20 that ends in Bates number 601 for Exhibit 92? 21 A Did I authorize Mr. Leventon? Not that 22 I'm aware of, no. 23 Q Did you authorize anybody anyone to 24 reach out to the independent directors on or about 25 April 11th or 12th to see if they would be willing</p> | <p>399</p> <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: No, if their memory is 3 better than mine, I don't think they'd be lying. 4 BY MR. CLUBOK: 5 Q Okay. 6 A It also -- they could have had limited 7 input from me. They may have been asking me how 8 to organize the slides, if they did meet with me. 9 It doesn't mean they asked me for the input of 10 numbers. I wouldn't even have known what numbers 11 to put in there. 12 Q Who came up with the idea to make the 13 proposed settlement structure as reflected in the 14 page that ends Bates number 601 of Exhibit 92 as 15 opposed to the original settlement structure that 16 we saw from the day before? 17 A I don't know. 18 Q It was you, wasn't it? 19 A No, it wasn't me. I don't remember 20 coming up with this structure. It could have been 21 compliance. 22 Q It could have been who at compliance? 23 A If compliance -- part of the process 24 was examining various structures of what was 25 possible.</p> |
| <p>398</p> <p>1 to sell a \$100 million ATE policy in exchange for 2 all the assets in HFP and CDO Fund? 3 A Did I authorize anyone to do that? No. 4 Q Who came up with these numbers in the 5 span of 24-hour period between when Ms. Vitiello 6 tells Isaac Leventon she spoke to you and they're 7 going to have a meeting with you tomorrow at the 8 end of the day, April 12th; do you know? 9 A No idea if this is again during the 10 timeframe where obviously all these ideas were 11 being bandied about in large group and subsets of 12 the groups. There could have been numerous inputs 13 of the list. 14 Q Was there a large group that met on 15 April 12th on this subject? 16 A I cannot remember what times people 17 met. 18 Q Did you ever meet -- 19 A It was four years ago. 20 Q Did you ever meet just in a small group 21 with Mr. Leventon and Ms. Vitiello to discuss this 22 structure? 23 A Not that I remember. 24 Q If either of them said you did, would 25 they be lying?</p> | <p>400</p> <p>1 Q You are just totally speculating about 2 that, you have no memory of talking to compliance 3 at this time about -- 4 A I didn't say I talked to compliance. 5 You asked me who they talked to or who gave the 6 input to this and I told you I don't know. And 7 you said, "It was you, wasn't it," and I said, 8 "No." 9 Q But you were certainly involved with 10 the proposal that's reflected on the page that 11 ends 601 for Exhibit 92; correct? 12 MS. SMITH: Objection to form. 13 THE WITNESS: I have no memory of this 14 at all, period. 15 MR. CLUBOK: Okay, that's all that 16 I have, I believe. 17 Thank you very much. I will say, I 18 guess, since we're done with the deposition, just 19 to briefly respond, because I don't want to get 20 these arguments on the record. 21 MS. SMITH: We are on the record. 22 THE VIDEOGRAPHER: We are not off the 23 record. 24 MR. CLUBOK: We can stay on the record, 25 I just don't want to have this -- we can go off</p> |

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| <p>401</p> <p>1 the video of the deposition. The court reporter 2 can continue.</p> <p>3 Let's shut the deposition down and the 4 court reporter can continue.</p> <p>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.</p> <p>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.</p> <p>24 We would like to serve Mr. Ellington. 25 We would like him not to dodge service of the</p> | <p>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.</p> <p>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?</p> <p>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.</p> <p>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>402</p> <p>1 matter that's pending in New York. We'd like him 2 to --</p> <p>3 MS. SMITH: You need to go off the 4 record if you are going to be talking about other 5 stuff now.</p> <p>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.</p> <p>12 MR SODERLUND: She brought up your 13 violation of the confidentiality of the deposition 14 is what she brought up, Andy.</p> <p>15 -- (overspeaking) --</p> <p>16 MS. SMITH: That's Eric Soderlund from 17 my office.</p> <p>18 MR. CLUBOK: Yes, it's unhelpful. I 19 believe.</p> <p>20 In any event, I passed on that request. 21 I want to make it clear that --</p> <p>22 -- (overspeaking) --</p> <p>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>404</p> <p>1 him but it will be a considerably unnecessary 2 expense, if the last time is the guide.</p> <p>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.</p> <p>14 MS. SMITH: Are we done?</p> <p>15 MR. CLUBOK: Yes. Thank you.</p> <p>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.</p> <p>20 MS. SMITH: I'll talk to my client.</p> <p>21 MR. CLUBOK: Thank you very much.</p> <p>22 HOUSEKEEPING</p> <p>23 MS. SMITH: Ms. Barrett, I would like a 24 draft, please, Frances Smith.</p> <p>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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REPORTER'S CERTIFICATION

1 I, Lisa M. Barrett, the officer before
 2 whom the foregoing deposition was taken, do hereby
 3 certify that the foregoing transcript is a true
 4 and correct record of the testimony given; that
 5 Said testimony was taken by me stenographically
 6 and thereafter reduced to typewriting under my
 7 direction; that reading and signing was requested;
 8 and that I am neither counsel for, related to, nor
 9 employed by any of the parties to this case and
 10 have no interest, financial or otherwise, in its
 11 outcome.

12
 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 Defendant.) Adv. Proc. No. 21-03020-SGJ) 11) 12 VIDEOTAPED DEPOSITION OF THOMAS ADAMCZAK, 30(b)(6) 13 14 Tuesday, April 12, 2022 9:06 a.m. 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 10 Exhibit 113 Subpoena ad Testificandum 13 11 Exhibit 114 Letter 22 Re: Sentinel Reinsurance, Ltd. ("Sentinel"; License #642423) Request for Approval - Change in Ownership (CIMA Follow Up Questions) DISCSEN000097 - DISCSEN0000139 15 16 Exhibit 115 E-mail 26 Subject: FW: Sentinel Re, Ltd CIMA requests DISCSEN0008408 - DISCSEN0008410 17 18 19 Exhibit 116 E-mail 36 Subject: RE: Sentinel CIMA exam BC SEN000076061 - BC SEN000076080 20 21 Exhibit 117 Management and Administrative 51 Services Agreement BC SEN000361175 - BC SEN000361183 22 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) 7 HIGHLAND CAPITAL) MANAGEMENT, L.P., HIGHLAND) CDO OPPORTUNITY MASTER) FUND, L.P., HIGHLAND) SPECIAL OPPORTUNITIES) 8) 9 HOLDING COMPANY, HIGHLAND) FINANCIAL PARTNERS, L.P.,) HIGHLAND CREDIT STRATEGIES) MASTER FUND, L.P., HIGHLAND) CRUSADER OFFSHORE PARTNERS,)) L.P., HIGHLAND CREDIT) 10 OPPORTUNITIES CDO, L.P.,) and STRAND ADVISORS, INC.,)) 11) 12) 13 Defendants.)) 14) 15 VIDEOTAPED DEPOSITION OF THOMAS ADAMCZAK, 30(b)(6) 16 17 Tuesday, April 12, 2022 9:06 a.m. 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 3 4 5 6 Exhibit 119 E-mail 79 Subject: Fwd: London UBSPROD460936 - UBSPROD460948 7 8 Exhibit 120 E-mail 89 Subject: FW: Ellington - Request Reimbursement BC SEN000663342 - BC SEN000663344 9 10 11 Exhibit 121 Letter 95 KL_000029 - KL_000039 12 13 Exhibit 122 E-mail 105 Subject: RE: Expense Reimbursement BC SEN000662367 - BC SEN000662368 14 15 16 Exhibit 123 2006 Tenuta San Guido 109 Sassicaia Bolgheri (No Bates Numbers) 17 18 Exhibit 124 E-mail 114 Subject: Re: Sentinel Expenses for Approval BC SEN000074288 - BC SEN000074289 19 20 21 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 & 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> |

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| <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 A Yes. 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 A That's fair. 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 A Okay. 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 A Yes. 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 A No. 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 A The name is Thomas Patrick Adamczak, 9 T-h-o-m-a-s Patrick, P-a-t-r-i-c-k, Adamczak, 10 A-d-a-m-c-z-a-k. 11 Q Mr. Adamczak, who do you work for? 12 A I work for Brown & Brown formerly known as 13 Beecher Carlson. 14 Q Have you been deposed before? 15 A No. 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 A Yes. 23 Q -- and obligated to tell the truth today? 24 A Yes. 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 A That's fair. 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 A That's fair. 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 A That's correct. 16 Q And that your answers today are on behalf 17 of Beecher Carlson? 18 A Correct. 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 A Correct. 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> |

Conducted on April 12, 2022

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| <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 A I do. 25 Q And have you seen this document before?</p> | <p>13</p> | <p>1 BY MR. BURT: 2 Q So you understand you are designated to 3 testify on these topics in both proceedings? 4 A Correct. 5 Q Perfect. 6 Mr. Adamczak, when did you begin working 7 for Beecher Carlson? 8 A In 2014. 9 Q And when did you begin working on Sentinel 10 matters? 11 A Probably shortly after I started with 12 Beecher. 13 Q How did it come to be that you began 14 working on the Sentinel matters? 15 A The person that I had replaced had 16 previously done work with Sentinel and it was my 17 designated client to work with. 18 Q Who did you replace? 19 A John, I don't remember his last name. 20 Q And so Sentinel is one of 21 Beecher Carlson's clients, correct? 22 A It is. 23 Q How long has Sentinel been a Beecher 24 client? 25 A Since its inception.</p> | <p>15</p> |
| <p>1 A I have. 2 Q And have you had a chance to review the 3 topics listed in Attachment A? 4 A I have. 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 A I have. 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 A Yes. 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 A I am seeing this for the first time now. 18 Q And I will represent to you they are the 19 same topics that are listed -- 20 A I was going to ask. 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>14</p> | <p>1 Q And when you say that Sentinel is a 2 Beecher client, what precisely do you mean by 3 that? 4 A Sentinel has an agreement with 5 Beecher Carlson to provide captive management 6 services consisting of financial statements, 7 preparation, coordination of board meetings, 8 corresponding with the regulators. 9 Q Anything else that's involved in being a 10 captive insurance manager? 11 A Interacting with the various service 12 providers that Sentinel would engage for audit, 13 actuarial, whatever. 14 Q Do you know how it came to be that Beecher 15 was hired to be Sentinel's captive insurance 16 manager? 17 A I believe Beecher had helped set up the 18 captive initially. 19 Q On whose request? 20 A Someone from Highland; whoever would have 21 contacted Beecher Carlson to perform the work. 22 Q When you say Highland, who are you 23 referring to? 24 A Highland Capital Management. 25 Q Do you know who works -- or who worked at</p> | <p>16</p> |

Conducted on April 12, 2022

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| <p style="text-align: right;">17</p> <p>1 the time for Highland Capital Management?</p> <p>2 A I believe it was J.P. Sevilla. There were</p> <p>3 a number of other employees as well that we worked</p> <p>4 with, but he was I believe the one who had done</p> <p>5 the initial work with Beecher in setting it up.</p> <p>6 Q Who else do you recall worked at that time</p> <p>7 for Highland Capital Management?</p> <p>8 A Katie Irving.</p> <p>9 Q Anyone else?</p> <p>10 A At that time that it was set up that's all</p> <p>11 that I am aware of.</p> <p>12 Q And over time did you correspond with</p> <p>13 others at Highland Capital Management?</p> <p>14 A Yes.</p> <p>15 Q Who did you correspond with?</p> <p>16 A Matt DiOrio.</p> <p>17 Q Did you understand him to work for</p> <p>18 Highland Capital Management?</p> <p>19 A Yes.</p> <p>20 Q Anyone else?</p> <p>21 A Isaac Leventon, but it was primarily</p> <p>22 through Matt DiOrio that we worked with him and on</p> <p>23 a very limited basis.</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 A Correct.</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 A So the captive managers like</p> <p>10 Beecher Carlson are specialized in setting up and</p> <p>11 helping to manage the captives. We have all the</p> <p>12 contacts, we being Beecher Carlson, has all the</p> <p>13 contacts with regulators and the various service</p> <p>14 providers, whether they are actuaries, attorneys,</p> <p>15 claims handlers, investment bankers.</p> <p>16 Q And what does the sponsoring business do?</p> <p>17 A They have the understanding of the risks</p> <p>18 that are being insured within the captive.</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 A Those are the only ones that come to mind.</p> <p>2 Q How about Stephanie Vitiello, does that</p> <p>3 ring a bell?</p> <p>4 A I think I have seen the name. I</p> <p>5 understand that she had attended a meeting down in</p> <p>6 the Cayman with a few other folks from Highland</p> <p>7 Capital on behalf of Sentinel, but we have had no</p> <p>8 interaction with her other than her awareness of</p> <p>9 that meeting.</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 A Well, a captive insurance company does not</p> <p>16 generally have any employees, so all of the</p> <p>17 employees are typically from a sponsoring</p> <p>18 organization. In this case it was Highland</p> <p>19 Capital that was that sponsoring organization.</p> <p>20 Q And what exactly does sponsoring</p> <p>21 organization mean?</p> <p>22 A They provide the direction, ideas for</p> <p>23 insurance coverage, pretty much the concept for</p> <p>24 the captive and why it came to be in the first</p> <p>25 place.</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 A Of the insurance company.</p> <p>4 Q Who appoints the directors?</p> <p>5 A That's generally another director who</p> <p>6 might be on the board or a parent organization.</p> <p>7 Q With respect to Sentinel do you know who</p> <p>8 was making the decisions for Sentinel?</p> <p>9 A For his time that he was there Matt DiOrio</p> <p>10 was.</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 A Right, when he was -- when he had joined</p> <p>15 Highland Capital he was appointed on the Sentinel</p> <p>16 board and was our main contact at that point</p> <p>17 forward.</p> <p>18 Q Do you know if he was making decisions on</p> <p>19 his own?</p> <p>20 A I do not.</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> |

Conducted on April 12, 2022

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| <p style="text-align: right;">21</p> <p>1 A I do.</p> <p>2 Q Who do you understand Mr. Ellington to be?</p> <p>3 A I understand that Scott Ellington was an</p> <p>4 attorney with Highland Capital and also one of the</p> <p>5 ultimate beneficial owners of Sentinel.</p> <p>6 Q What does ultimate beneficial owner mean?</p> <p>7 A They would be the individuals that</p> <p>8 ultimately owned Sentinel.</p> <p>9 Q Was there another ultimate beneficial</p> <p>10 owner of Sentinel?</p> <p>11 A There was.</p> <p>12 Q Who was that?</p> <p>13 A Jim Dondero.</p> <p>14 Q Does he also go by James Dondero?</p> <p>15 A James Dondero, yes.</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 A Correct.</p> <p>20 Q How did you know that?</p> <p>21 A We have been provided with organizational</p> <p>22 charts from Highland Capital and were informed</p> <p>23 that the two UBOs that sat at the top were</p> <p>24 Mr. Dondero and Mr. Ellington.</p> <p>25 Q Who provided you those documents of</p> | <p style="text-align: right;">23</p> <p>1 A Sure.</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 A Correct.</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 A Correct.</p> <p>10 Q What was Mr. Kranz's role?</p> <p>11 A He is -- was the primary person that was</p> <p>12 performing captive management duties with respect</p> <p>13 to Sentinel.</p> <p>14 Q Is he located in the Caymans?</p> <p>15 A He is not.</p> <p>16 Q Is he located here?</p> <p>17 A He is located in Vermont.</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 A It is.</p> <p>23 Q And are you still working on that account?</p> <p>24 A I am.</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 A My recollection is Matt DiOrio and</p> <p>3 J.P. Sevilla.</p> <p>4 Q What is the role of an ultimate beneficial</p> <p>5 owner?</p> <p>6 A The ultimate person who would call the</p> <p>7 shots for the captive.</p> <p>8 Q Because they own it?</p> <p>9 A Correct.</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 A That is correct.</p> <p>11 Q That was Beecher's understanding in 2015?</p> <p>12 A Correct.</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 A That is true.</p> <p>18 Q And it is still true to this day?</p> <p>19 A That is correct.</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 A That is correct.</p> <p>24 Q And that is true to this day as well?</p> <p>25 A That is correct.</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 A I reported to Mr. Kranz. 19 Q Is that that true to this day? 20 A He has moved up to a different level, but 21 in an indirect way, yes, that's still true. 22 Q Do you report to somebody else more 23 directly for the Sentinel account? 24 A For the Sentinel account we have a 25 Clayton Price down in Cayman. We actually opened</p> | <p style="text-align: right;">26</p> <p>1 the Cayman office and have staff on hand in Cayman 2 and Clayton Price is in the Cayman and he is I 3 guess our main Cayman contact. 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;">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 A Okay. 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 A Correct. 13 Q I am probably mispronouncing the name 14 there, and it's regarding Sentinel Re CIMA 15 requests, do you see that? 16 A I do. 17 Q What was going on in the June-July, 2019 18 timeframe with respect to CIMA and Sentinel? 19 A CIMA had performed its periodic inspection 20 of Sentinel and this was in response to a few 21 questions they had on that inspection. 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;">28</p> <p>1 organizational chart." Do you see that? 2 A I do. 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 A I do. 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 A That is. 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 A That is correct. 21 Q Underneath that is SS Holdings, Limited. 22 Do you know what SS Holdings Limited was? 23 A SS Holdings Limited was a subsidiary of 24 Sentinel Reinsurance. 25 Q What function did it have?</p> |

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| 29 | <p>1 A To hold the investment in SeaOne.</p> <p>2 Q And what was SeaOne?</p> <p>3 A SeaOne is a limited partnership startup</p> <p>4 company that was contributed to Sentinel back in</p> <p>5 2014, I believe.</p> <p>6 Q And who contributed it to Sentinel?</p> <p>7 A James Dondero.</p> <p>8 Q Who runs SeaOne?</p> <p>9 A I do not know.</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 A As a capital contribution to increase the</p> <p>20 capital in Sentinel.</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 A Shares of ownership.</p> <p>25 Q How did the shares of ownership increase</p> | 31 | <p>1 of investees other than Sentinel.</p> <p>2 Q Do you know if those investees involve</p> <p>3 Mr. Dondero or Mr. Ellington?</p> <p>4 A I do not.</p> <p>5 Q Or trusts or other organizations that they</p> <p>6 own or control?</p> <p>7 A I do not, no.</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 A I do.</p> <p>14 Q What do you understand Mainspring Limited</p> <p>15 to be?</p> <p>16 A A parent entity for Sentinel Reinsurance.</p> <p>17 Q And is it correct that Mr. Dondero</p> <p>18 ultimately owns Mainspring?</p> <p>19 A That is correct.</p> <p>20 Q Is he the only owner of Mainspring?</p> <p>21 A I do not know that.</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 A We understood that the cost basis of the</p> <p>3 SeaOne ownership was \$7 million so the \$7 million</p> <p>4 flowed down into Sentinel and increased its</p> <p>5 capital base by 7 million.</p> <p>6 Q Is SeaOne -- does Sentinel still own that</p> <p>7 SeaOne interest?</p> <p>8 A Sentinel does.</p> <p>9 Q Do you know what the value of it is today?</p> <p>10 A The latest valuation that was performed it</p> <p>11 was upwards of 40 to 45 million, I believe.</p> <p>12 Q Who performed that valuation?</p> <p>13 A Valuation Research CORP.</p> <p>14 Q And they are referred to sometimes in the</p> <p>15 documents as VRC?</p> <p>16 A Correct.</p> <p>17 Q When was that valuation?</p> <p>18 A 2020.</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 A There are several other owners.</p> <p>22 Q Do you know who they are?</p> <p>23 A I do not. I have seen a document with all</p> <p>24 of the listed shareholders, various individuals,</p> <p>25 trusts, whatever. There is a significant number</p> | 32 | <p>1 A According to the org chart, correct.</p> <p>2 Q Do you have an understanding to the</p> <p>3 contrary?</p> <p>4 A I do not.</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 A I do.</p> <p>9 Q What is Kind Holdings?</p> <p>10 A An entity in the structure.</p> <p>11 We really did not have any knowledge other</p> <p>12 than what was presented in the org chart as far as</p> <p>13 any of the entities above Sentinel.</p> <p>14 Q Was that something that Highland was</p> <p>15 managing?</p> <p>16 A Correct.</p> <p>17 Q And was it Mr. DiOrio who most often</p> <p>18 communicated to you about those issues?</p> <p>19 A Anything pertaining to the entities within</p> <p>20 the Sentinel structure or the SAS structure as we</p> <p>21 would refer to it would either be communicated by</p> <p>22 Matt DiOrio, JP Sevilla, or Katie Irving.</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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| <p style="text-align: right;">33</p> <p>1 Montage Holdings, Limited do you see that on the 2 chart? 3 A I do. 4 Q Is Montage Holdings Limited owned by 5 Mr. Ellington? 6 A According to the org chart. 7 Q And you don't have an understanding 8 differently? 9 A I do not. 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 A Correct. 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 A Correct. 20 Q What do you understand that entity to be? 21 A I do not have any knowledge of what that 22 entity represents. 23 Q Do you know who owned it? 24 A I do not. 25 Q Do you know who controlled it?</p> | <p style="text-align: right;">35</p> <p>1 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. 7 Q Did they send that request to Beecher? 8 A It was included within the inspection 9 report. 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 A That is correct. 14 Q -- the ownership structure. 15 Who carried out that reorganization? 16 A The Sentinel directors and the folks at 17 Highland Capital along with their attorneys. 18 Q But Beecher didn't have any role in that? 19 A Other than communicating with CIMA that 20 was our role. 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 style="text-align: right;">34</p> <p>1 A I do not. 2 Q And above that it states ITA Red Cross. 3 Do you know what that refers to? 4 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. 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 A I do not know. 14 Q No understanding at all? 15 A I do not know, no. 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 A That is correct. 20 Q Was there a corporate reorganization of 21 all of these entities that occurred around this 22 time in 2019? 23 A There was some reorganization at the 24 request of CIMA. 25 Q And do you know what that request was?</p> | <p style="text-align: right;">36</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 A Okay. 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 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. 20 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. 24 Q And you say here, "Clayton, here are the 25 items that have not been uploaded on account of</p> |

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| 37 | <p>1 them being unavailable." If you recall, what did 2 you mean by that? 3 A Typically with the inspection is they will 4 send out a request list require by a certain date 5 these documents are provided. These documents 6 would have been either unavailable at a time 7 whether it was we had to obtain them from somebody 8 else or we were still searching for the applicable 9 documents that they were looking for. 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? 18 A That is correct. 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? 22 A Yes. 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? 7 A Yes, I do have it. 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? 11 A I do. 12 Q And do you understand that those are 13 documents that Beecher Carlson produced pursuant 14 to subpoena? 15 A I do. 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? 19 A Correct. 20 Q And keeping these documents was part of 21 Beecher's normal business practices? 22 A That was the role of the captive manager, 23 correct. 24 Q And these documents would have been kept 25 in the ordinary course of that role, is that</p> | 40 |
| | <p>1 right? 2 A Correct. 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? 10 A It does. 11 Q Do you know if this ITA Global Trust 12 Limited referred to in this exhibit refers to the 13 same ITA? 14 A I do not. 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? 23 A I am not familiar. 24 Q Is today the first time you have heard of 25 it?</p> | |

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1 **A I am familiar with the existence of it.**
 2 Q What do you know about it?
 3 MR. WELDON: Objection, asked and
 4 answered.
 5 You can answer it again.
 6 THE WITNESS: Just that it existed and
 7 that's really all I know about it.
 8 BY MR. BURT:
 9 Q Going to the second attachment, right
 10 after the board minute meetings, the board meeting
 11 minutes, it talks about a Sentinel advisory
 12 committee discussion, do you see that?
 13 **A I do see it.**
 14 Q Do you know what the Sentinel advisory
 15 committee was?
 16 **A My recollection is these were internal**
 17 **discussions had by Mr. Ellington and Mr. Dondero**
 18 **regarding the Sentinel structure.**
 19 Q Did they call themselves the Sentinel
 20 Advisory Committee?
 21 **A I am not aware.**
 22 Q You are aware that they were the ones who
 23 were having these discussions?
 24 **A That is correct.**
 25 Q And you see that Scott Ellington signs

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1 this as the recording member, is that right?
 2 **A I do see that.**
 3 Q Did Beecher -- when did Beecher get a copy
 4 of these advisory committee discussion notes?
 5 **A We would have obtained these at the**
 6 **request of CIMA probably around the same time that**
 7 **this was conducted.**
 8 Q So that would have been in February
 9 of 2019?
 10 **A Correct.**
 11 Q This committee discussion, the very first
 12 one, says Q1 2017 and is dated February 2, 2017.
 13 And it states, "Discussion of potential ATE policy
 14 and engagement of actuary, review of investment
 15 returns," do you see that?
 16 **A I do.**
 17 Q So this was not provided to Beecher in
 18 February of 2017 but only two years later, is that
 19 right?
 20 **A That is correct.**
 21 Q Did Beecher have any knowledge that in
 22 February of 2017 Mr. Ellington and Mr. Dondero
 23 were talking about a potential ATE policy?
 24 **A No.**
 25 Q Do you know if Messrs Dondero and

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1 Ellington were reporting to the Sentinel board
 2 that they were having discussions about the
 3 potential ATE policy?
 4 **A They never attended the board meetings.**
 5 Q Do you know if copies of these advisory
 6 committee discussions were provided to the board
 7 for the board to review?
 8 **A I am not aware of them being provided to**
 9 **the board for review.**
 10 Q And part of Beecher's role as the
 11 insurance manager is to maintain the books and
 12 records for the company, right?
 13 **A That is correct.**
 14 Q But these records were not provided to
 15 Beecher at the time that they were actually
 16 created?
 17 **A That is correct.**
 18 MR. WELDON: You are talking about, just
 19 so we are clear, the Sentinel Advisory Committee
 20 discussions?
 21 MR. BURT: Correct, yes.
 22 BY MR. BURT:
 23 Q Do you know if the ITA Global Trust
 24 resolution was provided to Beecher prior to
 25 February, 2019 or was that only later as well?

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1 **A I don't recall having seen it prior to**
 2 **when it was provided to CIMA.**
 3 Q In looking at your e-mail, what we first
 4 looked at when you said they were unavailable, do
 5 you recall who provided them to you in February
 6 of 2019, these materials?
 7 **A I believe they would have come from**
 8 **Matt DiOrio.**
 9 Q Looking back at the advisory committee
 10 discussions, we have looked at the first page, the
 11 second page is dated May 4, 2017, it says
 12 discussion re audit, do you know what they were
 13 referring to then, an audit in May of 2017?
 14 **A The Sentinel annual audit, which would**
 15 **have been conducted around that time period.**
 16 Q And who conducted the audit?
 17 **A In 2017 I believe that was Crowe.**
 18 Q And were they one of the service providers
 19 that Beecher are arranged?
 20 **A That is correct.**
 21 Q Then Q3 of 2017 it states there is a
 22 discussion of potential ATE policy and engagement
 23 of actuary and then another discussion re about
 24 it.
 25 Again, Beecher was not aware that this

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| 45 | <p>1 committee of Mr. Ellington and Dondero were 2 discussing the potential ATE policy in August 3 of 2017, correct? 4 MR. WELDON: Objection. 5 THE WITNESS: Correct. 6 BY MR. BURT: 7 Q If you flip to the next page, Q4, 2017, 8 dated November 7, 2017, it states documentation of 9 ATE policy and closing of same. 10 And, again, Beecher was not aware that 11 Messrs Dondero and Ellington were speaking about 12 and documenting these discussions at that time, 13 correct? 14 MR. WELDON: Objection, you can answer. 15 THE WITNESS: That's correct. 16 BY MR. BURT: 17 Q It states that the closing of the ATE 18 policy -- I don't know if it states that it took 19 place around November -- strike that. 20 Let me just ask this way. When did the 21 ATE policy close or come into effect? 22 A I believe the ATE policy inception in 23 August of 2017. 24 Q And then they discussed the settlement of 25 the transferred investment portfolio.</p> | 47 | <p>1 transfer in a little bit more detail in a bit, but 2 let me just ask this. Do you know when the 3 valuation of those assets took place? 4 A The valuations would have been performed 5 late in 2017, early 2018, but there would have 6 been valuations that were performed as of the date 7 that the assets were transferred in so that we had 8 a starting point and then another valuation as of 9 the 12/31/2017 year-end. 10 Q And were those valuations done by 11 valuation Resource Corp.? 12 A Research Corp., correct. 13 Q Research. 14 When did Beecher first become aware of the 15 possibility of an ATE policy for Sentinel? 16 A The business plan for Sentinel had 17 previously requested and approved from CIMA the 18 ability to write ATE coverage, and I believe there 19 were several different types of coverages that 20 were requested at the time. There were multiple 21 discussions between Pete Kranz and J.P. Sevilla to 22 discuss insurance coverages to put in to the 23 captive, and ATE was one concept that J.P. had 24 brought to the discussion. 25 The specific event that was ultimately</p> |
| 46 | <p>1 Again, that information that they were 2 discussing, that investment portfolio, that was 3 not conveyed to Beecher at the time, correct? 4 MR. WELDON: Objection. 5 You can answer. 6 THE WITNESS: So this time period here, 7 November of 2017, would have been after the ATE 8 policy had inception and after the transfer of the 9 assets to Sentinel, so we were aware of the 10 portfolio as we were attempting to try and value 11 everything that was received. 12 BY MR. BURT: 13 Q Right. 14 And my question was that Beecher wasn't 15 aware that Mr. Dondero and Ellington as part of 16 this Sentinel Advisory Committee were having these 17 discussions. 18 A At no point until we -- 19 MR. WELDON: Hold on, objection. 20 You can answer, go ahead. 21 THE WITNESS: At no point until we 22 received these summaries did we know of the 23 existence of these internal discussions. 24 BY MR. BURT: 25 Q We are going to talk about the asset</p> | 48 | <p>1 insured in the captive I believe it was in early 2 2017 that they were -- J.P. and Pete were 3 discussing it and started looking at moving it 4 forward and drafting the policy. 5 Q Were you involved in those discussions? 6 A I was not involved directly into 7 discussions, but I was provided with information 8 subsequently. 9 Q When did you get involved with that 10 particular ATE policy that was actually -- 11 A For me it was primarily once the 12 accounting needed to be addressed. 13 Q When was that? 14 A Mid 2017. 15 Q The discussions that Mr. Kranz had with 16 J.P. in early 2017, what did those involve? 17 MR. WELDON: Objection, it misstates his 18 earlier testimony. 19 BY MR. BURT: 20 Q You can answer, and if I did it was 21 unintentional. 22 The discussions that Mr. Sevilla and 23 Mr. Kranz were having, I believe you said in early 24 2017, they began discussing the particular ATE 25 policy that was ultimately issued.</p> |

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| 49 | <p>1 A That's correct.</p> <p>2 Q Do you know what they were discussing</p> <p>3 precisely?</p> <p>4 A They would have discussed limits, premium,</p> <p>5 the nature of how the premium would be paid,</p> <p>6 policy language.</p> <p>7 Q Who the insureds would be?</p> <p>8 A Who the insureds would be, the specific</p> <p>9 event that was being covered.</p> <p>10 Q And what was the event that was being</p> <p>11 covered?</p> <p>12 A It was the UBS litigation matter.</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 A Highland Capital and the particular funds.</p> <p>18 Q What did Beecher understand at that time</p> <p>19 about who controlled and owned those funds?</p> <p>20 A Beecher's understanding was that the funds</p> <p>21 were controlled by Highland Capital Management.</p> <p>22 Q Do you know which funds in particular were</p> <p>23 at issue?</p> <p>24 A The funds that -- I don't know off the top</p> <p>25 of my head, but it's the funds that are the</p> | 51 |
| 50 | <p>1 insureds.</p> <p>2 Q In the policy?</p> <p>3 A In the policy.</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 A I am ready.</p> <p>16 Q Great.</p> <p>17 So what do you understand this document to</p> <p>18 be?</p> <p>19 A This is the agreement between Beecher</p> <p>20 Carlson Cayman and Sentinel to provide captive</p> <p>21 management services.</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 A That is correct.</p> | |
| | <p>1 Q And continues to do so to this day?</p> <p>2 A Correct.</p> <p>3 Q And the effective date of this agreement</p> <p>4 is October 1, 2013, right?</p> <p>5 A That is correct.</p> <p>6 Q Which is just before you began at Beecher?</p> <p>7 A Correct.</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 A Jason Flexbeard.</p> <p>11 Q Who is he?</p> <p>12 A Jason Flexbeard at the time was the leader</p> <p>13 of the captive practice at Beecher Carlson.</p> <p>14 Q Who signed on behalf of Sentinel?</p> <p>15 A Kobi Dorenbush.</p> <p>16 Q It states director, is that a Mr. or Ms.?</p> <p>17 A Mr., I believe.</p> <p>18 Q Is he a director of Sentinel at the time?</p> <p>19 A He was a director of Sentinel and was with</p> <p>20 Caledonian. Caledonian was a company that had</p> <p>21 provided outside director services to captives or</p> <p>22 investment companies or whatever in the Cayman.</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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| <p style="text-align: right;">53</p> <p>1 section, Section 1, describes all of the services 2 that Beecher Carlson provides for Sentinel? 3 A It describes all of the standard services 4 that are provided under the captive management. 5 Q Are there any services beyond what's 6 listed here that Beecher provides? 7 A No. 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? 18 A I do. 19 Q And is that something that Beecher 20 provides? 21 A That is. 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> | <p style="text-align: right;">55</p> <p>1 statements, profit and loss and balance sheet 2 statements, to Beecher, is that right? 3 A Correct. 4 Q And is that how its actually been in 5 practice, that Highland Capital requests that 6 financial information? 7 A That is correct. 8 Q And has it mostly been J.P. Sevilla and 9 Matt DiOrio who requested that information? 10 A That is correct. 11 Q Has Katie Irving as well? 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. 17 Q Those would come through Mr. Sevilla -- 18 you say Sevilla? 19 A Sevilla. 20 Q -- Sevilla or Mr. DiOrio the direction? 21 A Correct. 22 Q And at times Mr. Leventon? 23 MR. WELDON: Objection. 24 THE WITNESS: No. 25</p> |
| <p style="text-align: right;">54</p> <p>1 requested by Sentinel through Highland Capital," 2 do you see that? 3 A I do. 4 Q And those are services that Beecher 5 provides? 6 A That is correct. 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? 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. 16 Q And does Highland Capital here refer to 17 Highland Capital Management? 18 A I believe that is correct. 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> | <p style="text-align: right;">56</p> <p>1 BY MR. BURT: 2 Q Did Mr. Dondero or Mr. Ellington ever make 3 requests for this information? 4 A Not directly to Beecher Carlson. 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? 12 A That is correct. 13 Q Do you know at whose direction Mr. Sevilla 14 or Mr. DiOrio would request this type of 15 information? 16 A I do not. 17 Q The visibility sort of ended there for 18 Beecher Carlson at that level? 19 A Yes. 20 Q Have you ever spoken with Mr. Dondero or 21 Mr. Ellington directly? 22 A I have not. 23 Q Have you ever had e-mail communications 24 with them directly? 25 A I have not.</p> |

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1 Q Do you know if anyone at Beecher has?

2 A I believe that when the captive was set up

3 Beecher Carlson might have had a few initial

4 discussions with Scott Ellington, but it was only

5 initially and certainly hasn't been anything since

6 then. Everything has gone through Matt DiOrio and

7 J.P. Sevilla.

8 Q Is that typical that ultimate beneficial

9 owners don't have communications with Beecher?

10 MR. WELDON: Objection.

11 THE WITNESS: I think that's probably not

12 out of the ordinary. There is always going to be

13 somebody that may have -- maybe the risk manager

14 or somebody that's more involved with the risk

15 management program than, say, the ultimate

16 openers, so it's not out of the ordinary that it

17 wouldn't be the top dogs that we are dealing with.

18 BY MR. BURT:

19 Q You have also testified that Mr. Dondero

20 and Ellington were calling the shots for Sentinel.

21 Is it ordinary that the people who are actually

22 calling the shots for the captive don't

23 communicate with Beecher directly?

24 MR. WELDON: Objection.

25 THE WITNESS: It's difficult to say

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1 because our contact was with J.P. and Matt and

2 they were the ones that would provide any

3 direction for what we were doing.

4 BY MR. BURT:

5 Q Looking down at E, referring back to the

6 management agreement, E states "coordinate and

7 attend Sentinel's annual meeting." What does that

8 refer to?

9 A There would be a requirement in the Cayman

10 for the captives to have periodic meetings to

11 discuss governance items typically on an annual

12 basis. As part of our role as captive managers we

13 would be preparing the board books, pulling all

14 documentation together, coordinating with anyone

15 that would be presenting and scheduling the

16 meeting.

17 Q How often did the Sentinel board have a

18 meeting?

19 A Approximately once a year.

20 Q Would Beecher schedule those?

21 A Beecher would.

22 Q And Beecher would attend those meetings?

23 A That is correct.

24 Q And is it also correct that Mr. DiOrio as

25 director of Sentinel would attend?

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1 A Mr. DiOrio would as well as the other

2 directors.

3 Q Would Mr. Sevilla attend as well?

4 A He had attended some of them, but

5 typically once Matt was involved it was just Matt

6 from Highland.

7 Q How about Ms. Irving, did she attend?

8 A I think early on, but not the later

9 meetings.

10 Q Do you know why they attended?

11 A It was before Matt so J.P. was our main

12 contact at Highland at the time.

13 Q But he wasn't on the Sentinel board,

14 right?

15 A He was never on the board.

16 Q Is it common for the sponsoring company's

17 personnel to attend board meetings even if not on

18 the board?

19 A It is.

20 Q Item F here states "Facilitate the

21 investment of available funds in accordance with

22 written instructions from Sentinel through

23 Highland Capital." So did Beecher provide that

24 service for Sentinel?

25 A Yes.

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1 Q And were those instructions for investing

2 funds did those come from Highland Capital?

3 A They did.

4 Q So Highland Capital made all decisions as

5 far as the investments of Sentinel assets, is that

6 right?

7 A That is correct.

8 Q Beecher wasn't making those decisions on

9 its own, correct?

10 A Beecher was not.

11 Q Wasn't authorized to make those decision

12 the?

13 A They were not. We may have been consulted

14 with and discussions, we can advise the directors

15 on how to or how we think that might make sense

16 given their situations, but we wouldn't ultimately

17 call the shots, that decision was either with the

18 directors.

19 Q Here it says actually that the

20 instructions come from Highland Capital, not the

21 directors, right?

22 A So at the time there were outside

23 directors that didn't have Highland's financial

24 interest in mind, I guess they would have been

25 focusing on Sentinel, so any direction would have

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| <p style="text-align: right;">61</p> <p>1 been at the request of Highland Capital.</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>14 A At the time that's correct, they weren't</p> <p>15 -- when the captive was originally set up I am not</p> <p>16 sure. We can back up.</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>21 A That is correct.</p> <p>22 So there was a requirement that there were</p> <p>23 some outside independent directors that were</p> <p>24 involved on the board for Sentinel, and up until</p> <p>25 Matt DiOrio was -- had joined Highland Capital</p> | <p style="text-align: right;">63</p> <p>1 focused on liquidity on some of the investments</p> <p>2 maybe, I don't know.</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>6 A They wouldn't have initiated. They would</p> <p>7 have been brought in to discussions with the</p> <p>8 Highland folks or J.P. and Matt and ultimately</p> <p>9 made the decision at the end to invest in this</p> <p>10 vehicle or that vehicle.</p> <p>11 Q They being the entire board?</p> <p>12 A The board of directors were ultimately</p> <p>13 responsible for making those decisions.</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>17 A I believe so.</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>21 A I am not aware of anything.</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> |
| <p style="text-align: right;">62</p> <p>1 there were only outside independent directors on</p> <p>2 Sentinel's board and then Matt was appointed,</p> <p>3 there was another individual from Highland Capital</p> <p>4 that was added to the board, and so there were</p> <p>5 four total directors, two outside independent</p> <p>6 directors and two Highland Capital</p> <p>7 representatives.</p> <p>8 Q Who was the other Highland Capital</p> <p>9 director?</p> <p>10 A Dilip Massand.</p> <p>11 Q When did Mr. DiOrio join the board?</p> <p>12 A I believe it was 2018.</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>17 A They weren't affiliated with Highland but</p> <p>18 they were appointed to act on behalf of Sentinel;</p> <p>19 not necessarily what Highland's motives might be,</p> <p>20 I guess.</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>24 A I don't know that it necessarily mattered</p> <p>25 other than they might -- they might be more</p> | <p style="text-align: right;">64</p> <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>8 A I do.</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>19 A The directors.</p> <p>20 The way that the account was set up was</p> <p>21 that Beecher would initiate the transactions in</p> <p>22 the system at least as far as the current bank</p> <p>23 account is Beecher would initiate the transactions</p> <p>24 and the invoice and requests for processing and</p> <p>25 request for approval would be sent to the</p> |

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| <p style="text-align: right;">65</p> <p>1 directors who would give their formal approval, 2 this is the outside directors, and they would 3 release the payments on the system. 4 Q Where did Beecher -- who provided the 5 invoice in the initial request to Beecher? 6 A The primary person to provide invoices to 7 Beecher, it was Matt DiOrio, unless it was a 8 service provider that Beecher worked closely with, 9 whether it was the audit firm or the actuary, 10 those would come directly to Beecher and then 11 Beecher would submit them to Matt, get his okay, 12 and then they would go to the outside directors 13 for their approval. 14 Q So ultimately the outside directors had to 15 sign off on any expense payment by Sentinel? 16 A That is correct. 17 Q Did that always happen? 18 A That is true, yes. 19 Q Were any invoices from DiOrio -- that 20 DiOrio submitted were any not approved by the 21 directors? The outside directors, let me be more 22 specific. 23 A I don't believe there were any that 24 ultimately were not approved. 25 Q Since Mr. DiOrio is no longer with</p> | <p style="text-align: right;">67</p> <p>1 A Correct. 2 Q Now post-Mr. DiOrio leaving those 3 requests, the Highland requests, are coming from 4 the independent directors for Sentinel? 5 A That is correct. 6 Q You mentioned a Sentinel account and it 7 sounded like you said account in the singular, so 8 I just want to understand that. 9 Did Sentinel have a single account from 10 which payments were made for reimbursement or 11 expenses? 12 A They have a single checking account and an 13 investment custodial account. 14 Q Where is that checking account located? 15 A CIBC in the Cayman. 16 Q And they have a single you said investment 17 account? 18 A Correct, custodial account with CIBC as 19 well. 20 Q CIBC Caymans? 21 A Yes. 22 Q So help me understand the difference. 23 In the checking account there is cash, is 24 that right? 25 A That is correct.</p> |
| <p style="text-align: right;">66</p> <p>1 Highland Capital, where are the requests coming 2 from now? 3 MR. WELDON: Objection. 4 Clarification, you are talking about where 5 the invoice is coming from now? 6 MR. BURT: Right. 7 BY MR. BURT: 8 Q So any requests for payment for Sentinel 9 to make a payment, where are those coming from? I 10 understand some might be coming from service 11 providers. 12 A Invoices that come from the service 13 providers still follow the same channel. Any 14 invoices that would originate from the Highland 15 side will now or have been since the new directors 16 took over since the old directors and Matt 17 resigned are coming through to those directors and 18 then they submit them to us. 19 Q The directors -- the new directors of 20 Sentinel? 21 A The current independent directors, yes. 22 Q So prior to Mr. DiOrio leaving the request 23 -- the Highland-related request, let's call them, 24 those were coming from an inside director from 25 Mr. DiOrio?</p> | <p style="text-align: right;">68</p> <p>1 Q And then in the investment, the custodial 2 investment account, what is located there? 3 A There are the investments that were 4 registered in Sentinel's name are custodied with 5 that investment account. 6 Q And we will get to this, but some of the 7 assets -- the assets that were transferred from 8 the Highland entities as part of the ATE policy, 9 would those be in the CIBC account? 10 A Some of those are in the CIBC custody 11 account. 12 Q Are there some located elsewhere? 13 A Not all of the investments were 14 re-registered into Sentinel's name. 15 Q So some never made it -- 16 A That is correct. 17 Q -- in other words, all right. 18 Has that been true throughout the time 19 that Beecher has been managing Sentinel, that all 20 claims for reimbursement would come out of the 21 single checking account? 22 A With the current checking account that is 23 accurate. Prior to setting up that checking 24 account and while Maples served as the outside 25 directors Maples had a cash function and they</p> |

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| 69 | <p>1 would process payments on their end.</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 A As far as I know they are still in the</p> <p>8 name of the insureds.</p> <p>9 Q And do you know which ones never made it?</p> <p>10 A Any that are not in the custody account.</p> <p>11 Q Sure.</p> <p>12 A There is a number of them. I would</p> <p>13 recognize them if I saw them.</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 A Maples, just like Caledonian, just like a</p> <p>18 number of firms in the Cayman provided outside</p> <p>19 independent director services to companies in the</p> <p>20 Cayman. They also have a legal arm. They have a</p> <p>21 corporate services arm.</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 A They had a segregated account that they</p> | 71 | <p>1 correct.</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 A As long as the directors approved it and</p> <p>7 supported that it was in relation to Sentinel it</p> <p>8 would be dispersed out of the account.</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 A That does.</p> <p>16 Q Was that 9 million was that held in this</p> <p>17 checking account?</p> <p>18 A The \$9 million was carved out of the</p> <p>19 premium and tracked separately.</p> <p>20 As far as the specific cash dollars it</p> <p>21 would have been commingled with any other cash</p> <p>22 that Sentinel had.</p> <p>23 Q And was all the cash held in the checking</p> <p>24 account at CIBC?</p> <p>25 A Correct.</p> |
| 70 | <p>1 held for Sentinel that was -- and they were able</p> <p>2 to disperse payments on behalf of Sentinel</p> <p>3 through.</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 A That is correct.</p> <p>8 Q What time period was that?</p> <p>9 A 2015 through 2017.</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 A That is correct.</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 A To the extent that there were any, that's</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 A Correct.</p> <p>6 Q -- as the cash?</p> <p>7 A Correct.</p> <p>8 When those invoices were provided to</p> <p>9 Sentinel from Matt DiOrio if it wasn't explicitly</p> <p>10 explained as being risk mitigation fees we would</p> <p>11 inquire the nature of the fees just so that we had</p> <p>12 a sense of how to account for it on the Sentinel</p> <p>13 side.</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 A If there were invoices that were coming in</p> <p>18 in somebody else's name we would inquire whether</p> <p>19 they were risk mitigation fees.</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 A Of Sentinel officers? I don't believe</p> <p>24 there were any travel or expense.</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? 3 A There were some travel costs that came 4 through and paid under the risk mitigation fees. 5 Q And whose travel costs were those? 6 A I believe those were Scott Ellington's. 7 Q Do you know why those were paid out of the 8 risk mitigation fee? 9 A We were informed that they related to the 10 defense of the UBS litigation matter. 11 Q So that was the justification that was 12 given? 13 A Correct. 14 Q Who informed you of that? 15 A Matt DiOrio. 16 Q And did the outside directors approve 17 those expenses? 18 A They did. 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. 6 A Okay. 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? 12 A Alli Devins is an employee with Beecher 13 Carlson. 14 Q Does she work on your team? 15 A She does. 16 Q And does she work on the Sentinel account? 17 A She did at the time. 18 Q No longer? 19 A We have since transitioned that work to 20 Gareth Pereira because he is in our Cayman office 21 with Clayton. 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? 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. 7 Q So early 2020 doesn't stand out in any 8 way? 9 A No. 10 Q And when you say that, Ms. Devins, "Do you 11 have time to get approval," what did you mean by 12 approval? 13 A To seek approval from the directors to 14 process the invoices. 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? 20 A That's correct. 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? 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. 18 Q So ultimately the requests were coming 19 from Highland Capital through Mr. DiOrio to 20 Beecher, is that right? 21 A Correct. 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</p> <p>2 if you have any additional invoices."</p> <p>3 And the first attachment states SEN 200206</p> <p>4 Scott Ellington invoices for \$176,334.77, it's a</p> <p>5 PDF. Do you see that?</p> <p>6 A I do.</p> <p>7 Q And referring to that attachment which</p> <p>8 begins the Bates ending 727324, do you see where I</p> <p>9 am at?</p> <p>10 A Yes.</p> <p>11 Q And at the top it says Ellington expenses</p> <p>12 London and Paris, total \$78,841.93.</p> <p>13 A Yes.</p> <p>14 Q Do you know what these requests were for?</p> <p>15 A It says risk mitigation fees, so I am not</p> <p>16 certain the nature of what these travel expenses</p> <p>17 related to.</p> <p>18 Q So that information specifically how they</p> <p>19 related to risk mitigation that was not provided</p> <p>20 at the time?</p> <p>21 A No.</p> <p>22 Q And as you look at this, starting on</p> <p>23 December 23, 2019, London Hilton Parklane is the</p> <p>24 first expense for \$388. The next expense is the</p> <p>25 Novikov Bar and Grill in London for \$1,397. Do</p> |
| 78 | <p>1 you see that?</p> <p>2 A I do.</p> <p>3 Q And then there is a payment at Claridge's</p> <p>4 Hotel for \$2006.29 right underneath that. Do you</p> <p>5 see that?</p> <p>6 A I do.</p> <p>7 Q And you have no insight into what these</p> <p>8 expenses actually were?</p> <p>9 A I do not.</p> <p>10 Q Looking down do you see a few rows down a</p> <p>11 \$15,000 expense at Browns Hotel in London?</p> <p>12 A Yes.</p> <p>13 Q Looking down a little bit more there is a</p> <p>14 Four Seasons Hotel George V for \$7900, do you see</p> <p>15 that one?</p> <p>16 A Yes.</p> <p>17 MR. WELDON: 7978, is that what you are</p> <p>18 referring to?</p> <p>19 MR. BURT: \$7,978.46.</p> <p>20 BY MR. BURT:</p> <p>21 Q A few lines after that Park Chinois -</p> <p>22 London \$4,000 expense, do you see that?</p> <p>23 A I do.</p> <p>24 Q There is some expense for \$716 at Sexy</p> <p>25 Fish London, do you see that?</p> |
| 79 | <p>1 A I do.</p> <p>2 Q And then a \$21,991 expense for Browns</p> <p>3 Hotel in London, do you see that?</p> <p>4 A I do.</p> <p>5 Q And Beecher had no insight into what these</p> <p>6 actually were, right?</p> <p>7 A No.</p> <p>8 If these were all under risk mitigation</p> <p>9 they would have been -- our understanding is that</p> <p>10 they would have been expenses related to the</p> <p>11 insureds under the ATE policy and that all costs</p> <p>12 related to the insureds were to be paid under</p> <p>13 these risk mitigation fees.</p> <p>14 Q So Beecher was relying on accurate</p> <p>15 information to come from Highland through</p> <p>16 Mr. DiOrio?</p> <p>17 A That is correct.</p> <p>18 (Document marked Exhibit 119 for</p> <p>19 identification.)</p> <p>20 BY MR. BURT:</p> <p>21 Q Showing you we will mark our next exhibit,</p> <p>22 keep that handy, that London trip from DiOrio, we</p> <p>23 are going to do some comparison. This one I don't</p> <p>24 think you have seen before, what I just handed</p> <p>25 you, 119, is Bates labeled UBSPROD460936. And</p> |
| 80 | <p>1 it's a series of e-mails between Mr. Ellington and</p> <p>2 Ms. Sarah Goldsmith.</p> <p>3 Do you know who Sarah Goldsmith is?</p> <p>4 A I have never heard of her.</p> <p>5 Q And underneath that, you see this is dated</p> <p>6 12th of December, 2019 at the top?</p> <p>7 A Yes.</p> <p>8 Q And underneath that -- on the attachment</p> <p>9 it states London activities 2019 December PDF,</p> <p>10 London dining 2019 December PDF, London festive</p> <p>11 dining 2019 December. Do you see that?</p> <p>12 A What page are you on?</p> <p>13 Q Just at the very top of the first page,</p> <p>14 the attachments listed.</p> <p>15 A Sorry, yes.</p> <p>16 Q And then as you go down the first e-mail,</p> <p>17 this affidavit in the chain appears to be from a</p> <p>18 Stephanie Archer to Mr. Ellington. Do you know</p> <p>19 who Stephanie Archer is?</p> <p>20 A I have never heard of her.</p> <p>21 Q And her signature there as a licensed</p> <p>22 Realtor at Allie, Beth, Allman & Associates in</p> <p>23 Dallas, Texas, do you see that?</p> <p>24 A I do.</p> <p>25 Q Now, underneath that we see an e-mail from</p> |

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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 A I do. 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 A I do. 17 Q And Beecher had no insight into any of 18 this, right? 19 A I have never seen this document before. 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 A I do see that. 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 A I do. 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 A I do. 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 A This is the first time I am seeing any of 17 this. 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 A I do. 3 Q Again, none of this is familiar, correct? 4 A That is correct. 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 A I do. 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 A I do. 6 Q And that's what was submitted to 7 Beecher Carlson, correct? 8 A Correct. 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 A The dates appear to correlate. 17 Q And the locations appear to correlate as 18 well, London and Paris? 19 A They do. 20 Q Do you have any knowledge of whether 21 Mr. Ellington did any risk mitigation work in 22 London and Paris? 23 A We were only provided with the direction 24 that the invoice was to be paid under the risk 25 mitigation fees.</p> |

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| <p style="text-align: right;">85</p> <p>1 Q Did Ms. Archer to your knowledge have any 2 business with Sentinel? 3 A I am not aware who Ms. Archer is. 4 Q Did she provide any services with regard 5 to the ATE policy to your knowledge? 6 A I am not aware of who Ms. Archer is. 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 A That would be news to me. 11 Q And this was a personal trip that they 12 took to London and Paris? 13 A That would also be news to me. 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 A Had Beecher known about it we would have 23 pushed that the expenses not be reimbursed under 24 the risk mitigation. But if the directors had 25 approved it and that it was appropriate to pay</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 A That is correct. 5 Q Do you know what the distinction was 6 between risk mitigation and business development? 7 A We were informed that anything business 8 development related to business opportunities that 9 Sentinel was looking into for future insurance 10 programs. 11 Q And who informed you of that? 12 A Matt DiOrio. 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 A Only what was told to us by Mr. DiOrio. 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 & Company Steakhouse on the 23 17th, do you see that? 24 A I do. 25 Q I skipped one, on the 14th another</p> |
| <p style="text-align: right;">86</p> <p>1 under it we would have had no choice other than to 2 follow the direction of the directors. 3 Q Because ultimately Beecher didn't have the 4 authority one way or the other? 5 A Beecher did not. 6 Q And it was the outside directors who were 7 ultimately approving, right? 8 A That is correct. 9 Q Do you know if any of this information was 10 provided to the outside directors? 11 A I am aware that the invoices themselves 12 would have been provided, but whether or not they 13 scrutinized it, I am not aware. 14 Q And the e-mails back and forth between 15 Ms. Archer and Mr. Ellington, Beecher never had 16 those, correct? 17 A Beecher never received those, so as to 18 whether or not they made it to the directors, I do 19 not know. 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 A I do.</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 A I do. 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 A I do. 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 A That is correct. 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 A That is correct. 19 I do remember speaking with Matt on this 20 particular invoice and he had indicated that the 21 Toronto trip had some involvement with the 22 litigation. 23 Q Do you recall what he said precisely? 24 A I don't remember other than that and it 25 was a conversation we had.</p> |

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| <p style="text-align: right;">89</p> <p>1 Q And would that conversation have been 2 around the February, 2020 timeframe when this was 3 provided? 4 A Yes. 5 Q Most likely. 6 Mr. Adamczak, having now seen the 7 London/Paris itinerary and what was happening I am 8 just going to ask what's your reaction to that 9 sitting here today? 10 MR. WELDON: Objection. 11 You can answer. 12 THE WITNESS: I don't know what to say. 13 BY MR. BURT: 14 Q It's news to you today sitting here? 15 A It is. 16 Q It was never disclosed to you at the time? 17 A No, it was not. 18 (Document marked Exhibit 120 for 19 identification.) 20 BY MR. BURT: 21 Q Showing you what's been Bates labeled BC 22 SEN0000663342 marked as Exhibit 120, go ahead and 23 take a look, a couple e-mails and an expense 24 report. 25 A Okay.</p> | <p style="text-align: right;">91</p> <p>1 Q To include all of them? 2 A Right. 3 Q Got it. 4 So here Ms. Goldsmith says, "Matt, as 5 discussed earlier I am submitting the attached 6 expense reimbursement on behalf of Scott Ellington 7 subject to review and approval by directors. 8 Please instruct reimbursement to Scott Ellington 9 for the attached travel expenses. Total is 10 \$318,938. Please let me know if you have any 11 additional questions. And then wire account 12 information is provided from Scott Ellington and 13 his bank account at Wells Fargo." Do you see 14 that? 15 A Yes. 16 Q And then in the e-mail above Mr. DiOrio 17 forwards it to you and Ms. Devins on Friday 18 December 20, 2019, so this appears to be about a 19 month and a half prior to the expenses that we 20 just looked at, the London and Paris? 21 A Uh-huh. 22 Q And he says, "Hi guys, please submit the 23 attached expenses for approval and reimbursement. 24 Just a heads up, settlement talks are cranking up 25 as we understand it so there will be an increase</p> |
| <p style="text-align: right;">90</p> <p>1 Q Looking at the bottom e-mail it is an 2 e-mail from Sarah Goldsmith to Matt DiOrio both at 3 SAS Management, cc'ing Connie and Scott Ellington 4 at SAS Management for subject Ellington request 5 reimbursement, do you see that? 6 A I do. 7 Q Let me ask while we are looking at e-mail 8 addresses, Mr. DiOrio is listed here as having an 9 SAS Management e-mail address. Is that the e-mail 10 address he typically used in communicating with 11 you? 12 A That is typically the e-mail address that 13 they would use. We were told that any e-mails 14 that were coming from the Highland folks were 15 because it was a Cayman entity that they were 16 representing they had to use the Cayman e-mail 17 address, which was the sasmanagement.com e-mail 18 address. 19 Q Did you at times receive e-mails from 20 their Highland Capital accounts as well? 21 A We would. 22 Q Even when it related to Sentinel business? 23 A We would. And then when I would reply I 24 would try to remember to put the SAS management 25 e-mail.</p> | <p style="text-align: right;">92</p> <p>1 in travel expenses over the next few months. 2 These are actually related to business development 3 as we try to plan for potential world post-ATE." 4 Do you recall receiving that e-mail from 5 Mr. DiOrio and hearing about settlement talks and 6 potential world post-ATE in this timeframe? 7 A I do. 8 Q What do you remember about that? 9 A I specifically had a discussion with him 10 relating to these invoices just to understand the 11 nature of business development costs and 12 Mr. DiOrio explained to me that there was a 13 convention in Las Vegas that was the type of 14 clientele that Highland Capital were looking at as 15 far as the next potential insurance programs that 16 they might be considering, so there was a lot of 17 wining and dining that went on in Las Vegas. 18 Q Highland Capital was considering, is that 19 right? 20 MR. WELDON: Objection. 21 THE WITNESS: Highland Capital was 22 considering for Sentinel. 23 BY MR. BURT: 24 Q For Sentinel in particular? 25 A Correct.</p> |

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1 Q When he says post -- a potential world
 2 post-ATE, did you discuss what he meant by that?
 3 **A It was understood at the time and it was**
 4 **discussed in board meetings that because of the**
 5 **magnitude of the ATE policy the potential exposure**
 6 **that was there they didn't want to write any**
 7 **additional policies through Sentinel until they**
 8 **got on the other side of that UBS litigation.**
 9 Q And when you say the potential -- the size
 10 of the policy and the potential exposure, describe
 11 what you mean by that.
 12 **A Potential exposure \$91 million of maximum**
 13 **loss on the policy.**
 14 Q And did Sentinel have the assets to cover
 15 that?
 16 **A They did.**
 17 Q And in terms of the potential settlement
 18 that was being discussed, was it being discussed
 19 that the ATE policy would cover that settlement?
 20 **A I do not know of any settlement talks**
 21 **other than what Matt shared with us here.**
 22 Q Did Mr. DiOrio share with you that the
 23 judge the prior month had issued a ruling finding
 24 in favor totally for UBS?
 25 **A He did not.**

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1 Q Let's take a look at 55A. We are going to
 2 come back to that one so keep that handy.
 3 **A Are we done with the other ones?**
 4 Q You can set those ones aside for the
 5 moment, yes.
 6 MR. WELDON: Is this a good place to take
 7 a break?
 8 MR. BURT: We can, yes, sure.
 9 THE VIDEOGRAPHER: This marks the end of
 10 Disk No. 2 in the deposition of Thomas Adamczak,
 11 we are going off the record at 11:13.
 12 (Recess taken.)
 13 THE VIDEOGRAPHER: Here begins Disk No. 3
 14 in the deposition of Thomas Adamczak, we are going
 15 back on the record at 11:27.
 16 BY MR. BURT:
 17 Q So, Mr. Adamczak, before the break we were
 18 looking at this e-mail that was forwarded to you
 19 from Mr. DiOrio for expense reimbursements from
 20 Mr. Ellington, and the date of that e-mail was
 21 December 20, 2019. Do you recall that?
 22 **A Yes.**
 23 Q Now, I believe I had asked you had
 24 Mr. DiOrio informed you anything about a recent
 25 court order in a UBS case finding in favor of UBS

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1 and I believe your answer was no, is that right?
 2 **A That is correct.**
 3 (Document marked Exhibit 121 for
 4 identification.)
 5 BY MR. BURT:
 6 Q So now looking at Exhibit 121, you can
 7 actually flip to the fourth physical page, and you
 8 will see a document that has a file stamp, it has
 9 a case heading on it, do you see that?
 10 **A Yes.**
 11 Q And the Bates at the bottom of that is
 12 KL_0000036. And you see that this is a judgment
 13 in the Supreme Court of the State of New York in
 14 the case of UBS Securities, LLC and another UBS
 15 entity plaintiffs against Highland Capital
 16 Management, LLP and a number of Highland entities,
 17 do you see that?
 18 **A I do.**
 19 Q And looking at that case caption are those
 20 the -- is this the action that you understood to
 21 be the event in the ATE policy?
 22 **A I believe so.**
 23 Q Now, looking at Page 2 of this order or
 24 this judgment the second paragraph begins with
 25 "and", do you see where I am?

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1 **A Yes.**
 2 Q It states, "And the Court having rendered
 3 a final decision and order after trial on
 4 November 14, 2019 in which it found in favor of
 5 Plaintiffs UBS Securities, LLC and UBS AG London
 6 Branch on their third and fourth causes of actions
 7 against the counter-parties and dismissed
 8 Defendant Highland Capital Management, LLP's
 9 counterclaims with prejudice."
 10 My question for you is did Mr. DiOrio make
 11 you aware of the court order on November 14, 2019
 12 finding in favor of UBS?
 13 **A I believe he had mentioned it and**
 14 **indicated that there were appeals that were going**
 15 **through.**
 16 Q When did he first mention it to you?
 17 **A I don't recall.**
 18 Q Looking at this December 20, 2019 e-mail
 19 in the previous exhibit do you know whether he had
 20 mentioned it to you around this time when he was
 21 sending these expense reimbursements along?
 22 **A I don't believe so.**
 23 Q So --
 24 **A I don't recall.**
 25 Q But your best estimate probably would have

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1 come sometime later?
 2 MR. WELDON: Objection.
 3 THE WITNESS: I don't recall.
 4 BY MR. BURT:
 5 Q What did he say about appeals?
 6 **A He didn't really have a lot of information**
 7 **related to the process or where it was, but they**
 8 **were trying to appeal.**
 9 Q Do you know if appeals were ever taken?
 10 **A I do not know.**
 11 Q Did you ever speak with anybody else at
 12 Highland about the judgment entered against them?
 13 **A At the end of each year, probably sometime**
 14 **in January to March, so post-year end, we would**
 15 **have discussion with the actuary and include J.P.,**
 16 **Matt, and Isaac Leventon to try to determine the**
 17 **scenarios for the outcome of the case and with the**
 18 **end goal being to determine what the loss,**
 19 **ultimate loss, would end up being that Sentinel**
 20 **would record in their financial statements.**
 21 Q And did you engage in that process after
 22 this judgment had come down?
 23 **A We would have had a discussion in sometime**
 24 **between January and March of 2020.**
 25 Q Do you recall anything about that

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1 discussion, what was discussed?
 2 **A I don't, other than potential outcomes and**
 3 **with the attempt to try and assign weights to that**
 4 **for calculating the loss reserves.**
 5 Q What if anything do you recall about what
 6 Mr. Sevilla or Leventon said about the potential
 7 outcomes?
 8 **A I don't recall anything specific.**
 9 Q Okay.
 10 **A The discussion was really for the actuary**
 11 **primarily.**
 12 Q And what would the actuary do with that
 13 information precisely?
 14 **A The actuary would take those outcomes and**
 15 **probabilities of each outcome and run it through**
 16 **the models to try and determine the liability, the**
 17 **ultimate loss liability.**
 18 Q One moment.
 19 Were those actuarial estimates were those
 20 used for accounting purposes or how did they end
 21 up being used?
 22 **A For accounting purposes.**
 23 Q And how specifically would they affect the
 24 accounting?
 25 **A So whatever the calculation by the actuary**

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1 **was for loss reserves would be what the directors**
 2 **approved to be recorded as a liability in**
 3 **Sentinel's books.**
 4 Q We will come back to that. We will come
 5 back to that in a couple of minutes.
 6 So looking back at Exhibit I think it is
 7 120, the expense reimbursement request, if we look
 8 at the actual attachment, the expense report of
 9 Mr. Ellington, dated December 19, 2019 for a total
 10 of \$318,934.88, here it doesn't have a listing of
 11 risk mitigation or business development included
 12 in this report. Do you know how this would have
 13 been accounted for?
 14 **A This was explained to be all business**
 15 **development expenses.**
 16 Q And as we have discussed earlier, whether
 17 it was risk mitigation or business development it
 18 was coming out of the same Sentinel checking
 19 account, right?
 20 **A That is correct.**
 21 Q So it was just for accounting purposes how
 22 it was included in the ledger whether it was a
 23 business development?
 24 **A Correct.**
 25 Q Or risk mitigation, okay.

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1 MR. WELDON: Objection.
 2 BY MR. BURT:
 3 Q Is that right?
 4 **A That is correct.**
 5 MR. WELDON: Objection.
 6 BY MR. BURT:
 7 Q Here if we look at these expenses you see,
 8 for example, on December 12, 2019 a charge of
 9 \$152,000 at the Wynn Las Vegas Hotel, do you have
 10 any insight on that charge what is listed here?
 11 **A The only thing I know is what Matt DiOrio**
 12 **explained that these were business development**
 13 **expenses related to wining and dining**
 14 **opportunities, potential future insurance**
 15 **opportunities for Sentinel.**
 16 Q Do you know if any of those insurance
 17 opportunities ever came to fruition?
 18 **A Sentinel has not written any policies**
 19 **since the ATE policy.**
 20 Q So none of this business development
 21 resulted in any new ATE policy or other policy for
 22 Sentinel?
 23 MR. WELDON: Objection.
 24 THE WITNESS: Not currently.
 25

Conducted on April 12, 2022

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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 A No.</p> <p>5 Q No one ever told you what it was?</p> <p>6 A No.</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 A No.</p> <p>10 Q Did you have an understanding?</p> <p>11 A I did not. That wasn't one that I</p> <p>12 particularly looked at. I think I might have</p> <p>13 looked at the Sapphire expense and questioned</p> <p>14 that.</p> <p>15 Q And what do you understand Sapphire to be?</p> <p>16 A A typical Las Vegas strip club.</p> <p>17 Q Did you look at that at the time?</p> <p>18 A I did.</p> <p>19 Q And you asked Mr. DiOrio specifically</p> <p>20 about that?</p> <p>21 A I did.</p> <p>22 Q And his answer was that it was business</p> <p>23 development?</p> <p>24 A They were all business development, this</p> <p>25 is how they do business.</p> | <p style="text-align: right;">103</p> <p>1 A That is mine.</p> <p>2 Q And you recall sending that?</p> <p>3 A I do.</p> <p>4 Q And what raised your concern there?</p> <p>5 A The fact that there was \$318,000 worth of</p> <p>6 expenses at first, but there was a significant</p> <p>7 amount of that seemed to be club-related.</p> <p>8 Q Was it after that that you had the</p> <p>9 conversation with Mr. DiOrio?</p> <p>10 A Correct.</p> <p>11 Q So you tried to do some more diligence on</p> <p>12 this?</p> <p>13 A I did.</p> <p>14 Q And the answer that you were given was --</p> <p>15 A Business development.</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 A It was.</p> <p>20 Q And do you know if the directors approved</p> <p>21 it?</p> <p>22 A Ultimately they did, but they also</p> <p>23 questioned it.</p> <p>24 Q What did they question?</p> <p>25 A They requested the nature of those</p> |
| <p style="text-align: right;">102</p> <p>1 Q "They" being who?</p> <p>2 A Highland Capital.</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 A He didn't offer more than that.</p> <p>14 Q Did he explain whether anybody accompanied</p> <p>15 Mr. Ellington to Las Vegas?</p> <p>16 A He did not.</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 expenses as well and specifically inquired whether</p> <p>2 all or both of the UBOs would be okay with running</p> <p>3 these expenses through the captive as business</p> <p>4 development.</p> <p>5 Q And who did they ask that question to?</p> <p>6 A Matt DiOrio.</p> <p>7 Q And what was the answer he gave?</p> <p>8 A That it was appropriate.</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> |

Conducted on April 12, 2022

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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 A Yes.</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 A Yes.</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 A So in connection with the CIMA inspection</p> <p>25 CIMA specifically had questions related to the</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 A Who?</p> <p>6 Q Stephanie Vitiello.</p> <p>7 A I think she did, and that was the only</p> <p>8 reference to her that I have seen.</p> <p>9 Q In regards to this CIMA meeting?</p> <p>10 A Her existence anywhere within Sentinel</p> <p>11 operations.</p> <p>12 Q Do you know whether they traveled by</p> <p>13 private jet?</p> <p>14 A I do not know.</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 A To the Caymans? Not necessarily. But I</p> <p>19 do know that they have had chartered flights for</p> <p>20 other meetings.</p> <p>21 Q Did they seek reimbursement from Sentinel</p> <p>22 for those?</p> <p>23 A Yes.</p> <p>24 Q What do you know about those flights?</p> <p>25 A I believe there was one flight, it might</p> |
| <p style="text-align: right;">106</p> <p>1 investments and how they fit into Sentinel's</p> <p>2 investment policy. So this was a meeting at the</p> <p>3 request of the directors with CIMA to specifically</p> <p>4 cover the investments.</p> <p>5 Q And which directors attended?</p> <p>6 A I believe all of them had.</p> <p>7 Q Did Mr. Sevilla attend as well?</p> <p>8 A I believe he did as well.</p> <p>9 Q Did Ms. Irving attend?</p> <p>10 A I believe she did.</p> <p>11 Q Mr. Leventon?</p> <p>12 A I don't think so.</p> <p>13 Q Do you know if Mr. Dondero or Ellington</p> <p>14 appeared?</p> <p>15 A I don't believe so.</p> <p>16 Q Now, do you recall this particular expense</p> <p>17 reimbursement that Mr. DiOrio submitted?</p> <p>18 A I don't recall it, but this would have</p> <p>19 been the expenses that Matt covered on that trip.</p> <p>20 Q Would that have come out of risk</p> <p>21 mitigation?</p> <p>22 A This would have been travel expenses for</p> <p>23 Sentinel, I believe.</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 have been the Toronto flight, that was --</p> <p>2 actually, I don't even know that this one took</p> <p>3 place.</p> <p>4 There was a fee that came through for a</p> <p>5 chartered flight that the trip ended -- never</p> <p>6 ended up taking place so the funds were</p> <p>7 reimbursed.</p> <p>8 Q In this e-mail Jonathan Arbeit also</p> <p>9 appears. Who is that?</p> <p>10 A He was an employee of mine.</p> <p>11 Q Working on the Sentinel account?</p> <p>12 A Correct.</p> <p>13 Q Is he still?</p> <p>14 A No.</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 A I do not.</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 A I do not.</p> <p>25 Q You responded to it on the same day "wow".</p> |

Conducted on April 12, 2022

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| <p style="text-align: right;">109</p> <p>1 No recollection of that?</p> <p>2 A I don't.</p> <p>3 Q Do you recall if you clicked on the link</p> <p>4 that you sent?</p> <p>5 A I don't remember.</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 A Is that what this \$4,000 is?</p> <p>17 Q Well, I am asking you.</p> <p>18 A I don't. I don't remember, no.</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 A It does not.</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 A I don't.</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 A Matt had mentioned it to us I think at the</p> <p>8 time that they were putting that in place, but it</p> <p>9 didn't -- it didn't -- I didn't see anything more</p> <p>10 about it until months later when I actually saw a</p> <p>11 copy of the agreement.</p> <p>12 Q What did Matt say when he first mentioned</p> <p>13 it to you?</p> <p>14 A That they were putting this in place to</p> <p>15 cover the expenses for the employees. I don't</p> <p>16 remember anything more than that.</p> <p>17 Q To cover the legal expenses in particular?</p> <p>18 A Legal expenses, yes.</p> <p>19 Q Which employees?</p> <p>20 A I believe the agreement specified which</p> <p>21 employees, but I don't recall.</p> <p>22 Q Mr. DiOrio is covered?</p> <p>23 A He was on the list, yes.</p> <p>24 Q Was Mr. Sevilla?</p> <p>25 A I don't recall.</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 A No.</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 A I know of an indemnification agreement</p> <p>13 related to former Highland employees that worked</p> <p>14 on Sentinel.</p> <p>15 Q Does Beecher have a copy of that</p> <p>16 indemnification agreement?</p> <p>17 A I believe they do.</p> <p>18 Q And have you seen that?</p> <p>19 A I have.</p> <p>20 Q What does it provide?</p> <p>21 A I believe it's covering indemnification of</p> <p>22 legal expenses for those employees.</p> <p>23 Q Legal expenses related to what?</p> <p>24 A Related to deposition subpoenas, court</p> <p>25 proceedings related to the UBS litigation matter.</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 A I would just be guessing.</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 A I believe the directors may have.</p> <p>11 Q Was Mr. DiOrio still a director at the</p> <p>12 time?</p> <p>13 A He was.</p> <p>14 Q Who drafted it?</p> <p>15 A I don't recall. I don't know that I knew.</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> |

Conducted on April 12, 2022

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| <p style="text-align: right;">113</p> <p>1 A Yes.</p> <p>2 Q Do those invoices still come to Beecher</p> <p>3 for processing?</p> <p>4 A I haven't seen any recently.</p> <p>5 Q When was the last time you saw one?</p> <p>6 A I believe it was just a retainer upfront,</p> <p>7 and I don't remember the name of the law firm.</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 A As far as I know.</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 A That is correct.</p> <p>16 Q Do you -- was that paid, that retainer?</p> <p>17 A Yes.</p> <p>18 Q Was it classified as a risk mitigation</p> <p>19 expense?</p> <p>20 A I do not recall. I believe it would have</p> <p>21 been, but I don't recall.</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 A We have seen a lot of legal bills come</p> <p>3 through Sentinel, so it's possible there could</p> <p>4 have been some other ones that I am just not</p> <p>5 remembering. There were a lot of legal bills.</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 A There is the legal bills for Collas Crill</p> <p>10 who is Sentinel's attorney, and then all the other</p> <p>11 law firms that they have worked with, whether they</p> <p>12 were related to the UBS matter or not.</p> <p>13 Q And those continue to come to Beecher?</p> <p>14 A I don't remember which ones we have seen</p> <p>15 recently, but they do -- the only way that they</p> <p>16 can be paid through Sentinel is if they come</p> <p>17 through Beecher.</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 A Yes.</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 A Mr. McDonald is one of the current</p> <p>9 directors of Sentinel and he is an outside</p> <p>10 independent director.</p> <p>11 Q When was he appointed?</p> <p>12 A Shortly before this e-mail.</p> <p>13 Q So in the April, May timeframe?</p> <p>14 A I want to say probably final approval came</p> <p>15 through in early June maybe.</p> <p>16 Q 2021?</p> <p>17 A '21, yes.</p> <p>18 Q Do you know who appointed him?</p> <p>19 A Matt DiOrio as the current -- then current</p> <p>20 remaining director on the Sentinel board.</p> <p>21 Q Was he still a member of the Sentinel</p> <p>22 board at that time?</p> <p>23 A At the time that he was appointed, yes.</p> <p>24 They didn't want to have all the directors resign</p> <p>25 at the same time because that would leave the</p> | <p style="text-align: right;">116</p> <p>1 company with no directors.</p> <p>2 Q When did Mr. DiOrio leave the board,</p> <p>3 resign from the board?</p> <p>4 A It was probably early June. It would have</p> <p>5 been right after the formal approval by CIMA of</p> <p>6 the new directors.</p> <p>7 Q Do you know if Mr. DiOrio was still</p> <p>8 working for Highland at that time?</p> <p>9 A He told us that he was no longer working</p> <p>10 for Highland.</p> <p>11 Q But was still a board member of Sentinel?</p> <p>12 A Correct.</p> <p>13 Q Do you know what diligence went into</p> <p>14 finding Mr. McDonald?</p> <p>15 A I do not.</p> <p>16 Q It is a name that Mr. DiOrio presented?</p> <p>17 A I don't remember who presented his name.</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 A I believe that is how it went.</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 A He is another independent director.</p> <p>25 Q When was he appointed?</p> |

Conducted on April 12, 2022

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| <p>117</p> <p>1 A The same time that Mr. McDonald was.</p> <p>2 Q Did Mr. DiOrio appoint him as well?</p> <p>3 A He would have appointed both of them.</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 A He is the attorney for Sentinel.</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 A That was the e-mail account that he was</p> <p>10 using since he left Highland.</p> <p>11 Q He no longer used an SAS account either?</p> <p>12 A No.</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 A J.S. is the third independent director.</p> <p>16 He was appointed shortly after Mr. McDonald and</p> <p>17 Mr. Kenny were appointed.</p> <p>18 Q Who appointed Mr. de Jager?</p> <p>19 A I don't remember, but Mr. McDonald and</p> <p>20 Mr. Kenny may have.</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 A Correct.</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 A I do.</p> <p>9 Q Do you know what hearing he was referring</p> <p>10 to?</p> <p>11 A I do not.</p> <p>12 Q And is this the indemnification agreement</p> <p>13 that we have been discussing?</p> <p>14 A I believe that's correct.</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 & 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 A Correct.</p> <p>9 Q Do you recall this request coming from</p> <p>10 Mr. Pereira?</p> <p>11 A I do.</p> <p>12 Q What do you remember about it?</p> <p>13 A This is the typical expense request where</p> <p>14 we would provide the invoices to the directors for</p> <p>15 their approval and release in the CIBC system.</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 A I do.</p> | <p>120</p> <p>1 A I assumed it related to the UBS</p> <p>2 litigation.</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 A CIMA had requested that Sentinel refrain</p> <p>7 from making any payments and disposing of any of</p> <p>8 the assets.</p> <p>9 Q When did CIMA make that request?</p> <p>10 A I don't remember the date.</p> <p>11 Q Was it in 2021?</p> <p>12 A I believe it was in 2021.</p> <p>13 Q Was it before these requests for</p> <p>14 reimbursement came in?</p> <p>15 A I don't believe so, but I don't remember.</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 A Yes, that's what I was referring to.</p> <p>20 Q That's what you were referring to, okay.</p> <p>21 A Yes.</p> <p>22 Q And to your knowledge has Sentinel adhered</p> <p>23 to that since receiving it?</p> <p>24 A Beecher sought clarification from CIMA</p> <p>25 whether they intended us to not pay any service</p> |

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| <p style="text-align: right;">121</p> <p>1 providers and let everything lapse or if they</p> <p>2 wanted to at least continue the operations and</p> <p>3 they specified that we could continue paying</p> <p>4 normal business expenses.</p> <p>5 Q Was that in a written response to Beecher?</p> <p>6 A I believe so, yes.</p> <p>7 Q Would that have come to --</p> <p>8 A Clayton.</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>13 A I don't recall this being before that</p> <p>14 cease and desist, whatever you termed it as.</p> <p>15 Q The restraint?</p> <p>16 A The restraint.</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>24 A I don't know.</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>4 A The independent directors?</p> <p>5 Q Uh-huh.</p> <p>6 A No.</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>1 A It would be up to the directors to make</p> <p>2 that call.</p> <p>3 Q What types of expenses are on hold and</p> <p>4 restrained that Sentinel is not making?</p> <p>5 A Sentinel is not disposing of any of the</p> <p>6 assets currently, so any -- where they had</p> <p>7 originally planned on selling some of the</p> <p>8 securities or liquidating securities they have</p> <p>9 foregone any decisions to do that in the near</p> <p>10 term.</p> <p>11 Q Who had made the decision to liquidate</p> <p>12 securities?</p> <p>13 A The directors had originally.</p> <p>14 Q At what time was that decision made?</p> <p>15 A Sometime in the summer of 2021.</p> <p>16 Q So it was the new directors?</p> <p>17 A The new directors.</p> <p>18 Q Who wanted to liquidate certain assets?</p> <p>19 A Correct.</p> <p>20 Q But that's on hold?</p> <p>21 A Correct.</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>11 A I am all set.</p> <p>12 Q What do you recognize the attachment to</p> <p>13 be?</p> <p>14 A This is the ATE policy.</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>17 A ATE is after the event, it's a legal</p> <p>18 liability insurance policy covering a negative</p> <p>19 outcome on a particular matter.</p> <p>20 Q Does Beecher have any other clients that</p> <p>21 issue ATE policies?</p> <p>22 A No.</p> <p>23 Q Sentinel is the only one?</p> <p>24 A The only one that I am aware of.</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 A Just one.</p> <p>3 Q And it's this one we are looking at here?</p> <p>4 A Correct.</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 A Correct.</p> <p>10 Q And you are familiar with this document,</p> <p>11 you have seen it before?</p> <p>12 A I have.</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 A Correct.</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 A Yes.</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 A Yes.</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 A Correct.</p> <p>9 Q It includes Highland Special Opportunities</p> <p>10 Holding Company, which is an insured, correct?</p> <p>11 A Correct.</p> <p>12 Q It includes Highland Financial Partners,</p> <p>13 LP, which is not an insured, correct?</p> <p>14 A Correct.</p> <p>15 Q And it includes Highland CDO Opportunity</p> <p>16 Master Fund LP, which is an insured, correct?</p> <p>17 A Correct.</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 A Correct.</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 A Yes.</p> |
| <p style="text-align: right;">126</p> <p>1 A At the direction of J.P. Sevilla.</p> <p>2 Q What direction specifically did he give?</p> <p>3 A That these would be the insureds on the</p> <p>4 policy.</p> <p>5 Q When did he give that?</p> <p>6 A When the policy was drafted.</p> <p>7 Q Which was when?</p> <p>8 A Prior to August 1, 2017.</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 A Not to my knowledge.</p> <p>14 Q Did he represent that these three entities</p> <p>15 were all in the litigation?</p> <p>16 A Could you clarify?</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 A That's our understanding, yes.</p> <p>23 Q Did Beecher ever check to see if that was</p> <p>24 correct?</p> <p>25 A No.</p> | <p style="text-align: right;">128</p> <p>1 Q Was that known to Beecher at the time?</p> <p>2 A It may have been, but it would have -- if</p> <p>3 we asked we would have assumed or been under the</p> <p>4 assumption that it was part of the affiliation of</p> <p>5 those entities whether a subsidiary of those</p> <p>6 entities or some relation that was covered under</p> <p>7 that.</p> <p>8 Q And that would have been told to you by</p> <p>9 Mr. Sevilla?</p> <p>10 A Correct.</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 A They were either subsidiaries of Highland</p> <p>17 Capital Management or funds that Highland Capital</p> <p>18 Management managed.</p> <p>19 Q That was known to Beecher, that fact that</p> <p>20 these were all affiliated?</p> <p>21 A That was our understanding.</p> <p>22 Q Based on what Mr. Sevilla told you?</p> <p>23 A Correct.</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>3 A I don't know.</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>15 A Not to my knowledge.</p> <p>16 Q Why not?</p> <p>17 A I don't know.</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>1 A None.</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>5 A At the time that this policy was put in</p> <p>6 place there were only outside directors.</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>16 A I do.</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>20 A That he had authority to act on each of</p> <p>21 those entities as president or CEO or whatever his</p> <p>22 role was with Highland Capital.</p> <p>23 Q Who told you that?</p> <p>24 A I don't believe anyone told us, it was</p> <p>25 probably assumed.</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>3 A Yes.</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>7 A Yes.</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>13 A Correct.</p> <p>14 Q And is it correct that he was a director</p> <p>15 of Sentinel at the time?</p> <p>16 A Correct.</p> <p>17 Q Did he work for one of those agencies or</p> <p>18 groups that provided --</p> <p>19 A Maples.</p> <p>20 Q He worked for Maples.</p> <p>21 How long did Mr. Dean serve as a director?</p> <p>22 A From 2015-ish to 2018.</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>3 A He may have. I don't remember.</p> <p>4 We have seen Mr. Dondero's name on a</p> <p>5 number of documents so it's not uncommon to see</p> <p>6 him related to Highland Capital.</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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| <p style="text-align: right;">133</p> <p>1 describe how that figure was arrived at?</p> <p>2 A It was actuarially -- sorry, the 100</p> <p>3 million?</p> <p>4 Q The 100 million limit of indemnity.</p> <p>5 A It was the figure that Mr. Sevilla had</p> <p>6 given us.</p> <p>7 Q Had he ever provided other figures that he</p> <p>8 was considering?</p> <p>9 A 80 million and I believe I have seen 120</p> <p>10 million.</p> <p>11 Q When did Mr. Sevilla start providing these</p> <p>12 possible limits of indemnity figures?</p> <p>13 A At the time that they were discussing</p> <p>14 writing the policy.</p> <p>15 Q And thinking back to before lunch, was</p> <p>16 that in early 2017?</p> <p>17 A Early 2017.</p> <p>18 Q And that was when Mr. Kranz and</p> <p>19 Mr. Sevilla were talking about it?</p> <p>20 A Correct.</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 A I think it was based on the premium that</p> <p>24 they were willing to pay and the exposure that</p> <p>25 they were willing to put into the captive.</p> | <p style="text-align: right;">135</p> <p>1 A The assumptions that were used in the</p> <p>2 model.</p> <p>3 Q Were the assumptions provided to</p> <p>4 Mr. Stubbs by Mr. Kranz and Mr. Sevilla?</p> <p>5 A Correct.</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 A The way that the actuarial modeling worked</p> <p>11 was whatever the outcomes were and the exposure</p> <p>12 and the probability of secession that would factor</p> <p>13 in to the calculation to determine the ultimate</p> <p>14 premium that would be paid.</p> <p>15 Q And those calculations were done by</p> <p>16 Mr. Stubbs?</p> <p>17 A Correct.</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 A In what way?</p> <p>22 Q Did they have questions about it, how the</p> <p>23 premium was determined?</p> <p>24 A They may have. I don't remember.</p> <p>25 Q I will show you a document that maybe will</p> |
| <p style="text-align: right;">134</p> <p>1 Q When you say exposure willing to put in,</p> <p>2 what does that mean?</p> <p>3 A Exposure, risk that Sentinel could</p> <p>4 potentially be on the hook for.</p> <p>5 Q I see. So the exposure to Sentinel.</p> <p>6 A Yes.</p> <p>7 Q And Mr. Sevilla was providing those</p> <p>8 figures to Mr. Kranz?</p> <p>9 A I don't know.</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 A I don't know that.</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 A The premium was actuarially determined</p> <p>17 based on a set of outcomes and their probabilities</p> <p>18 of secession.</p> <p>19 Q Who was the actuary you were using?</p> <p>20 A Jason Stubbs of International Risk.</p> <p>21 Q Is it correct to say that Mr. Stubbs</p> <p>22 arrived at the \$25 million figure?</p> <p>23 A He arrived at the \$25 million figure in</p> <p>24 discussions with Pete and J.P.</p> <p>25 Q What were those discussions about?</p> | <p style="text-align: right;">136</p> <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 A Yes.</p> <p>12 Q Are you familiar with this?</p> <p>13 A Yes.</p> <p>14 Q And you recall receiving these reports in</p> <p>15 May of 2019 from CIMA?</p> <p>16 A Yes.</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 A I do.</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 A It states here that that is the case, so I 17 was aware. 18 Q Do you disagree with that finding? 19 A I disagree with the fact that there were 20 discussions with Mr. Stubbs and Mr. Kranz and 21 Mr. Sevilla regarding pricing analysis. The 22 pricing analysis was never formally finalized, so 23 from the standpoint of Mr. Stubbs response maybe 24 that's true because it wasn't formalized. 25 Q I guess what I am trying to understand is</p> | <p style="text-align: right;">139</p> <p>1 A I have never heard of Neil Horner. 2 Q And what role did Paul Scrivener play in 3 the June, 2017 timeframe with respect -- 4 A Hold on, let me catch up. 5 Q Sure. 6 A We are on Page 3 or 2? 7 Q Page 3, the June 12, 2017 e-mail. 8 A Yes, I am with you. 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 A What was the question again? 14 Q No problem. 15 The question was what role did 16 Mr. Scrivener play with respect to the ATE policy? 17 A I believe we had contacted Solomon Harris 18 along with a number of legal firms to provide 19 guidance in terms of drafting the ATE policy. 20 Q Around here in the third paragraph that 21 begins with "the insurer here", do you see that? 22 A Yes. 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 A I was not part of those discussions so I 7 do not know. 8 Q Well, how about Beecher, as Beecher's 9 corporate representative do you know? 10 A I do not know. 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 A He was an attorney with Solomon Harris. 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 A Yes. 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 A Directly affiliated with litigation 10 funding business through the Sentinel structure 11 and affiliated with the U.S. hedge fund management 12 company through common ownership. 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 A Correct. 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 A I don't know how much ownership they had 7 of it, but it was our assumption that they had 8 some ownership. 9 Q Of Highland? 10 A Yes. 11 Q And did Mr. Sevilla ever tell you that? 12 A No. 13 Q How about Mr. DiOrio? 14 A No. 15 Q No one from Highland ever told you that? 16 A Maybe did it, I don't remember. 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 A Third-party business being not the parent</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 A That the fair value was undetermined. 10 Q So in June of 2017 it was unknown as far 11 as Beecher was aware of -- 12 A Correct. 13 Q -- of the value? 14 Do you have any idea where Mr. Scrivener 15 may have gotten that figure? 16 A I don't know. 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 risks. 2 Q I am not sure I understand that, what do 3 you mean by that? 4 A It is not -- if it is in a direct line 5 with the ownership, the parents, it would be 6 affiliated risk. If it's a sister company or some 7 distant relationship it would fall under the 8 third-party risk. 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 A Correct. 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 A Yes.</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 A Through the discussions with the actuary. 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 A I know there was a discussion between 14 J.P., Pete, and Jason Stubbs to prepare the 15 premium pricing model, and that was the outcome of 16 the draft premium pricing model that was provided. 17 Q And, again, the assumptions that went into 18 that model were provided by Mr. Sevilla and 19 Mr. Kranz? 20 A That is my understanding. 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 A Yes.</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 A Yes.</p> <p>16 Q So that was always understood?</p> <p>17 A Always.</p> <p>18 Q Where did that idea come from?</p> <p>19 A J.P.</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;">147</p> <p>1 A Yes.</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 A Okay.</p> <p>10 Q Do you see that?</p> <p>11 A I do.</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 A Nondisclosure agreement, or something like</p> <p>18 that, I don't know.</p> <p>19 Q Was that part of retaining or bringing on</p> <p>20 Bartlett Actuarial to provide work?</p> <p>21 A Nothing that I am involved with.</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;">146</p> <p>1 these figures.</p> <p>2 A I don't know what he is referring to in</p> <p>3 terms of an actuarial assessment of the portfolio</p> <p>4 assets.</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 A I am ready.</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;">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 A Yes.</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 A Yes.</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 A Okay, I do see that.</p> <p>24 Q So if you go to the next e-mail --</p> <p>25 A I see, yes.</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 A I do. 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 A Yes, correct. 18 Q So that's after those figures that 19 Mr. Scrivener had given in that June 12 e-mail, 20 right? 21 A I see, yes. 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 A Correct. 3 Q Do you recall him doing that type of work, 4 providing three scenarios? 5 A Yes. 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 A Yes. 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 A Correct. 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 A Yes. 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 A Yes. 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 A I do not know. 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 A Yes. 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 A Not really. He said 20 million and 85 14 million of coverage. 15 Q Fair enough. 16 So instead of 85 million he says the 17 assumption is the policy limit of 80 million? 18 A Sure. 19 Q But otherwise the same premium is used, 20 correct? 21 A Correct. 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 A Yes.</p> |

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| <p style="text-align: right;">153</p> <p>1 Q What did you understand about those 2 calculations?</p> <p>3 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.</p> <p>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?"</p> <p>14 A Yes. There has got to be some kind of 15 support for how the premium is determined.</p> <p>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 style="text-align: right;">155</p> <p>1 A That's what it would state.</p> <p>2 Q Did Beecher understand that at the time?</p> <p>3 A Yes.</p> <p>4 Q Was Beecher concerned about that, that 5 this policy would result in a loss to Sentinel 6 even under the most optimistic?</p> <p>7 A I don't -- 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?</p> <p>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?</p> <p>20 A Yes, I am with you.</p> <p>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 style="text-align: right;">154</p> <p>1 A Yes.</p> <p>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?</p> <p>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?</p> <p>22 A That's what it states.</p> <p>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 style="text-align: right;">156</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?</p> <p>14 A Either through discussions with Beecher 15 Carlson or J.P. Sevilla.</p> <p>16 Q As we have discussed the parties had 17 common ownership though, right?</p> <p>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> |

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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 A Because we were talking about from an</p> <p>4 insurance standpoint affiliated risks were those</p> <p>5 in the direct line of the parent, whereas the</p> <p>6 unrelated risks would be more distant cousins or</p> <p>7 other entities not closely related to Sentinel.</p> <p>8 Q So it's that distinction that you had made</p> <p>9 before?</p> <p>10 A Correct.</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 A I am ready.</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 A Yes.</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 A I don't recall.</p> <p>9 Q Do you recall writing that at the time in</p> <p>10 2019?</p> <p>11 A Yes.</p> <p>12 Q Why did you tell that to Mr. Stubbs?</p> <p>13 A I don't recall.</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 A The insureds of the ATE?</p> <p>18 Q Correct.</p> <p>19 A Correct.</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 A Correct.</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 A Yes.</p> <p>6 Q And this regards the Sentinel year-end</p> <p>7 actuarial analysis, right?</p> <p>8 A Yes.</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 A Correct. That's for determining the loss</p> <p>13 reserves.</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 A This is the inspection that CIMA conducted</p> <p>19 in early 2019.</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 A Yes.</p> <p>4 Q And that was Beecher's understanding?</p> <p>5 A Yes.</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 A Yes, I do see that.</p> <p>21 Q So Mr. Stubbs followed your edited and</p> <p>22 took the affiliate out?</p> <p>23 A Yes.</p> <p>24 Q Do you recall that?</p> <p>25 A Yes.</p> |

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| <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? 10 A I do. 11 Q So Mr. Stubbs here is saying it appears 12 that Sentinel has suggested that the premium be 20 13 million, right? 14 A That would appear to be the case. 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? 19 A I don't recall that. 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>1 A That's what it says. 2 Q Again, that was information provided by 3 Mr. Leventon and Mr. Sevilla? 4 A Correct. 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? 11 A Math? 12 Q Is it just an average? 13 A I think it is the average based on the 14 probabilities. 15 Q So a weighted average? 16 A Yes. 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? 22 A Correct. 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. 8 A Yes. 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? 12 A That's what it says. 13 Q Do you know how he arrives at the expected 14 payout number based on the probability? 15 A I believe those were numbers that were 16 provided in the discussion with Isaac and J.P. 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? 21 A Correct. 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? 2 A Correct. 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? 7 A Correct. 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? 11 A No. 12 Q Do you know why this one was written even 13 though that's what the actuary found? 14 A I do not. 15 Q Did Beecher have any involvement in making 16 the final determination to issue the policy? 17 A Sorry, say that again? 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? 21 A No. 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 A The directors ultimately approved the ATE 2 policy. 3 Q And at the time was it outside directors 4 or was there also Highland directors? 5 A It was outside directors at that time. 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 A This wouldn't have been the final premium 10 that was contemplated. The premium actually 11 jumped up to 25 million, I don't know how it would 12 have affected this. 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 A I don't know. 18 Q Did Beecher have any involvement with 19 that? 20 A I do not know. 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;">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 A Yes. 15 Q Were you aware there was two policies 16 being considered at that point? 17 A Yes. 18 Q What was your understanding for the 19 reasons why? 20 A Well, I personally wasn't aware so I 21 don't know -- 22 Q But Beecher was generally? 23 A Beecher would have been because Pete was 24 copied on these. 25 Q And so Beecher was aware.</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 A Yes. 9 Q How is it that the date of insurance could 10 begin before the drafts of the policy were 11 finalized? 12 A I don't think it's uncommon that the 13 policy language might be finalized shortly after 14 the policy accepts. 15 Q So it applies retroactively back to a 16 date? 17 A In this case, yes. 18 Q And that's not uncommon? 19 A It happens. 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;">168</p> <p>1 Did you ever have discussions with 2 Mr. Kranz about that at the time? 3 A About there being two policies, no. 4 Q Or the reasons why it eventually ended up 5 as just one? 6 A No. 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 A I do. 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 A Yes. 19 Q Does Beecher know the reasons why the 20 switch? 21 A I don't know particularly related to the 22 legal costs, but I understand from J.P. that upon 23 payment of the premium there were no funds to be 24 able to pay any business costs or legal costs or 25 whatever within the insureds so those costs would</p> |

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| <p style="text-align: right;">169</p> <p>1 be borne by Sentinel under this own costs</p> <p>2 provision.</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>5 A Correct.</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>14 A I do.</p> <p>15 Q Do you recall we walked through the</p> <p>16 schedule?</p> <p>17 A I do.</p> <p>18 Q One of them is not a defendant, right?</p> <p>19 A Correct.</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>23 A I don't know.</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>5 A That is what it would appear.</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>9 A I don't know.</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>17 A That is.</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>22 A Correct.</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>4 A As Pete Kranz was copied on this we would</p> <p>5 have been aware.</p> <p>6 Q Any knowledge about why the change from 80</p> <p>7 to 120?</p> <p>8 A I do not know.</p> <p>9 Q Or from 20 to 30 million on the premium?</p> <p>10 A I do not know.</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>14 A Correct.</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>22 A An exclusion is a clause that identifies</p> <p>23 scenarios that would not be covered under that</p> <p>24 policy.</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>7 A This does not look familiar to me.</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>22 A No.</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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| <p style="text-align: right;">173</p> <p>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</p> | <p style="text-align: right;">175</p> <p>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</p> |
| <p style="text-align: right;">174</p> <p>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?</p> | <p style="text-align: right;">176</p> <p>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.</p> |

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1 (Recess taken.)
 2 THE VIDEOGRAPHER: Here begins Disk No. 4
 3 in the deposition of Thomas Adamczak, we are back
 4 on the record at 2:17.
 5 (Document marked Exhibit 131 for
 6 identification.)
 7 BY MR. BURT:
 8 Q Mr. Adamczak, showing you what's been
 9 marked as Exhibit 131 with the Bates BC
 10 SEN0000046128. Go ahead and take a look at that
 11 and let me when you are ready.
 12 **A I am ready.**
 13 Q This is an e-mail to you David A. Roberts
 14 at Crowe Horwath on May 23, 2017, is that right?
 15 **A Correct.**
 16 Q Who is David Roberts?
 17 **A David Roberts is a partner in an audit**
 18 **firm that we typically work with.**
 19 Q And is that from -- you referred to them
 20 as Crowe?
 21 **A Crowe Horwath, shortened their name to**
 22 **Crowe.**
 23 Q Are they located in Burlington?
 24 **A They have an office in Burlington.**
 25 Q I saw their building over there.

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1 And did he work on the Sentinel auditing
 2 for --
 3 **A No.**
 4 Q He did not?
 5 **A No.**
 6 Q Why did you e-mail him at this time?
 7 **A Just to touch base with him regarding**
 8 **investment valuation if there were any**
 9 **recommendations that they might have for firms**
 10 **that we could reach out to engage.**
 11 Q So here you write, "Dave, do you have a
 12 few minutes to discuss an item on Sentinel."
 13 Did he know who Sentinel was?
 14 **A I think we bounced some things off him**
 15 **before.**
 16 Q It says, "It is not an audit issue yet,
 17 but I would like to pick your brain so it doesn't
 18 become an issue after next year. I have attached
 19 a list of investments that Sentinel is looking to
 20 receive as premium payment on the new after the
 21 event coverage they will begin writing shortly.
 22 Since these investments are not readily marketable
 23 my concern is with valuation. Pete indicated you
 24 might be able to provide suggestions on firms we
 25 can engage to assist in valuing these with the

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1 expectation it will limit issues/concerns with the
 2 future audit."
 3 And that -- you ended up hiring Valuation
 4 -- what was the name?
 5 **A Valuation Research Corporation.**
 6 Q Did David Roberts recommend them?
 7 **A I think that might have been a**
 8 **recommendation coming from him.**
 9 Q Now, in the May -- on May 23, 2017 you
 10 knew that Sentinel was looking to receive these
 11 assets as premium on an ATE policy, right?
 12 **A We were provided with a list of assets**
 13 **from J.P. I do not know if these were the assets**
 14 **that ultimately came in or the value of them**
 15 **coming in.**
 16 Q So that was -- you answered my next
 17 question, which was where did this come from, it
 18 was from J.P. Sevilla.
 19 MR. WELDON: Objection.
 20 BY MR. BURT:
 21 Q Is that right?
 22 **A That is correct.**
 23 Q Although Beecher was holding books and
 24 records for Sentinel at the time as its captive
 25 insurance manager, these were not at the time part

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1 of anything that Sentinel owned, is that right?
 2 **A Correct.**
 3 Q How did you know that they were not
 4 readily marketable at the time?
 5 **A Based on discussions with J.P.**
 6 Q When did J.P. first raise this with you?
 7 **A When they were talking about writing the**
 8 **policy. I believe it was always known or conveyed**
 9 **to us from J.P. that the investments would -- that**
 10 **they did not have enough cash to pay and the**
 11 **premium would come in the form of assets, on**
 12 **liquid assets.**
 13 Q Is that common with insurance policies
 14 that premiums come not in cash but through other
 15 types of assets?
 16 **A It can happen. It doesn't happen**
 17 **frequently but it can happen.**
 18 Q How about with the types of assets that
 19 were ultimately transferred here, is that a unique
 20 situation?
 21 **A This was a unique situation.**
 22 Q You had never seen this type of transfer
 23 before?
 24 **A I have not.**
 25 Q And how many different insurance policies

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| <p style="text-align: right;">181</p> <p>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</p> | <p style="text-align: right;">183</p> <p>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</p> |
| <p style="text-align: right;">182</p> <p>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</p> | <p style="text-align: right;">184</p> <p>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.</p> |

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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 A Correct. 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 A I do. 21 Q And do you know whose signature that is? 22 A I do not. 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 A Yes. 4 Q And it was aware then beginning in 5 November of 2017 that it also represented the 6 insureds, is that right? 7 A Yes. 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 A This is for the broker brokerage deal on 12 the after the event insurance policy, so this is 13 separate, separate work that was performed here 14 from the captive management. 15 Q So what was the broker deal? I am not 16 familiar with that. 17 A So it is not uncommon for Beecher Carlson 18 to serve in a brokerage capacity as well as 19 captive management capacity with a number of our 20 clients. We have a brokerage arm that handles a 21 lot of policy issuance and that's separate from 22 the captive management. 23 Q So here it was brokering the policy for 24 the insureds on the ATE policy? 25 A That's what it would look like.</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 A Yes okay, yes. 6 Q So looking at those Sentinel Advisory 7 Committee discussions, do you see Mr. Ellington's 8 signature there? 9 A Yes, I do. 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 A I don't know. I didn't recognize the 25 signature, so.</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 A Once the policy is issued there is no more 6 additional work that would need to be done. 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 A The policy generally defines how the claim 12 should be filed. 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 A I don't know. 20 Q Who would know that at Beecher, who is 21 dealing with this particular aspect of the 22 Beecher's work? 23 A I am not sure. 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 style="text-align: right;">189</p> <p>1 A There is, and I don't know if they were 2 the ones that had put this together or who was 3 involved with it. 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 A I don't know that there was any additional 11 work that was done after the policy was issued. 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 A I don't -- maybe. I don't know. 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 A And you are looking just to confirm 22 whether there was any additional work that was 23 done? 24 MR. WELDON: Under the broker agreement. 25 MR. BURT: Under this.</p> | <p style="text-align: right;">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 A I am. 16 Q And what is your understanding of what it 17 is? 18 A This was the document that controlled the 19 assets that were transferred as premium under the 20 ATE policy. 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 A That is correct.</p> |
| <p style="text-align: right;">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 A I don't remember how that came up. 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 A I am not aware of any conflicts, and as I 20 explained this is not uncommon to have the same 21 entity represent them from a captive management 22 standpoint and a brokerage standpoint. 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 style="text-align: right;">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 A Correct. 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 A Yes. 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 A None. 20 Q Who made those decisions? 21 MR. WELDON: Objection. 22 BY MR. BURT: 23 Q If you know. 24 A This was provided by J.P. as part of the 25 assets that would be transferred in.</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 A Sometime in -- sometime after the policy 4 was incepted, so after August 1. 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 A Yes. 10 Q We are not talking about the movie or 11 anything. 12 A No. 13 Q So the beginning of the policy. So after 14 the policy is signed Beecher is provided the 15 Schedule A assets? 16 A Correct. 17 Q Do you recall whether the purchase 18 agreement was signed after the policy was 19 incepted? 20 A I believe it was, but I don't fully 21 recall. 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 A I don't know. 6 Q So he was just the point of contact. 7 A He was the point of contact. 8 Q And whether it related to Highland or 9 whether it related to Sentinel J.P. was the point 10 of contact? 11 A He was the point of contact. 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 A Correct. 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 A I am. 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 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. 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 A No. I said the assets were not registered 3 in Sentinel's name. 4 Q Were they registered in someone else's 5 name? 6 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. 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 A All of the assets were intended to go to 17 Sentinel. 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 A Some of them were not registered in 24 Sentinel's name. 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 A I don't believe it was.</p> <p>8 Q Do you know who owned it prior to</p> <p>9 Sentinel?</p> <p>10 A According to the schedule Highland CDO</p> <p>11 Opportunity Master Fund, LP.</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 A That is correct.</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 A I believe they were.</p> <p>22 Q Are we going through these asset by asset?</p> <p>23 A Yes.</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 A The CIBC investment custody account. So</p> <p>3 anything that was in that custody account of the</p> <p>4 assets that were transferred in that made their</p> <p>5 way into Sentinel would be in that custody</p> <p>6 account. They couldn't hold anything in that</p> <p>7 custody account that was not in Sentinel's name.</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 A There were no additional services, it was</p> <p>25 just the work that was initially done on the ATE</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 A It was probably an Excel schedule and it</p> <p>24 would also be identified by looking at what's held</p> <p>25 in the custody account.</p> | <p style="text-align: right;">200</p> <p>1 policy.</p> <p>2 Q So in brokering the ATE policy?</p> <p>3 A Correct.</p> <p>4 Q That was it, nothing further.</p> <p>5 A Correct.</p> <p>6 Q So the \$50,000 fee, was that a one-time</p> <p>7 payment to Beecher Carlson?</p> <p>8 A One-time.</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 A It's part of the process of pulling the</p> <p>12 policy together, finalizing it, I guess. I am not</p> <p>13 familiar with that side of the operations.</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 A Yes.</p> <p>18 Q So how does that line up, can you just</p> <p>19 explain that?</p> <p>20 A I think there was a delay in filing this</p> <p>21 document. I think it was something that came in</p> <p>22 after the fact to complete the files.</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 A Yes.</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 A I wasn't a part of that work so I don't</p> <p>6 know how much or what specifically was done.</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 A I don't know, but that's my understanding.</p> <p>19 Q Do you know what bank Highland CDO</p> <p>20 Opportunity Master Fund, LP was using?</p> <p>21 A I don't necessarily know that there is a</p> <p>22 custody account that these investments would sit</p> <p>23 in.</p> <p>24 Q Where would they be located?</p> <p>25 A I don't know.</p> | <p style="text-align: right;">203</p> <p>1 records, the interim financial statement records.</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 A Correct.</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 A This is the investment custody account.</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 A Correct.</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 A No.</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 A No.</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 A We wanted to keep track of each investment</p> <p>20 and in particular which ones needed to have the</p> <p>21 re-registration done.</p> <p>22 Q And would that be reflected in the audited</p> <p>23 financial statements, for example?</p> <p>24 A The audited financial statements, no. But</p> <p>25 it would have been in our financial statement</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 A I am talking about the investments, each</p> <p>6 particular investment though.</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 A Yes.</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 A Yes.</p> <p>24 Q How does Sentinel get those distributions?</p> <p>25 A I am not 100% sure on the process, but it</p> |

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| <p style="text-align: right;">205</p> <p>1 involves a letter that the directors send to State</p> <p>2 Street or whoever the custodian was that was</p> <p>3 holding those assets or funds.</p> <p>4 Q And that letter says essentially send the</p> <p>5 distributions to Sentinel?</p> <p>6 A I believe, yes.</p> <p>7 Q Even though they are not registered in</p> <p>8 Sentinel's name?</p> <p>9 A Correct.</p> <p>10 If they were registered in Sentinel's name</p> <p>11 the funds would flow automatically.</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>15 A I do not know.</p> <p>16 Q Do you know what the originating bank of</p> <p>17 those transfers is that transfers over?</p> <p>18 A I do not know.</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>23 A I believe so.</p> <p>24 Q And are those distributions ongoing?</p> <p>25 A With respect to the CLO investments they</p> | <p style="text-align: right;">207</p> <p>1 with the trustee or wherever it is and Sentinel</p> <p>2 has to go out and grab that through this process.</p> <p>3 Q Of sending a letter?</p> <p>4 A Of sending a letter signed by somebody on</p> <p>5 behalf of Sentinel. I am not part of that</p> <p>6 process.</p> <p>7 Q Does Beecher receive copies of those</p> <p>8 letters?</p> <p>9 A I have seen copies of it in the past.</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>14 A That has not been done since before Matt</p> <p>15 resigned.</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>20 A That is correct.</p> <p>21 Q So all of that money is sitting with the</p> <p>22 CLO trustee or whomever?</p> <p>23 A Correct.</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>1 will typically pay out a distribution quarterly.</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>17 A That is true.</p> <p>18 Q But all of the CLOs will be distributing</p> <p>19 on May 1?</p> <p>20 A Typically the distributions occur on</p> <p>21 May 1.</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>25 A It doesn't come to Sentinel, it sits out</p> | <p style="text-align: right;">208</p> <p>1 what account was used?</p> <p>2 A No.</p> <p>3 Q That is beyond Beecher's knowledge?</p> <p>4 A That is correct.</p> <p>5 Q Do you know who would know that?</p> <p>6 A I do not know.</p> <p>7 Q Would the directors know that?</p> <p>8 A They may.</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>20 A Okay, sorry.</p> <p>21 Q No, that's fine.</p> <p>22 A What was the question?</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>1 A Correct.</p> <p>2 Q And was that part of their onboarding</p> <p>3 process to help them come up to speed?</p> <p>4 A I believe so.</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>9 A Yes.</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>21 A I do.</p> <p>22 Q You are familiar with these financial</p> <p>23 statements, right?</p> <p>24 A Correct.</p> <p>25 Q This is really the core of what Beecher</p> | <p style="text-align: right;">211</p> <p>1 A Correct.</p> <p>2 Q Do you know who made the decision to pay</p> <p>3 that dividend?</p> <p>4 A The directors of Sentinel.</p> <p>5 Q Were there outside directors involved in</p> <p>6 that decision at the time?</p> <p>7 A All of the directors resolved to pay the</p> <p>8 dividend.</p> <p>9 Q Do you know why?</p> <p>10 A I don't know why.</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>15 A Correct.</p> <p>16 Q So SeaOne increased almost by 50 million</p> <p>17 in value?</p> <p>18 A That's correct.</p> <p>19 Q And who provided -- was that Valuation</p> <p>20 Resource Group or Research Group who did that?</p> <p>21 A Valuation Research Corp., yes.</p> <p>22 Q And did they do that valuation under</p> <p>23 Beecher's direction?</p> <p>24 A It was under the direction of the</p> <p>25 directors.</p> |
| <p style="text-align: right;">210</p> <p>1 does for Sentinel?</p> <p>2 A Correct.</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>6 A There would have been a dividend payment</p> <p>7 of 6.4 million.</p> <p>8 Q And where do we see that in the financial</p> <p>9 statements?</p> <p>10 A I am seeing that on the cashflow Page 3 of</p> <p>11 the document.</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>17 A Correct.</p> <p>18 Q What was the nature of that dividend?</p> <p>19 A Dividend up to the parent company of</p> <p>20 Sentinel.</p> <p>21 Q Was it Mainspring and Montage that it was</p> <p>22 paid to on the org chart?</p> <p>23 A I believe so.</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>3 A The investment had been carried at</p> <p>4 historical cost and the appreciation over that</p> <p>5 time resulted in the valuation. This was the</p> <p>6 first valuation that was done on it.</p> <p>7 Q Is it true that SeaOne is an ongoing</p> <p>8 concern with active business going and growing?</p> <p>9 A That's my understanding.</p> <p>10 Q Based on the valuation?</p> <p>11 A Yes.</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>15 A No.</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>19 A Yes.</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>23 A Correct.</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 A I want to say it is still around 30 2 million. 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 A There is a column referencing acquisition 18 date, that would have been the date that Sentinel 19 acquired those assets, so everything reflecting 20 8/11/2017 was part of the ATE premium that was 21 paid in. 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 had from the beginning and when they were being 2 registered into Sentinel's name two of the 3 original share certificates were lost so were 4 unable to be re-registered and somebody from 5 Highland needed to assist with that process and it 6 hasn't happened yet. 7 Q So I guess that was my next question. 8 Would those -- did those transfers 9 originate from Highland entities? 10 A I don't know where they came from. 11 Q But you said someone from Highland would 12 have to re-register? 13 A Someone from Highland needed to help with 14 the process because I believe they were 15 investments that they were familiar with and would 16 have the means to be able to obtain original 17 certificates so that they could register them in 18 Sentinel's name. 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 A I believe that is outside Beecher's 24 knowledge. 25 Q If you could just confirm on a break the</p> |
| <p style="text-align: right;">214</p> <p>1 that right? 2 A Correct. 3 Q Were those successfully transferred and 4 registered in Sentinel's name? 5 A Those are -- I believe two of those are in 6 Sentinel's name and one is not. 7 Q Do you know which two are? 8 A I don't know. There is another one down 9 below with a 1/7/2014 date. Two of those 10 investments are in Sentinel's name and two of them 11 are not. 12 Q Is that something that you could easily 13 confirm on a break? 14 A What is it you need me to confirm? 15 Q Which ones are registered in Sentinel's 16 names and which aren't. 17 A I can. 18 Q That would be great. 19 The Valhalla CLO Limited at the bottom, 20 was that registered to Sentinel successfully? 21 A I don't believe so. 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 A Yes. Those were investments that Sentinel</p> | <p style="text-align: right;">216</p> <p>1 two that were registered and the two that were 2 not. 3 A Yes. 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 A I don't believe so. 11 Q How about the two Southforks? 12 A I believe those were. 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 A It is our understanding that it can be 22 paid. 23 Q Has yet to be paid on? 24 A It has not been paid off, but our 25 understanding is that it is collectable.</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 A Uh-huh. 12 Q Do you see that? 13 A Yes. 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 A Lisa worked for the audit firm of 25 Sentinel, Crowe.</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 A I don't know. 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 A That is correct. 22 Q What is your understanding of the reasons 23 for the endorsements? 24 A The first was to adjust the premium to 25 reflect the fair value of assets received.</p> |
| <p style="text-align: right;">218</p> <p>1 Q So she was a colleague of Allison's? 2 A Correct. 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 A Correct. 7 Q Do you recall what source document she was 8 referring to? 9 A There were some reports detailing the 10 underlying loans that were part of the CLOs, so 11 any details on outstanding balances, defaulted 12 balances, anything that was maybe payment 13 schedules, whatever they needed to support their 14 valuation. 15 Q And when did VRC perform the valuation of 16 the CLOs? 17 A After December 31, 2017, that was for the 18 12/31 valuations. 19 Q Do you recall when that valuation came in, 20 was it springtime, 2018? 21 A It was sometime between spring to -- yes, 22 sometime in the spring. 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 And the second was to adjust the limits in 2 premium to segregate the risk mitigation fee that 3 was funded, pre-funded. 4 Q Why was it necessary to adjust the 5 premium? 6 A For the fair value of the assets? 7 Q Right. Endorsement number one. 8 A That was a suggestion by the auditors. 9 Q Did they provide a rationale for that 10 suggestion? 11 A They indicated that without adjusting the 12 premium to match it would require additional 13 disclosures in the audited financial statements. 14 Q And was that a problem to provide 15 additional disclosures? 16 A It was going to be time consuming and take 17 away from the content of the financial statements. 18 Q So the auditor had a suggestion to do 19 that. Did they provide that suggestion to you? 20 A They provided it to me. We had a 21 discussion with the auditors and the directors and 22 it was ultimately decided to amend the policy to 23 reflect the actual fair value of the assets 24 received. 25 Q Which directors were involved in that?</p> |

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| <p style="text-align: right;">221</p> <p>1 A This was the two independent directors.</p> <p>2 This is prior to Matt DiOrio.</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>6 A This is the first situation like this that</p> <p>7 we have seen where there were assets that were</p> <p>8 taken in as opposed to cash.</p> <p>9 Q And have you ever seen anything like it</p> <p>10 since?</p> <p>11 A I have not.</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>17 A That is why we chose to hire the</p> <p>18 independent valuation consultants to help</p> <p>19 determine and value.</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;">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>12 A This?</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>19 A Sure.</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;">223</p> <p>1 recall this sheet.</p> <p>2 A Okay.</p> <p>3 Q Do you recall this sheet?</p> <p>4 A I don't.</p> <p>5 Q Do you have any reason to dispute you did</p> <p>6 not create it?</p> <p>7 A No.</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>12 A Sure.</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>17 A The person responsible for reviewing the</p> <p>18 financial statements.</p> <p>19 Q And then responsibilities listed is Alli?</p> <p>20 A That would be the person preparing</p> <p>21 financial statements.</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;">224</p> <p>1 Do you recall that at the time?</p> <p>2 A That sounds like something I would put,</p> <p>3 yes.</p> <p>4 Q And why would you have put that regarding</p> <p>5 Sentinel's investments?</p> <p>6 A At the time this is prior to having any of</p> <p>7 the valuations so we were still figuring out how</p> <p>8 to handle those investments.</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>17 A I believe so.</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>22 A Correct.</p> <p>23 Q No real comparison to what Sentinel is</p> <p>24 doing?</p> <p>25 A Correct.</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 A Yes.</p> <p>4 Q As far as putting the financials together?</p> <p>5 A Yes.</p> <p>6 Q Valuation Research Group, Corp., are they</p> <p>7 completely independent from Sentinel and Highland?</p> <p>8 A Yes.</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 A Sure.</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 A I believe on the initial recording of the</p> <p>4 policy the premium was assumed to be the stated</p> <p>5 25 million so that's what we recorded as premium</p> <p>6 collected, and should the investments come in</p> <p>7 lower we would have had a loss, should they come</p> <p>8 in higher we would have had a gain, so that was</p> <p>9 just the recording of the fair value of the</p> <p>10 assets.</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 A Correct.</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 A Correct.</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 A We had VRC prepare valuations on each of</p> <p>16 the securities that they could and those</p> <p>17 valuations were used in the financial statements.</p> <p>18 Q And were they listed as assets then?</p> <p>19 A They were listed as assets.</p> <p>20 Q Do you know when those VRC valuations were</p> <p>21 done?</p> <p>22 A They were -- they would have been done</p> <p>23 sometime at or around year-end and after year-end</p> <p>24 for the 12/31 valuations.</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 A That was how we initially recorded them</p> <p>3 and it was at the suggestion of the auditors that</p> <p>4 be reflected as premium.</p> <p>5 Q And where did you originally record them,</p> <p>6 where in the financial statements?</p> <p>7 A As an investment gain.</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 A At the time, that's correct.</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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| <p style="text-align: right;">229</p> <p>1 A Not true.</p> <p>2 Q It is not, okay. How is that wrong?</p> <p>3 A So there is -- with the recording of a</p> <p>4 premium on a policy you are also going to have an</p> <p>5 offsetting loss to go along with it, and that loss</p> <p>6 is reflective in how the actuarial analysis plays</p> <p>7 out.</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 A Correct.</p> <p>12 Q So it's pre-booking the risk, in other</p> <p>13 words, for the potential loss?</p> <p>14 A Yes.</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 A The 40 million would have reflected at</p> <p>19 that time the net assets that were received.</p> <p>20 Q Inclusive of cash?</p> <p>21 A Inclusive of cash.</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> | <p style="text-align: right;">231</p> <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 A Whether it was recorded as a gain or</p> <p>22 additional premium wouldn't have changed the fact</p> <p>23 that there wasn't going to be premium going back</p> <p>24 to the insureds.</p> <p>25 Q Is that the dispositive point for why you</p> |
| <p style="text-align: right;">230</p> <p>1 there would have been for just the 25 million</p> <p>2 cash?</p> <p>3 A We were talking about an investment gain,</p> <p>4 we were talking about premium at that time, so.</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 A So the policy although stated that the</p> <p>10 premium was 25 million the intention with the</p> <p>11 transaction since there was no -- there wasn't</p> <p>12 sufficient cash to be able to pay the premium all</p> <p>13 of those assets were to go into Sentinel.</p> <p>14 Should there be an appreciation in value</p> <p>15 or a found improvement in the value of the assets</p> <p>16 received there would be no return of premium above</p> <p>17 the 25 million to the insureds.</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> | <p style="text-align: right;">232</p> <p>1 felt like it needed to be reported as premium?</p> <p>2 A We had the discussion with the auditors</p> <p>3 and then with the directors and the directors</p> <p>4 chose to have the policy amended.</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 A Correct.</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 A Correct.</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 A That would be the loss reserves per the</p> <p>25 actuarial analysis.</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 It's not necessarily a CIMA requirement,</p> <p>3 but it was a requirement per the investment policy</p> <p>4 that Sentinel had sought approval from CIMA. The</p> <p>5 investment policy stated that at any time cash</p> <p>6 reserves would be held at least equal to the loss</p> <p>7 reserves.</p> <p>8 Q And the loss reserves were determined how?</p> <p>9 A Actuarially as I stated previously.</p> <p>10 Q Was that Jason Stubbs who was determining</p> <p>11 that?</p> <p>12 A That's correct.</p> <p>13 Q Was that reflected in his actuarial</p> <p>14 analysis that we looked at earlier?</p> <p>15 A That was the pricing study.</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 Correct. I believe I said that earlier as</p> <p>19 well.</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 So at the time that the policy was written</p> <p>2 and we were working on accounting for it we had</p> <p>3 discussions with J.P. and Isaac regarding the</p> <p>4 expected -- what was the term -- the expected risk</p> <p>5 period, and it was determined based on the</p> <p>6 schedule that was estimated that it would be a</p> <p>7 two-year period so the premium was being earned</p> <p>8 over that two-year period. And this was</p> <p>9 indicating if there was a delay in that should we</p> <p>10 extend the policy period and I said that, no, that</p> <p>11 wasn't appropriate to do that.</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 That if there was manipulation of the</p> <p>17 policy term to extend the risk period that it</p> <p>18 could cause concerns of whether it being an arm's</p> <p>19 length transaction.</p> <p>20 Q At like the CIMA level?</p> <p>21 A At the CIMA level, yes.</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 CIMA requirements state that capital has</p> <p>7 to be maintained at a certain level for each</p> <p>8 captive, depending on the class of insurance</p> <p>9 licensee.</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 Correct.</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 term 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 I can ask, but I don't know that it will</p> <p>20 matter.</p> <p>21 Q Well, if you could ask that would be</p> <p>22 great, yes.</p> <p>23 A Okay.</p> <p>24 Q So let's go to the endorsement. Let's go</p> <p>25 to the end.</p> |

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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 **A I think it was signed in June, 2018.**
 11 Q Around the time of your e-mails --
 12 **A Yes.**
 13 Q -- that we just looked at?
 14 **A Yes.**
 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?

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1 **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.**
 6 Q So that investment alone was worth
 7 28 million?
 8 **A Yes.**
 9 Q What was that investment?
 10 **A It was the Highland Multi-Strategy Credit**
 11 **Fund.**
 12 Q What form was that investment, was that a
 13 CLO, was that a promissory note?
 14 **A That is a limited partnership that**
 15 **Highland managed.**
 16 Q And Sentinel obtained the interest in?
 17 **A Correct.**
 18 Q So when you wrote that e-mail about the
 19 40 million --
 20 **A That was prior to.**
 21 Q Prior to that, neither Beecher nor the
 22 auditor fully understood or was able to value that
 23 multi-strat interest?
 24 **A Correct.**
 25 Q Did the valuation company did they perform

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1 the valuation on multi-strat?
 2 **A No.**
 3 Q How did that go, how is that valuation
 4 performed?
 5 **A That fund is audited and carries a net**
 6 **asset value so it is easily determined.**
 7 Q Whatever portion of ownership interest
 8 Sentinel has, is that portion of the assets of the
 9 fund?
 10 **A Yes.**
 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 **A Multi-strat, yes.**
 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 **A I am not aware if that was presented to**
 22 **the insureds.**
 23 Q Because the coverage amount stayed the
 24 same, the 100 million --
 25 **A Correct.**

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1 Q -- in Endorsement 1.
 2 **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.**
 6 Q And what's the significance of that, the
 7 risk on both sides?
 8 **A It's a risk that they were -- that**
 9 **Sentinel was taking when they accepted a basket of**
 10 **unmarketable securities as premium --**
 11 Q Okay.
 12 **A -- with only 11 million being in cash.**
 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 **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.**
 21 Q But the coverage would be 100,000,000
 22 Either Way?
 23 **A Correct.**
 24 Q And who was that understanding shared by?
 25 **A That was based on discussions with J.P.**

Conducted on April 12, 2022

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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 A I don't recall how their reaction was.</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 A Yes.</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 A Yes.</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 A Correct.</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 A I do.</p> <p>6 Q And what was Beecher's reaction to that?</p> <p>7 A Sorry, what was the question now?</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 A Beecher discussed with the directors and</p> <p>14 formulated the response here under management's</p> <p>15 comments to explain the process as far as how the</p> <p>16 premium was determined and the assets coming in.</p> <p>17 Q And did you help draft that?</p> <p>18 A I have reviewed and helped edit the</p> <p>19 document.</p> <p>20 Q Do you know who was the primary drafter?</p> <p>21 A I think it was a combination of the</p> <p>22 directors and Beecher.</p> <p>23 Q Which directors in particular?</p> <p>24 A All of them.</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 A I did.</p> <p>4 Q Did they play a role in developing these</p> <p>5 responses?</p> <p>6 A I believe Matt did.</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 A That is how it would appear, yes.</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 A Within a short period of time. 20 Q Like what does short mean in this context? 21 A A week, maybe two weeks. 22 Q And describe what the problem was that was 23 trying to be addressed in Endorsement No. 2. 24 A The risk mitigation fees that had been 25 paid to this point under the view of the auditors</p> | 247 | <p>1 the loss? 2 A Yes. 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 A Correct. 15 Q Was that really just an accounting 16 transaction that happened or was money actually 17 moved in any accounts? 18 A There was no money being moved there, that 19 was just the recording of a liability for that 20 pre-funded balance. 21 Q And that -- so that 9 million showed up as 22 a liability on Sentinel's books? 23 A Correct. 24 MR. BURT: So let's do Tab 35. 25</p> |
| 246 | <p>1 indicated that a claim had occurred and if a claim 2 had occurred the liability would need to be 3 recorded upfront in its full liability of the 4 actuarially-determined ultimate loss. 5 Q Rather than spread out? 6 A Rather than earning the premium out over 7 the entire risk period and then accruing that 8 liability for the reserves over that risk period. 9 That would have posed a problem with the 10 investment policy which stipulated that cash had 11 to be maintained at or equal to the loss reserves, 12 and that would have run afoul with CIMA. 13 Q So there wouldn't have been enough cash, 14 in other words, in the account? 15 A Correct. 16 Q If a claim had been made on the policy? 17 A Correct. 18 Q That would have immediately brought from 19 an accounting perspective both the premium and 20 loss the entire amounts immediately? 21 A Correct. 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 A I don't know that she was a director at 18 that point in time, but she worked for Maples and 19 interacted with the directors that were there. 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 A I do not. 25 Q And I realize there is not a lot of</p> |

Conducted on April 12, 2022

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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. 13 A That's correct. 14 Q If you file a claim for accounting reasons 15 you have got to record the premium and the full 16 actuarial ultimate. 17 A Correct. 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? 21 A Correct. 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? 25 A If there are defense costs there is a</p> | <p style="text-align: right;">251</p> <p>1 are incurred during the conduct of legal action on 2 behalf of the insured. 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? 7 A That is the only one that I understand of 8 the policy. 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>1 claim that has been made. 2 Q And is that the way that it typically 3 works? 4 A Yes. 5 Q But here with these defense costs there 6 was -- claims were not being made, right, on the 7 policy? 8 A Correct. 9 Q Have you ever done it this way in any 10 other policy? 11 A I think the issue here is that these were 12 ongoing expenses that were being paid under that 13 own cost clause in the policy or the risk 14 mitigation fees. 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? 18 A I do. 19 Q Can you direct me to the provision you are 20 thinking of? 21 A 9.1.7. 22 Q Okay. 23 A Own costs means all costs and expenses of 24 the representative and other service providers in 25 the normal course, including related tax, which</p> | <p style="text-align: right;">252</p> <p>1 BY MR. BURT: 2 Q You can answer. 3 A So the discussions that we had with J.P. 4 under the understanding that all assets were being 5 paid as premium to Sentinel the insureds had no 6 means of being able to pay normal business costs 7 going forward, so they would be covered under the 8 own cost clause which we had broken out as the 9 pre-funded risk mitigation fees. 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? 15 A That is correct. 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? 20 A These were classified as risk mitigation 21 fees which were differentiated from defense 22 claims, defense claims fees. 23 Q Right. 24 But ultimately they were to pay for the 25 defense of the case, right, that's what these</p> |

Conducted on April 12, 2022

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| 253 | <p>1 were?</p> <p>2 A They were -- sure.</p> <p>3 MR. WELDON: Objection.</p> <p>4 THE WITNESS: But it's not --</p> <p>5 MR. BURT: Chris, you can laugh at this,</p> <p>6 it never happened in any other policy, you do an</p> <p>7 accounting trick so you don't have to make a</p> <p>8 claim. I am trying to understand this. I don't</p> <p>9 know what is funny about it, Chris.</p> <p>10 MR. WELDON: Well, I think you</p> <p>11 misunderstand what he is saying. There was an</p> <p>12 accounting auditor that came in and looked at the</p> <p>13 policy. His testimony is pretty clear. And</p> <p>14 auditor came in and said he had to adjust it</p> <p>15 because this isn't going to be covered under the</p> <p>16 policy.</p> <p>17 MR. BURT: That was Endorsement 1, I</p> <p>18 haven't heard anything about an auditor on</p> <p>19 Endorsement 2.</p> <p>20 THE WITNESS: This was all raised by the</p> <p>21 auditors and in terms of how the loss reserves</p> <p>22 would end up needing to be recorded on Sentinel's</p> <p>23 books as of year-end if there was a claim and it</p> <p>24 was made clear to us that the triggering of the</p> <p>25 claim would be the judgment against the insureds.</p> | 255 | <p>1 of you?</p> <p>2 A I do.</p> <p>3 Q Terrific.</p> <p>4 I think we have gone through the first</p> <p>5 three, Aberdeen was not registered at Sentinel and</p> <p>6 the two Southforks were, is that right?</p> <p>7 A Correct.</p> <p>8 Q The next is another Aberdeen LN FDG</p> <p>9 Limited PFD.</p> <p>10 First of all, do you know what difference</p> <p>11 between that one is and the first Aberdeen?</p> <p>12 A I don't.</p> <p>13 Q Was this investment transferred to</p> <p>14 Sentinel?</p> <p>15 A It is not in Sentinel's name.</p> <p>16 Q The next one is GSC ABS CDO 2006-4U LT CUM</p> <p>17 PFD 144A. Is that registered in Sentinel's name?</p> <p>18 A I don't believe it is.</p> <p>19 Q And so to the best of Beecher's knowledge</p> <p>20 if they were not transferred and registered at --</p> <p>21 to the best of Beecher's knowledge, if not</p> <p>22 registered at Sentinel would they still be at</p> <p>23 Highland's CDO Opportunity Master Fund, LP?</p> <p>24 MR. WELDON: Asked and answered. He</p> <p>25 already said he doesn't know where they are before</p> |
| 254 | <p>1 BY MR. BURT:</p> <p>2 Q Just so we are absolutely clear, yes or</p> <p>3 no, this has never been done on any other policy</p> <p>4 you have worked on, correct?</p> <p>5 MR. WELDON: Objection.</p> <p>6 THE WITNESS: I have not seen it done</p> <p>7 before.</p> <p>8 MR. BURT: Why don't we go ahead and take</p> <p>9 a break.</p> <p>10 THE VIDEOGRAPHER: This marks the end of</p> <p>11 Disk No. 4 in the deposition of Thomas Adamczak,</p> <p>12 we are off the record at 4:16.</p> <p>13 (Recess taken.)</p> <p>14 THE VIDEOGRAPHER: Here begins Disk No. 5</p> <p>15 in the deposition of Thomas Adamczak, we are back</p> <p>16 on the record at 4:41.</p> <p>17 BY MR. BURT:</p> <p>18 Q Mr. Adamczak, we are going to take a</p> <p>19 little detour and go back to Schedule A of the</p> <p>20 asset purchase agreement to walk through quickly</p> <p>21 the various investment instruments just to get for</p> <p>22 the record whether they were transferred and</p> <p>23 registered at Sentinel.</p> <p>24 A Okay.</p> <p>25 Q Do you have a copy of Schedule A in front</p> | 256 | <p>1 they came.</p> <p>2 BY MR. BURT:</p> <p>3 Q You can answer.</p> <p>4 A That's correct.</p> <p>5 Q What your counsel testified to?</p> <p>6 MR. WELDON: I wasn't testifying, what his</p> <p>7 answer, his answer was --</p> <p>8 THE WITNESS: I don't know where they are</p> <p>9 held/custodied.</p> <p>10 BY MR. BURT:</p> <p>11 Q The next one is Greenbriar CLO LTD PFD</p> <p>12 144A.</p> <p>13 A Sorry, which one, the Greenbriar?</p> <p>14 Q The Greenbriar CLO LTD PFD 144A.</p> <p>15 A That one was not transferred in.</p> <p>16 Q Next is Highland FINL Partners LP.</p> <p>17 A The 615,733 was.</p> <p>18 Q And below that another Highland FINL</p> <p>19 Partners LP NPV?</p> <p>20 A Was not.</p> <p>21 Q Then we have Longstreet CDO I -- I think</p> <p>22 it is an I LTD PFD 144A.</p> <p>23 A It is not.</p> <p>24 Q Then Nexpoint C COM USD0.001 (POST REV S)?</p> <p>25 A That one was.</p> |

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1 Q Next is PAM CAP FDG LP 0.001MAY13 144A.
 2 A **That one was not.**
 3 Q Then is TOUSA INC 8.0 PFD 144A?
 4 A **This one was not.**
 5 Q Next is Valhalla CLO LTD 0.0 01AUG23 144A?
 6 A **That was not.**
 7 Q Next is Vertical ABS CDO 2 0.0 09MAY46
 8 144A?
 9 A **That was not.**
 10 Q Just so I am clear, when you say it is
 11 not --
 12 A **Not transferred into Sentinel.**
 13 Q At any time, it was never registered in
 14 Sentinel's name?
 15 A **Correct.**
 16 **If I indicate that one was transferred in**
 17 **it is either in Sentinel now or it was transferred**
 18 **in and has since paid out and closed or sold.**
 19 Q Or been moved?
 20 A **Right.**
 21 Q And we will talk in a minute about
 22 Sebastian Clark and assets that were transferred
 23 to Sebastian Clark, I think that is one of the
 24 things you are referring to as far as transferring
 25 out of Sentinel.

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1 A **Yes, but those are back in Sentinel.**
 2 Q I see, okay. We will get to that in a
 3 moment.
 4 Then we have Highland Credit Opportunities
 5 CDO LTD Partnership interest?
 6 A **That is in Sentinel.**
 7 Q Next is Nexpoint Multifamily Capital
 8 Trust?
 9 A **That is.**
 10 Q Then we have Nexpoint Real Estate Strat-Z
 11 Highland Gemini Program (Pollux).
 12 A **I think you just read off two.**
 13 Q Did I? You are right I did.
 14 The next is just Nexpoint Real Estate
 15 Strat-Z.
 16 A **That one is.**
 17 Q Then we get to Highland Gemini Program
 18 (Pollux) Promissory Note - Highland Capital
 19 Management.
 20 A **That one is not -- it is a promissory note**
 21 **so it is not in Sentinel's name, but it had -- I**
 22 **believe it had paid out interest to Sentinel at**
 23 **some point.**
 24 Q Is it still paying interest to Sentinel?
 25 A **I think it is delinquent.**

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1 Q And then underneath that is CAMBR 5X
 2 Floating - 12/2045.
 3 A **That was not.**
 4 Q And then the cash of 7.779 was
 5 transferred, correct?
 6 A **All of the cash was transferred in.**
 7 Q So that would apply to the next cash under
 8 Highland CDO Opportunity Fund Limited, correct?
 9 A **Correct.**
 10 Q Then we get to Highland CDO holdings,
 11 company, the first is HFT REAL EST 3.33867 25NOV5
 12 144A F.
 13 A **That was transferred.**
 14 Q Then is Nexpoint C Com USD0.001 (POST REV
 15 S)?
 16 A **That was transferred in.**
 17 Q Then is Nexpoint R Com USD0.001 'WI'?
 18 A **That was transferred in.**
 19 Q Next is Stratford CL 3.16956 01NOV21 144A
 20 F.
 21 A **That was transferred in.**
 22 Q Then is Highland Park C4.93867 25NOV5 1
 23 FRN?
 24 A **That was not transferred in.**
 25 Q Then is another promissory note CLO Holdco

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1 limited 12/23/2025?
 2 A **Again, the promissory note so it is not**
 3 **being transferred in or re-registered in**
 4 **Sentinel's name, and I believe it had paid**
 5 **interest but is currently delinquent.**
 6 Q And we have cash that was paid.
 7 A **Correct.**
 8 Q And then the last is Capital Management
 9 LP?
 10 A **So that's the dividends receivable from**
 11 **Highland Capital Management, and I believe that**
 12 **was collected.**
 13 Q All right, almost done.
 14 The next is Highland Special Opportunities
 15 Holding Company.
 16 The first listed there is Delphi Corp. DEL
 17 7.125 01May29.
 18 A **I believe that one was transferred in.**
 19 Q And we have Delphi Corp. DEL 6.55 15JUN06
 20 USD?
 21 A **I believe that one was transferred in as**
 22 **well.**
 23 Q Longstreet CDO I LTD PFD 144A?
 24 A **That was not transferred in.**
 25 Q TOUSA INC 8.0 PFD 144A?

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| <p style="text-align: right;">261</p> <p>1 A That was not transferred in.</p> <p>2 Q Vertical ABS CDO 2 0.0 09MAY46 144A?</p> <p>3 A That was not transferred in.</p> <p>4 Q And then cash that was transferred,</p> <p>5 correct?</p> <p>6 A Correct.</p> <p>7 Q And then under Highland Financial Corp.,</p> <p>8 cash that was transferred, correct?</p> <p>9 A Correct.</p> <p>10 Q And then there is Capital Management --</p> <p>11 tax refund receivable at Highland Capital</p> <p>12 Management, LP.</p> <p>13 Was that cash transferred or collected?</p> <p>14 A Only in part. That was a refund from the</p> <p>15 IRS that when the refund came in it was in the</p> <p>16 name of I am assuming Highland Financial Corp.,</p> <p>17 and as such could not be deposited into Sentinel's</p> <p>18 account. So Matt DiOrio had opened an account in</p> <p>19 that name, deposited the check, and then</p> <p>20 transferred the majority of the funds into</p> <p>21 Sentinel's account.</p> <p>22 MR. WELDON: I think you had him testify</p> <p>23 about that check earlier today.</p> <p>24 BY MR. BURT:</p> <p>25 Q Then we have Highland Financial Partners</p> | <p style="text-align: right;">263</p> <p>1 to Mr. Kranz on July 2 you write, "Pete, I just</p> <p>2 spoke to Lisa. We have a potentially bigger issue</p> <p>3 than the investments. Lisa just informed me they</p> <p>4 feel the ATE premium and ultimate loss should all</p> <p>5 be recorded immediately and not earned pro rata</p> <p>6 over a period." So I will stop there.</p> <p>7 Who is the Lisa that you are referring to?</p> <p>8 A This is Lisa, the auditor with Crowe.</p> <p>9 Q And so here Lisa said that the premium and</p> <p>10 ultimate loss should be recorded immediately,</p> <p>11 right?</p> <p>12 A Based on what we previously discussed if</p> <p>13 there was a claim payment it would indicate that</p> <p>14 there is a claim and the claim should be recorded</p> <p>15 all upfront.</p> <p>16 Q And you write here, "The primary reason is</p> <p>17 that the loss event is known and, therefore, they</p> <p>18 feel this more like retroactive coverage, similar</p> <p>19 to an LPT or a novation." What is an LPT or a</p> <p>20 novation?</p> <p>21 A Loss portfolio transfer.</p> <p>22 Q What does novation refer to?</p> <p>23 A A transfer of risk off your balance sheet</p> <p>24 to somebody else.</p> <p>25 Q Lisa even went back to Art and discussed</p> |
| <p style="text-align: right;">262</p> <p>1 LP cash of 29,000 that was transferred, correct?</p> <p>2 A Correct.</p> <p>3 Q Thank you.</p> <p>4 I don't have a question about</p> <p>5 transferring, just a question on actually the</p> <p>6 entity description itself, under the -- in the</p> <p>7 first big box there for Highlands CDO Opportunity</p> <p>8 Master Fund, the third from the bottom, the</p> <p>9 Highland Gemini program that's listed as Pollux,</p> <p>10 do you know whether that actually came from</p> <p>11 Dugaboy?</p> <p>12 A I do not, no.</p> <p>13 MR. BURT: I think I gave the next</p> <p>14 exhibit.</p> <p>15 MR. WELDON: 140.</p> <p>16 MR. BURT: 140.</p> <p>17 (Document marked Exhibit 140 for</p> <p>18 identification.)</p> <p>19 BY MR. BURT:</p> <p>20 Q Showing, Mr. Adamczak, Exhibit 140, which</p> <p>21 is BC SEN0000585041, e-mails between you and</p> <p>22 Mr. Kranz in July of 2018, do you see that?</p> <p>23 A I do.</p> <p>24 Q Now, I am going to back now from our</p> <p>25 detour back to Endorsement No. 2, so your e-mail</p> | <p style="text-align: right;">264</p> <p>1 with him and he agreed. Who is Art?</p> <p>2 A Art is a partner at Crowe.</p> <p>3 Q They then -- you then say "They are pretty</p> <p>4 sure this" -- I think you meant to say is -- "how</p> <p>5 it should be accounted for unless there is</p> <p>6 something/events that the policy covers that</p> <p>7 is/are unknown other than the value of the loss.</p> <p>8 I know this is going to require us to revise/amend</p> <p>9 the investment policy because we do not have</p> <p>10 nearly enough cash as of year-end. Had this been</p> <p>11 known how it would need to be accounted for we</p> <p>12 would have needed all premium in cash (or at least</p> <p>13 the much larger portion). Cash at year-end is</p> <p>14 only \$11.4 million while the ultimate on the ATE</p> <p>15 policy \$33.4 million."</p> <p>16 Ultimate there being the actuarial loss</p> <p>17 that was being --</p> <p>18 A The actuarial determined loss projection.</p> <p>19 Q Is this what triggered what led to</p> <p>20 Endorsement 2?</p> <p>21 A Correct.</p> <p>22 Q So you hadn't yet decided -- the idea to</p> <p>23 do the risk mitigation expense to pull out the</p> <p>24 \$9 million --</p> <p>25 A Correct.</p> |

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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 A Correct.</p> <p>5 Q And you discussed that idea with Lisa?</p> <p>6 A I did.</p> <p>7 Q And she signed off on it?</p> <p>8 A The idea of--</p> <p>9 Q Of doing a pre-funded 9 million risk</p> <p>10 mitigation prepaid litigation balance.</p> <p>11 A We discussed with internally at Beecher</p> <p>12 and with the directors and determined that the</p> <p>13 policy -- sorry, the claim -- the triggering event</p> <p>14 of the claim would be the judgment, an unfavorable</p> <p>15 judgment against the insureds. And because there</p> <p>16 was no judgment there could not be a claim so all</p> <p>17 of these expenses would be risk mitigation outside</p> <p>18 the actual indemnity payment.</p> <p>19 Q So Lisa actually wasn't involved in that</p> <p>20 decision it sounds like?</p> <p>21 A Lisa is an auditor for Sentinel, she</p> <p>22 wouldn't be making any decisions.</p> <p>23 Q Which directors did you discuss that with?</p> <p>24 A This would have been discussed with Andrew</p> <p>25 Dean and Lesley Thompson.</p> | <p style="text-align: right;">266</p> <p>1 Q Was Mr. DiOrio involved in that?</p> <p>2 A Mr. DiOrio had not yet -- actually, I</p> <p>3 don't remember when he joined, if he joined and</p> <p>4 was a director at that point we would have</p> <p>5 involved him in, but I don't remember when he came</p> <p>6 in.</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 A Absolutely.</p> <p>10 Q How about J.P. Sevilla, was he involved in</p> <p>11 that decision making?</p> <p>12 A He may have been. He may have been</p> <p>13 involved in the discussion, but I don't recall.</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 A Just because of the magnitude and the</p> <p>18 adjustment that this would require related to --</p> <p>19 well, the issue with not having enough cash on</p> <p>20 hand as of year-end to satisfy the investment</p> <p>21 policy requirement.</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 A I don't believe so.</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 A You would probably have to have a</p> <p>5 corrective action immediately and bringing the</p> <p>6 cash balances up in line with what the loss</p> <p>7 reserves were.</p> <p>8 Q So a lot more cash would have to be</p> <p>9 infused immediately?</p> <p>10 A Absolutely.</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;">268</p> <p>1 A Yes.</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 A Correct.</p> <p>8 Q Dilip Massand?</p> <p>9 A Dilip Massand.</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 A We would have had a discussion with them.</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 A Correct.</p> <p>9 Q Is that different than the Endorsement No.</p> <p>10 2 we have been looking at?</p> <p>11 A The unanimous consent form would have been</p> <p>12 the formal governance document where the directors</p> <p>13 signed off approving the Endorsement 2.</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 A I am not exactly sure the nature of the</p> <p>6 legal fees that that were instructed to be</p> <p>7 processed under the risk mitigation fees.</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 A Yes.</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 A Yes.</p> <p>17 Q And were those expenses that Highland was</p> <p>18 submitting to Beecher for payment?</p> <p>19 A Yes.</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 A I don't recall.</p> <p>4 Q Do you recall responding to that, to this</p> <p>5 e-mail?</p> <p>6 A I don't recall.</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 A Yes.</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 A We were directed to process invoices by</p> <p>24 the directors under the risk mitigation fees.</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 A No.</p> <p>13 Q What account is that?</p> <p>14 A This is when Maples served as directors,</p> <p>15 they had the cash account that they managed.</p> <p>16 Q So this was the Maples account?</p> <p>17 A Correct.</p> <p>18 Q Understood.</p> <p>19 The Onson Mukwedeya name is new, who is</p> <p>20 he?</p> <p>21 A Somebody at Maples.</p> <p>22 Q In response Damien Austin, who I believe</p> <p>23 is a director, is that right?</p> <p>24 A Correct.</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? 12 A This may have been their first exposure to 13 any of the risk mitigation fees. 14 Q The fact that Highland and Sentinel have 15 common ownership, that wasn't hidden from 16 directors, right? 17 A It wasn't hidden, no. 18 And I believe Jan and Damian were new 19 directors at this point as well. 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>1 the risk mitigation fees. 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? 11 A There was no relationship between Sentinel 12 and the entities that were performing the 13 services, the services were not paid or were not 14 provided to Sentinel directly. 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? 20 A All of the invoices that related to the 21 risk mitigation fees came through our contact at 22 Highland. 23 Q Which was Matt DiOrio? 24 A In this case Matt DiOrio. 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? 3 A So it looks like those legal fees were 4 being paid under the risk mitigation fee. 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? 10 A I do. 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? 17 A To date 5 -- yes, 5 million was reimbursed 18 out of the risk mitigation fees. 19 Q And do you know what the majority of those 20 funds were being used for, what the expenses were? 21 A I do not. 22 Q So how much was for legal versus how much 23 was to run the insureds, you couldn't say? 24 A The directors had requested that we 25 process the invoices and reimburse them through</p> | <p style="text-align: right;">276</p> <p>1 J.P. Sevilla? 2 A It would have come from J.P., I believe. 3 I don't recall. 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. 14 A I do. 15 Q What do you understand this document to 16 be? 17 A This document was a sales agreement to 18 transfer certain securities that we were told to 19 be worthless to remove them from the balance sheet 20 of Sentinel. 21 Q Who told you that they were worthless? 22 A That direction would have come from 23 Matt DiOrio. 24 Q As part of the valuation services that -- 25 the Valuation Research Corp. had done had they</p> |

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| <p style="text-align: right;">277</p> <p>1 determined that those -- these assets were</p> <p>2 worthless?</p> <p>3 A They had not been engaged to perform</p> <p>4 valuations on those investments and it was</p> <p>5 discussed that if those investments were worthless</p> <p>6 there was no point in obtaining a valuation.</p> <p>7 Q Were these investments on Schedule A to</p> <p>8 the purchase agreement any of them?</p> <p>9 A Yes, they should all be on that schedule.</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 A Correct.</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 A That was the directors on discussions with</p> <p>17 Beecher Carlson.</p> <p>18 Q Were you involved in those discussions?</p> <p>19 A From the standpoint of what made sense to</p> <p>20 perform a valuation on, yes.</p> <p>21 Q Which directors in particular were</p> <p>22 involved in those discussions?</p> <p>23 A Matt DiOrio in particular and then the</p> <p>24 other directors were probably informed of it.</p> <p>25 Q But weren't involved in the discussions</p> | <p style="text-align: right;">279</p> <p>1 the transfer?</p> <p>2 A I am not recalling how that came about.</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 A My understanding is that Sebastian Clark</p> <p>10 is a Cayman entity that provides director services</p> <p>11 for other Sentinel-related entities.</p> <p>12 Q Do you know who owns Sebastian Clark?</p> <p>13 A I do not.</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 A I do not.</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 A You said Page 1.</p> <p>22 Q Schedule 1, it looks like it is Page 5.</p> <p>23 A Yes.</p> <p>24 Q Do you recall how that purchase price was</p> <p>25 come to?</p> |
| <p style="text-align: right;">278</p> <p>1 themselves?</p> <p>2 A They may have been involved in the</p> <p>3 discussions, but I don't recall.</p> <p>4 Q But you do recall Matt DiOrio being</p> <p>5 involved?</p> <p>6 A Definitely.</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 A I don't recall.</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 A It was beyond Beecher's responsibilities.</p> <p>20 Q Would it have been a director, perhaps?</p> <p>21 A Perhaps.</p> <p>22 Q But specifically you don't recall?</p> <p>23 A I don't recall, no.</p> <p>24 Q And who works on this asset transfer</p> <p>25 agreement in putting it together and organizing</p> | <p style="text-align: right;">280</p> <p>1 A A nominal value.</p> <p>2 Q And who made that decision?</p> <p>3 A I am not sure.</p> <p>4 Q It was somebody outside of Beecher?</p> <p>5 A It was not Beecher that determined that</p> <p>6 price.</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 A That was probably the face value at the</p> <p>15 time that that security was sold.</p> <p>16 Q And Mr. DiOrio had determined that it was</p> <p>17 a worthless asset?</p> <p>18 A It was not paying interest anymore.</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 A I don't remember what the terms were. It</p> <p>23 was probably delinquent at that point.</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 A The same as the Dugaboy Investment Trust</p> <p>4 promissory note.</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 A We had no way of confirming anything.</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 directors that were directors of some of the</p> <p>2 Sentinel structure entities.</p> <p>3 Q But not Sentinel itself?</p> <p>4 A No.</p> <p>5 Q Were they directors of Sebastian Clark?</p> <p>6 A I have no idea.</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 A I don't think we were aware of this until</p> <p>21 after it happened.</p> <p>22 Q Oh, until after the transfer had been</p> <p>23 finalized?</p> <p>24 A Or at least until after the effective date</p> <p>25 of the transfer.</p> |
| <p style="text-align: right;">282</p> <p>1 transferring entities?</p> <p>2 A Sentinel had no documents.</p> <p>3 Q Do you know who controls Dugaboy</p> <p>4 Investment?</p> <p>5 A I do not.</p> <p>6 Q How about CLO Holdco?</p> <p>7 A I do not.</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 Egglshaw, 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 Egglshaw were?</p> <p>24 A I do not know them personally. But my</p> <p>25 understanding is they were independent outside</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 A Yes.</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 A It's a type of audit opinion that is not</p> <p>21 clean.</p> <p>22 Q Meaning what exactly?</p> <p>23 A That its modified for certain items</p> <p>24 generally considered to be negative as far as from</p> <p>25 the viewpoint of anyone reviewing the financial</p> |

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| <p style="text-align: right;">285</p> <p>1 statements.</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 A Because the investments could not be</p> <p>6 valued whether favorably or unfavorably the</p> <p>7 auditors were unable to opine that the assets were</p> <p>8 fairly stated and therefore they caused</p> <p>9 qualifications to the audit report.</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 A That is correct.</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> | <p style="text-align: right;">287</p> <p>1 transferred back from Sebastian Clark do they have</p> <p>2 a value now?</p> <p>3 A Not to my knowledge.</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 A That is correct.</p> <p>13 Q Where do they show up in the financial</p> <p>14 statements?</p> <p>15 A We haven't completed financial statements</p> <p>16 for November, 2021 yet.</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 A They will show up in the asset holding</p> <p>20 schedule.</p> <p>21 Q And will values be assigned to them?</p> <p>22 A They will have a value of 0 assigned to</p> <p>23 them unless we know otherwise.</p> <p>24 Q Is Beecher trying to obtain a valuation of</p> <p>25 the assets?</p> |
| <p style="text-align: right;">286</p> <p>1 A Yes.</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 A It could be.</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 A That is correct.</p> <p>14 Q When did that happen?</p> <p>15 A That happened at some point in later 2021,</p> <p>16 I think the effective date may have been November,</p> <p>17 2021.</p> <p>18 Q Why were they transferred back to</p> <p>19 Sentinel?</p> <p>20 A Based on the discussions that the new</p> <p>21 directors had with counsel and others, I am not</p> <p>22 sure who, but the determination was that they</p> <p>23 would try to recover those assets in anticipation</p> <p>24 of the outcome of the discussions with UBS.</p> <p>25 Q Are these assets that have been</p> | <p style="text-align: right;">288</p> <p>1 A I do not know. That's the call of the</p> <p>2 directors whether they obtain any valuations going</p> <p>3 forward.</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 A Yes.</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> |

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| <p style="text-align: right;">289</p> <p>1 Highland Capital, right?</p> <p>2 A Correct.</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 A The captive management agreement has not</p> <p>7 been amended to this date.</p> <p>8 Q Does Beecher have any correspondence with</p> <p>9 the trustee overseeing Highland Capital?</p> <p>10 A Beecher Carlson has no correspondence with</p> <p>11 anyone from Highland Capital.</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 A Beecher would have to send that on to the</p> <p>17 directors and it would be ultimately up to the</p> <p>18 directors to determine how investments should be</p> <p>19 handled.</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 A That's correct.</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 A It's actually two years, and there was</p> <p>10 probably no formal approval in the December, 2017</p> <p>11 meeting of the prior year August 4, 2016 meeting</p> <p>12 minutes, so this was a catch-up approval.</p> <p>13 It's not uncommon to formally approve the</p> <p>14 board minutes at the following meeting, the prior</p> <p>15 meeting minutes.</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 A As Beecher doesn't make any payments</p> <p>5 themselves everything has to go through the</p> <p>6 directors for final approval.</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 A Correct.</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 A That is correct.</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 A I would assume that to be true.</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 A Right. But Sentinel was not named in any</p> <p>23 of that litigation.</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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1 transactions and affairs of the company since the
2 last meeting of the directors on the 4th of August
3 2016 accordingly who's resolved that all acts of
4 the directors and agents of the company taken on
5 behalf of the company since 4 August 2016 being
6 hereby and are hereby approved and ratified.
7 So here it states that the directors
8 hadn't met since the 4th of August, 2016 which is
9 inconsistent with what it says on the first page
10 that there was an 8 December 2017 meeting. Do you
11 know what was going on there?
12 **A I do not know or recall what the**
13 **December 8, 2017 meeting reviewed. It may have**
14 **been a brief meeting that may not have covered all**
15 **of the items and had the catchall resolution to**
16 **approve all prior acts since the last meeting.**
17 Q Did Beecher write the minutes for the
18 meetings?
19 **A Beecher as part of its captive management**
20 **role would typically take minutes for the meetings**
21 **and draft and then send those minutes to directors**
22 **for review and commentary.**
23 Q On the first page in attendance
24 J.P. Sevilla and Katie Irving for SAS Asset
25 Recovery are in attendance. Do you know why they

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1 are in attendance?
2 **A As members of Highland and knowledgeable**
3 **members of the activities centering around**
4 **Sentinel.**
5 Q They would attend board meetings?
6 **A Correct.**
7 Q They didn't have a vote?
8 **A No.**
9 Q Is that right?
10 **A No.**
11 Q What did they do at the board meetings, if
12 you recall?
13 **A I don't, unless it was specifically**
14 **identified in the minutes. They could have just**
15 **been observing.**
16 Q Going back to Sentinel as it exists today,
17 do you know who the creditors of Sentinel are if
18 it has any?
19 **A In what way?**
20 Q So entities that have loaned Sentinel
21 money, for example, if there were to be a
22 liquidation of Sentinel would there be various
23 organizations that are owed money by Sentinel?
24 **A Not to my knowledge.**
25 Q In other words, Sentinel hasn't issued any

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1 debt that is owed by a creditor?
2 **A Not to my knowledge.**
3 MR. BURT: Christian, we are getting
4 really close, let us take five minutes to organize
5 things.
6 MR. WELDON: Yes.
7 MR. BURT: If we can.
8 THE VIDEOGRAPHER: We are going off the
9 record, the time is 5:42.
10 (Recess taken.)
11 THE VIDEOGRAPHER: We are on the record,
12 the time is 5:53.
13 BY MR. BURT:
14 Q Mr. Adamczak, we are just about done here,
15 a few final mop-up questions.
16 Looking at Exhibit 140 -- 134, I wasn't
17 even close, 134, Page 9 of the investment holding
18 statement for Sentinel Reinsurance from
19 November 30, 2020, we had looked earlier in the
20 day that there were four investments that were
21 prior to the 2017 ATE transfers and those are
22 listed there, the Eastland, there was a
23 Greenbriar, there was a Greyson CLO, and then the
24 Stratford CLO, is that right?
25 **A That's correct.**

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1 Q And I believe you were able during a break
2 to confirm some information about those transfers,
3 is that right?
4 **A That is correct.**
5 Q What were you able to learn?
6 **A The Eastland and Greyson CLOs are not**
7 **transferred into Sentinel's name and the other two**
8 **are.**
9 Q And is it correct that just as with the
10 Schedule A assets those pre-ATE transfers Beecher
11 don't have any insight into where -- who the
12 transferor was, who those came from?
13 **A Correct.**
14 Q You mentioned earlier in the day that I
15 believe I asked you about whether the current
16 assets of Sentinel are sufficient to cover a
17 potential payment on the ATE policy, and I believe
18 you testified that, yes, they are, is that
19 correct?
20 **A That's correct.**
21 Q And I am wondering if you could explain
22 how you know that, how the assets have been
23 valued.
24 **A As of what date are we talking about?**
25 Q As of today, so the latest valuation of

| | | | |
|-----|---|-----|---|
| 297 | <p>1 those assets.</p> <p>2 A The latest valuation that we have on any</p> <p>3 of the investments was as of December 31, 2020.</p> <p>4 Q 2020, so two years ago -- a year and a</p> <p>5 half ago?</p> <p>6 A Yes.</p> <p>7 Q Is the 2021 those statements are being</p> <p>8 worked on now?</p> <p>9 A The directors have not concluded whether</p> <p>10 they want to obtain valuations as of December 31,</p> <p>11 2021.</p> <p>12 Q Do you know why?</p> <p>13 A I do not. They have been -- they have</p> <p>14 been having discussions with the audit firm and</p> <p>15 the auditors did not require it as they were</p> <p>16 likely disclaiming an opinion anyway.</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 A The same valuations that they had done on</p> <p>21 the investments in prior years.</p> <p>22 Q Done by the same service providers?</p> <p>23 A Valuation Research Corp.</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 Sentinel.</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 A I don't recall.</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 A Say that again?</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 A Correct.</p> <p>9 Q So \$91 million?</p> <p>10 A Correct.</p> <p>11 Q And how are those assets held, do you know</p> <p>12 in what forms?</p> <p>13 A There is CLOs, there is promissory notes,</p> <p>14 there is limited partnerships, basically whatever</p> <p>15 is left of the investments that weren't previously</p> <p>16 sold.</p> <p>17 Q And there is cash still?</p> <p>18 A And there is still cash.</p> <p>19 Q And the SeaOne investment is still there,</p> <p>20 for example?</p> <p>21 A The SeaOne investment is owned by</p> <p>22 SS Holdings, which is a subsidiary of Sentinel.</p> <p>23 Q And is it counted towards the assets of</p> <p>24 Sentinel?</p> <p>25 A It is in the consolidated financials for</p> | 300 | <p>1 A The only discussions that I recall were</p> <p>2 that there was going to be a risk in taking these</p> <p>3 investments so there had to be some reward for</p> <p>4 taking on that risk and that reward was in the</p> <p>5 form of a potential windfall should the</p> <p>6 investments prove to be worth more than nothing.</p> <p>7 Q And that's what Mr. Sevilla told you?</p> <p>8 A I don't remember if that was specifically</p> <p>9 his words, but that was our understanding.</p> <p>10 Q And that was Beecher's understanding?</p> <p>11 A That was Beecher's understanding.</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 A Beecher was not involved in that decision.</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 A Beecher was not aware that there was any</p> <p>20 information that was withheld from them.</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 A That's correct.</p> <p>25 Q And when did Beecher become aware of that?</p> |

Conducted on April 12, 2022

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|---|--|
| <p style="text-align: right;">301</p> <p>1 A When the demand came through in early 2 2021. 3 Q Has Beecher had conversations with the 4 directors about that? 5 A We have had limited conversations with the 6 directors regarding it. 7 Q What have those conversations been? 8 A That there had been no resolution in the 9 discussions, the settlement discussions or 10 negotiations, with UBS. 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 A They haven't given us a reason why there 15 has been no payment on the policy. 16 Q Does Beecher take a position one way or 17 another on whether the policy should be paid? 18 A Beecher is contracted with Sentinel to 19 provide the management services and financials. 20 We are available to be consulted with should there 21 need, we have had no consultation requests from 22 the directors. 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 A I have never heard of Peak Ventures. 19 Q Referring to Dilip Massand, do you happen 20 to know why he resigned from the board? 21 A We were not informed of the reasons why he 22 resigned. 23 Q Did that resignation come suddenly? 24 A It was sudden. 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 A In what way? 10 Q So we talked about the directors, right -- 11 A Yes. 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 A Yes. But I would take it to mean that the 17 management refers to those decision makers. 18 Q Being whom? 19 A The directors of Sentinel. 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 A I believe the explanation that we had was 2 that he was no longer affiliated with Highland 3 Capital. 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 A I do. 19 Q What was the context of this e-mail? 20 A This was at the time that the then current 21 directors were asked to resign from Sentinel. 22 Q And why was it interesting to learn that 23 Matt had been planning to resign? 24 A Because through previous discussions that 25 we had with him he had given us no indication that</p> |

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1 **he was going to be resigning until that point.**
 2 Q Do you know who asked the directors to
 3 resign?
 4 **A I do not.**
 5 Q What did you make of Clayton price's line
 6 that his instincts tells me Matt likely knows more
 7 about the demand for payment on the claim now
 8 being served?
 9 **A Say that again?**
 10 Q What did you take from Mr. Price's
 11 statement that his instincts told him Matt knew
 12 more about the demand for claim payment that was
 13 being served?
 14 **A I would just be speculating if I --**
 15 Q Did you share those instincts that Matt
 16 knew more than he was letting on?
 17 **A Yes.**
 18 Q Why is that?
 19 **A Because it just seemed peculiar.**
 20 Q What seemed peculiar?
 21 **A That he was resigning.**
 22 Q Last set of questions, in preparing for
 23 this deposition did you have any contact with
 24 Sentinel's counsel?
 25 **A No.**

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1 Q So that would be counsel at Foley Lardner
 2 or Collas Crill?
 3 **A Correct.**
 4 Q How about with any of the former Highland
 5 employees, Matt DiOrio?
 6 **A No.**
 7 Q Or J.P. Sevilla?
 8 **A No.**
 9 Q Just worked with Mr. Weldon here to
 10 prepare?
 11 **A That's correct.**
 12 MR. BURT: Chris, I think there are still
 13 a few documents that weren't produced to us over
 14 on the redaction, waiting to get.
 15 MS. GEORGE: There is at least 30
 16 invoices, not including --
 17 MR. WELDON: I know they are being worked
 18 on, just follow-up on them.
 19 MR. BURT: We will follow-up on them. And
 20 for that reason though I am just going to need to
 21 hold the deposition open pending --
 22 MR. WELDON: I don't agree it is open I
 23 think we are close to the seven hours, but I
 24 understand your position.
 25 MR. BURT: Okay.

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1 MR. WELDON: And I understand your
 2 request. I have only a couple questions. If you
 3 are done -- I asked Mr. Feinstein, I don't think
 4 he has any, I am not aware of anyone else so I am
 5 going to ask questions.
 6 EXAMINATION
 7 BY MR. WELDON:
 8 Q If you could look at Exhibit 137, I think
 9 they are in order. And then 128 is the other one
 10 I will need. If you guys want so you know what I
 11 am looking at. We are going to do 137 first.
 12 You testified about UBO, can you tell me
 13 what that term means again?
 14 **A Ultimate beneficial owner.**
 15 Q And you understood that UBOs in the
 16 corporate structure diagram to be who on those
 17 two?
 18 **A James Dondero and Scott Ellington.**
 19 Q Have you ever had any discussions with
 20 Dondero or Ellington?
 21 **A Me personally, no.**
 22 Q Are you aware of any document that you
 23 have seen today or do you have a document where
 24 you have seen that Dondero or Ellington made any
 25 decisions about anything relative to Sentinel

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1 directly that you saw on a decision making basis?
 2 **A I have not.**
 3 Q On one -- on Exhibit 137, if you look at
 4 the top, you see Matt DiOrio's e-mail there.
 5 **A Yes.**
 6 Q It says sasmtg.com, and you explained why
 7 you understood that e-mail to be utilized in that
 8 fashion.
 9 Do you know who Matt -- aside from being
 10 an internal director, which you testified about
 11 with Sentinel, do you know who Matt DiOrio
 12 specifically worked for and got paid by relative
 13 to his work?
 14 **A Not with certainty, no.**
 15 Q In regards to all the testimony you
 16 provided today are you aware of Matt DiOrio acting
 17 as anything but an internal director on his
 18 direction to you?
 19 **A On his direction to us, it was in his**
 20 **capacity as an internal director.**
 21 Q Because we have used the term coming from
 22 Highland Capital, do you have any direct knowledge
 23 on how information got from Highland Capital to
 24 Matt DiOrio specifically?
 25 **A I do not.**

| | | | |
|-----|---|-----|---|
| 309 | <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 A Yes.</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 A That's correct. In each of the scenarios</p> <p>13 there were two options that would have resulted in</p> <p>14 very little payout or no payment.</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 A No. This is similar to many policies that</p> <p>22 we have seen in the past.</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> | 311 | <p>1 Q Do you know what the basis of that</p> <p>2 restraining order is?</p> <p>3 A I do not.</p> <p>4 Q But there was some clarification on what</p> <p>5 could be paid?</p> <p>6 A Correct.</p> <p>7 Q Is that correct?</p> <p>8 A Correct.</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 A The current directors are aware of that</p> <p>14 restraining order and would direct us to pay</p> <p>15 invoices or to process invoices so that they could</p> <p>16 release them as deemed appropriate.</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> |
| 310 | <p>1 wasn't at the direction of the directors?</p> <p>2 A No. Beecher did not have the capacity to</p> <p>3 be able to do that. Everything was approved and</p> <p>4 directed by the directors, whether independent or</p> <p>5 internal.</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 A Matt DiOrio and Dilip Massand.</p> <p>10 Q J.P. was not an internal director to your</p> <p>11 knowledge?</p> <p>12 A J.P. was never a director of Sentinel.</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 A No.</p> <p>19 Sentinel followed through with all of</p> <p>20 their requests compliant with every piece of</p> <p>21 documentation so that they could continue with a</p> <p>22 clean bill of health to continue operating.</p> <p>23 Q And there is that order, that restraining</p> <p>24 order that came out?</p> <p>25 A Yes.</p> | 312 | <p>1 beneficial owners of Sentinel. Do you recall</p> <p>2 those questions?</p> <p>3 A Yes.</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> |

Conducted on April 12, 2022

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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.

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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.)
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 16
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 24
 25

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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 | 6 Dallas, Texas 75204 |
| 7 | 7 214.969.9099 |
| 8 | 8 |
| 9 | 9 |
| 10 | 10 ALSO PRESENT: |
| 11 | 11 CHESTER WONG, Planet Depos Videographer |
| 12 | 12 SARAH LOILER, Planet Depos Technician |
| 13 | 13 |
| 14 | 14 |
| 15 | 15 |
| 16 | 16 |
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| 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>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 A No. 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 A Technically it was Highland Capital 11 Management working on Highland Financial Partners. 12 Q Thank you. 13 A So not an employee of Highland Financial 14 Partners, but that was the fund and fund complex I was 15 working on as an employee of Highland Capital 16 Management. But the date is correct. 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 A Yes. 24 Q In 2012 is it correct that you moved to 25 Highland Capital Management, L.P. in a more general</p> | <p>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 A Yes. 6 Q And you also had responsibilities with 7 NexPoint Real Estate Strategies Fund. Is that 8 correct? 9 A Yes. 10 Q Did you receive separate compensation for 11 your role with these various entities? 12 A No. 13 Q So your checks issued only from Highland 14 Capital? 15 A Yes. 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 A Yes. 20 Q Since leaving Highland in April 2020, you've 21 worked at a publicly traded company. Is that right? 22 A Yes. 23 Q And your present employer is not managed by 24 Highland Capital. Is that true? 25 A No, it is not. Yes, it's true.</p> |
| <p>10</p> <p>1 sense? 2 A Technically it was 2009, but in 2012 I 3 received a title change around that move. 4 Q And did your title become chief accounting 5 officer? 6 A Yes. 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 A Yes. 11 Q Those responsibilities included with 12 Highland Financial Partners and its subsidiaries? 13 A Yes. 14 Q And did you keep those responsibilities with 15 Highland Financial until the time you left Highland in 16 April 2020? 17 A Yes. 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 A And by "institutional," for clarification, 23 you're asking about the hedge funds, so to speak? 24 Q Um-hmm, yes. 25 A Yes, yes, that's correct.</p> | <p>12</p> <p>1 Q Excellent. Thank you. Your present 2 employer is not owned or controlled by Mr. Dondero? 3 A No. 4 Q Your present employer is also not owned or 5 controlled by Mr. Ellington? 6 A No. 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 A Correct. I have not had any communications 11 with either. 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 A Roughly. 16 Q When did you -- 17 A On a limited basis. 18 Q When did you get this limited understanding 19 of Sentinel? 20 A Generally I recall it being somewhere 21 around, my first introduction to it being around 22 August of 2017. 23 Q When -- in August of 2017, what did you 24 learn about Sentinel that caused you to become aware 25 of it?</p> |

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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) --

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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

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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

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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

19
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

20
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

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|---|--|
| <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> |

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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

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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

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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?

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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

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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.**

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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

34

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.

35

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 style="text-align: center;">IN THE UNITED STATES BANKRUPTCY COURT</p> <p style="text-align: center;">FOR THE NORTHERN DISTRICT OF TEXAS</p> <p style="text-align: center;">-----x</p> <p>In re : Chapter 11</p> <p>HIGHLAND CAPITAL MANAGEMENT, : Case No.</p> <p>L.P., : 19-34054-SGJ11</p> <p>Debtor. :</p> <p>UBS SECURITIES LLC AND UBS AG : Adversary Proceeding</p> <p>LONDON BRANCH, : No. 21-03020-sgj</p> <p>Plaintiffs, :</p> <p>vs. :</p> <p>HIGHLAND CAPITAL MANAGEMENT, :</p> <p>L.P., :</p> <p>Defendant. :</p> <p style="text-align: center;">-----x</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF JEREMY RINGHEIMER</p> <p style="text-align: center;">CONDUCTED VIRTUALLY</p> <p style="text-align: center;">Friday, April 30, 2021</p> <p style="text-align: center;">7:40 a.m. PST</p> <p>Job No.: 368757</p> <p>Pages: 1 - 55</p> <p>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>ON BEHALF OF UBS SECURITIES LLC:</p> <p>ROBERT E. ALLEN, ESQUIRE</p> <p>SARAH A. TOMKOWIAK, ESQUIRE</p> <p>KATHRYN K. GEORGE, ESQUIRE</p> <p>LATHAM & WATKINS, LLP</p> <p>10250 Constellation Boulevard, Suite 1100</p> <p>Los Angeles, California 90067</p> <p>(424) 653-5563</p> <p>ON BEHALF OF DEFENDANT HIGHLAND CAPITAL MANAGEMENT,</p> <p>L.P.:</p> <p>ROBERT FEINSTEIN, ESQUIRE</p> <p>GREGORY V. DEMO, ESQUIRE</p> <p>PACHULSKI STANG ZIEHL & JONES</p> <p>780 3rd Avenue, 34th Floor</p> <p>New York, New York 10017</p> <p>(212) 561-7700</p> <p>ALSO PRESENT:</p> <p>Rick Spector, Videographer</p> <p>Ian Rowe, AV Technician</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|------|---------|------|---|-------------------|--|---|--------------------------|---|--|-------------------------------|------|----|----------------------|--|----|---|----|----|---|----|----|---|----|----|--|----|----|--|----|----|--|----|
| <p style="text-align: center;">2</p> <p>VIDEOTAPED DEPOSITION OF JEREMY RINGHEIMER,</p> <p>CONDUCTED VIRTUALLY.</p> <p>Pursuant to notice, before Charlotte Lacey,</p> <p>Certified Shorthand Reporter in and for the State of</p> <p>California.</p> | <p style="text-align: center;">4</p> <p style="text-align: center;">I N D E X</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 85%;">WITNESS</th> <th style="width: 10%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>3</td> <td>JEREMY RINGHEIMER</td> <td></td> </tr> <tr> <td>4</td> <td>Examination by Mr. Allen</td> <td style="text-align: right;">7</td> </tr> </tbody> </table> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 80%;">I N D E X O F E X H I B I T S</th> <th style="width: 15%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>10</td> <td>EXHIBITS DESCRIPTION</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>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>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>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>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> </tbody> </table> | | WITNESS | PAGE | 3 | JEREMY RINGHEIMER | | 4 | Examination by Mr. Allen | 7 | | I N D E X O F E X H I B I T S | PAGE | 10 | EXHIBITS DESCRIPTION | | 11 | Exhibit 1 E-mail from Isaac Leventon dated 10/26/2017; attachment, Legal Liability Insurance Policy | 38 | 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 | 17 | Exhibit 8 E-mail chain, top e-mail from Jeremy Ringheimer dated 8/11/2017, Bates number HCMUBS000516 through 517 | 22 | 20 | Exhibit 9 E-mail chain, top e-mail from Clifford Stoops dated 8/11/2017, Bates number HCMUBS000574 through 576 | 29 | 24 | Exhibit 10 E-mail from Alli Devins dated 5/22/2019; attachments, letters | 47 |
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Transcript of Jeremy Ringheimer
Conducted on April 30, 2021

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|---|---|
| <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 & Watkins, counsel for UBS. I'm joined today by 22 Sarah Tomkowiak and Katie George also of Latham & 23 Watkins. 24 MR. FEINSTEIN: This is Robert Feinstein, 25 Pachulski Stang Ziehl & 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 Jeremy Ringheimer, J-e-r-e-m-y 7 R-i-n-g-h-e-i-m-e-r. 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 & 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?

13

1 A **Carter Chism.**
2 Q And who did Mr. Chism report to?
3 A **Clifford Stoops.**
4 Q And did the chain of reporting change at all
5 after the title change?
6 A **No.**
7 Q Did you hold any other job titles while you
8 worked at Highland?
9 A **No.**
10 Q And you left in approximately September 2020?
11 A **No. I left at the end of the year -- at the**
12 **beginning of 2020.**
13 Q Is Highland related in any way to your new
14 employer, Park Walk?
15 A **They are not.**
16 Q Do you know whether Highland does any work
17 with Park Walk?
18 A **They do not.**
19 Q So while you worked at Highland Capital
20 Management, did you have responsibilities with any other
21 funds that were managed by Highland?
22 A **Can you be more specific.**
23 Q So you mentioned earlier that you, you know,
24 settled bids on behalf of Highland?
25 A **Uh-huh.**

14

1 Q Would -- were you also acting in your capacity
2 as either analyst or in your operations capacity on
3 behalf of Highland Capital Management, or did you work
4 on behalf of any other Highland entity?
5 A **Are you -- are you talking about, like,**
6 **specifically front -- like different funds or**
7 **different -- are you --**
8 Q Yeah, specifically different funds.
9 A **So I think to answer your question would be**
10 **that NexPoint funds do not fall under the umbrella of**
11 **HCMLP, so to answer your question would be, yes, we**
12 **settled trades for all NexPoint funds as well.**
13 Q Got it. And so within the Highland umbrella,
14 did you handle trades on behalf of any subsidiary
15 companies?
16 A **So Highland trades for Next Bank, but we do**
17 **not settle the trades. We would allocate the trades**
18 **into their account in Wall Street Office, and then they**
19 **have their own settlement team, and they move their**
20 **office in. But HCMLP's job would be -- they would make**
21 **trades for them, and we would allocate for them -- my**
22 **team would allocate them from Bloomberg into Wall Street**
23 **Office, and then they take it from there. So that -- it**
24 **was allocation -- trade allocation for Next Bank.**
25 Q So did you do any work on behalf of any

15

1 Highland-affiliated entities?
2 A **So I guess -- I guess NexPoint is affiliated**
3 **with Highland. And we would -- we would settle their**
4 **trades when they would make them.**
5 Q So I know there are a lot of Highland
6 entities, but are you familiar with Highland CDO
7 Opportunity Master Fund LP? It's commonly referred to
8 as CDO fund?
9 A **So there are several funds that are named CDO,**
10 **and it's been four years or -- you know, however long**
11 **it's been since I left, a couple of years, and then, you**
12 **know, four years since this. But I -- I don't recognize**
13 **the name, but I have heard CDO a lot. It's not a --**
14 **it's not a commonly -- it's not a commonly traded fund.**
15 **And it doesn't -- it -- I don't remember it trading**
16 **debt. So I didn't touch it very -- hardly at all**
17 **probably.**
18 Q And what is your basis for saying that it was
19 not a commonly traded fund?
20 A **So at the end of every day, we -- the**
21 **operations team allocates trades and -- you know, like I**
22 **previously mentioned, from Bloomberg into Wall Street**
23 **Office and another system called Geneva. And then we**
24 **reconcile the trade blotter, and then this is sent out**
25 **to everybody saying that the blotter has been**

16

1 **reconciled, so all trades are in. And I don't -- didn't**
2 **remember seeing that fund make trades.**
3 Q Would you feel confident more generally
4 identifying which funds were commonly traded out of and
5 which were not?
6 A **So the funds that I dealt with that -- that**
7 **traded debt would be Highland/iBoxx. So that's a --**
8 **that's a retail ETF. Highland Floating Rate**
9 **Opportunities Fund. Pension Denmark. Let's see,**
10 **Highland Global Allocation Fund. Those are just --**
11 **those were some of the big ones.**
12 Q So I guess the slightly more specific question
13 would be, given the volume that came across your desk,
14 do you feel confident identifying, you know, which were
15 high-volume funds versus which were not?
16 A **So the ones that I mentioned were the high**
17 **volume for debt. Now, there are also several funds**
18 **that, you know, would be trading equity, and the equity**
19 **team would be allocating those. So my team, they**
20 **allocate. So the equity team allocates trades**
21 **at 3 o'clock every day, 'cause that's when they -- they**
22 **drop, the market closes, and then when they're done,**
23 **that's when my team would go in there and allocate debt**
24 **trades. So equity at 3. We would normally be about 4.**
25 Q And who would your counterpart be on the

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

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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.**

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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**

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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?

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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?

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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.**

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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?

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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

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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 A I do. 15 Q Are you familiar with any of the assets listed 16 in schedule A? 17 A I've seen the names of a lot of those CLOs 18 before. 19 Q And -- 20 A They're all Highland-created CLOs, a lot of 21 those are. 22 Q Thank you. Do you recall whether these assets 23 were included in the transfers to Sentinel? 24 A I don't know. If they're on that list, I'm 25 not sure.</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 A I do not. But Dave Klos was over that team. 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 A I do not. 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 A I do not. I don't know if these -- if -- I 4 don't know if these -- that's traded shares, but I don't 5 know where they're marked at and if they're factored, so 6 I couldn't tell you. 7 Q Do you -- do you know who would know that 8 information? 9 A Either the CLO team at Highland or valuation 10 team at Highland. 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 A I think that's fair. 15 Q Do you have any idea what happened to the 16 assets listed in schedule A after August 2017? 17 A I do not. 18 Q Do you have any idea where these assets might 19 be today? 20 A I do not. 21 Q Do you have any reason to believe that these 22 assets were not transferred to Sentinel? 23 A I -- I do not. 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 A Okay. 3 Q And under "premium," the premium appears to 4 be \$25 million. Do you see that? 5 A I see that. I do. 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 A Yes. 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 A I do not. 15 Q Does -- is your recollection refreshed by 16 either this 25 million number or the \$100 million 17 number? 18 A I don't believe I've ever seen the \$25 million 19 number. And I don't -- I'm not sure on the hundred 20 either. 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> |

| | |
|--|--|
| <p style="text-align: right;">45</p> <p>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.</p> | <p style="text-align: right;">47</p> <p>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</p> |
| <p style="text-align: right;">46</p> <p>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?</p> | <p style="text-align: right;">48</p> <p>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 DiOrto, 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?</p> |

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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

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

PRESENT: HON. MELISSA CRANE

PART 60M

Justice

-----X

UBS SECURITIES LLC, UBS AG, LONDON BRANCH,

INDEX NO. 650097/2009

Plaintiff,

- v -

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.,

**DECISION, ORDER, AND
JUDGMENT AFTER
INQUEST**

Defendant.

-----X

INTRODUCTION

This 13-year-long dispute arises from several failed securitization transactions between plaintiffs UBS Securities LLC and UBS AG London Branch (“UBS”), defendant Highland Capital Management, L.P. (“HCM”), and HCM-controlled entities Highland CDO Opportunity Master Fund, L.P. (“CDO Fund”), Highland Special Opportunities Holding Company (“SOHC”) (together with CDO Fund, the “Funds”), Highland Financial Partners, L.P. (“HFP”), 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.”), Strand Advisors, Inc. (“Strand”) (NYSCEF Doc. No. 764, pg. 1).

In its second amended complaint (the “Second Amended Complaint”), dated May 11, 2011, UBS sought “to recover damages in excess of \$686 million resulting from the wrongful conduct of defendants” and asserted causes of action for fraudulent inducement, breach of contract, fraudulent conveyances, and declaratory judgment” (*id.*, ¶ 1).

This decision after inquest determines UBS’ damages on its remaining claims for Fraudulent Inducement (First Cause of Action), Fraudulent Conveyance (Fifth Cause of Action) and Alter Ego (Eighth Cause of Action), as against three remaining, defaulting defendants: CDO Fund, SOHC and HFP (NYSCEF Doc. No. 762).

BACKGROUND AND RELEVANT FACTS

The court presumes familiarity with all prior decisions and orders delineating the facts in this 2009 case.

I. The Underlying Agreements and the Restructuring Agreements

In 2007, UBS, the CDO Fund, SOHC and HCM entered into agreements (the “Underlying Agreements”) to securitize collateral loan obligations and credit-default swaps (*id.*, pg. 8). The Underlying Agreements provided that the Funds would be liable to UBS for certain losses if the parties’ agreements terminated without a successful securitization (*id.*).

After the contemplated securitization failed, the parties agreed to enter into negotiations to restructure the Underlying Agreements (*id.*). UBS ultimately agreed to restructure these agreements (the “Restructuring Agreements”), and it also agreed to release all claims as against the Funds arising from the Underlying Agreements (*id.*).

UBS alleges that the Funds intentionally misrepresented material facts and made omissions about the Funds’ creditworthiness and their finances and assets in negotiations concerning the Restructuring Agreements to induce UBS to enter into them (NYSCEF Doc. No. 764, ¶¶ 117-119).

UBS further alleges that these actions ultimately caused it to “release its pre-existing claims against [HCM] and the [Funds] related to the [Underlying Agreements]...and assume the credit-risk of the [Funds]...and [that] as a direct result... UBS...[incurred] substantial losses and damages...” (*id.*, ¶ 127).

II. The Restructuring Agreements and UBS’ Collateral Calls

Under the Restructuring Agreements, UBS was designated as the financial arranger responsible for the assets’ financing and housing (NYSCEF Doc. No. 762, pg. 9). HCM was designated as the servicer responsible for identifying and securitizing the assets (*id.*). The Funds were to provide collateral and bear any “losses in value that the assets might suffer” (*id.*).

UBS alleges that “between March 14, 2008 and December 3, 2008, [HCM] exercised its control over the [Funds] and caused the [Funds] to transfer valuable cash and assets out of the [Funds]; thereby impairing their ability to bear losses...and otherwise satisfy their obligations to creditors, including UBS” (NYSCEF Doc. No. 764, ¶ 168).

Eventually, in early December 2008, after three collateral calls, and the Funds' refusal to adhere to their contractual obligations, "UBS...terminated the [Restructuring Agreements] and found that it had incurred damages of over \$500 million" (NYSCEF Doc. No. 762, pg. 9).

III. The 2009 and 2010 Cases

In February 2009, UBS commenced this case against HCM and the Funds alleging that they had breached the Restructuring Agreements (*id.*). Additionally, UBS also sought indemnification from HCM (*id.*).

After discovering additional wrongdoing, UBS amended its complaint twice, included additional claims, and added additional defendants HFP, Credit Strategies, Crusader Fund, Credit Opp., and Strand (NYSCEF Doc. Nos. 148, 762).

After the court dismissed UBS' indemnification claim in 2010, UBS filed another action against HCM (Index No. 650752/2010). On November 1, 2010, the court consolidated both actions under this index number (NYSCEF Doc. No. 213). Following years of unnecessary motion practice and appeals, this 13-year-old case was put over for a trial.

On May 1, 2018, the court bifurcated the trial into two parts: Phase I and Phase II. The Breach of Contract claims (Third and Fourth Causes of Action) would be heard by the court in Phase I prior to the claims for Fraudulent Inducement (First Cause of Action), Fraudulent Conveyance (Fifth Cause of Action), and Alter Ego Liability (Eighth Cause of Action). Those three claims were to be heard by a jury at a later time in Phase II (NYSCEF Doc. No. 641, pg. 2).

IV. Phase I – The Bench Trial (Third and Fourth Causes of Action)

In Phase I, the court held a 13-day bench trial on UBS' Third and Fourth Causes of Action in the Second Amended Complaint for Breach of Contract as against the Funds, and HCM's counterclaims against UBS (*id.*, pg. 1). On November 14, 2019, the court issued its decision after trial and held in favor of UBS on those causes of action, and as against the Funds, for breach of the Cash Warehouse and Synthetic Warehouse Agreements (NYSCEF Doc. No. 641).

On February 10, 2020, the court entered judgment against the Funds (the "February 2020 Judgment") (NYSCEF Doc. No. 646). The February 2020 Judgment awarded UBS damages and interest in the amount of \$531,619,426.24 as against CDO Fund, and in the amount of \$510,771,605.55 as against SOHC, for a grand total of \$1,042,391,031.79.

As relevant here, the court stayed enforcement as to a portion of the judgment against SOHC, totaling \$70,500,000, until a determination was made on whether damages awarded during Phase II would overlap or otherwise cover the same damages that were awarded to UBS in Phase I (NYSCEF Doc. No. 641, pgs. 38-39).

V. Phase II – The Contemplated Jury Trial (First, Fifth and Eighth Causes of Action)

In Phase II, a jury trial was to be held on UBS’ remaining claims against CDO Fund, SOHC, and HFP for Fraud, Fraudulent Conveyances, and Alter Ego Liability (the First, Fifth, and Eighth Causes of Action, respectively) (*id.*).

In October 2019, HCM filed for bankruptcy, resulting in a stay of Phase II (NYSCEF Doc. No. 640). UBS subsequently settled with all the remaining Phase II defendants except the Funds and HFP (NYSCEF Doc. No. 762, pg. 10).

VI. The July 6, 2021 Default Judgment and Inquest

After the bankruptcy stay was lifted, Reid Collins & Tsai LLP moved, by Order to Show Cause and pursuant to CPLR 321(b)(2), to withdraw as counsel to defendants HCM, CDO Fund, SOHC, HFP, Credit Opp. and Strand (collectively, the “Highland Defendants”) (NYSCEF Doc. No. 654).

On April 6, 2021, the court held oral argument on the motion, at which time the Highland Defendants failed to appear (NYSCEF Doc. No. 660, pg. 1). Ultimately, the court granted the motion to withdraw as counsel and set the matter down for a Pre-Trial Conference (*id.*, pg. 2).

At the June 17, 2021 Pre-Trial Conference, counsel for HFP failed to appear (NYSCEF Doc. No. 665). The court then issued an order which scheduled another Pre-Trial Conference for June 24, 2021 at 11:00 a.m. (*id.*). The court expressly noted in its order that “a default judgment may be granted against any named parties that fail to appear at that conference and/or their claims may be dismissed, pursuant to 22 NYCRR 202.27” (*id.*).

Then, at the June 24, 2021 scheduled Pre-Trial Conference, CDO Fund, SOHC, and HFP failed to appear (NYSCEF Doc. No. 668). Subsequently, the court issued an order, dated July 6, 2021, that, pursuant to 22 NYCRR 202.27, entered a default judgment: “against Defendants CDO Fund and SOHC on Plaintiffs’ first cause of action for fraud,” “against Defendants CDO Fund, SOHC, and HFP on Plaintiffs’ fifth cause of action for actual and constructive fraudulent conveyances pursuant to N.Y. Debtor and Creditor Law §§ 273-276 and for attorneys’ fees

pursuant to N.Y. Debtor and Creditor Law § 276-a,” “against Defendant HEP on Plaintiffs’ eighth cause of action and HFP is declared to be the alter ego of SOHC and is liable for satisfying the judgment against SOHC for Plaintiffs’ third and fourth causes of action” (*id.*). UBS was also “directed to submit an application for or proof of damages within one year...in accordance with N.Y. CPLR § 3215 and. 22 NYCRR 202.46” (*id.*).

The court then put this case over for an inquest, scheduled for June 16, 2022 at 9:30 a.m., to determine UBS’ damages in connection with the July 6, 2021 dated default judgment. At the June 16, 2022 inquest, defendants CDO Fund, SOHC, and HFP did not appear, so the court took the inquest in on papers. There was no opposition to UBS’ inquest submissions, and all defendants were properly served and provided notice of the inquest pursuant to CPLR 3215(g)(1) (NYSCEF Doc. No. 771).

DISCUSSION

I. *Alter Ego Allegations and the Phase I Judgment*

The court entered a default judgment, dated July 6, 2021, as against HFP on UBS’ Eighth Cause of Action for Alter Ego Liability, and declared HFP to be SOHC’s alter ego (NYSCEF Doc. No. 668). This alter ego liability makes HFP liable for satisfying the judgment against SOHC on UBS’ Third and Fourth Causes of Action for Breach of Contract (*id.*).

Further, UBS’ alter ego allegations are sufficient under New York law. To plead an alter ego relationship, a plaintiff generally must allege: (i) "complete domination of the corporation in respect to the transaction attacked," and (ii) "that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury" (*Baby Phat Holding Co., LLC v Kellwood Co.*, 123 AD3d 405, 407 [1st Dept 2014]).

In deciding if a party may be deemed an alter ego, courts consider several factors, including: the disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors and personnel; common office space or telephone numbers; the degree of discretion demonstrated by the allegedly dominated corporation; whether dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; and the payment or guaranty of the corporation's debts by the dominating entity. No one factor is dispositive (*Fantazia Intern. Corp. v CPL Furs New York, Inc.*, 67 AD3d 511, 512, citing *Freeman v Complex Computing Co.*, 119 F 3d 1044, 1053 [2nd Cir 1997]).

In this case, UBS' Second Amended complaint alleges that SOHC: was HFP's instrumentality, had no independence, could not exercise any business discretion, did not have its own offices, officers or employees, and that "HFP completely dominated the day-to-day operations of SOHC as well as SOHC's sister affiliates." (NYSCEF Doc. No. 764, ¶¶, 195-196).

The Expert Report of Louis G. Dudney, UBS' forensic accounting and damages expert (the "Expert Report") (NYSCEF Doc. No. 766), further supports these allegations. The Expert Report comprehensively analyzed the relationship between the parties, and between HFP and SOHC, and summarized the assets at issue along with their respective valuations and the eventual transfers that took place in this case (*id.*).

Accordingly, HFP, as SOHC's alter ego, is liable for the judgment on the Third and Fourth Causes of Action for Breach of Contract in the amount of \$510,771,650.55.

II. Punitive Damages

"[P]unitive damages are awarded only in singularly rare cases such as cases involving an improper state of mind or malice or cases involving wrongdoing to the public," where the conduct "was so outrageous as to evince a high degree of moral turpitude and showing such wanton dishonesty as to imply a criminal difference to civil obligations (*Bothmer v Schooler, Weinstein, Minsky & Lester*, 266 AD2d 154, 154 [1st Dept 1999] [internal quotation marks and citations omitted]; see *Marinaccio v Town of Clarence*, 20 NY3d 506, 511 [2013] ["(T)he standard for imposing punitive damages is a strict one and punitive damages will be awarded only in exceptional cases."]).

"[A] private party seeking to recover punitive damages must not only demonstrate egregious tortious conduct by which he or she was aggrieved, but also that such conduct was part of a pattern of similar conduct directed at the public generally" (*Rocanova v Equitable Life Assur. Soc. of U.S.*, 83 NY2d 603, 613 [1994]).

Punitive damages are permitted only when "defendants' actions were aimed at the public or 'evinced a high degree of moral turpitude and demonstrat[ed] such wanton dishonesty as to imply a criminal indifference to civil obligations'" (*Linkable Networks, Inc. v Mastercard Inc.*, 184 AD3d 418, 419 [1st Dept 2020] [citations omitted]). A request for punitive damages for a fraud claim requires that an allegation that the fraud was aimed at the public generally (*Vandashield Ltd. v Isaacson*, 146 AD3d 552, 555 [1st Dept 2017] [citations omitted]).

Here, while defendants' actions are certainly reprehensible, they do not rise to the level of moral turpitude or criminal indifference that is required to support a punitive damages award (*see Seymour v Hovnanian*, 2022 NY Slip Op 04705 [1st Dept July 26, 2022] [conduct did not rise to the level required as to warrant awarding punitive damages]). Even assuming defendants' actions did rise to the requisite level, UBS has not established that the defendants' conduct was part of a pattern directed at the public generally. Rather, defendants' actions were, as UBS' stated in its very own Damages Inquest Demonstrative, a "[s]ystematic, willful, and calculated tortious scheme to dissipate and transfer assets to avoid payment to UBS" (NYSCEF Doc. No. 772).

Accordingly, the court denies the request and declines to award UBS' any punitive damages.

III. Judgment Setting Aside Fraudulent Transfers

The court awards UBS a money judgment, totaling \$67,222, as against the CDO Fund.

In its Expert Report, UBS "summarizes 127 cash and asset transfers, and their related values, all made as part of the HFP Notes termination by HFP's subsidiaries to other Highland Entities, while SOHC/HFP was insolvent" (NYSCEF Doc. No. 766, pg. 79).

UBS' Expert Report also states that "SOHC/HFP was insolvent when SOHC/HFP made these 127 transfers from March 18, 2009 through June 2, 2009" (*id.*). Further, UBS explains that the \$67,222 transfer on December 19, 2008 from HFP to CDO is the only fraudulent conveyance issue that it did not obtain a settlement for (NYSCEF Doc. No. 762, pg. 25). As CDO Fund is now insolvent, and no longer possesses the assets at issue, UBS is entitled to a money judgment in an amount up to the value of the fraudulently transferred assets (*id.*, pg. 26).

Accordingly, the court awards UBS a money judgment totaling \$67,222 as against the CDO Fund.

IV. Attorneys' Fees

UBS requests an award totaling \$27,914,282 in attorneys' fees against the Funds and HFP (*id.*, pg. 24). While it is true that the court-imposed liability under NY DCL § 276-a for attorneys' fees in the July 6, 2021 default judgment, the court declines to award the full amount sought here at this inquest.

Under DCL § 276-a, in an action brought to set aside a conveyance found to have been made with "actual intent . . . to hinder, delay or defraud," the court may award "reasonable"

attorneys' fees. However, the award of attorneys' fees must encompass services "inextricably intertwined with the fraudulent conveyance cause of action" (*Apparel Corp. (Far E.) v Sheermax LLC*, 126 AD3d 413, 414 [1st Dept 2015]).

In determining reasonableness of attorneys' fees, the court should evaluate factors such as the "time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented" (*Ohana v Levy*, 2015 WL 2441357, *6 [Sup Ct, Kings Cty May 22, 2015]). Moreover, the court is able to reduce a proposed award of attorneys' fees in order to account for inefficiency and duplication of work (*Valenti v Going Grain, Inc.*, 2020 N.Y. Misc. LEXIS 2589, *6 [Sup Ct, NY Cty June 5, 2020]).

Here, while awarding attorneys' fees is appropriate under DCL § 276-a, UBS' request for an award totaling \$27,914,282 is inappropriate and must be reduced. Despite attaching records indicating voluminous billing by counsel from 2011 through 2018, UBS provides nothing more than conclusory claims that these numerous charges were "inextricably intertwined" with the Fifth Cause of Action for fraudulent conveyance.

Additionally, this case's lengthy procedural history must be addressed. The Summons and Complaint were first filed on February 24, 2009 (NYSCEF Doc. Nos. 1-2). Since that time, the Complaint was amended twice (NYSCEF Doc. Nos. 148, 242), three separate global law firms were involved, over two dozen motions were filed, and multiple interlocutory appeals were taken (NYSCEF Doc. No. 762, pg. 9). This reveals deep patterns of inefficiency and duplication of work and highlights the excessive litigation and unnecessary motion practice that occurred here for more than a decade.

As such, the court awards UBS attorneys' fees in the amount of \$16,283,331, approximately 58% of the requested award, to account for fees not inextricably tied to the cause of action, as well as inefficiencies, excessiveness, and duplication of efforts (*see David Z. Inc. v Timur on Fifth Ave., Inc.*, 7 AD3d 257, 258 [1st Dept 2004] [reducing award of attorneys' fees from \$13,793 to \$7,500 after finding the original award "excessive"]).

V. Lifting the Prior Stay of Enforcement

Finally, the court lifts the stay of enforcement on the \$70,500,000 portion of the judgment rendered against SOHC in Phase I (NYSCEF Doc. No. 646). The Phase I judgment awarded UBS compensatory damages and prejudgment interest on its Third Cause of Action for Breach of

Contract as related to the Cash Warehouse Agreement, and the Fourth Action for Breach of Contract as related to the Synthetic Warehouse Agreement (NYSCEF Doc. No. 641, pg. 39).

In Phase II, however, UBS seeks attorneys' fees, punitive damages (that, as discussed above, the court declines to award) and a \$67,222.00 money judgment against the now-insolvent CDO Fund, representing the only remaining unsettled fraudulent conveyance (NYSCEF Doc. No. 762, pgs. 26-27). These damages do not overlap.

Accordingly, the court lifts the stay of enforcement on the \$70,500,000 judgment rendered in Phase I.

The court has considered the party's remaining contentions and finds them unavailing.

Accordingly, it is

ORDERED that the stay of execution of the \$70.5 million portion of the Phase I judgment against defendant Highland Special Opportunities Holding Company (NYSCEF Doc. No. 646 [1/22/20 judgment]) is lifted; and it is further

ORDERED, ADJUDGED, and DECLARED that defendant Highland Financial Partners, L.P., with an address at 100 Crescent Ct., Suite 1850, Dallas, Texas 75201, as an alter ego of defendant Highland Special Opportunities Holding Company, with an address at Walker House, 87 Mary Street, George Town, Grand Cayman, Cayman Islands, is liable for satisfying Plaintiffs' January 22, 2020 judgment against Highland Special Opportunities Holding Company on Plaintiffs' third and fourth causes of action in the amount of **\$510,771,650.55**, together with post-judgment interest at the statutory rate as calculated by the clerk of the court, and that Plaintiffs shall have execution thereof; and it is further

ORDERED, ADJUDGED, and DECLARED that Highland Financial Partners, L.P.'s December 19, 2008 transfer of \$67,222.00 to defendant Highland CDO Opportunity Master Fund, L.P. is null and void as it was an actually and constructively fraudulent transfer with respect to Plaintiffs; and it is further

ORDERED and ADJUDGED that Plaintiffs UBS Securities LLC, with an address of 600 Washington Blvd., 10th Floor, Stamford, Connecticut 06901, and 1285 Avenue of the Americas, New York, New York 10019, and UBS AG London Branch, with an address at 5 Broadgate, London EC2M 2QS, United Kingdom, have judgment on their fifth cause of action for fraudulent conveyance and recover against Highland CDO Opportunity Master Fund, L.P. the amount of **\$67,222.00**; and it is further

ORDERED and ADJUDGED that Plaintiffs UBS Securities LLC, with an address of 600 Washington Blvd., 10th Floor, Stamford, Connecticut 06901, and 1285 Avenue of the Americas, New York, New York 10019, and UBS AG London Branch, with an address at 5 Broadgate, London EC2M 2QS, United Kingdom, have judgment and recover against defendants Highland Financial Partners, L.P., Highland Special Opportunities Holding Company, and Highland CDO Opportunity Master Fund, L.P. the amount of **\$16,283,331.00** for Plaintiffs' reasonable attorneys' fees, and that Plaintiffs shall have execution thereof; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

7/27/2022
DATE


MELISSA CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

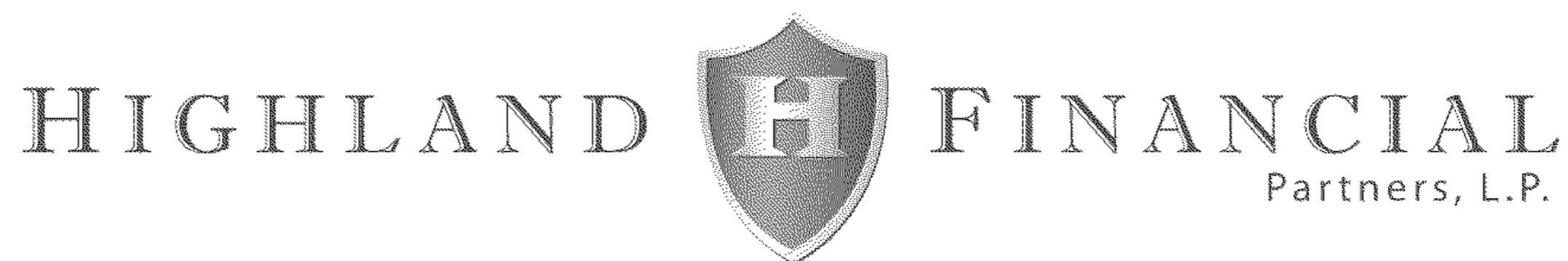
SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE



January 27, 2009

Dear Investors,

This letter provides a periodic update for the limited partners of Highland Financial Partners, L.P. (“HFP” or “the Partnership”). The Partnership’s largest limited partner is Highland Capital Management, L.P. (“HCMLP” or “Highland”). Highland is also an investment manager of other hedge funds and retail funds that operate as separate legal entities, independent of HFP. It is important to note that this letter applies only to HFP.

The past three months have been extremely challenging for HFP. During October, our adjusted book value decreased from \$5.78 to \$.07, and from \$.07 to \$0.00 during November, driven primarily by declining marks (unrealized losses) in our securities’ portfolio. We expect our December 31, 2008 balance sheet will reflect liabilities greatly exceeding our assets. With the deteriorating condition of the credit markets overall and the global loss of liquidity in almost every market, we currently see no impetus for a reversal in the mark trends. In addition, as discussed in the second quarter financial statements that we recently distributed¹, HFP has begun to experience significant liquidity issues due to the continued deterioration of the credit markets and the economy as a whole.

The purpose of this letter is to provide a brief overview of the conditions in the leveraged loan and Collateralized Loan Obligation (“CLO”)² markets and the effect they have had on HFP’s recent operating performance.

A. Overview of the Leveraged Loan and CLO Markets

The global financial crisis has generated unprecedented volatility in the fixed income markets, with credit spreads at their highest levels in recent history. The anticipated increase of corporate loan default rates and the collapse of the structured credit market have driven prices on these asset classes to all time lows. The downward trends in the prices of leveraged loans and CLO securities that we are currently experiencing began in October 2007 and have accelerated rapidly over the past 90 days. In the fourth quarter of 2008, the average S&P LSTA Leveraged Loan Index³ bid fell by approximately 25.1%, from 82.44⁴ to 61.74⁵ and is now comparable to the trading price of high yield bonds. By comparison, the fall in the average loan bid price from December 31, 2007 through September 30, 2008 was approximately 12.7%.

¹ A complete copy of the financial statements is available on our website www.hfplp.com.

² Collateralized loan obligations (“CLOs”) are a form of securitization where payments from multiple loans are pooled together and passed on to different classes of owners in various tranches.

³ The S&P/LSTA Leveraged Loan Index (LLI) is a leveraged loan index which covers the U.S. loan market. The index reflects the market-weighted performance of institutional leveraged loans in the U.S. loan market based upon real-time market weightings, spreads and interest payments. All of the index components are the institutional tranches (Term Loan A, Term Loan B and higher and Second Lien) of loans syndicated to U.S. loan investors. If a loan that consists of tranches is syndicated both in the U.S. and Europe (i.e., a cross-border transaction), the US dollar portion that is syndicated in the U.S. market is tracked by the LLI and the Euro portion that is syndicated in the European market is tracked by the ELLI. The LLI series currently calculates total return daily with an inception date of 1 January 1997. Total return is the product of two components: interest income return and market value return.

⁴ As of September 30, 2008.

HIGHLAND FINANCIAL

Partners, L.P.

The fall in loan prices has been driven primarily by an excess supply of loans due to the forced liquidation of total return swap facilities and hedge funds liquidating assets in order to meet margin calls and redemptions. This has been coupled with a decrease in demand due to the closure of the structured credit markets, including CLOs. Until the summer of 2007, growth in the leveraged loan market had been exploding, mainly driven by LBO activity and growth of the structured products market. In October 2008, the supply of leveraged loans increased as several banks, suffering their own liquidity issues, escalated the forced unwinds of financing facilities and credit exposure to hedge funds. Bids-Wanted-in-Competition (“BWIC”)⁶ totaled approximately \$3.3 billion of par value compared to only \$217 million in September⁷. Over 70% of new loans issued from 2003 to 2007 were purchased by CLOs. With primary CLO issuance at a standstill and the inability of CLOs to purchase such deep discounted assets, there was no demand for a significant portion of the assets flooding the market. In addition, retail funds, which generated approximately 29%⁸ of the historical demand for leveraged loans, are now facing dramatically increased redemption requests from their investors, which are preventing them from purchasing additional loans and even forcing them to liquidate assets to meet such redemption requests.

Although the downward trend in loan prices has vastly exceeded the decline in the credit quality of the issuers, we have begun to see an increase in default rates in recent months. Loan defaults have risen sharply since bottoming in 2007 at a record low of 0.15%⁹. As of January 6, 2009, default rates for below investment grade corporate loans stood at 3.82% by issuer count and 4.76% by dollar volume¹⁰. While more loans have defaulted, the average value of these defaults has been relatively small in comparison to the average loan size (hence the gap between these measures). It should be noted that the average discount spread on loans of Libor + 1695¹¹ basis points is approximately 1391 basis points higher than the average historical spread of Libor + 304 basis points¹².

The fourth quarter of 2008 was also one of the worst for ratings downgrades on US leveraged loans. The number of issuers downgraded during the quarter was 119 according to the data tracked by the S&P/LSTA leveraged loan index. This was the largest number of downgrades in any quarter dating back to March of 2000. This is significant because ratings based tests that are in the later vintages of CLOs potentially cause the diversion of cash flows once the CCC rated assets rise above a certain threshold, typically 7.5%. Once CCCs are above this threshold, the excess CCCs are marked-to-market for purposes of the overcollateralization tests in the transaction. By the end of the year, the amount of loans in the

⁵ As of December 31, 2008.

⁶ BWICs represent a process for auctioning loan portfolios whereby an intermediary sends a spreadsheet of the loans to potential buyers. The buyers usually have a couple of days to submit bids for the entire portfolio or portions of it

⁷ Source: Standard & Poor’s LCD.

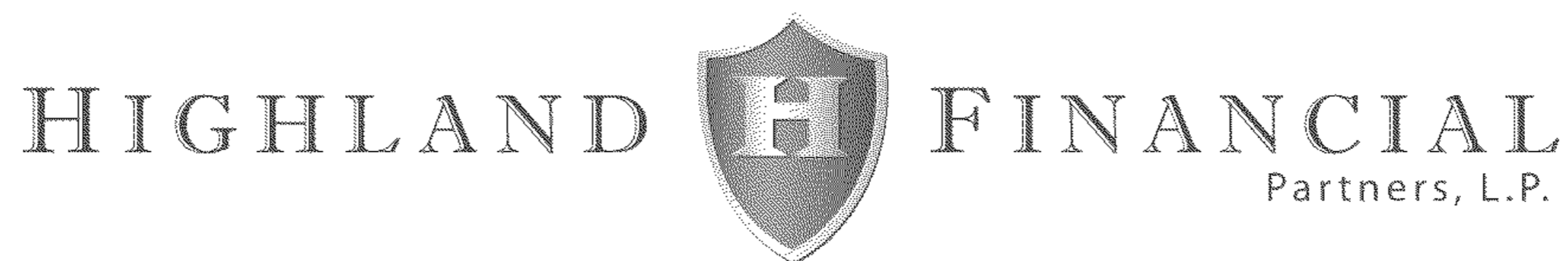
⁸ Source: Standard & Poor’s LCD.

⁹ Source: Standard & Poor’s LCD, LCD Loan Stats Weekly 11/17/08.

¹⁰ Source: Standard & Poor’s LCD. Default rate by principal amount is calculated as the amount defaulted over the last twelve months divided by the amount outstanding at the beginning of the twelve-month period. Default rate by number of issuers is calculated as the number of defaults over the last twelve months divided by the number of issuers in the index at the beginning of the twelve-month period.

¹¹ Source: S&P LCD Secondary Spreads by Rating and Industry Report, October 31, 2008. Excludes facilities in default. Discounted spread assumes discount from par is amortized evenly over a three-year life.

¹² Historical risk premium is determined by subtracting an implied historical loss of 90 bps (3% average historical default rate and 30% average loss given default) from the historical average secondary spread of 394 bps (source: S&P LCD Secondary Spreads by Rating and Industry Report; October 31, 2008). Implied default rate is calculated as the difference between the current secondary spread and the historical risk premium and dividing that figure by an average loss given default of 30%.



S&P/LSTA leveraged loan index with a rating of CCC+ or below was 12.3%, excluding non-rated loans. That same percentage was 5.24% as of September 19, 2008 and 3.7% as of June 30, 2008. The deterioration in the credit quality of loans has adversely impacted the Partnership's adjusted book value, as the allowance for loan losses increases to match the increase in expected future losses in the Partnership's portfolio of loans.

The increasing default rate and aggressive downgrade actions by the agencies on corporate bank loans have also affected our structured finance subsidiaries'¹³ ability to satisfy certain collateralization tests and interest diversion tests. To the extent the subsidiaries fail to meet such collateral tests, all or a portion of the distributions payable to the Partnership and other equity holders are required to be invested in new eligible assets within the structured finance subsidiary or diverted to the debt holders until such failures are cured. During the fourth quarter, the cash flow diversion tests for two of the structured finance subsidiaries were triggered, which resulted in a reduction of equity flows to the Partnership of approximately \$2,800,000. We anticipate that conditions in the credit markets will continue to weaken, and it is possible that actual defaults or credit-rating actions on the assets held will further impair, or very likely stop, the equity flows to the Partnership for some period of time. We are actively monitoring the credit quality of all positions in the underlying portfolios.

The dislocation in the leveraged loan market is even more pronounced in the market for CLO securities, which represent the structured product equivalent of the loan asset class. Approximately 12% of our \$14.8 billion in assets are CLO securities. Spreads on CLO tranches have widened to historic levels (Refer to Appendix B). As a result, the weighted average mark on CLO securities that we record on our balance sheet at fair value¹⁴ fell by approximately 28% in October (more than double the amount of the decline in loan prices) and approximately 14% in November, compared to a 15.6% decline during the entire third quarter. Only after we began to receive broker quotes during the first week of November did the magnitude of the market-to-market losses become known. We believe this asset class was subject to the same forced selling pressure as their underlying loans, but in a much higher magnitude. The unrealized losses that we recorded on our securities portfolio during November, coupled with the increase in our reserve for loan losses, was of enough magnitude to reduce our book value to zero as of November 30.

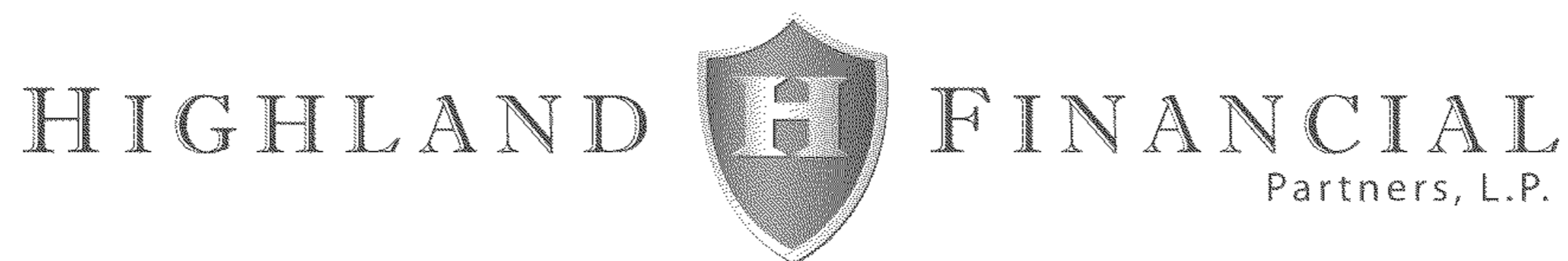
During the month of December, CLO security prices deteriorated further, and by the end of the month, virtually all A, BBB, BB and equity tranches were trading below fifteen cents on the dollar and most equity tranches were below ten cents on the dollar. (Refer to Appendix C.)

B. Short-Term Financing Arrangements

Exacerbating this rapid deterioration in market levels of our assets has been the unwillingness or inability of financing counter parties to provide term financing facilities, which are summarized below.

¹³ The term structured finance subsidiary refers to a majority-controlled entity of the Partnership that has issued long-term notes collateralized by CLO securities and leveraged loans.

¹⁴ HFP estimates the fair value of the CLO securities held by its structured finance subsidiaries in accordance with the provisions of Statement of Financial Accounting Standards ("SFAS") No. 157. Please refer to footnote 3 of our March 31, 2008 financial statements for a definition of fair value. In addition, footnote 6 of those financial statements discusses the valuation techniques that HFP applies to its CLO securities.



Secured Credit Facility

As discussed in notes 12 and 14 of our 2007 audited financial statements¹, we have historically relied on a secured credit facility to provide long-term liquidity for HFP to fund some of our strategic initiatives. The borrowings under the facility were secured by the equity interests in our structured finance subsidiaries. As the value of those interests declined in response to the market conditions discussed above (refer to Appendix C), the counterparty to the facility required us to post more cash collateral.

In March 2008, we re-negotiated the terms of the facility to free up almost \$120 million of the cash collateral and we reduced the amount of our outstanding borrowings by approximately \$67 million (leaving a total amount borrowed of approximately \$166 million). At the time, we were optimistic that these new terms would provide us with sufficient access to the capital we needed to sustain our long-term business plan and significantly reduce the collateral we would be required to post in the future. However, due to the unexpected acceleration of the deterioration of market conditions in October, we received a collateral call from the counterparty for approximately \$64 million. The previous margin calls for the months of August and September were \$21 million and \$29 million, respectively. A majority of the cash needed to meet the margin calls in October and November was raised from HCMLP and its affiliates (these parties are no longer able to provide funding to us prospectively). As a result, the Partnership was able to repay this market sensitive facility. If the Partnership had been unable to raise the cash to pay the margin calls, the counterparty would have exercised its rights under the facility and seized the underlying collateral and liquidated it at depressed prices to satisfy the margin calls.

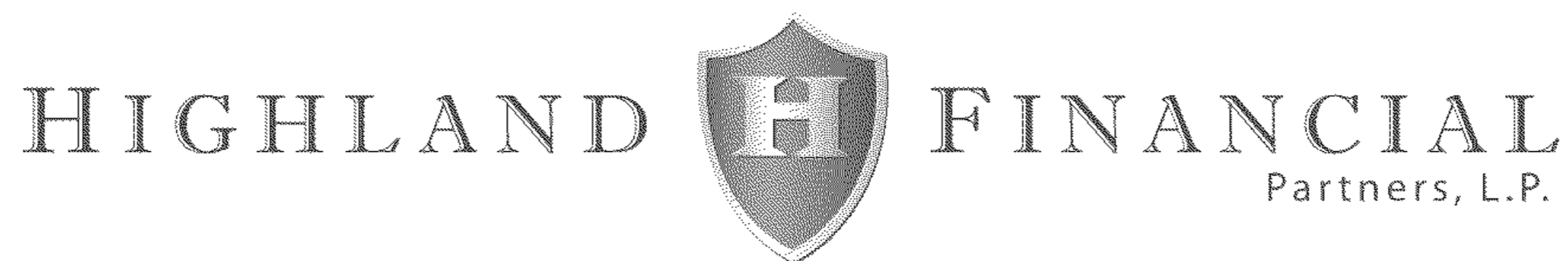
Warehouse Facilities

As of September, 30, 2008, we had one remaining outstanding loan warehouse facility¹⁵, which held a portfolio of European leveraged loans. This warehouse facility was scheduled to expire on January 31, 2009. However, in October 2008, the counterparty unexpectedly and unilaterally terminated the facility. Although we have not received final details, the counterparty claims to have liquidated the portfolio in November at levels which may result in over \$100 million of realized losses for the Partnership. Approximately \$56 million of collateral was previously posted, and the counterparty is holding it as an offset. Because we had previously expected to hold the assets to maturity, we recorded them on our balance sheet at amortized cost. Therefore, the decline in the assets' market value did not affect our operating performance or adjusted book value until they were seized by the counterparty. We have recognized the full amount of the potential loss in our financial statements and reserved our rights in this matter.

CLO Financing Facility

A wholly-owned subsidiary of HFP, Highland Special Opportunities Holding Company ("SOHC"), holds a 49% interest in a risk sharing agreement that holds CLO bonds and credit default swaps ("CDS") that reference CLO obligations (Refer to note 8 of the 2007 audited financial statements). During the fourth quarter of 2008, the market value of the assets underlying the risk sharing agreement was marked down by our financing counterparties by approximately 87%. The net result was an additional decrease in HFP's book value of approximately \$249 million, or \$4.98 per unit.

¹⁵ A "loan warehouse facility" is an agreement with a financial institution to finance the purchase of leveraged loans for the anticipated issuance of debt and equity when it converts into a structured finance subsidiary.



On November 6, 2008, SOHC received a request from the counterparty to post additional collateral in accordance with the terms of the agreement. Based on SOHC's inability to do so, the counterparty elected to terminate the agreement as of December 5, 2008. The counterparty has since notified SOHC that its pro-rata share of the losses incurred through the termination date was approximately \$365 million and sent a formal demand for payment. SOHC is currently assessing all options with the counterparty to determine the final settlement of the facility.

C. Conclusion and Going Concern Considerations

It is currently clear that the future quarterly cash flows received by the Partnership will be dramatically reduced by the diversion of cash flows in our structured finance subsidiaries caused by the aggressive downgrade actions in the leveraged loan sector, coupled with increasing default rates.

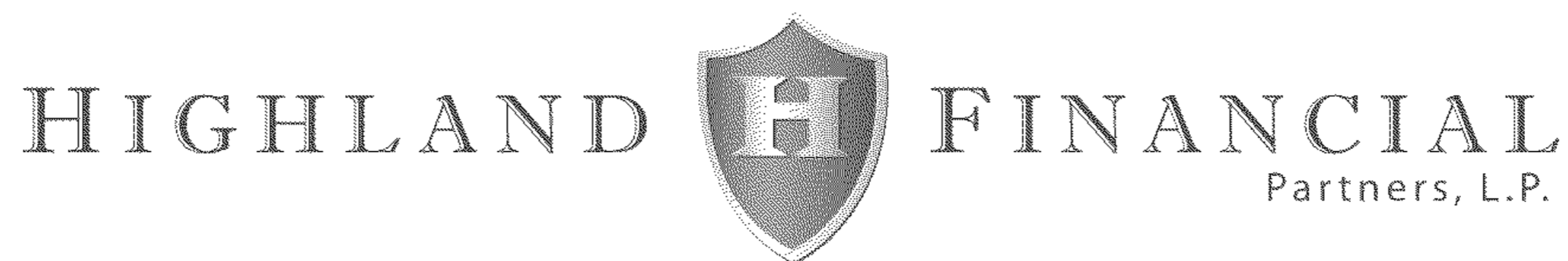
Due to events and circumstances described in this letter, we have concluded as of December 31, 2008, it is likely that all future inflows of cash to HFP will be used to pay creditors and that there is no prospect of return to holders of HFP units. As such, the value of HFP units has suffered a permanent impairment. It should be noted that HCMLP and its employees have participated materially in every capital raise by HFP and also been adversely affected by these events. Net of base management fees received in prior periods, HCMLP and its employees have lost approximately \$121 million that they invested in HFP.

D. Management Fees

Due to the unprecedented and unexpected downturn in economic conditions, the freefall in marks on our assets and the resulting negative impact on HFP, management has elected to permanently forgo any management fees that would be owed under the terms of the existing management agreement beginning in the fourth quarter of 2008.

Sincerely,

The Management Team
Highland Financial Partners, LP



Attachments

Appendix A – Market Implied Default Rates

Appendix B – Widening Spreads on CLO Tranches

Appendix C – Pricing Trends of A, BBB, BB and Equity CLO Tranches

Appendix D – Summary of Operations, Third Quarter 2008

Appendix E – HFP Adjusted Book Value per Common LP Unit, November 2008

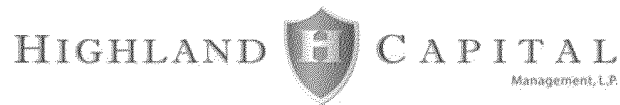
Cautionary Statement

This letter contains forward-looking statements. Forward-looking statements are based on management's current expectations that are subject to risks and uncertainties. We caution you that actual results may differ, perhaps materially, from the forward-looking statements included in this letter. We do not undertake to update any forward-looking statements.

Past performance does not guarantee future results. Performance during time period shown is limited and may not reflect the performance in different economic and market cycles. There can be no assurance that similar performance will be experienced. This material is for informational purposes only and does not constitute an offer to sell or solicitation of an offer to buy any securities or investment services. Investments in loan markets involve the risk of loss.

Targeted IRR described herein have been prepared by Highland Capital Management, L.P. on the basis of estimates and assumptions about the performance of the life settlement assets gross of fees and any expenses. Actual results may differ materially from these estimates. Targeted returns should not be relied upon as facts as there is no assurance that these results will be achieved.

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February 4, 2009

Dear Highland CDO Opportunity Fund Investor:

The unprecedented market volatility and disruption to the financial system, and the market for structured products assets in particular, have so significantly deteriorated the CDO Opportunity Fund's asset values that the Fund has been rendered insolvent.

Therefore, Highland CDO Opportunity Fund GP, L.P., the general partner of Highland CDO Opportunity Fund, L.P. ("CDO Fund US"), and the board of directors of Highland CDO Opportunity Fund, Ltd. ("CDO Fund Bermuda" and together with CDO Fund US, the "CDO Funds" or the "Funds"), in each such case, in consultation with Highland Capital Management, L.P. (the "Investment Manager"), have determined that it is in the best interests of the CDO Funds to wind down the Funds. In connection with this process, all of the Fund's available assets will be distributed to the Fund's remaining financing counterparties and other senior and trade creditors in an orderly liquidation. Regretfully, as of December 31, 2008, the amount of these liabilities exceeded the assets of the Fund to such a degree that no assets remain available to satisfy any unpaid redemptions of the Fund or to distribute amounts to any current investors in the Fund.

We are extremely disappointed in the Funds' performance and this outcome, but believe there is no viable path to any recovery for investors in the Fund. As you are aware, Highland Capital and its affiliates had among the largest exposure to the Fund, which has been rendered worthless.

If you have any questions regarding these matters, please contact your relationship manager, and email us at HighlandCDOOpportunityFunds@hcmlp.com.

Respectfully,

Highland Capital Management, L.P.

From: Scott Ellington <SEllington@HighlandCapital.com>
To: Isaac Leventon <ILeventon@HighlandCapital.com>, JP Sevilla <JSevilla@HighlandCapital.com>
Subject: Fwd: PRIVILEGED FW: Multi Strat Cash Projection
Date: Fri, 1 Dec 2017 18:40:00 -0600
Importance: Normal
Attachments: ATT00001.htm; MultiStrat_11.30.17_Pro_Forma_Cash.xlsx; ATT00002.htm
Inline-Images: image001.jpg

See below and attached and please call me tomorrow on this.

Sent from my iPhone

Begin forwarded message:

From: Thomas Surgent <TSurgent@HighlandCapital.com>
Date: December 1, 2017 at 5:52:56 PM CST
To: Scott Ellington <SEllington@HighlandCapital.com>
Subject: PRIVILEGED FW: Multi Strat Cash Projection

Let's discuss

From: Taylor Colbert
Sent: Friday, December 01, 2017 5:50 PM
To: Trey Parker <TParker@HighlandCapital.com>
Cc: Thomas Surgent <TSurgent@HighlandCapital.com>; Hunter Covitz <HCovitz@HighlandCapital.com>; Clifford Stoops <CStoops@HighlandCapital.com>; Neil Desai <NDesai@HighlandCapital.com>; Carter Chism <CChism@HighlandCapital.com>; David Willmore <DWillmore@HighlandCapital.com>; Chris Dunn <CDunn@HighlandCapital.com>; Brandon Wurz <BWurz@HighlandCapital.com>
Subject: RE: Multi Strat Cash Projection

Trey,

As discussed, please see the updated file with Sentinel being presented as an affiliated investor.

Please let me know if you would like to see any other changes made.

Thanks.

Taylor

From: Taylor Colbert
Sent: Friday, December 1, 2017 3:37 PM
To: Trey Parker <TParker@HighlandCapital.com>
Cc: Hunter Covitz <HCovitz@HighlandCapital.com>; Clifford Stoops <CStoops@HighlandCapital.com>; Neil Desai <NDesai@HighlandCapital.com>; Carter Chism <CChism@HighlandCapital.com>; David



Willmore <DWillmore@HighlandCapital.com>; Chris Dunn <CDunn@HighlandCapital.com>; Brandon Wurz <BWurz@HighlandCapital.com>

Subject: Multi Strat Cash Projection

Hi Trey,

Please see attached for the cash projection and distribution allocation, as requested. There are several estimates in the file that we will continue to sharpen over the next couple of days.

Please let us know if it would be helpful to stop by and walk you through or if you would like it presented differently.

Best,

Taylor Colbert, CFA, CPA | Fund Analyst

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HIGHLAND CAPITAL
M A N A G E M E N T

Credit Ops Investors by NAV

10/31/2017

215,001,877 Master Fund NAV at 10/31/2017

99,847,836 Highland/Affiliates NAV

46.44% Highland % of Master NAV
13.31% Highland CDO Opportunity Fund, Ltd. % of Master NAV

| Master Fund - Highland Credit Opportunities Fund, LP | NAV @ Master | Highland % | Highland NAV | % of Non-Affiliated Master | Estimated Distribution | |
|--|-----------------------|------------|--------------|----------------------------|------------------------|---------------------------------------|
| California Public Employees' Retirement System | 47,927,141.29 | | 0% | - | 41.62% | 32,899,204 |
| HCMLP | 22,758,617.76 | | 100% | 22,758,618 | | |
| Starck, Ltd. | 8,838,382.67 | | 100% | 8,838,383 | | |
| Sentinel Re Holdings, Ltd. | 8,155,312.09 | | 100% | 8,155,312 | | |
| Core Credit Holdings L.P. | 6,149,703.27 | | 0% | - | 5.34% | 4,221,415 |
| Highland Capital Management, LP | 501,930.41 | | 100% | 501,930 | | |
| Highland Credit Opportunities Fund, Ltd. (Offshore Feeder) | 120,670,789.11 | | 49% | 59,593,593 | 53.04% | 41,925,954 <i>See Breakdown Below</i> |
| | 215,001,876.60 | | | 99,847,836 | 100.00% | 79,046,572 Total Distribution |

| Offshore Feeder - Highland Credit Opportunities Fund, Ltd. | NAV @ Offshore | % of Offshore | Highland NAV | % of Non-Affiliated Master | Estimated Distribution | |
|---|-----------------------|---------------|----------------|----------------------------|------------------------|-------------------|
| Sentinel (from Highland CDO Fund) | 28,586,336.37 | | 23.71% | 28,586,336 | | |
| The Dugaboy Investment Trust | 1,008,932.59 | | 0.84% | 1,008,933 | | |
| Highland Capital Management, LP 2 | 5,605,181.18 | | 4.65% | 5,605,181 | | |
| Highland Capital Management Services, Inc. | 20,694,672.02 | | 17.17% | 20,694,672 | | |
| Quest IRA, Inc. FBO Jennifer G. Terry, IRA #1467511 | 140,129.51 | | 0.12% | 140,130 | | |
| Quest, IRA, Inc. FBO Joshua N. Terry, IRA #1467711 | 280,259.08 | | 0.23% | 280,259 | | |
| Mark K. Okada | 252,233.12 | | 0.21% | 252,233 | | |
| PAUS LP | 58,774,396.29 | | 48.76% | - | 51.09% | 40,386,179 |
| ETI KAV Ltd. | 485,695.20 | | 0.40% | - | 0.42% | 333,740 |
| Pioneer Group Limited | 697,829.81 | | 0.58% | - | 0.61% | 479,506 |
| Highland | 2,965,403.53 | | 2.46% | 2,965,404 | | |
| Highland Multi-Strategy Credit Fund, Ltd. - Series A Shares - Japanese Unit Trust | 1,057,323.73 | | 0.88% | - | 0.92% | 726,528 |
| | 120,548,392.43 | | 100.00% | 59,533,147 | 53.04% | 41,925,954 |

61,015,245.03 Non-Affiliate Offshore NAV

Multi-Strat Cash Projections

| | | | |
|--|-------------|-------------------|------------------|
| 11/30/2017 Beginning | | 21,902,710 | Per 11.30.17 tab |
| 12/5/2017 Trade Settlements with CLO HoldCo | 12,102,395 | 34,005,105 | |
| 12/8/2017 ACIS 2 Paydown | 23,850,342 | 57,855,447 | |
| 12/15/2017 Net Turtle Bay Proceeds | 6,096,418 | 63,951,865 | |
| 12/15/2017 Life Settlement Redeemers Payment | (865,953) | 63,085,912 | |
| 12/15/2017 Selling of positions on repo | 18,791,220 | 81,877,133 | |
| 12/18/2017 Remainder of Neil positions to be sold | 8,956,295 | 90,833,428 | |
| 1/1/2018 LS Premiums & Fund Expenses & Repo Interest | (679,365) | 90,154,062 | |
| 2/1/2018 LS Premiums & Fund Expenses & Repo Interest | (709,025) | 89,445,037 | |
| 3/1/2018 LS Premiums & Fund Expenses & Repo Interest | (718,686) | 88,726,352 | |
| 3/8/2017 ACIS 2 Redeemers Payable | (6,761,765) | 81,964,587 | |
| 3/15/2018 Claims outstanding | (838,292) | 81,126,295 | |
| 4/1/2018 LS Premiums & Fund Expenses & Repo Interest | (697,398) | 80,428,897 | |
| 5/1/2018 LS Premiums & Fund Expenses & Repo Interest | (662,686) | 79,766,211 | |
| 6/1/2018 LS Premiums & Fund Expenses & Repo Interest | (719,639) | 79,046,572 | |
| Estimated Projected Distributable Cash | \$ | 79,046,572 | |

Highland Multi Strategy Credit Fund
Cash Estimate
11/30/2017

| Cash on hand | Amount | Fund | Notes |
|--|-------------------|---------------|------------------------------|
| Onshore cash | 6,540,373.92 | MASTER | |
| Jeffries cash | 12,120,462.04 | MASTER | |
| MVCDO cash | 567,062.26 | MVCDO | |
| Offshore cash | -4,865.97 | OFFSHORE | |
| Holdco cash | 247,200.37 | HOLDCO | |
| HCOF | 500,317.82 | MASTER | |
| Hibiscus | 11,830.28 | MASTER | |
| Nexbank cash (to transfer to BNY) | 1,016,141.28 | MASTER | |
| HCOAL cash | 894,456.14 | HCOAL | |
| | 21,902,710 | | to cash walk tab |
| Unsettled Trades | | | |
| Match Group, Inc. (fka The Match Group, Inc.) 5.00% - 12/2027 - 57665RAG1 144A | (1,980,540) | MASTER | Already traded |
| Weight Watchers International, Inc. Term Loan B | (3,920,000) | MASTER | Already traded |
| ACIS 2015-6A Float - 05/2027 - E - 004524AA2 | 7,400,500 | MASTER | Already traded |
| HPCDO 2006 - 1X Float - 11/2051 - A2 - USG44392AG65 | 1,338,664 | MASTER | Already traded |
| HPCDO 2006-1A Float - 11/2051 - A2 - 404185AG5 | 892,442 | MASTER | Already traded |
| Liberty CLO, Ltd. Common | 1,031,370 | MASTER | Already traded |
| PAMCO 1997-1A 7.910% - 08/2009 - B - 697638AC8 | 22,559 | MASTER | Already traded |
| Westchester CLO, Ltd Class I Preference Shares 144A | 4,729,400 | MASTER | Already traded |
| Match Group, Inc. (fka The Match Group, Inc.) 5.00% - 12/2027 - 57665RAG1 144A | 1,995,000 | MASTER | Already traded |
| Weight Watchers International, Inc. Term Loan B | 197,000 | MASTER | Already traded |
| Weight Watchers International, Inc. Term Loan B | 396,000 | MASTER | Already traded |
| Per Neil to be Sold @ 10.31.17 MV (estimated) | | | |
| ACIS 2015-6A Float - 05/2027 - E - 004524AA2 | 5,355,625 | MASTER | Proposed to trade |
| ACIS 2014-4A Float - 05/2026 - E - 00100HAA9 | 2,387,500 | MASTER | Proposed to trade |
| Rockwall Investors Corp Preferred | 1,213,170 | MASTER | Proposed to trade |
| Selling of Positions Currently on Repo | 18,791,220 | MASTER | Proposed to trade |
| Claims | | | |
| KATO | (808,699) | MASTER | Could be claimed at any time |
| Various ACIS interest items | (118,618) | MASTER | Could be claimed at any time |
| Rockwall Equity Flows | 2,843 | MASTER | Could be claimed at any time |

SENTINEL REINSURANCE, LTD.
(the "**Company**")

UNANIMOUS WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

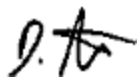
1 Approval of Dividend Payment

- 1.1 It is noted that on 23 April 2020, Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the "**Manager**"), had notified Cayman Islands Monetary Authority ("**the Authority**") of the Company's intention to declare a dividend in an aggregate amount of US\$6,400,000 (the "**Dividend**"), in accordance with its dividend policy approved by CIMA on 21 March 2016.
- 1.2 It is further noted that:
- (a) the latest management accounts of the Company had been reviewed by the directors of the Company (the "**Directors**");
 - (b) in order for the Company to be able to pay the Dividend it must be able to pay its debts as they fall due in its ordinary course of business immediately following the payment of the Dividend and there must be sufficient profits, retained earnings or share premium; and
 - (c) the Directors had considered whether there were any agreements or other arrangements binding on the Company which may restrict the Company's ability to pay the Dividend and it is noted that the Directors had determined that the Company is not so restricted.
- 1.3 Accordingly, **IT IS RESOLVED THAT:**
- (a) the Dividend, which complies with the Company's dividend policy, be approved, confirmed and ratified;
 - (b) the Directors be authorised to perform on behalf of the Company any and all such acts as they may deem necessary or advisable in order to comply with applicable laws and in connection therewith to execute and file all requisite papers and documents including but not limited to applications, reports, security bonds, irrevocable consents and appointments of attorneys for service of process, and the execution by a Director of any such paper or document or the doing by him of any act in connection with the foregoing matters shall conclusively establish his authority therefor from the Company and the approval and ratification by the Company of the papers and documents so executed and actions so taken; and
 - (c) all prior actions taken by any Director, officer, and agent for and on behalf of the Company in connection with the foregoing resolutions, including but not limited to, the signing of any agreements, resolutions, deeds, letters, notices, certificates, acknowledgements, receipts, authorisations, instructions, releases, waivers, proxies and other documents (whether of a like nature or not) and the payment of all and any related fees and expenses be confirmed, ratified and approved in all respects.

[signature page follows]

Written board resolutions of Sentinel Reinsurance, Ltd.

Signed by all the Directors:



Damien Austin

Director

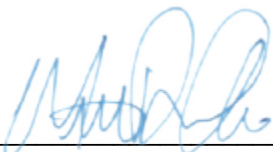
Dated: 24 April 2020



Jan Neveril

Director

Dated: 24 April 2020



Matthew DiOrio

Director

Dated: April 24, 2020

SENTINEL REINSURANCE, LTD.
(the "**Company**")

UNANIMOUS WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

1 Approval of Dividend Payment

1.1 It is noted that Beecher Carlson Cayman, Ltd., which acts as the insurance manager of the Company (the "**Manager**"), will notify Cayman Islands Monetary Authority ("**the Authority**") of the Company's intention to declare a dividend in an aggregate amount of US\$2,500,000 (the "**Dividend**"), in accordance with its dividend policy approved by CIMA on 21 March 2016.

1.2 It is further noted that:

- (a) the latest management accounts of the Company had been reviewed by the directors of the Company (the "**Directors**");
- (b) in order for the Company to be able to pay the Dividend it must be able to pay its debts as they fall due in its ordinary course of business immediately following the payment of the Dividend and there must be sufficient profits, retained earnings or share premium; and
- (c) the Directors had considered whether there were any agreements or other arrangements binding on the Company which may restrict the Company's ability to pay the Dividend and it is noted that the Directors had determined that the Company is not so restricted.

1.3 Accordingly, IT IS RESOLVED THAT:

- (a) the Dividend, which complies with the Company's dividend policy, be approved, confirmed and ratified;
- (b) the Directors be authorised to perform on behalf of the Company any and all such acts as they may deem necessary or advisable in order to comply with applicable laws and in connection therewith to execute and file all requisite papers and documents including but not limited to applications, reports, security bonds, irrevocable consents and appointments of attorneys for service of process, and the execution by a Director of any such paper or document or the doing by him of any act in connection with the foregoing matters shall conclusively establish his authority therefor from the Company and the approval and ratification by the Company of the papers and documents so executed and actions so taken; and
- (c) all prior actions taken by any Director, officer, and agent for and on behalf of the Company in connection with the foregoing resolutions, including but not limited to, the signing of any agreements, resolutions, deeds, letters, notices, certificates, acknowledgements, receipts, authorisations, instructions, releases, waivers, proxies and other documents (whether of a like nature or not) and the payment of all and any related fees and expenses be confirmed, ratified and approved in all respects.

[signature page follows]

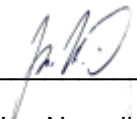
Written board resolutions of Sentinel Reinsurance, Ltd.

Signed by all the Directors:

Damien Austin

Director

Dated: _____



Jan Neveril

Director

Dated: 11 January 2021



Matthew DiOrio

Director

Dated: January 11, 2021

SENTINEL REINSURANCE, LTD.
(the "**Company**")

UNANIMOUS WRITTEN RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE COMPANY

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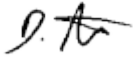
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- (c) all prior actions taken by any Director, officer, and agent for and on behalf of the Company in connection with the foregoing resolutions, including but not limited to, the signing of any agreements, resolutions, deeds, letters, notices, certificates, acknowledgements, receipts, authorisations, instructions, releases, waivers, proxies and other documents (whether of a like nature or not) and the payment of all and any related fees and expenses be confirmed, ratified and approved in all respects.

[signature page follows]

Written board resolutions of Sentinel Reinsurance, Ltd.

Signed by all the Directors:



Damien Austin

Director

Dated: January 11, 2021

Jan Neveril

Director

Dated: _____

Matthew DiOrio

Director

Dated: _____

From: [Matt DiOrio](#)
To: [Gareth Pereira](#)
Cc: [Jan Neveril](#); [Alli Ammirato](#); [Damien Austin](#); [Tom Adamczak](#)
Subject: Re: Sentinel Dividend
Date: Monday, January 11, 2021 12:37:02 PM

[External]

Same split

Sent from my iPhone

On Jan 11, 2021, at 11:32 AM, Gareth Pereira <pgareth@beechercarlson.com> wrote:

Hi Matt

Do we know how the payment is to be split between Montage and Mainspring, I know in April 2020 it was a 30/70 split?

Thanks
Gareth

From: Matt DiOrio <mdiorio@sasmgt.com>
Sent: Monday, January 11, 2021 11:24 AM
To: Gareth Pereira <pgareth@beechercarlson.com>
Cc: Jan Neveril <jan.neveril@compassofm.com>; Alli Ammirato <aammirato@beechercarlson.com>; Damien Austin <daustin@ims.ky>; Tom Adamczak <tadamczak@beechercarlson.com>
Subject: Re: Sentinel Dividend

[External]

Info below. Both are at CIBC so instructions are the same outside of account name and number.

Montage Holdings Ltd, account # 10471471
Mainspring Ltd, account #10471477

Correspondent Bank: Wells Fargo, N.A., New York, USA

SWIFT Code: PNBUS3NNYC

ABA Code: 026005092

Beneficiary Bank: FirstCaribbean International Bank (Cayman) Limited

Beneficiary Bank Account Number: 2000192002655

SWIFT Code: FCIBKYYK

From: Gareth Pereira <pgareth@beechercarlson.com>
Sent: Monday, January 11, 2021 9:43 AM
To: Matt DiOrio
Cc: Jan Neveril; Alli Ammirato; Damien Austin; Tom Adamczak
Subject: RE: Sentinel Dividend

Thanks Matt, with the change to the new CIBC online banking website we lost all the beneficiaries that were previously set up on the old system. Please send along the wire instructions when you get a chance.

Thanks
Gareth

From: Matt DiOrio <mdiorio@sasmgt.com>
Sent: Monday, January 11, 2021 10:38 AM
To: Tom Adamczak <tadamczak@beechercarlson.com>; Damien Austin <daustin@ims.ky>
Cc: Jan Neveril <jan.neveril@compassofm.com>; Alli Ammirato <aammirato@beechercarlson.com>; Gareth Pereira <pgareth@beechercarlson.com>
Subject: Re: Sentinel Dividend

[External]

Thanks everyone. Alli and Gareth, wire instructions have not changed since the last dividend but please let me know if you need them again.

From: Tom Adamczak <tadamczak@beechercarlson.com>
Sent: Monday, January 11, 2021 6:51 AM
To: Matt DiOrio; Damien Austin
Cc: Jan Neveril; Alli Ammirato; Gareth Pereira
Subject: RE: Sentinel Dividend

All, that is correct, the Dividend Policy approved by CIMA only requires notification to CIMA provided that capital be maintained at 125% the greater of MCR and PCR. As Sentinel sits currently, this dividend would allowed under the Dividend Policy.

Thanks,

Tom

From: Matt DiOrio <mdiorio@sasmgt.com>
Sent: Saturday, January 9, 2021 6:45 PM
To: Damien Austin <daustin@ims.ky>
Cc: Jan Neveril <jan.neveril@compassofm.com>; Alli Ammirato <aammirato@beechercarlson.com>; Tom Adamczak <tadamczak@beechercarlson.com>; Gareth Pereira <pgareth@beechercarlson.com>
Subject: Re: Sentinel Dividend

[External]

I believe we just have to notify them that it's happened. We don't need preapproval.

Sent from my iPhone

On Jan 9, 2021, at 5:42 PM, Damien Austin <daustin@ims.ky> wrote:

I'm fine with this
Do we need to we get cima approval in advance.?

Thanks
Damien Austin
IMS.

From: Jan Neveril <jan.neveril@compassofm.com>
Sent: Friday, January 8, 2021 4:03:43 PM
To: Matt DiOrio <mdiorio@sasmgt.com>; Damien Austin <daustin@ims.ky>
Cc: Alli Devins <ADevins@beechercarlson.com>; Tom Adamczak <tadamczak@beechercarlson.com>; Gareth Pereira <pgareth@beechercarlson.com>
Subject: RE: Sentinel Dividend

Matt – thanks, let us confirm on Monday when Damien is back in the office.

Jan

From: Matt DiOrio <mdiorio@sasmgt.com>
Sent: Friday, January 8, 2021 11:55 AM

To: Jan Neveril <jan.neveril@compassofm.com>; 'Damien Austin' (daustin@ims.ky) <daustin@ims.ky>

Cc: Alli Devins <ADevins@beechercarlson.com>; Tom Adamczak <tadamczak@beechercarlson.com>; Gareth Pereira <pgareth@beechercarlson.com>

Subject: Sentinel Dividend

I'd like to propose a dividend in the amount of \$2.5M. This leaves an operating cash cushion of approximately \$700k above our current loss reserves of \$25.3M.

Separately, we expect the loss reserve requirement to decrease to \$19.1M in the near future provided the actuary agrees with what has been provided in relation to the current status of the ATE litigation.

Jan and Damien please let us know if you approve of the dividend and then the Beecher team can get to work setting it up.

Thanks,

Matt DiOrio

857-453-0197

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Cc: Gareth Pereira[pgareth@beechercarlson.com]; Wade Kenny[wkenny@calderwood.ky]; Stephen Leontsinis[Stephen.Leontsinis@collascrill.com]; JS de Jager CSI[js@csi.ky]; Tom Adamczak[tadamczak@beechercarlson.com]; Clayton Price[cprice@beechercarlson.com]
To: Casey McDonald[cmcdonald@calderwood.ky]
From: Matt DiOrio[matttorio40@gmail.com]
Sent: Thur 6/24/2021 9:23:56 PM Coordinated Universal Time
Subject: Re: Sentinel Expenses for Approval

[External]

This is in order and should be settled. The company indemnified a group of former employees, myself included, a while back and it relates to our defense with respect to today's hearing that I mentioned.

Sent from my iPhone

On Jun 24, 2021, at 4:19 PM, Casey McDonald <cmcdonald@calderwood.ky> wrote:

Thanks Gareth

I can go in and approve, but as Wade and I don't have any visibility into the legal bill, I'd appreciate Matt confirming it's all in order and should be settled. And as it's for US counsel, am I right in thinking that it is coming out of the prefunded risk mitigation balance? Or is there any additional background we could get on the expense?

Best regards,

Casey McDonald / Independent Director
cmcdonald@calderwood.ky / c: +1 345 324 2022

4th Floor, Century Yard, Cricket Square, George Town

[<image002.jpg>](#) P O Box 31162, Grand Cayman, KY1-1205 Cayman Islands

www.calderwood.ky

[<image003.jpg>](#)

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From: Gareth Pereira <pgareth@beechercarlson.com>
Sent: Thursday, 24 June 2021 11:38 AM
To: Casey McDonald <cmcdonald@calderwood.ky>
Cc: Wade Kenny <wkenny@calderwood.ky>; Stephen Leontsinis <Stephen.Leontsinis@collascrill.com>; 'Matt DiOrio' <matttorio40@gmail.com>; JS de Jager CSI <js@csi.ky>; Tom Adamczak <tadamczak@beechercarlson.com>; Clayton Price <cprice@beechercarlson.com>
Subject: RE: Sentinel Expenses for Approval

Good morning Casey

Following on from last week, please can you provide your approval through email and also release the following payments that have been set up in CIBC for Sentinel:

- Ross & Smith - Legal expenses – \$75,854.90
- Q3 Beecher Carlson Captive Management Fees – \$15,000.00



96

BC SEN0000074288
11/03/21
Highly Confidential

- Risk International - Actuarial consulting expenses – \$7,500.00 (Invoice from last week)

Going forward we will rotate payment approvals and release requests between the 3 directors.

Many thanks
Gareth

From: Gareth Pereira
Sent: Wednesday, June 16, 2021 9:04 AM
To: cmcdonald@calderwood.ky
Cc: wkenny@calderwood.ky; Stephen Leontsinis <Stephen.Leontsinis@collascrill.com>; 'Matt DiOrio' <mattdiorio40@gmail.com>; Tom Adamczak <tadamczak@beechercarlson.com>; Clayton Price <cprice@beechercarlson.com>
Subject: Sentinel Expenses for Approval

Hi Casey

Hope all is well

Please can you provide your approval through email and also release the following payments that have been set up in CIBC for Sentinel:

- CIMA - extension of audit filing – \$617.26 (Includes \$7.50 bank fee)
- Risk International - Actuarial consulting expenses – \$7,500.00

Let me know if there are any questions

Many thanks
Gareth

Gareth Pereira
Account Manager
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

<image004.png>

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Transcript of James Seery, Jr.

Date: August 5, 2022

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Transcript of James Seery, Jr.
 Conducted on August 5, 2022

| | |
|---|---|
| <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 DALLAS DIVISION</p> <p>4 -----X</p> <p>5 In re</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, L.P.,</p> <p>7 Debtor,</p> <p>8 -----X</p> <p>9 UBS SECURITIES LLC and UBS AG</p> <p>10 LONDON BRANCH, Plaintiffs, : Chapter 11</p> <p>11 vs. : Case No.:</p> <p>12 HIGHLAND CAPITAL MANAGEMENT, : 19-34054-SGJ11</p> <p>13 L.P., :</p> <p>14 Defendant. :</p> <p>15 -----X</p> <p>16</p> <p>17 REMOTE VIDEOTAPED Deposition of James Seery, Jr.</p> <p>18 Friday, August 5, 2022</p> <p>19 2:07 p.m.</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 458868</p> <p>24 Pages 1-136</p> <p>25 Reported by: Angela (Angie) Shaw-Crockett, CRR, RMR</p> | <p style="text-align: center;">3</p> <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PLAINTIFFS, UBS SECURITIES</p> <p>3 LLC:</p> <p>4 ANDREW CLUBOK, ESQUIRE</p> <p>5 SHANNON McLAUGHLIN, ESQUIRE</p> <p>6 LATHAM & WATKINS LLP</p> <p>7 555 Eleventh Street, NW</p> <p>8 Suite 1000</p> <p>9 Washington, District of Columbia 20004-1304</p> <p>10 202-637-2200</p> <p>11</p> <p>12 ON BEHALF OF THE DEFENDANT, HIGHLAND CAPITAL</p> <p>13 MANAGEMENT, L.P.,:</p> <p>14 JOHN MORRIS, ESQUIRE</p> <p>15 GREGORY DEMO, ESQUIRE</p> <p>16 PACHULSKI STANG ZIEHL & JONES LLP</p> <p>17 780 Third Avenue</p> <p>18 34th Floor</p> <p>19 New York, New York 10017-2024</p> <p>20 212-561-7700</p> <p>21</p> <p>22 ALSO PRESENT: Harold Rodriguez, Planet Depos Tech</p> <p>23 Enrique Casas, The Videographer</p> <p>24</p> <p>25</p> |
| <p style="text-align: center;">2</p> <p>1 REMOTE VIDEOTAPED Deposition of James Seery, Jr.,</p> <p>2 held at:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to Notice, before Angela (Angie)</p> <p>10 Shaw-Crockett, CRR, RMR, Notary Public in and for the</p> <p>11 states of New York, New Jersey and Connecticut.</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>1 I N D E X</p> <p>2 Examination of:</p> <p>3 Page</p> <p>4 James Seery, Jr.</p> <p>5</p> <p>6 C O N T E N T S</p> <p>7 MR. CLUBOK 7</p> <p>8</p> <p>9 E X H I B I T S</p> <p>10 (Retained by the Planet Depos)</p> <p>11 DEPOSITION EXHIBIT PAGE</p> <p>12 Exhibit 69 UBS's First Request for Production 29</p> <p>13 of Documents to Debtor Highland</p> <p>14 Capital Management, L.P.</p> <p>15 Exhibit 149 Debtor's Motion for Entry of an 33</p> <p>16 Order Approving Settlement with UBS</p> <p>17 Exhibit 150 Highland's Amended Responses and 36</p> <p>18 Objections to UBS's Requests for</p> <p>19 Admission</p> <p>20 Exhibit 151 an email chain with the top email 38</p> <p>21 dated August 5, 2020, from Mr. Seery</p> <p>22 to Mr. Leventon, copying Scott</p> <p>23 Ellington with the subject UBS</p> <p>24 Supplemental Information Request</p> <p>25 Exhibit 48 Settlement Analysis 44</p> <p>Exhibit 152 Letter to HFP from January 20, 2009 46</p> <p>Exhibit 153 February 4, 2009 letter to CDO 47</p> <p>Opportunity Fund Investors</p> <p>Exhibit 73 Email dated August 21, 2020 56</p> <p>Exhibit 154 Email thread 64</p> <p>Exhibit 155 Letter dated September 16, 2020 77</p> |

| | |
|---|---|
| <p style="text-align: center;">5</p> <p style="text-align: center;">E X H I B I T S (CONT'D)</p> <p style="text-align: center;">(Retained by Planet Depos)</p> <p>1 Exhibit 156 Email exchange around January 2021 83</p> <p>2 Exhibit 57 Email exchange between Isaac Leventon and Chris Dunn 90</p> <p>3 Exhibit 2 Purchase agreement dated August 7, 2017 100</p> <p>4 Exhibit 3 Memo from Shawn Raver to Rick Swadley regarding the policy 106</p> <p>5 Exhibit 157 Email from Jason Post to Sarah Goldsmith that attaches a copy of the Highland Capital Management Compliance Manual 109</p> <p>6 Exhibit 158 Document October 2017 113</p> <p>7 Exhibit 159 Document dated January 10, 2020 114</p> <p>8 Exhibit 160 Document dated January 8, 2021 116</p> <p>9 Exhibit 161 April 28, 2021 letter 119</p> <p>10 Exhibit 162 First formal written response Mr. Seery received in response to his demand 121</p> <p>11 Exhibit 163 Letter that the director sent to James Seery personally and at Highland Capital Management as opposed to CDO Fund 122</p> <p>12 Exhibit 164 A letter from Walkers 125</p> <p>13 Exhibit 165 WALKERS two-page document 126</p> <p>14 Exhibit 167 Another email exchange that was in early February 2021 127</p> <p>15 Exhibit 166 Email exchange in late January of 2021 with Matt DiOrio and Mr. Romey and Mr. DiOrio 128</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;">7</p> <p>1 are attending remotely.</p> <p>2 Would counsel please voice identify themselves and state who they represent.</p> <p>3 MR. CLUBOK: On behalf half of UBS, this is Andrew Clubok and Shannon McLaughlin from Latham~&~Watkins LLP.</p> <p>4 MR. MORRIS: And it's John Morris and Greg Demo from Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P., and we're representing the witness today, Mr. Jim Seery, in his individual capacity.</p> <p>5 THE VIDEOGRAPHER: The court reporter today is Angie~Shaw representing Planet Depos.</p> <p>6 Would the reporter please swear in the witness.</p> <p>7 James Seery, Jr., having been duly REMOTELY sworn, testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Good afternoon. Could you introduce yourself please.</p> <p>11 A Hi, my name is James Seery.</p> <p>12 Q Mr. Seery, you are a licensed attorney in New York?</p> <p>13 A I am a licensed attorney. My registration</p> |
| <p style="text-align: center;">6</p> <p>1 PLANET DEPOS TECH: Thank you to everyone for attending this proceeding remotely, which we anticipate will run smoothly. Please remember to speak slowly and do your best not to talk over one another. Please be aware that we're recording this proceeding for backup purposes. Any off-the-record discussions should be had away from the computer. Please remember to mute your mic for those conversations. Please have your video enabled to help the reporter identify who is speaking. If you are unable to connect with video and are connecting via phone, please identify yourself each time before speaking. I apologize in advance for any technical-related interruptions. Thank you.</p> <p>2 THE VIDEOGRAPHER: Here begins disk number one in the remote video deposition of James Seery, Jr., in the matter of UBS Securities LLC, et al., versus Highland Capital Management, L.P., in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, case number 19-34054-SGJ11.</p> <p>3 Today's date is August 5, 2022. The time on the video monitor is 2:07 p.m. The remote videographer today is Enrique Casas representing Planet Depos. All parties of this video deposition</p> | <p style="text-align: center;">8</p> <p>1 is currently in hiatus or retirement or something like that, but I do pay every year my annual fee.</p> <p>2 Q Okay. And are you currently employed?</p> <p>3 A I am, yes.</p> <p>4 Q By whom?</p> <p>5 A I am the CEO of Highland Capital Management Limited Partnership.</p> <p>6 Q Can you very briefly walk through your education and prior job experience, just a summary version?</p> <p>7 A Undergraduate BA, JD. Started in real estate restructuring as a paralegal in '88, prior to graduating from law school in '90. I was a restructuring finance attorney from 1990 to 1999. I joined Lehman Brothers on the business side. At Lehman Brothers, I ran a distressed -- ultimately running the loan business globally, and then I -- after Lehman Brothers, we -- I went back to law for a couple of years, and then I went to run the restructuring business in New York. And then I went to a hedge fund that we started with some Mexican partners. And we were there from 2000 and -- beginning of 2012 until the end of 2017 or '18. And then I was at Guggenheim Securities building a credit business for a couple of years and became an</p> |

| | |
|--|--|
| <p style="text-align: right;">9</p> <p>1 independent director at Highland in January of 19 -- 2 2020, mid 2020. The court approved me as a CEO of 3 Highland and Chief Restructuring Officer and took on, 4 through the bankruptcy, and now the CEO of the 5 reorganized entity. 6 Q And what is the business of the reorganized 7 entity? 8 A The reorganized entity is an asset manager, 9 but does own assets as well. And its business is part 10 of a liquidating trust of which I am the 11 liquidating -- or I am the claimant trustee. And in 12 that capacity, we are monetizing the assets that 13 Highland has in both its individual ownership capacity 14 as well as its management of certain funds. 15 Q You mentioned that Highland Capital 16 Management is a limited partnership. Who is the 17 general partner? 18 A It's a newly-formed general partner that is 19 owned by the claimant trust and all of the limited 20 partnership interest in Highland are also owned by the 21 claimant trust. 22 Q And prior to the restructuring the general 23 partner of HCM was Strand Advisors? 24 A That's correct. 25 Q And what was your connection to Strand</p> | <p style="text-align: right;">11</p> <p>1 A That's correct. I should point out that 2 while I was at Lehman Brothers, Lehman Brothers did do 3 business with Highland Capital Management. 4 Q Okay. Had you met Jim Dondero before? 5 A Yes. 6 Q When was the last time -- 7 A Before the bankruptcy, meaning before 8 this -- 9 Q Yeah, before the bankruptcy? 10 A I think it would have been 2007 maybe once. 11 Q Okay. So roughly a dozen years or so 12 before the bankruptcy? 13 A Correct. 14 Q Okay. As independent director, what were 15 your responsibilities? 16 A As independent directors, the -- all three 17 were to manage the enterprise Highland Capital 18 Management in the bankruptcy, with Mr. Dondero having 19 been removed as CEO and president. He maintains 20 simply a portfolio management position, but we were 21 doing it remotely. So it would be incorrect to think 22 that we would have managed every aspect of Highland's 23 business at the time when it had shared offices with 24 Mr.~Dondero who was still on the premises running his 25 other businesses. And because of the shared service</p> |
| <p style="text-align: right;">10</p> <p>1 Advisors? 2 A Because it was a limited partnership, we 3 came in as independent directors who became 4 independent directors at Strand. Strand, as the GP, 5 had the ability to control and manage the limited 6 partnership of Highland Capital Management. 7 Q Okay. And Highland Capital Management 8 filed for Chapter 11 relief in late 2019? 9 A October 16, 2019. 10 Q You I think said that you thereafter, 11 sometime in approximately January of 2020, became one 12 of three independent directors of Strand Advisors? 13 A That's correct. January 9, 2020. 14 Q What connection does Strand have to the 15 current entity? 16 A None. 17 Q Prior to 2020, had you ever done any work 18 for Strand or HCM? 19 A No. 20 Q Now your appointment as independent 21 director I think you said was approved by the court. 22 But that was the product of an agreement between the 23 committee of the unsecured creditors and Highland 24 Capital Management's then president and CEO, Jim 25 Dondero; is that correct?</p> | <p style="text-align: right;">12</p> <p>1 arrangements, Highland Capital employees performed 2 numerous services for all of those other businesses. 3 Q And who were -- were there anybody -- were 4 there any employees of Highland who reported to the 5 independent directors? 6 A Directly or indirectly all of them did. 7 Q Okay. And did that include Jim Dondero 8 while he stayed on? 9 A Really, technically I think yes, but he was 10 a portfolio manager and he really didn't report to the 11 board effectively. I think technically he was 12 required to and the board could remove him, but he 13 really didn't take direction from the board. 14 Q Okay. And I think you testified that your 15 role changed a little bit over time. You became the 16 CEO and Chief Restructuring Officer in mid 2020? 17 A That's correct. 18 Q And, again, the bankruptcy court approved 19 those appointments? 20 A Yes. 21 Q What led to your appointment of those 22 positions? Strike that. 23 What led to you being appointed to those 24 positions? 25 A It was really a determination by the board</p> |

13

1 that a triamvirate was not the right way to try to
2 manage the business, particularly because of COVID.
3 We were working remotely and someone had to be the
4 point person. And based on my experience, I became
5 the de facto CEO and then appointed to the CEO and
6 chief restructuring role.
7 Q And did your -- strike that.
8 I think you have testified in the past
9 about your duties and responsibilities as CEO and CRO.
10 I'm going to ask you if I have this list generally
11 correct.
12 Is it the case that as CEO and CRO, you
13 directed Highland Capital Management's day-to-day
14 ordinary course operations, oversaw Highland Capital
15 Management's personnel, made management decisions with
16 respect to HCM's training operations, directed HCM's
17 reorganization efforts, monetized HCM's assets,
18 oversaw the claims objection resolution process, and
19 led the process towards the confirmation of the
20 Chapter 11 plan?
21 A That's correct, with the caveat that it was
22 done with the approval of the oversight board and
23 often in conjunction with the oversight board, as well
24 as with the management ex Mr. Dondero of Highland
25 Capital at the time.

14

1 Q By the way, there was one other title that
2 I think you had. Foreign representative. Do you know
3 what that refers to?
4 A I believe I was put in as foreign
5 representative so that I could also manage the foreign
6 entities that Highland had, to the extent that that
7 was required.
8 (Reporter interruption.)
9 MR. CLUBOK: Yeah, Jim, your voice was
10 fading out a little bit. When you moved closer, it
11 got better so if you could stay a little closer that's
12 much better.
13 THE WITNESS: All right.
14 BY MR. CLUBOK:
15 Q So with respect to foreign representatives,
16 were there particular countries that that was relevant
17 to?
18 A Highland had subsidiaries in a number of
19 different countries. Generally operate funds, not
20 necessarily operating companies. But those included
21 Caymans, Bermuda, indirectly Guernsey, Singapore; and
22 Brazil.
23 Q Were there Highland employees who
24 specifically dealt with the foreign funds like the
25 Cayman's funds?

15

1 A Typically, the legal department dealt with
2 the foreign funds. That didn't mean they were all
3 lawyers, but they worked in the legal department.
4 Q In any of your roles in connection with
5 Highland, have you had any responsibilities with
6 respect to an entity that we've referred to as
7 Multi-Strat?
8 A Yes.
9 Q And can you describe that please?
10 A Multi-Strat is a fund that Highland formed,
11 that Highland is the portfolio manager of. So as the
12 CEO at Highland, I would be responsible for directing
13 the efforts of Highland with respect to its role as
14 the manager of Multi-Strat.
15 Q Did you rely on anybody at Highland to
16 assist you in managing Multi-Strat?
17 A Yes. All of them, the management team at
18 Highland were involved in the day-to-day operations of
19 Highland.
20 Q And would that also include the legal
21 department?
22 A Yes.
23 Q What about CDO Fund. What were your
24 responsibilities in connection with CDO Fund, if any?
25 A CDO Fund, we really didn't have any

16

1 responsibilities. We believed that CDO Fund had no
2 assets and was simply a shell entity. And we believed
3 that, because that's what the legal department at
4 Highland told us. So we really didn't need to take up
5 any actions with respect to CDO Fund until
6 January 2021 when we discovered that what we'd been
7 advised was incorrect.
8 Q Okay. Thank you. We'll come back to that
9 a little more. What about an entity that's referred
10 to as SOHC?
11 A Similar. SOHC is a subsidiary of an entity
12 called HFP, Highland Financial Partners, which was
13 also a limited partnership. That entity, we actually
14 did not have control of, notwithstanding owning the
15 GP. So we had only -- certainly had all of the
16 ownership interest in that from the GP perspective
17 entity. The LPs were a mixture of various entities,
18 including complete third parties, but it had an
19 unusual structure with a board that was able to
20 control that entity completely.
21 Most of the case, we didn't have any
22 dealings because, again, HFP was described to us as
23 being a completely valueless entity that had had lost
24 all value during the financial crisis and with respect
25 to the judgments that UBS had against its

17

1 subsidiaries. So there really was nothing to do until
2 we really found out more about what would happen in
3 January of 2021. And then we realized we really
4 couldn't even control HFP because it was odd for its
5 structure.

6 Q Does HFP still have a board?

7 A It did have a board until relatively
8 recently. It had one member which was Jim Dondero.
9 And ultimately he indicated he resigned. And because
10 of the structure, we'd taken outside counsel's advice
11 on this. It's -- it would be really difficult to try
12 to replace that board because you need the limited
13 partners, all of whom are long gone.

14 Q I'm going back to this in more detail later
15 on in the deposition, but you've said a couple of
16 times with respect to CDO Fund and SOHC/HFP that you
17 were advised that these entities had lost all value
18 during the financial crisis and basically had no
19 remaining value. Who advised you of that?

20 A That would have been Mr. Leventon and
21 Mr. Ellington. I'm not sure if Frank Waterhouse, the
22 CFO, was involved in those discussions either. I'd be
23 guessing. I just don't recall him specifically. The
24 conversations with Ellington, Leventon were numerous
25 and specific. And then other members of the legal

18

1 department were in and around those conversations and
2 those would include JP Sevilla, Matt DiOrio and Katie
3 Irving.

4 Q Okay. Thank you. And, again, we'll come
5 back in a little more detail shortly.

6 I want to talk briefly about UBS's claim in
7 the bankruptcy, sort of why we're here.

8 You do recall that shortly after you were
9 appointed as independent director, the New York court
10 entered a judgment in UBS's favor for over a billion
11 dollars against CDO Fund and SOHC, correct?

12 A Yes, I do.

13 Q And did you -- were you aware that although
14 the judgment was entered February 10, 2020, there had
15 already been a decision that had been released, at
16 least to the parties, that anticipated that judgment
17 and that decision has been released in November of
18 2019?

19 A I was aware of that, yes.

20 Q So fair to say that by the time you
21 became -- or shortly after the time you became
22 appointed to the role of independent director, you
23 were aware of this impending judgment of over a
24 billion dollars?

25 A Before I became appointed.

19

1 Q Okay. So even -- I guess before you became
2 appointed, you did some due diligence and you met with
3 members of the unsecured committee maybe, did due
4 diligence, and folks met with you and discussed the
5 matters relating to the bankruptcy with you?

6 MR. MORRIS: Objection to the form of the
7 question.

8 A That's correct.

9 Q Okay.

10 MR. CLUBOK: Yeah, thanks, John. Let me --
11 I'll ask it with slightly more English if I can.

12 BY MR. CLUBOK:

13 Q So prior to being appointed as independent
14 director, fair to say you investigated some of the
15 facts relating to the bankruptcy and the potential
16 claims?

17 A Yes.

18 Q And in the course of those -- when did you
19 first start that conversation?

20 A Very shortly before I was appointed, so
21 sometime in the week of -- the week of or right before
22 January 9.

23 Q Okay. And during those -- and during those
24 discussions, had you -- you spoke with members of the
25 creditors' committee?

20

1 A I don't recall if I spoke to members. I
2 certainly spoke to creditors' committee counsel, some
3 of the members' counsel.

4 Q And did you also speak with representatives
5 of the debtor or --

6 A Yes.

7 Q And fair -- did you learn about the
8 billion-dollar judgment from representatives of the
9 debtor prior to becoming an independent director?

10 A I don't recall from whom I learned it.

11 Q Okay. But it was well understood by you
12 that there was this impending billion-dollar judgment
13 even before you took on your role as independent
14 director?

15 A Absolutely. It was well understood by
16 everybody, meaning both the debtor representatives and
17 the committee representatives, as well as the
18 creditors' committee member representatives.

19 Q Okay. So once you assumed your role, fair
20 to say you -- one of your main responsibilities or
21 certainly a significant responsibility was to review
22 UBS's claim?

23 A That's correct. It was the entire
24 independent board, but there weren't that many claims.
25 And, obviously, there's two sides to the equation

21

1 here. There's the assets and then there's the
2 liabilities. And so understanding what the assets
3 are, were, and what they could be, versus what the
4 claim pool could be, was an essential and critical
5 role for the independent board, including myself.
6 Q And just to situate this, UBS's claim is
7 ultimately filed on June 26, 2020. But fair to say
8 that the independent board's initial investigation of
9 that claim and the defenses and potential liabilities
10 of the debtor and its funds began at least as early as
11 January of 2020?
12 A Absolutely. On January 9.
13 Q As part of the effort to fully educate
14 yourself about UBS's bankruptcy claim, did you ask
15 people at Highland to provide you with detailed
16 information regarding the history of the dispute?
17 A Yes.
18 Q And who did you instruct specifically with
19 respect to gathering information so that you could
20 fully understand UBS's claims?
21 A The main people, Mr. Ellington and
22 Mr. Leventon. Mr. Leventon's primary role, as far as
23 I could tell, at Highland for the previous number of
24 years, was dealing with the UBS claim.
25 Q You came to understand that Mr. Leventon

22

1 had been the day-to-day point person for dealing with
2 all things related to the UBS claim?
3 A Yes. Other than settlement discussions,
4 which were exclusive purview of Mr. Ellington at
5 direction and in coordination with Mr. Dondero.
6 Q Speaking of Mr. Dondero, I take it that he
7 was also a source of information to the independent
8 board regarding the UBS dispute?
9 A He was but not very much. He was just
10 dismissive of it and didn't provide any real detail.
11 Q Did you --
12 A At that time, in first half of 2020.
13 Q Sure. And in the first half of 2020 while
14 Mr. Dondero was still -- during the first half of
15 2020, Mr. Dondero was still actively engaged with HCM
16 as portfolio manager?
17 A The answer is yes. It's unclear exactly
18 what he was doing. And certainly managing for the
19 first quarter the select fund until that would -- with
20 Joe Sowin, of HCFMA, and (indiscernible) Rudolph. And
21 then I stepped in with Mr. Sowin to manage out of the
22 marching clauses with Jefferies. And I'm not sure
23 what else Mr. Dondero was precisely doing. But
24 Highland had -- Highland empire had two halves. It was
25 the HCMLP half and then Mr. Dondero's other entities,

23

1 which were roughly 70 employees shy. And so once
2 COVID came in in March, most of the Highland employees
3 that were under -- HCMLP employees that were working
4 remotely, most of the time Mr. Dondero's other half
5 were coming in the office and Mr. Dondero was largely
6 in the office is what we've been told. I didn't go to
7 Dallas during the rest of that year.
8 Q Fair to say that regardless of what
9 Mr. Dondero actually did, you expected him to be fully
10 engaged to assist in whatever ways you needed during
11 that first half of 2020?
12 A Certainly. He was -- he had the most to
13 gain or lose by the bankruptcy and expected him to be
14 active in assisting in his resolution.
15 Q And based on the -- is it fair to say that
16 the information that Mr. Ellington, Mr. Leventon, and
17 others at Highland, including Mr. Dondero to the
18 extent he provided some information about the UBS
19 claim, helped you form your opinion upon the merits of
20 that claim?
21 A Certainly that was part of it. I did do a
22 significant amount of independent work reviewing the
23 documents, how the transaction was structured, the
24 various margin calls, the restructuring of the
25 transaction. And then my analysis of the documents

24

1 was then further informed by Ellington, Leventon,
2 Sevilla, the rest of the team, including the detailed
3 presentations before COVID came in in the Highland
4 office. Also, we had -- obviously had outside counsel
5 involved in that analysis, as well.
6 Q And in that first half of 2020, did you
7 have any reason to doubt the legitimacy or the
8 accuracy of the information that these former Highland
9 Capital Management employees were providing to you
10 regarding UBS's claims?
11 A No. In fact, I was consistent with what
12 they said all. All of them said similar things. They
13 provided detailed structural information, they
14 provided PowerPoint presentations on how the
15 transactions worked, what the prior litigation history
16 had been for the last -- I guess at that point
17 seven-plus years. It's actually more like -- I think
18 it's closer to ten years. And there's no reason for
19 us to -- me or the rest of the board to doubt the
20 specifics of the details they were providing.
21 Q And in reliance of the information they
22 provided you, along with the other work that you did,
23 did you form an initial opinion about the merits of
24 UBS's claim?
25 A Yes.

25

1 Q And what was that?

2 **A I didn't think it was a good claim against**

3 **Highland. When I say "Highland," I mean HCMLP, the**

4 **debtor.**

5 Q And that would include taking into account

6 actions that Mr. Dondero may or may not have done on

7 behalf of Highland?

8 MR. MORRIS: Objection to the form of the

9 question.

10 **A I'm not quite sure I understand.**

11 **BY MR. CLUBOK:**

12 Q Okay. I'll ask again.

13 So you said you didn't think it was a good

14 claim against Highland. And in forming that opinion,

15 I take it you considered whether or not Mr. Dondero's

16 actions as the head of Highland -- to the extent you

17 understood what his actions had been -- sorry. I

18 think that was the end of the question, but I made it

19 seem like I was pausing, so let me ask it again.

20 **A Okay. I got it.**

21 Q Yeah, I'll ask the question.

22 **A To the extent -- to the extent we were**

23 **familiar with what his actions were, so what we knew**

24 **of, meaning margin calls, trying to negotiate with**

25 **UBS, and failing to meet margin calls, some of the**

26

1 **transactions, intercompany transactions between**

2 **different affiliates and moving assets around, to some**

3 **degree to try to satisfy some of the requirements of**

4 **the structure, meaning the financing structure that**

5 **was in place with UBS, we had considered those**

6 **actions, yes.**

7 **And we didn't see them as negative to our**

8 **view of what the transaction documents required, what**

9 **the law would require, and what the validity of UBS's**

10 **claim was at the time.**

11 Q And you understood that part of UBS's

12 claims included claims for breach of implied covenant

13 of good faith and fair dealing?

14 **A That's correct.**

15 Q And you also understood that UBS's claims

16 involved claims relating to alleged fraudulent

17 transfers?

18 **A Yes.**

19 Q And you understood that UBS's claims also

20 involved claims relating to alterego, specifically how

21 Mr. Dondero may have commingled assets or treated

22 different affiliates as one major affiliate for

23 purposes of dealing with UBS?

24 **A Yes.**

25 Q And with respect to all of those elements

27

1 of UBS's claims, you -- your opinion that UBS's claims

2 may lack merit was formed in large part because of the

3 information you received from the then Highland

4 Capital Management employees?

5 **A Yeah. I would say material part. So the**

6 **documents obviously and our analysis of the law and**

7 **the pattern and practice in terms of dealing with**

8 **the -- with the structure of the transaction, as well**

9 **as our analysis of the ten years of litigation, which**

10 **largely came from Mr. Leventon. That certainly helped**

11 **form our opinion.**

12 Q And it's fair to say that you later came to

13 learn more information that affected your view of the

14 potential merits of the UBS claims?

15 **A That's fair, yes.**

16 Q And what specifically caused your change in

17 the view about the merits of UBS's claims?

18 **A Well, two things, and they evolved.**

19 **The first part was during a mediation in**

20 **the early fall of 2020 and just hearing a**

21 **third-party's perspective on some of the risks. In**

22 **particular, the risks related to Multi-Strat and the**

23 **fraudulent conveyance actions against Multi-Strat**

24 **certainly helped inform my opinion and my opinion as**

25 **well of the risks with respect to those claims.**

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1 **And then in January of 2021, we learned**

2 **that, in fact, notwithstanding what we'd been**

3 **previously told, that the subsidiaries that you asked**

4 **about earlier had had somewhere between 100- and**

5 **\$300 million of assets and those assets were secretly**

6 **moved out of those subsidiaries, even though they were**

7 **counterparts of UBS. And those were secreted into the**

8 **Cayman Islands in exchange for what we thought was a**

9 **very strange contractual arrangement.**

10 Q And that information caused you to reassess

11 the potential merits of UBS's claims for breach of

12 implied covenant of good faith and fair dealing, its

13 alterego claims, and its fraudulent conveyance claims,

14 correct?

15 **A Yeah. Certainly the board which was active**

16 **through the mediation. I think the other members of**

17 **the board, it would be fair to say, were more cautious**

18 **about the risks of the litigation perhaps than I was.**

19 **And I think that we moved towards a settlement based**

20 **upon those -- those views when we were in the process**

21 **of reaching a settlement which was acceptable to all**

22 **board members, including myself.**

23 **We learned of these other facts which we**

24 **then disclosed to UBS. And those certainly materially**

25 **changed our -- my view. I think with the risks that**

29

1 we learned of in the mediation, it included some of
2 the things, perhaps, that we found later. But they
3 were more conjecture at that point as opposed to any
4 hard facts.

5 Q Is it fair to say that members of Highland
6 Capital Management's legal team covered up, in your
7 opinion, critical information that would have allowed
8 you to fully assess the merits of UBS's claims?

9 A I think I can now say that without any
10 equivocation at all. It was covered up and it was
11 coordinated and it involved several people, including
12 Mr. Dondero, Mr. Ellington, Mr. Leventon, Mr. Sevilla,
13 Ms. Irving. And it looks to me like Ms. Vitiello.

14 Q Okay. Well, let's talk about that a little
15 more specifically. If you could turn in your binder
16 to Tab~1.

17 Tab~1 has Exhibit 69.
18 (Deposition Exhibit 69 was received and
19 marked for identification, as of this date.)
20 BY MR. CLUBOK:

21 Q Exhibit 69 are UBS's First Request for
22 Production of Documents to Debtor Highland Capital
23 Management, issued in connection with the
24 restructuring. Do you see that?

25 A Yes.

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1 Q And I want to draw your attention to
2 requests eight and nine, which start -- looks like the
3 pages may not may be not numbered, but you can flip
4 forward until you get to Request 8?

5 A Yes, I'm there.

6 Q Here we go. We've got it up on the screen
7 as well. And Request 8 asks for: All documents
8 pertaining to the assets and liabilities of HFP, CDO
9 Fund, and SOHC, including but not limited to -- and
10 then it lists a number of specific requests related to
11 this general request. Do you see that?

12 A Yes.

13 Q And you can see that it's clear that the
14 information sought was being sought -- historic --
15 being sought over a period that ranged from, you know,
16 about a dozen years prior through the present,
17 correct?

18 A That's correct.

19 Q And generally speaking, did you understand
20 that what UBS was asking for was the complete
21 financial picture of the assets of these funds -- HFP,
22 CDO Fund, SOHC -- from the time of the original
23 dispute through the present?

24 A That's very clear, yes.

25 Q And did you -- what did you do with these

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1 requests?

2 A Well, they came in through counsel and we
3 began trying to respond to them with outside counsel
4 and with the legal department.

5 Q And is it true you tasked the in-house
6 legal team with coming up with the substantive
7 responses to UBS's discovery requests?

8 A Certainly. I think the -- the specifics
9 are that this was in and around the time of the
10 mediation and it was a pretty voluminous request.

11 So we sought to hone it to get the most
12 critical information first and then we could expand
13 out from that. But it was with the legal department's
14 assistance that had been doing this with UBS for some
15 time and, obviously, familiar with what Highland's
16 systems and the information that's requested.

17 Q And in words or substance without giving
18 the exact words, but the gist of what you conveyed to
19 the legal team was to prepare or provide information
20 that would paint an accurate picture of the finances
21 and the assets and liabilities of these funds dating
22 back to the original dispute through the present,
23 correct?

24 A I don't know if that's fair. I would
25 have -- I would have just said this is voluminous.

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1 It's critical. Let's get them the most important
2 stuff first, work with outside counsel on getting that
3 done. The most important things would have been what
4 I think are the obvious is the judgment debtor's CDO
5 Fund, SOHC, and any of those subsidiaries, and put
6 that information together and provide it.

7 I wouldn't have been the one looking
8 through each of items and then checking Highland's
9 computer system to see what's available on its files.

10 Q Sure. But your direction then was to
11 provide the most important information as quickly as
12 possible that UBS is legitimately seeking in
13 connection with these requests?

14 MR. MORRIS: Objection to the form of the
15 question.

16 A Yeah, better to say let's put together as
17 much as of the information as we can, give it to
18 outside counsel, and then let them determine what's
19 the appropriate thing we're supposed to do. But we're
20 going to have to produce some degree of information
21 that's requested. It would have been -- I would not
22 have thought there would have been in a way to say
23 (indiscernible).

24 BY MR. CLUBOK:

25 Q Did you in words or substance instruct the

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1 legal team to not provide anything that was being
2 requested?
3 **A No, never.**
4 Q Did you --
5 **A But I wouldn't have had them provide it**
6 **directly to UBS, to Latham. I would have had them to**
7 **provide it to Pachulski.**
8 Q Okay. Fair enough. So let me maybe just
9 rephrase it.
10 You tasked the legal team with gathering
11 the information so that you could turn it over to your
12 outside counsel who would then figure out what was
13 appropriate to provide from what was gathered by the
14 in-house legal team?
15 **A Just to be very specific, I don't recall**
16 **the actual words or the conversation. But I typically**
17 **would do and I believe I did in this instance was say**
18 **to an attorney at Pachulski and to Isaac Leventon,**
19 **take a look at this, start working on these docs,**
20 **we're going to need to prepare something.**
21 Q Let me -- actually, if you turn to Tab 52,
22 just to refresh your recollection.
23 (Deposition Exhibit 149 was received and
24 marked for identification, as of this date.)
25 BY MR. CLUBOK:

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1 Q This is the 9019 motion that the debtor
2 filed in connection with the settlement through UBS.
3 And I'd just refer you to paragraph 8.
4 MR. MORRIS: I'm sorry. Which exhibit are
5 you on?
6 MR. CLUBOK: It's Tab~52. It is the
7 Debtor's Motion for Entry of an Order Approving
8 Settlement with UBS.
9 MR. MORRIS: Yes, thank you.
10 MR. CLUBOK: It's 52 in your binder.
11 I guess -- do we have a deposition exhibit
12 number for this, Shannon? We'll get the next number.
13 We'll find out the next exhibit number that we should
14 use and we'll mark it as such.
15 BY MR. CLUBOK:
16 Q But for now, if you can look at the 9019
17 motion.
18 MR. CLUBOK: Oh, it looks like Exhibit 149.
19 We'll mark this as Exhibit 149.
20 BY MR. CLUBOK:
21 Q And Exhibit 149 is the Debtor's Motion for
22 Entry of an Order Approving the Settlement with UBS
23 Securities.
24 If you look at paragraph 8, page five.
25 **A Yes.**

35

1 Q Is it fair to say that you tasked the
2 debtor's in-house legal team with providing the
3 responses to UBS's discovery requests, at least to
4 your outside counsel, so that they could then pass
5 them on to UBS?
6 **A That's correct. I think that's consistent**
7 **with what I said. It would have been the outside**
8 **working with the legal team.**
9 Q Right. And who, in particular, did you
10 rely upon for providing the responses to UBS's
11 discovery requests?
12 **A Specifically Mr. Ellington and**
13 **Mr. Leventon.**
14 Q Was Stephanie Vitiello involved at all?
15 **A I don't recall her being specifically**
16 **involved. I do see her on some of the emails and the**
17 **materials that I sent over which I took a skim of.**
18 Q Did you ever, in words or substance, tell
19 Mr. Leventon to -- only to identify the assets that
20 were in the funds in May of 2009 and answer the
21 question what happened to those assets and where are
22 they today. Did you ever limit his task in that way?
23 **A No, that would be absurd.**
24 Q You came to believe -- well, after this
25 collection process and providing the documents to your

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1 outside counsel, there was a production made to UBS
2 that I think was completed by -- about the end of
3 October 2020; is that correct?
4 **A That's my recollection. I believe it was a**
5 **bit of a rolling production.**
6 Q Right. And if you look at Tab~51, which --
7 or the requests, Highland's Responses and Objections
8 to UBS's Requests for Admission, we'll mark that as
9 Exhibit 150.
10 (Deposition Exhibit 150 was received and
11 marked for identification, as of this date.)
12 BY MR. CLUBOK:
13 Q I think it's -- if you look at No. 33, at
14 least at some point whether you remember the date or
15 not, fair to say that Highland represented to UBS that
16 discovery was substantially complete in response to
17 this document request that's been identified as
18 Exhibit 69 [sic]?
19 **A I believe that's --**
20 MR. MORRIS: I apologize for interrupting,
21 but I just do want to point out that this particular
22 document is dated September 2021. I don't know if you
23 want to think about your question at all, but this is
24 at least dated September 2021, which would have been
25 nine months after Mr. Ellington and Mr. Leventon left

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1 Highland.
2 MR. CLUBOK: Right. I guess maybe my
3 question was unclear.
4 BY MR. CLUBOK:
5 Q Back in October of 2020 while Ellington and
6 Leventon were still at Highland and had responded to
7 your tasking with respect to responding to the UBS
8 document production, isn't it true that based on what
9 they told you about the work they had done, Highland
10 represented to UBS that it was substantially complete
11 with its document production?
12 **A I believe that's correct and it would have**
13 **been we've done all we can do (indiscernible).**
14 (Reporter clarification.)
15 **A I believe what we would have said and what**
16 **I would have said and how counsel would have delivered**
17 **to UBS's counsel, is that based on information that we**
18 **received from Mr. Leventon and Mr. Ellington, we had**
19 **completed discovery. We'd found all we could get that**
20 **was responsive and that we had turned it over, to the**
21 **extent it wasn't otherwise protected. And I don't**
22 **recall whether there was any privilege or not.**
23 **BY MR. CLUBOK:**
24 Q And fair to say that your view on whether
25 Highland had substantially completed a response to

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1 UBS's discovery request changed after you got more
2 information in 2021?
3 **A Yes.**
4 Q And fair to say that you ultimately learned
5 that Mr. Ellington and Mr. Leventon's statements to
6 you about the completeness or the production were
7 false?
8 **A Yes.**
9 Q Okay. Let's talk about some other
10 misrepresentations that Mr. Ellington and Mr. Leventon
11 made. And I want to refer you to Tab~2, which is an
12 email chain with the top email dated August 5, 2020,
13 from you to Mr. Leventon, copying Scott Ellington,
14 with the subject UBS Supplemental Information Request.
15 **A Give me that again?**
16 Q It's Tab~2 and it will be Exhibit 151.
17 (Deposition Exhibit 151 was received and
18 marked for identification, as of this date.)
19 THE WITNESS: I'm going to try to switch
20 screens and see if that helps.
21 BY MR. CLUBOK:
22 Q This one might be easier to deal with in
23 hard copy because you have to kind of read up, but
24 whatever it easiest for you, we'll try to make it.
25 THE WITNESS: Let me know for the audio, is

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1 this one better?
2 MR. CLUBOK: Yes.
3 THE VIDEOGRAPHER: We just lost our video
4 image. Can we go off the record?
5 THE WITNESS: Hold on. Let me get that.
6 MR. CLUBOK: Yeah, let's go off the record.
7 THE VIDEOGRAPHER: Okay. Stand by. We're
8 going off the record. The time --
9 THE WITNESS: It says I have video.
10 MR. CLUBOK: I can see Jim. Enrique, you
11 can't see Jim?
12 THE VIDEOGRAPHER: Yes. But I just lost
13 him so I unpin --he was unpinned from the screen, so I
14 lost him for a second.
15 MR. CLUBOK: Ah, okay.
16 THE VIDEOGRAPHER: And since we're doing
17 video, I need to have him pinned.
18 THE WITNESS: Sorry about that on the fly.
19 Hang on one second. I'm just going to grab some
20 water.
21 MR. CLUBOK: Okay.
22 THE VIDEOGRAPHER: If you give me one
23 second, Counsel, I'm just sorting something out here.
24 Going back on the record. The time is
25 2:55 p.m.

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1 BY MR. CLUBOK:
2 Q Mr. Seery, I want you to look at
3 Exhibit~151, which is an email chain with the top
4 email being a August 5, 2020 email from you to Isaac
5 Leventon with a copy to Scott Ellington. Do you see
6 that?
7 **A Yes.**
8 Q And, you know, the way email works, you
9 have to go to the last page and work your way up.
10 So I want to go to the last page of
11 Exhibit 151. And you can see this chain starts with
12 an email from someone named James Romey, R-O-M-E-Y, to
13 Isaac Leventon, David Klos, with a copy to you and to
14 Bradley Sharp. And the subject is: UBS Supplemental
15 Information Request. Do you see that?
16 **A Yes.**
17 Q And who is James Romey?
18 **A James Romey was an employee of DSI**
19 **Consulting who was the debtor's financial consultant.**
20 Q And in this email to Mr. Leventon and
21 others, he says, Can you do a call this morning ASAP
22 with Jim to discuss status of these materials. This
23 is a high priority item. Do you see that?
24 **A Yes.**
25 Q And, in fact, you respond shortly

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1 thereafter that you have another call at 11:00.
2 So you asked if the people would just get
3 on a call right then and there. It's 9:16 in the
4 morning. Do you see that?
5 **A Yes. The -- I'm going to guess -- and this**
6 **is a guess -- that he might have been in Chicago**
7 **because this came first and the 9:16 came after. But**
8 **one, we would have been working for me telling these**
9 **guys to get on the phone now.**
10 Q Okay. And in this -- later on in the email
11 chain, Isaac Leventon sends -- then he copies in Greg
12 Demo from your outside counsel, and he gives
13 information the about UBS's request for information.
14 Do you see that?
15 **A Yes.**
16 Q And among other things, Leventon -- and if
17 you go down to -- well, if you look in first bullet
18 point, he says some things and he says, UBS has all of
19 the documents to which the special master deemed it
20 was entitled. Do you see that?
21 **A Yes.**
22 Q Did Mr. Leventon ever tell you about a
23 discovery dispute relating to the financial condition
24 of the funds that was presented to special master
25 during the underlying UBS litigation?

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1 **A Not that I recall, no.**
2 Q Did Mr. Leventon -- did you know what he
3 meant when he talked about this or just took him at
4 his word?
5 **A I believe we had some brief discussion**
6 **about it and it had to do with what types of discovery**
7 **you could get prejudgment and post judgment in**
8 **New York. At least that was sought by -- I'm not a**
9 **New York litigator. My perspective and direction,**
10 **both with respect to this matter and others, was**
11 **produce everything. Let's get this done.**
12 Q Okay. So Mr. Leventon then goes on to
13 reference HFP, which is the parent of SOHC and CDO
14 funds, having informed their investors in 2009 that
15 they had zero net asset value. Do you see that?
16 **A Yes.**
17 Q And then he says that he had been tracking
18 the assets through an SOHC and CDO fund and he was
19 putting together a report with supporting documents,
20 right?
21 **A I see that, yes.**
22 Q Did you take from this and from other
23 things that Mr. Leventon told you that he was working
24 diligently to provide a full picture of the assets at
25 SOHC, CDO Fund, HFP, from the time of their initial

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1 transaction through the present?
2 **A Well, actually, initially, I took this as a**
3 **surprise, because I had previously been told that**
4 **there were no assets. So if there were assets, why do**
5 **we need to track them.**
6 **And then it evolved into, well, there had**
7 **been assets when there wasn't very much and we're**
8 **working our way through. And he was going to be**
9 **working hard and diligently to give us a schedule of**
10 **all of these assets and what happened to them.**
11 **But it was a surprise to me because the**
12 **prior representations were that they were shell**
13 **companies with no assets.**
14 Q So was this the first time you learned that
15 their actually were at least some assets?
16 **A Yes.**
17 Q Then?
18 **A Yes.**
19 Q Mr. Leventon also says here that HFP and
20 CDO Fund had informed their investors in 2009 they had
21 zero net asset value. Do you see that?
22 **A Yes.**
23 Q I want to show you an Exhibit that's at
24 Tab~36 that's been marked as Exhibit 48.
25 (Deposition Exhibit 48 was received and

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1 marked for identification, as of this date.)
2 BY MR. CLUBOK:
3 Q Have you seen this document before?
4 **A I have, yes.**
5 Q If you look at page three of this document,
6 this is a Settlement Analysis that Highland had done
7 long before you became involved, in which it talks
8 about the prospects for winning or losing the
9 litigation with UBS. Is that what you understand?
10 **A I'm familiar with the document, yes.**
11 Q Okay. And if you -- and basically in this
12 document that you've read before and you've seen that
13 they go through scenarios with respect to what would
14 happen if Highland wins its litigation with UBS or
15 loses its litigation with UBS, correct?
16 **A That's correct. We discovered this**
17 **document on Mr. DiOrio's desk after he was terminated**
18 **for cause. We then, obviously, analyzed it. This was**
19 **in 2021 in February. We analyzed it and it goes**
20 **through a number of scenarios that if it wins or loses**
21 **different litigations what could happen. And it talks**
22 **about using assets that were secreted into the**
23 **Caymans, which I referred to before out of Sentinel,**
24 **to use those assets to effectuate certain settlements.**
25 **And ultimately as a strategy to leave the redeemer**

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1 committee of the crusader fund, it basically -- I
2 think it says on an island or something to that effect
3 as its only defendant -- only material defendant if it
4 could effectuate settlements cheaply with other
5 litigants.
6 Q Fair to say back in 2020 when Mr. Leventon
7 was providing you information about responding to
8 UBS's information request, he did not share any
9 version of this document that's been marked as
10 Exhibit 48 with you, correct?
11 A Never saw this until long after
12 Mr. Leventon was terminated and Mr. Ellington was
13 terminated, and Mr. DiOrio was terminated. And then
14 we found it on Mr. DiOrio's desk, which then caused us
15 to search our computer system at Highland and found
16 it.
17 Q And the specific -- we're going to come
18 back to this document in a bit. But the specific
19 question I wanted to focus on here was just with
20 respect to Mr. Leventon's telling you that HFP had
21 told its investors in 2009 that it had zero net asset
22 value, isn't it the case that Highland had concluded
23 it would have net zero -- zero net asset value only if
24 Highland lost its litigation with UBS. Because if it
25 won its litigation with UBS, HFP was going to have

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1 positive value as it says on page three of Exhibit 48?
2 A I'd forgotten about that section. It's
3 very clear that at the time this document was
4 completed, the belief that Highland had was that
5 Highland would have -- HFP would have positive value
6 if it wins the litigation and that would result in
7 massive tax liability for a number of individuals and
8 entities because they had already taken a material tax
9 loss.
10 Q Okay. So now let's turn back to
11 Mr. Leventon's email exchange with you on August 5,
12 2020. And, again, he's telling you about this letter
13 that was sent by HFP and then another letter that was
14 sent by CDO Fund.
15 If you look at Tab~3, a document that we
16 have marked as Exhibit 152, is that letter to HFP from
17 January 20, 2009 that he's referring to. Do you see
18 that?
19 A Yes.
20 (Deposition Exhibit 152 was received and
21 marked for identification, as of this date.)
22 BY MR. CLUBOK:
23 Q Have you seen that before?
24 A I have, yes.
25 (Deposition Exhibit 153 was received and

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1 marked for identification, as of this date.)
2 BY MR. CLUBOK:
3 Q And if you look at the next tab,
4 Exhibit 153, that is a February 4, 2009 letter to CDO
5 Opportunity Fund Investors. That is also what
6 Mr. Ellington refers to in Exhibit 151.
7 A It appears to be. That document I don't
8 recall if I'd seen before.
9 Q Okay. Well then turning back to the one
10 you do recall seeing before, Exhibit 152, if you look
11 at page four?
12 MR. MORRIS: Mr.~Klubok, apologies. What
13 tab is that in the binder?
14 MR. CLUBOK: Sorry. Tab~3.
15 BY MR. CLUBOK:
16 Q So Tab~3 is Exhibit 152, and it's that
17 letter to HFP investors from 2009 that Mr. Leventon
18 referred to when he told you that HFP had net zero
19 asset value.
20 If you go down to -- if you look at the
21 letter that he's referring to and you see on the
22 bottom of page four, it talks about the CLO financing
23 facility and it refers to the transaction with UBS
24 that was the subject of the litigation. Do you see
25 that?

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1 A That's correct, yes.
2 Q And then if you look at the next page --
3 and clearly as we know that that was a significant --
4 at least many hundreds of millions at that time
5 potential liability. That was one of the reasons why
6 they, I guess, were telling investors they might have
7 net zero asset value, correct?
8 A Correct. But my experience -- unless there
9 was a judgment of a certain loss, we wouldn't tell
10 your investors there was no net asset value because
11 you don't take a worthless security deduction unless
12 you're absolutely certain that the security is
13 worthless. So doing that and at the -- and I only can
14 put this together now, doing that at the same time
15 while you're claiming that you don't owe UBS any money
16 is highly improper in my opinion.
17 Q And that's because if they really didn't
18 owe UBS any money, they wouldn't have had a zero net
19 asset value, correct?
20 A That's what that next deck says. And it
21 would have -- it could have -- anyone who followed
22 the -- I don't know if it's advice, but the implicit
23 advice in this email and took a worthless security
24 deduction, would find themselves with a significant
25 tax problem. I'm not very familiar with it, but

| | |
|--|--|
| <p style="text-align: center;">49</p> <p>1 familiar enough to know from my experience, you don't 2 take one unless you're certain it's worthless. 3 Q And in the conclusion section of the letter 4 to HFP investors, it's been marked as Exhibit 152, in 5 the middle -- or the second paragraph says, "Due to 6 events and circumstances described in this letter, 7 we've concluded as of December 31, 2008, it's likely 8 that all future inflows of cash to HFP will be used to 9 pay creditors and there's no prospect of return to 10 holders of HFP units," correct? 11 A Correct. 12 Q Are you aware of HFP ever paying a single 13 penny to UBS with respect to the judgment that UBS has 14 obtained? 15 A Not that I'm aware of, no. 16 Q All right. So let's turn back to 17 Mr. Leventon's letter to you. After talking about 18 the -- and by the way, did Mr. Leventon bring any of 19 this information to your attention in any words or 20 substance regarding the true nature of HFP's assets 21 and how the UBS litigation very directly affected 22 that? 23 A No, not at all and in fact quite the 24 opposite. It was -- the information that was brought 25 was that there -- there were no assets and that UBS's</p> | <p style="text-align: center;">51</p> <p>1 this information in the bullet points here and 2 specifically with respect to SOHC, he says that it had 3 295,000 in cash and all since paid in legal fees. Do 4 you see that? 5 A Yes. 6 Q And then he says there are four worthless 7 securities and basically nothing else, correct? 8 A Correct. Although there's this -- there's 9 a section there with the five assets remain in the 10 fund. Three with zero value as well as 11-million in 11 Greenbriar CLO equity, and some amount of Multi-Strat 12 equity. I'm trying to figure that out. That 13 raised -- that raised concerns. 14 Q But that -- but that is -- and I was going 15 to turn to that next. That's CDO Fund. His next 16 bullet point he talks about what's in CDO Fund as 17 opposed to SOHC? 18 A Correct, correct. 19 Q Yeah. And for CDO Fund now, he tells you 20 that there were ten assets as of the end of 2011, plus 21 1.2 million in cash. Do you see that? 22 A Yes. 23 Q And he then says that some of the assets 24 were sold to pay legal fees. There's another asset 25 that's a claim in Lehman bankruptcy, the claims he's</p> |
| <p style="text-align: center;">50</p> <p>1 claims were against shell companies with no assets. 2 In fact, the initial view description was 3 they never had any assets because they were all pushed 4 into the warehouse. And if they had some, it would -- 5 it was only because they were transiting towards the 6 warehouse from the warehouse. 7 Q And you later came to learn that was all 8 lies. 9 A That's correct. 10 Q If you look back at Mr. Leventon's email on 11 August 5, 2020, 2:54 p.m. his time, he says that he's 12 been tracking the assets through on SOHC and CDO Fund 13 and he was putting together a report with supporting 14 documents. Do you see that? 15 A Yes. 16 Q Now fair to say that you've come to learn 17 since, but didn't know then, that one of the 18 significant assets SOHC had at the time was a hundred 19 million dollar insurance policy? 20 A That's correct, yes. 21 Q Did Mr. Leventon in any way, shape or form 22 tell you anything about this insurance policy which 23 SOHC had a claim to? 24 A Never. 25 Q So Mr. Leventon gives you this -- rest of</p> | <p style="text-align: center;">52</p> <p>1 trying to track down. And then he says there's five 2 assets remaining that -- three of which have zero 3 value and then the Greenbriar equity and some amount 4 of Multi-Strat equity. Do you see all of that? 5 A Yes. 6 Q Now did he tell you why -- when he says the 7 CDO Fund had ten assets as of the end of 2011, did you 8 take that to mean that there were no further assets of 9 CDO Fund post 2011? Is that a natural reading of 10 that? 11 A I think that's a natural reading, but I was 12 more -- I recall getting this and talking with him and 13 saying what are you talking about. You told me these 14 were shell entities with no assets. And I took that 15 to mean back to 2009, which I had previously -- he had 16 previously told me was the case. 17 Q I see. 18 A And now you're telling me there were some 19 assets post 2009. What were they? What happened to 20 them? And I got this explanation about legal fees and 21 this is -- we treated SOHC and CDO Fund, as I did, 22 pretty much the same, they were jointly and severally 23 liable on the UBS obligation. 24 And then part of it was this Greenbriar. 25 And I wanted to know what the heck that was, as well</p> |

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1 as what do you mean they had an interest in
2 Multi-Strat and do they still have.
3 Q So before this, he had previously lied to
4 you by saying there just are no assets at all in
5 these --
6 **A Correct.**
7 Q -- correct?
8 Now he's admitting there are some assets.
9 Did he explain why he had previously said there were
10 no assets at this time?
11 **A No. He's not somebody who's a clear**
12 speaker. I think that's often purposeful.
13 Q Did he ever in words or substance ever say
14 that any CDO assets were used to procure an insurance
15 policy?
16 **A No, never.**
17 Q All right. One sec. If you'd move up the
18 email chain, you can see that on that same day several
19 hours later Leventon provides additional information
20 about CDO Fund and SOHC. Do you see that?
21 **A Yes.**
22 Q And he now tells you that the current
23 assets are 32 million, comprised of 11 million in
24 Greenbriar and 21 million in Multi-Strat. Do you see
25 that?

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1 A Yes.
2 Q And he talks about an asset list from 2009
3 to 2011. And then he talks about cash from 2012 to
4 2015. Do you see that?
5 **A Yes.**
6 Q And its claimed that from 2012 to 2015, the
7 fund had 12.5 million in cash and then they paid out
8 16.6 million in legal fees. Do you see that?
9 **A Yes.**
10 Q Again, any information at all about any
11 other assets the CDO Fund had post 2011?
12 **A No. And this led to discussion because it**
13 was quite shocking that there had been that much cash
14 there spent for legal fees defending -- being
15 defensible, frankly, with respect to CDO Fund and
16 SOHC. And while I believe Highland's defenses had
17 merit, that cause should have been borne by Highland,
18 not these two counterparties.
19 **And then I wanted to know what the heck**
20 they were talking about with 11 million Greenbriar CLO
21 and 21 million Multi-Strat and where was it.
22 Q And what, if anything, did he tell you
23 about Greenbriar CLO?
24 **A They had to look. He wasn't sure. They**
25 couldn't find it listed as an asset of these entities,

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1 and they were going to dig into it and come back to
2 me.
3 Q And what, if anything, did he tell you
4 about the Multi-Strat asset?
5 **A Very similar. It used to be there. We**
6 started to trying to look to see was it an ownership
7 interest in one of the feeder funds or an ownership
8 interest in a subsidiary of Multi-Strat. Because it
9 wasn't listed as a limited partner at Multi-Strat,
10 meaning CDO Fund.
11 Q You've come to learn that by approximately
12 2016 or early 2017 there were roughly 300 million
13 face-value assets with a valuation of over 100 million
14 of market value spread amongst CDO Fund and the SOHC
15 HFP family of funds, correct?
16 **A That's correct, yes.**
17 Q That information was clearly omitted from
18 Mr. Leventon's reports to you, correct?
19 **A Yes.**
20 Q Is that kind of information the kind of
21 information you fully expected Mr. Leventon to have
22 disclosed to you had you known about it?
23 **A Not only would I have expected it, it would**
24 have been his duty as a senior lawyer for the company.
25 Q He was -- he was a lawyer for the company

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1 at that time. Do you feel like he made material
2 omissions to you regarding the state of CDO Fund and
3 SOHC's assets?
4 **A Clearly.**
5 Q If you could turn to Tab~5. We have
6 deposition Exhibit 73.
7 (Deposition Exhibit 73 was received and
8 marked for identification, as of this date.)
9 BY MR. CLUBOK:
10 Q And this is another email he sends to you
11 a couple of weeks later, copying Scott Ellington and
12 Greg Demo and James Romey.
13 And in the email at the top he says, "All,
14 I do not want to include this in the UBS package until
15 we discuss, but please see attached showing the
16 Multi-Strat position being written off." Do you see
17 that?
18 **A Yes.**
19 Q And if you look at -- there may be a blue
20 sheet, but we're going to mark -- but there's --
21 there's an attachment to this email. Actually there's
22 two attachments to this email that we've got behind
23 blue sheets in your binder.
24 And these are attachments that he included
25 with his cover email that's been marked as Exhibit 73.

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1 Do you see that?

2 **A Yeah, I recognize it.**

3 Q And if you look at the first attachment,

4 this purports to show that -- and by the way, what

5 we've been calling Multi-Strat used to be called

6 Highland Credit Opportunities CDO, correct?

7 **A That's correct. And Multi-Strat is a**

8 **number of feeder funds with similar confusing names**

9 **but also subsidiaries where it's held certain assets.**

10 Q But when Leventon in his cover e-mail talks

11 about Multi-Strat and then he gives you documents

12 showing activity and credit opportunities, you all

13 have a shared understanding. You're talking about the

14 same entity, correct?

15 **A That is the same entity, correct.**

16 Q Okay. So with respect to the first

17 attachment to Exhibit 73, that purports to show -- and

18 it's may be hard to read. We've tried to give you a

19 bigger version.

20 **A That's okay. I got it.**

21 Q And Shannon can try to blow it up on the

22 screen. But that purports to show that all of the

23 interest in credit opportunities/Multi-Strat were

24 written off in August 11, 2017. Do you see that?

25 **A That's correct.**

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1 Q Now those -- you know, you knew at the time

2 that that quantity of interest in Multi-Strat actually

3 had pretty significant value, correct?

4 **A Yes.**

5 Q And did Mr. Leventon give you any

6 explanation as to why the CDO Fund quote would have,

7 quote, written off that valuable asset back in August

8 of 2017?

9 **A Not that I recall. The -- it was with**

10 **specificity. The discussion was that there must have**

11 **been some kind of mistake. It would have -- if they**

12 **had been an owner of Multi-Strat, it would have been**

13 **clearly set forth in -- in the log or ledger that we**

14 **had with respect to who are the LPs of Multi-Strat.**

15 **It wasn't there.**

16 **This email engendered -- it was -- it came**

17 **from the prior set of emails that he's talking about**

18 **we have this interest in Multi-Strat, found it. Where**

19 **is it? Because if CDO Fund had an interest in**

20 **Multi-Strat, that might help us facilitate a**

21 **settlement with UBS. Because right now we're offering**

22 **nothing.**

23 **Couple of weeks -- I forget the exact dates**

24 **from the last email, but it took a little time to come**

25 **back to me and say, Oh, we've hunted it down and it's**

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1 **gone. It was written off. And the only explanation**

2 **that I recall was something along the lines of it was**

3 **an improper entry. And what it shows is in the next**

4 **exhibit that it was traded. But it was -- and we had**

5 **discussion about well, was it actually traded, no.**

6 **That's just the way we wrote it off. It was**

7 **improperly listed as their asset.**

8 **And that obviously -- or maybe not**

9 **obviously, but to me that engendered a lot of**

10 **questions. And so I pressed them on how this could**

11 **actually be the case. I even raised this to Dondero,**

12 **who told me that the Greenbriar interest -- this is**

13 **the Multi-Strat interest. So this one is different.**

14 **The Multi-Strat interest was just a -- some**

15 **kind of mistake, that it shouldn't have been there.**

16 **And so it shows that a trading entry, that is just a**

17 **way to write it off and it says that there's no**

18 **counterparty basically.**

19 Q By the way, you're looking at the second

20 attachment --

21 **A Correct.**

22 Q -- to the email that Leventon sent you

23 which we've marked as Exhibit 73?

24 **A Yes.**

25 Q And that's a document from WSOWeb?

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1 **A Yes.**

2 Q Is that Highland's trading system?

3 **A That was one of the systems. So this is**

4 **the Wall Street office, which was the system that**

5 **Highland had.**

6 Q And so this would have been a document that

7 was prepared back in it says August 21, 2020. Well I

8 don't know -- maybe that was the day it was printed

9 out. Was that the day it was printed out?

10 **A I believe that's the day it was printed**

11 **out. It says the entry is from August 11, 2017.**

12 Q Okay. So back in August 11, 2017, Highland

13 used its trading system to record a supposed writeoff

14 of this significant interest in Multi-Strat, right?

15 **A Correct.**

16 Q And by the way, by significant, I think

17 that interest today is somewhere in the high 20 low

18 30 million-dollar range, correct?

19 **A All -- and including all distributions on**

20 **it, it would have been somewhere in the 20s I believe.**

21 Q Somewhere in the 20 million-dollar range?

22 **A But I don't know what it would have been**

23 **worth in 2017.**

24 Q Sure. You've come to learn that, in fact,

25 this interest wasn't just written off because it was

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1 some mistaken fiction, correct?
2 **A Correct.**
3 Q You've come to learn that in fact this
4 interest that CDO Fund held in Multi-Strat was
5 purportedly transferred to Sentinel as part of the
6 overall effort to purchase an insurance policy for the
7 UBS litigation, correct?
8 **A Yeah, we learned that in first quarter of**
9 **'21.**
10 Q Right. So not until months after
11 Mr. Leventon is telling you this is just a writeoff
12 because of a mistake, correct?
13 **A Oh, yeah. Even after Mr. Leventon was**
14 **fired, he never shared this information with us. He**
15 **shared the information in his email, but it's clearly**
16 **wrong if not fraudulent.**
17 Q Fair to say it was a material omission --
18 to put it mildly -- for Mr. Leventon to not explain --
19 strike that.
20 I think this is actually a lie to represent
21 that the CDO interest in Multi-Strat had been written
22 off as opposed, used as part of a purchase of an
23 insurance policy. Is that fair?
24 **A I think that's a fair characterization. If**
25 **one creates a description of something that is**

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1 **materially false and knowingly does so, whether --**
2 **whether -- without disclosing the actual events, I**
3 **think that that description could be fairly**
4 **characterized as a lie.**
5 Q And by the way, Mr. Leventon has copied
6 Mr. Ellington on this, correct?
7 **A Yes.**
8 Q Mr. Ellington, you've come to learn, is a
9 part owner, an ultimate beneficial owner of Sentinel,
10 correct?
11 **A That's correct.**
12 Q And when Mr. Ellington was copied on this
13 email where Mr. Leventon provides you this false
14 information about the Multi-Strat interests that were
15 previously held by CDO Fund, did Mr. Ellington in any
16 words or substance correct Mr. Leventon's
17 misrepresentations?
18 **A No. And Mr. -- I don't recall the specific**
19 **conversations. Maybe something will trigger that,**
20 **something you show me may trigger that. But**
21 **Mr. Ellington was involved in these discussions.**
22 Q And he certainly never in words or
23 substance told you that CDO Fund's interest in
24 Multi-Strat and other assets had been, in fact,
25 transferred or tried to be transferred to Sentinel

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1 back in August of 2017?
2 **A That's fair. We'd never been -- and I had**
3 **never been informed of any such transfers or even the**
4 **existence or name of Sentinel until the first quarter**
5 **of '21 when we found it on our own.**
6 Q Did you ever -- strike that.
7 Had you known about what really happened to
8 CDO Fund's interest in Multi-Strat, would you have
9 told UBS about it at the time?
10 **A Yes.**
11 Q And by the way, is it your understanding
12 that those interests, that are identified here as
13 supposedly being written off, are the same interests
14 that are now being restrained pursuant to the
15 temporary injunction that's been issued by this court?
16 **A Yes. These interests are worth north of**
17 **\$20 million.**
18 Q And these interests, which instead of being
19 written off were purportedly transferred to Sentinel,
20 are now only being restrained because of this court's
21 actions, correct?
22 **A That's correct.**
23 Q Otherwise, is it fair to say that without
24 the court's injunction, you might be required to
25 redeem the interest in Multi-Strat by turning over the

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1 value of the restrained interest to Sentinel?
2 **A Yes, we have the full amount of cash**
3 **necessary to redeem this interest and redeem all**
4 **similar interest.**
5 Q Okay. Let's turn to Tab-6, which has been
6 marked as Exhibit 153 [sic].
7 (Deposition Exhibit 154 was received and
8 marked for identification, as of this date.)
9 BY MR. CLUBOK:
10 Q And this is another email thread that the
11 top thread is August 21, 2020 from Mr. Leventon to you
12 and others including your outside counsel and copying
13 Scott Ellington. Do you see that?
14 **A Yes. This is the same day as the prior set**
15 **of emails, but it's in the morning.**
16 Q It's in the morning, okay.
17 And if you go again to the first email in
18 the chain, which you have to go to the end of the
19 documents, you can see that Mr. Romey had sent an
20 email to Mr. Leventon which he puts importance,
21 "high."
22 And he says, "Before we give anything to
23 UBS today, we need to track down what the Highland
24 Credit Opportunities CDO Limited partner [sic]
25 interest in Multi-Strat means and how it's accounted

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1 for in Multi-Strat's books, i.e., whether it's part of
2 the existing redemption group or it has -- or how it
3 has any remaining interest in the fund. Or if I'm
4 misunderstanding something, please let me know ASAP."
5 Do you see that?
6 **A Yes.**
7 Q And if you go up the chain, you see an
8 email from Greg Demo where -- this is at the bottom of
9 the page that Bates labeled 38893.
10 You see Mr. Demo says, "The confusion that
11 we're having is that the assets shown on the
12 worksheets we got from Isaac says that Highland's CDO
13 Opportunity Master Fund has a 21.5 million limited
14 partner interest in Multi-Strat." Do you see that?
15 **A Yes.**
16 Q And he goes onto say, "So the issue you
17 raise exactly the issue we're trying to figure out.
18 Going off the org chart, I thought this entity was
19 100 percent owned by MSCF. We're trying to figure out
20 what the 26 million-dollar asset on CDO Fund's books
21 means." Do you see that?
22 **A Yes.**
23 Q And Isaac then responds to that by saying
24 "Dave, I will call you to figure this out." Do you
25 see that?

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1 **A Yes.**
2 Q And Mr. Romey asks for a status check and
3 Leventon then says there's no prerequisite to deliver
4 materials to UBS in satisfaction of their concerns.
5 And then --
6 MR. MORRIS: I'm sorry. Where is that
7 email?
8 MR. CLUBOK: Sorry. I'm working my way up
9 the chain. So there's an email on August 6, 2020,
10 5:05 p.m., where Leventon basically says that this is
11 isn't a prerequisite to delivering materials to UBS.
12 And Scott Ellington responds at 6:08 p.m.,
13 saying "Isaac and me were instructed by Jim Seery to
14 get this UBS deliverable handled." He says, "I was
15 just on the phone with Isaac when this email came
16 through. Don't see how this is urgent, especially
17 relative to UBS request. We'll get to this when it is
18 a priority." Do you see that?
19 **A Yes.**
20 **BY MR. CLUBOK:**
21 Q And then Mr. Demo, on August 15, writes to
22 Scott and Isaac and he says, "I spoke to Jim about
23 this issue this morning. It is a high priority at
24 this point and we need to do what we can to push to
25 conclusion." Do you see that?

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1 **A Yes.**
2 Q And that's where Mr. Ellington then sends a
3 pretty lengthy email. And this may have been what you
4 were referring to when you said you remember him
5 weighing in. And I'll you take a minute to look at
6 Mr. Ellington's response.
7 **A Yeah, he made it on the 6th as well. And**
8 **I'm familiar with the response. So he was active in**
9 **these discussions.**
10 Q And he, again, is pushing back on an actual
11 call about this to get it sorted out. Do you see
12 that?
13 **A Yes.**
14 Q And he claims that "we are searching for
15 documents and records that were created as far as back
16 as 15 years ago," right?
17 **A Yes.**
18 Q And then there's a lot of statements
19 that -- fair to say were designed the make you believe
20 that he's doing everything possible and trying his
21 best but it's just too hard to figure this all out?
22 **A Correct. And that he's -- he's the one who**
23 **has expertise and he's digging in and he's talked to**
24 **UBS about it, he's talked personally to you about it,**
25 **he's talked to KPMG about it and it's a ton of work**

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1 **and he's spent -- he and Isaac have spent over 100**
2 **hours trying to work on this and get it right. And it**
3 **seemed that my request that when we provide discovery**
4 **to UBS, we actually know what the heck we're giving**
5 **was a real challenge to Mr. Ellington and**
6 **Mr. Leventon. Obviously, that's all false.**
7 Q He claims this project is a herculean task.
8 Do you see that?
9 **A Yes.**
10 Q That's false, correct?
11 **A They knew the answer clearly based upon**
12 **what we know now. It was this is all -- the herculean**
13 **task was how to obfuscate it.**
14 Q And in fact, very specifically, he reminds
15 you that he's personally discussed at length, with the
16 head of KPMG Cayman Islands, the situation. And he
17 expressed to Mr. Ellington, supposedly, that there are
18 currently more than 6,000 ghost funds that -- such as
19 these target entities, stemming from the 2008 crisis,
20 that do not have directors, custodians,
21 administrations, bank accounts, that sit dormant and,
22 in all caps, "NO ONE" knows what they truly retain, et
23 cetera. Do you see that?
24 **A Yes.**
25 Q And then he says "I know that UBS is aware

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1 of the situation and I know Andy Clubok knows of the
2 situation, because I, Scott Ellington, have personally
3 discussed it with him several dozen times, including
4 as recently as this year." Do you see that?
5 **A Yes.**
6 Q Fair to say Mr. Ellington used this phrase
7 "ghost funds" to make it appear that there was just no
8 way to track these assets and where they had gone and
9 what Cayman entity had them or what was the status.
10 Is that fair?
11 MR. MORRIS: Object to the form of the
12 question.
13 **A I'd say that is fair and this was not the**
14 **first time he had used a term. It was a term he liked**
15 **to use to indicate that if there were funds**
16 **pre-financial crisis down from Caribbean**
17 **jurisdictions, it would be impossible to get**
18 **information about them which, obviously, was not true**
19 **with respect to funds that Highland had the**
20 **information itself.**
21 **BY MR. CLUBOK:**
22 Q And, in fact, Sentinel, which at that time
23 had ownership in the Multi-Strat -- specific in the
24 Multi-Strat asset. There was a specific subject of
25 this back and forth -- Sentinel had directors at that

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1 time, right?
2 **A Correct.**
3 Q And Sentinel had bank accounts at that time
4 that were not dormant, correct?
5 **A That's what we now know, yes. We didn't**
6 **know about or at least the independent board, myself,**
7 **Pachulski, our outside counsel or DSI had no awareness**
8 **of the existence of Sentinel at this time. We didn't**
9 **learn of that existence, as I said earlier, until Q1**
10 **'21.**
11 Q So when Mr. Ellington talks about ghost
12 funds that don't have directors or custodians or bank
13 accounts and sit dormant and no one know what they
14 truly retain, he failed to tell you that none of those
15 things applied to Sentinel, correct?
16 **A That's correct. And further, one of the**
17 **directors at Sentinel was a direct report to**
18 **Mr. Ellington, and that was Matt DiOrio. And Matt**
19 **DiOrio worked in the legal department but was not a**
20 **lawyer. He had been brought into the legal department**
21 **because he was Mr. Ellington's friend.**
22 Q And, in fact, Mr. Ellington was one of the
23 two ultimate beneficial owners of Sentinel at the time
24 he was claiming that he just didn't have any more
25 information about what happened to the Multi-Strat

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1 assets, correct?
2 **A That's correct. And we now know even more**
3 **that in June of 2020, he and several members of the**
4 **legal department were quite aware of the existence of**
5 **the entity that he ultimately beneficial owned,**
6 **Sentinel, because they got an indemnity from Sentinel**
7 **which they signed and executed. And they certainly**
8 **started to look for that around the time that we were**
9 **starting to do work around the UBS claim and litigate**
10 **with UBS.**
11 Q At the time Mr. Ellington was making these
12 representations to you, you were his ultimate boss?
13 **A Direct boss.**
14 Q You were his direct boss?
15 **A Correct.**
16 Q And you expected him to give you true and
17 accurate advice?
18 **A Yes. He was both a direct report and the**
19 **general counsel of the company, as well as an officer.**
20 Q Did you count on him having fiduciary
21 duties when he gave you advice or made statements to
22 you?
23 **A I would say that he certainly had fiduciary**
24 **duties. He was supposed to do that. Did I count on**
25 **him? I think it would be fair to say that at certain**

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1 **times I didn't have other avenues to get information**
2 **so I had to rely on him. I wouldn't say that I was**
3 **naive to what often were inconsistent and strange,**
4 **both statements and behavior.**
5 Q Well, whether or not he complied with his
6 fiduciary duties, fair to say that in your position,
7 you expected someone in his position to comply with
8 fiduciary duties in providing you information?
9 **A Absolutely.**
10 Q And did he?
11 **A We now know clearly not.**
12 Q Mr. Ellington concludes by assuring you
13 that Isaac and him are actively working on this and
14 speak literally daily about it. Do you see that?
15 **A Yes.**
16 Q Did Mr. Leventon ever --
17 **A That -- that statement by the way may be**
18 **true.**
19 Q Yeah, I would assume it is.
20 Mr. Ellington and Mr. Leventon, as far as
21 you knew, were working very closely on everything
22 they -- correct?
23 **A Absolutely, yes.**
24 Q And they shared your experience directing
25 and -- directing their activities, you found them to

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1 share information with each other freely?
2 **A Well, Leventon reported to Ellington.**
3 **Ellington reported to me. They certainly shared**
4 **information as evidenced by the inclusion of each**
5 **other on -- as a cc on many of the emails. And where**
6 **they're not cc'd, eventually they're often blind**
7 **copied.**
8 Q So do you think that -- well, did
9 Mr. Leventon ever in words or substance say that he
10 disagreed with anything that Mr. Ellington told you in
11 this email that's been marked as Exhibit 153?
12 **A No, not in the least. And my recollection**
13 **is from conversations is that he agreed with it.**
14 Q Mr. Leventon is testifying in this case
15 that he thinks he did tell someone he disagreed with
16 Ellington with respect to this email.
17 Does that -- is that true as far as you
18 know?
19 **A I have no -- there's no chance that -- he**
20 **never said anything to me. He never said anything**
21 **with respect to anybody who would have reported it to**
22 **me. Anybody who would have heard that who was in my**
23 **line of either direct report or my outside lawyers or**
24 **consultants would have told me. That -- that**
25 **statement doesn't ring true at all.**

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1 Q Did Highland Capital Management rely on
2 Mr. Ellington's statements in this email?
3 **A We certainly believed that he and**
4 **Mr. Leventon were unable to get the information that**
5 **we were requesting. And it's hard to say "relied"**
6 **because of what we now know about Mr. Ellington and**
7 **Mr. Leventon and to some degree some of the concerns**
8 **that may have been in the back of our minds at the**
9 **time.**
10 However, because CDO Fund and SOHC had a
11 judgment against them for north of a billion dollars,
12 if there were assets in CDO Fund or SOHC, finding them
13 and delivering them and using them to settle with UBS
14 would have been to the advantage of HCMLP. The only
15 reason it turns out it wasn't to the advantage of
16 certain people who weren't HCMLP, i.e., Dondero and
17 Ellington, is because those assets had been secretly
18 stripped and sent over to them.
19 When we're reading an email like this or
20 when I was reading an email like this, there was no
21 benefit to Ellington being deceptive or from Leventon
22 being deceptive. Because if these funds were still
23 down in CDO Fund or SOHC, giving them to UBS to help
24 facilitate an overall deal would have been great for
25 Highland. We just didn't know anything about Sentinel

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1 existing and there being ultimately -- ultimate
2 beneficial owners who were Dondero and Ellington. We
3 didn't know anything about that whole secret ploy,
4 meaning the structure of what they were trying to do,
5 and these emails -- hiding those assets as opposed to
6 trying to uncover them.
7 Q So --
8 **A The long way of saying when we read this,**
9 **we took it at face value, not the hyperbole that**
10 **Ellington was engaging in about a herculean task and**
11 **these hundreds of hours. I'd be challenged to think**
12 **that he worked 100 hours on any one matter that I**
13 **could think of during my time at Highland. But -- and**
14 **I mean cumulatively.**
15 **But it didn't make sense for them to hype**
16 **this. And now it makes a lot of sense now that we**
17 **know about the whole Sentinel structure on the side.**
18 Q No question that it would have been to
19 HCM's advantage to identify every single possible
20 asset that CDO Fund, SOHC or HFP had a claim to,
21 correct?
22 **A Absolutely. It would have helped**
23 **facilitate the deal with UBS.**
24 Q And by hiding that information,
25 affirmatively hiding that information from you, it

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1 damaged HCM, correct?
2 **A Hugely. It led us down a path which we had**
3 **started in the first half of 2020 and then into the**
4 **second half of 2020 of fighting hammer and tong with**
5 **UBS. Because my perspective after the work that we**
6 **had done analyzing the transaction and working with**
7 **counsel and working with in-house legal team about the**
8 **facts and the prior litigation was that Highland**
9 **hadn't done anything wrong and these two shell**
10 **entities had liability. And the liability was limited**
11 **to the shells. There was no dispute from early on,**
12 **even from 2017 with the summary judgment motion that**
13 **UBS prevailed on, that those entities were going to be**
14 **found liable. And the only question was did they have**
15 **any assets.**
16 The perspective was they never had any
17 assets. That perspective was developed because that's
18 what Ellington and Leventon told me and told the rest
19 of the board. The reason that we fought so hard was
20 we didn't want to create liability. We didn't think
21 there was appropriate liability for Highland, the
22 debtor, to have to be on the hook for that judgment.
23 If there were assets in the subsidiaries, CDO Fund and
24 SOHC and their subsidiaries, getting them to UBS would
25 only help facilitate the deal to relieve Highland, the

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1 debtor, of any either litigation risk or costs to keep
2 fighting with UBS. We spent millions and millions of
3 dollars on that fight.
4 Q Fair to say that by hiding the information,
5 it also damaged UBS?
6 A UBS had to -- yes. I think UBS had to do a
7 similar thing and had to defend itself.
8 Q Tab~6 should be 154. I think I messed up.
9 So the email dated August 21, 2020, that we've been
10 discussing, in which Mr. Ellington refers to ghost
11 funds, is Exhibit 154.
12 And I want to turn now to 155, which is
13 Tab~7.
14 (Deposition Exhibit 155 was received and
15 marked for identification, as of this date.)
16 BY MR. CLUBOK:
17 Q Exhibit 155 is a letter that I sent to your
18 outside counsel on September 16, 2020, in which UBS --
19 I pass on that UBS is demanding full satisfaction of
20 the judgments it then had against CDO Fund and SOHC.
21 Do you see that?
22 A Yes.
23 Q And at that time, you certainly believed
24 that -- that judgment was largely uncollectible
25 because of the lack of assets in those funds that you

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1 understood, based on the information that
2 Mr. Ellington and Mr. Leventon others had provided
3 you, correct?
4 A Largely. I think at that point though I
5 was concerned about the Greenbriar asset that had been
6 referred to earlier in one of the emails. My concern
7 about that asset was that while it wasn't listed as an
8 asset owned by CDO Fund, I had concern because nobody
9 could give me an explanation as to what had happened
10 to it that was satisfactory.
11 Dondero had said to me, Oh, that's nothing.
12 We participated that asset out a long time ago. I
13 was -- that struck me as a very odd -- this was in and
14 around the mediation time. That struck me as a very
15 odd remembrance for him because a participation of a
16 small asset like that from ten years ago, while his
17 memory is very sharp, it was very unusual that
18 somebody would remember that specific asset if there
19 had been numerous other assets and the warehouse had
20 had so much -- so many assets in it that were
21 ultimately foreclosed upon. So that always just stuck
22 in the back of my mind.
23 But to your question, largely
24 uncollectible. But that this asset of Greenbriar that
25 could have been worth 8- to 10 million, we were

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1 concerned about -- I was certainly concerned about
2 where that asset was. And also then could I somehow
3 use that to facilitate a deal with UBS.
4 Q By the way, you said that Mr. Dondero told
5 you with respect to the Greenbriar asset that it had
6 been participated out. What did you understand that
7 phrase to mean?
8 A It's a common phrase in finance. You can
9 sell an asset if you're able to transfer it. If for
10 some reason transferring the asset is difficult, you
11 can essentially transfer the financial attributes of
12 that asset to somebody else by entering into what's
13 referred to as participation agreement. In a
14 participation agreement, the participant, which in
15 that case would be the counterparty to CDO Fund,
16 Highland, never gets whatever flows are generated off
17 of that -- of that asset. The recipient, if it was in
18 Highland's name, the CDO Fund's name, would receive
19 proceeds and then it would be required to turn them
20 over to the participant.
21 Q And did you come to learn that in fact that
22 was not true?
23 A Yes.
24 Q Did you come to learn that Greenbriar was
25 another asset that CDO Fund had or the folks who then

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1 controlled CDO Fund had attempted to transfer to
2 Sentinel as part of this whole insurance policy
3 situation?
4 A Yes. We found out in the first quarter of
5 '21 and I don't recall if it was January or February,
6 but that was our first learning and starting to
7 uncover this issue after we terminated Mr. Leventon.
8 I came to understand that that asset had
9 been part of the transfer to Sentinel but somehow got
10 lost in the transfer. And so the asset, meaning the
11 preferred shares in Greenbriar, were never
12 reregistered in Sentinel's name and remained in CDO
13 Fund's name.
14 But I believe on Highland's books, they
15 actually had been eliminated because the Highland
16 group, Leventon, Ellington, Sevilla, who
17 orchestrated -- Katie Irving who orchestrated this
18 transfer, removed it from Highland's books, but then
19 it never made it to Sentinel. So from the trustee's
20 perspective, that asset remained with CDO Fund. I
21 think I said Highland but CDO Fund.
22 Q So with respect to this asset, that group
23 attempted to fraudulently transfer it but were just
24 incompetent in their execution; is that fair?
25 A Yeah. I mean however you want to

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1 characterize the transfer, it didn't get -- whether
2 it's fraudulent, not fraudulent, it didn't get done.
3 Q Okay. Fair to say that when Mr. Dondero
4 talked about participation, based on what you now know
5 but didn't know then, it's fair to say that
6 Mr. Dondero was lying to you?
7 **A I think it's fair to say that -- I don't**
8 know if it was ...
9 Q Let me rephrase the question.
10 **A He certainly -- he certainly didn't know --**
11 it certainly hadn't been participated. It was
12 certainly an odd recollection. And it -- I don't know
13 what he was trying to do.
14 Q Fair to say that to the extent Mr. Dondero
15 knew anything about the Sentinel transaction, but when
16 you talked about Greenbriar, he talked vaguely about
17 participation, that he omitted key facts you would
18 have expected him to disclose if he was being truthful
19 to you; is that correct?
20 **A We weren't looking at a -- at a document.**
21 I think it just -- it came up in a conversation where
22 I said if we can find this Greenbriar asset and use
23 that, that could help facilitate a deal with UBS. And
24 he said, Oh, there's nothing -- there's nothing --
25 something to the effect of there's nothing there with

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1 Greenbriar. That asset's participated a long time
2 ago.
3 Q Okay. So in substance, he told you there
4 was no value associated with Greenbriar that could be
5 used for CDO Fund to satisfy the judgment that UBS had
6 against it?
7 **A That's fair, yes.**
8 Q And that was not true, correct?
9 **A It turns out that's not true, yes. I don't**
10 know what he knew or didn't know.
11 Q Do you know what SAS Management is?
12 **A I do, yes, now.**
13 Q What is it?
14 **A I've been told that it was called sword and**
15 shield. It was a secret company that the legal
16 department and a guy named Dilip Nissan (phonetic) who
17 were involved with -- it was owned by either Dondero
18 or some related entity. Certainly related to
19 Highland. It was operated out of Highland's office --
20 offices. It's unclear to me what it really did. It
21 showed up in one litigation, I believe, with Grupo
22 Mexico. And we've -- we tried to figure out -- what
23 get to the bottom of what it is but we don't have a
24 great understanding.
25 It certainly was connected to, we now know,

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1 the offshore activities of Dondero and Ellington as
2 ultimate beneficial owners. And that shows up in some
3 of the documents that we found in our system related
4 to Cayman activity.
5 Q I think you mentioned that Dondero was a
6 owner of -- have you also come to learn now that Scott
7 Ellington is at least a partial owner of SAS?
8 **A I believe so. I'd have to go back and**
9 look. I think that's the case.
10 Q If you look at the next tab, Tab~8 it's
11 been marked as Exhibit 156.
12 (Deposition Exhibit 156 was received and
13 marked for identification, as of this date.)
14 BY MR. CLUBOK:
15 Q This was an exchange involving various
16 folks that you can see on the email. Oops, I'm sorry.
17 That's the wrong document.
18 Exhibit -- skip that Tab~8 to Tab~9.
19 Exhibit 156 is Tab~9, which is an email
20 exchange around late 20 -- January 2021, amongst you
21 and others including Katie Irving and Stephanie
22 Vitiello and others. Do you see that?
23 **A Yes.**
24 Q In particular, there's an email where -- in
25 the chain where Greg Demo, who is one of your outside

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1 counsel, sends to Katie Irving and asks for complete
2 list of the parties who worked on SAS or on SAS
3 emails, et cetera, et cetera. And then notes in big
4 bold letters, This request is not limited to Katie.
5 If anyone else knows the answers to these questions,
6 tell us. Do you see that?
7 **A Yes.**
8 Q Did Katie Irving ever provide the
9 information that Mr.~Demo is requesting?
10 **A No, she did not.**
11 Q Did she explain why?
12 **A No. And in looking at this email chain**
13 starting from the bottom, it was Jack Donahue who
14 initiated the request. Jack is an associate with DSI
15 and he started hitting people up with an email, Can
16 you tell me anything about SAS Management. And Helen
17 Kim says, no, don't know anything.
18 **And then Jack, because he's dogged, says,**
19 do you know what it stands for? Anybody know anything
20 about this? Any contracts? And Stephanie Vitiello,
21 who's also an attorney says, No.
22 **And then Jack doesn't give up. So he asks**
23 again and they keep saying "no." And then Vitiello
24 says "I'm not aware of any contracts."
25 **So his question is do you know anything**

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1 about SAS. And she says, "I'm not aware of any
2 contracts." So that is a strange response --
3 nonresponsive response.
4 Then it goes to -- Jack doesn't give up.
5 So eventually he involves Demo. Demo then, I think,
6 pushes on the group again. And Katie Irving says
7 there's no -- there's no info. First she says that to
8 Jack, no info, nondebtor, Summit Management are
9 directors. And then it goes a little later. I think
10 I sent an email on the third page of this exhibit
11 because I had been copied at some point by Demo and
12 basically was tired of the nonsense and said, you
13 know, who is this entity and who's got the docs? I'm
14 told it's alive. Where is it?
15 And I get a specific response from Katie
16 Irving that isn't a non answer or nonresponsive. It's
17 a direct deceitful response that say, I'm not sure who
18 advised you. It is totally incorrect. It's not a
19 known entity. That's false. Legacy claims funding
20 platform, maybe, maybe not. Wholly unrelated to the
21 debtor. Completely untrue since debtor employees are
22 the ones who did all the work on it without
23 compensation.
24 And then it continues with very
25 nonresponsive responses and ultimately JP Sevilla, all

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1 of these folks we now know had an SAS email address.
2 And JP Sevilla says it's -- deceptively says this was
3 litigation. The litigators did all of the substantive
4 work. They're all gone.
5 Q And you mentioned they had emails with an
6 SAS email address. What do you mean by that?
7 A They had an SAS -- I don't know if it was
8 SAS -- I think it was sasmanagement.com. I stumbled
9 across it when I terminated Elling -- Leventon and
10 went to send his termination letter to him and
11 Microsoft Outlook in a very friendly way popped it up
12 as one of the alternate addresses.
13 I don't recall ever seeing it. It must
14 have been in some trail of emails and that's how it
15 did it. And that got us looking as to what this thing
16 was. And that would have been the genesis is my
17 belief. That would have been genesis of the original
18 inquiry from Donahue.
19 Q Did Ms. Irving ever tell you in words or
20 substance that she was originally hired by Highland to
21 work on SAS tasks among other things specifically?
22 A No.
23 Q Do you know that Scott Ellington hired her?
24 A I don't. I don't know. That wouldn't
25 surprise me.

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1 Q With respect to those emails, have you been
2 able to recover the SAS emails from that server?
3 A No. We determined that SAS was not on the
4 Highland server platform. It was separate.
5 Q Did SAS separately pay the Highland
6 employees from a different fund for the work they did
7 with -- in connection with SAS as far as you know?
8 A Not to our knowledge, no.
9 Q Was Katie Irving --
10 A Certainly Highland did not get paid or
11 reimbursed for the work that Highland employees did
12 working for SAS.
13 Q Yeah. Did you know -- when was the first
14 time you learned about -- strike that.
15 When was the first time you learned that
16 any Highland employees were actually doing work for
17 SAS?
18 A That would have been in the first quarter
19 of '21, 2021.
20 Q Did you ever hear of SAS referred to as a
21 project related to litigation funding?
22 A I don't -- I've heard that since, but I
23 think it was claims buying. I never heard of it as
24 litigation funding to my knowledge. I don't recall
25 that.

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1 Q Ms. Irving -- are you aware of the
2 following testimony by Ms. Irving.
3 "Question: What instigated your move from
4 Ernst & Young to Highland Capital?
5 "Answer: Highland was looking for someone
6 to essentially work on a incubator project related to
7 litigation funding. I thought it seemed like an
8 interesting opportunity.
9 "Question: What about this struck you as
10 interesting?
11 "Answer: I met the team. I thought it was
12 a very entrepreneurial environment.
13 "Question: Who was the team?
14 "Answer: Scott Ellington and JP Sevilla.
15 "Question: Did this litigation funding
16 have its own entity that worked under separate from
17 Highland Capital?
18 "Answer: Yes.
19 "Question: What entity was that?
20 "Answer: SAS Asset Recovery."
21 BY MR. CLUBOK:
22 Q Had you heard about this testimony?
23 A No.
24 Q To the extent that it's true, as Ms. Irving
25 testified to in her deposition in this matter, that

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1 she was hired from the beginning to work on the SAS
2 project or SAS Asset Recovery, is that consistent with
3 what she told you?
4 **A I just never have heard anything like that.**
5 **I never inquired of her who hired her and what her**
6 **specific role was. She was assigned to the Highland**
7 **legal team even though she wasn't a lawyer and she**
8 **worked on the UBS matter, she worked on Cornerstone.**
9 **But, frankly, she didn't have a lot to do that I knew**
10 **of. But she was -- as far as I knew -- exclusively a**
11 **Highland employee and was a full-time employee at**
12 **Highland and paid that way. She was paid well.**
13 Q When you say she worked on the UBS matter,
14 you mean she supported Mr. Leventon's day-to-day
15 oversight of UBS litigation?
16 **A That's my recollection. I don't know that**
17 **she was day-to-day, but she certainly had involvement**
18 **is my recollection.**
19 Q Okay. This email exchange that we've been
20 looking at, Exhibit 156, was late January of 2021.
21 Fair to say shortly after that, you
22 disclosed to UBS that you had learned about the
23 significant transfer of assets from the judgment to --
24 debtors to UBS to Sentinel to purportedly purchase an
25 insurance policy, correct?

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1 **A Yeah, it was in and around this time.**
2 Q And when did you first become aware of that
3 transfer of assets in connection with the acquisition
4 of an insurance policy?
5 **A Again, I don't have the exact dates in**
6 **front of me. I'd have to be refreshed on it. But it**
7 **was in and around this time. Leventon was filed --**
8 **was fired at the beginning of January 2021; DiOrio was**
9 **fired at the end of -- the end of February 2021. When**
10 **we fired Leventon, we didn't know anything about SAS**
11 **or Sentinel or any of these transfers. When we fired**
12 **DiOrio, we definitely knew about it. So it was in**
13 **that time frame.**
14 Q Okay. If you turn to Tab~10, which is
15 Exhibit 57.
16 (Deposition Exhibit 57 was received and
17 marked for identification, as of this date.)
18 BY MR. CLUBOK:
19 Q There's a email exchange between Isaac
20 Leventon and Chris Dunn. Subject is UBS privilege, he
21 says, from October of 2017. And he attaches something
22 called the UBS ATE PDF. Do you see that?
23 **A Yes.**
24 Q And the attachment is the so-called Legal
25 Liability Insurance Policy that's been executed

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1 according to the signature pages at the end that that
2 we've been referring to loosely as the insurance
3 policy, correct?
4 **A That's correct, yes.**
5 Q And did Mr. Leventon ever tell you about
6 what he called the UBS ATE during -- ever? Did he
7 ever tell you about it?
8 **A Never.**
9 Q ATE stands for After the Event; is that
10 your understanding?
11 **A That's my understanding, yes.**
12 Q And in a nutshell, what this policy does is
13 it says okay, you've already got a litigation or
14 there's already been an event that you might have
15 liability for. And knowing that, we're going to now
16 issue a policy to satisfy a judgment in case you lose
17 the litigation over that event. Is that a fair
18 summary of --
19 **A That's what it looks to do.**
20 Q Yeah. And Mr. Leventon -- by the way, who
21 is Chris Dunn?
22 **A I don't know.**
23 Q Mr. Leventon says, "Label all communication
24 related to this project as privileged as all documents
25 are being drafted at the request of the legal team."

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1 Do you see that?
2 **A Yes.**
3 Q But the document that's attached is an
4 insurance policy, right?
5 **A Correct.**
6 Q That wouldn't be a privileged document,
7 correct?
8 MR. MORRIS: Objection to the form of the
9 question.
10 **A Not in my experience.**
11 BY MR. CLUBOK:
12 Q You've not claimed privilege over this
13 document, correct?
14 **A That's correct.**
15 Q And as far as you know, was this document
16 ever provided to UBS prior to February of 2021?
17 **A Not to my knowledge, no.**
18 Q Do you remember specifically how you --
19 does looking at it ring a bell as to how you found it
20 or who first told you we've got this?
21 **A It's a bit of a convoluted story, but it**
22 **goes very much along the lines of when Microsoft**
23 **Outlook graciously gave me the SAS Management email**
24 **for Leventon at some point. I asked our team to start**
25 **looking to figure out what SAS was. And when they**

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1 were doing that, they came across -- and when I say
2 "our team," I meant DSI and outside counsel. When
3 they were doing that, they came across Sentinel. When
4 they came across Sentinel, the aforementioned
5 Mr. Romey recalled that Sentinel was a redeemer out of
6 the Multi-Strat fund. And that got us looking in the
7 system for anything related to Sentinel. And that
8 then brought us to the policy.
9 But before that, we had no idea who Sent --
10 Sentinel was not something on my radar screen. We had
11 no idea who they were. If they showed up as a
12 redeemer on a list I got, I wouldn't have thought they
13 were a related party.
14 Q Now that you've had a chance to look at it
15 in your role as overseeing Highland's assets and
16 liabilities and the assets/liabilities of the funds
17 that may affect Highland, fair to say that this
18 insurance policy, if it was valid, would have been
19 very material to UBS?
20 A Not only to UBS. UBS is a pretty big
21 business so materiality for them I'm not quite sure
22 about. But certainly material to Highland. Highland
23 controlled CDO Fund. CDO Fund was -- purportedly from
24 the Highland legal team had no assets. And it turns
25 out that it had one very material asset which is this

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1 insurance policy.
2 Q As part of the work you've been doing at
3 Highland, you had control over CDO Fund, correct?
4 A That's correct, yes.
5 Q And at some point --
6 A Through the general partner.
7 Q Right. And you understood from the get-go
8 even before you took your job as independent director
9 that CDO Fund owed UBS over \$500 million, correct?
10 A That was from the original decision prior
11 to the judgment. And it looked to us like that was
12 going to be a pretty sound ruling with respect to CDO
13 Fund and SOHC.
14 Q If you had known that CDO Fund had an
15 insurance policy for \$100 million, would you have
16 hesitated at all to tender that as at least partial
17 satisfaction of the over 500 million-dollar judgment
18 against CDO Fund?
19 A No. We would have done it right away. I
20 would have saved months and months, years and
21 countless dollars, tens of millions.
22 Q If you turn to the page -- the page that's
23 marked 17 of 16, oddly. It's Bates labeled 3070 at
24 the bottom, Exhibit 57. It may have a different
25 numbering system in the Caymans.

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1 You could see the previous page was page 16
2 of 16 and then this one for whatever reason is called
3 page 17 of 16. I guess it's an add-on page after all
4 the signature pages that were all 16 of 16.
5 I just want to refer you to this just to
6 make sure we all understand what we're talking about.
7 And this is a schedule that's part of the legal
8 liability insurance policy that we sometimes called
9 the insurance policy or the ATE policy that's attached
10 by Mr. Leventon to his email that's been identified as
11 Exhibit 57. Are you with me?
12 A Yes.
13 Q So on that schedule, it refers to the
14 insurer and the insurer here is Sentinel Reinsurance
15 Limited, correct?
16 A Yes.
17 Q And the insureds were Highland CDO
18 Opportunity Master Fund, L.P., Highland CDO Holding
19 Company, and Highland Special Opportunities Holding
20 Company, correct?
21 A Yes.
22 Q And you understand that Highland Special
23 Opportunities Holding Company is a -- the entity that
24 we've been called SOHC, correct?
25 A That's correct.

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1 Q It talks about a legal action. Do you see
2 that in the middle of the schedule?
3 A Yes.
4 Q And that legal action it specifically
5 references was the underlying UBS litigation with the
6 High -- with Highland and the related funds that
7 had -- that still is pending in New York, correct?
8 A That's correct.
9 Q And that's the very -- we talk about the
10 UBS litigation with Highland or the New York action.
11 That's all the same as what's captioned here on this
12 schedule?
13 A That's my understanding, yes.
14 MR. MORRIS: Mr. Clubok, I don't mean to
15 interrupt, but I just want to point out that it's
16 almost 4:15 and I just want to remind you that I have
17 a hard stop at 5:00 and I understood you did as well.
18 MR. CLUBOK: Yeah, I understand.
19 BY MR. CLUBOK:
20 Q So, Mr. Seery, this ATE by the way as an
21 asset of the funds would have been responsive to UBS's
22 discovery request we previously looked at that were
23 marked as Exhibit 69, correct?
24 A I don't know specifically, but I believe it
25 would have been. Certainly would have been an asset

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1 and part of the requests were assets of CDO Fund and
2 SOHC. So probably would have been responsive to both.
3 Q You would have turned this over immediately
4 had you been aware of it, correct?
5 A Absolutely.
6 Q And, in fact, once you became aware of it,
7 you turned it over, you know, almost immediately or
8 shortly after you found it, correct?
9 A Within -- within a day or two. Yeah, I say
10 within a day or two. As soon as we figured out what
11 it was, and we were very quick to get this to UBS.
12 And the reason for that is we had a pending settlement
13 with UBS. And my view and obviously my co-directors
14 at the time agreed we could not go forward with the
15 settlement until we figured this out. And we needed
16 to do that with UBS to tell them. We couldn't just
17 say we're not going forward with the settlement. We
18 had to say we're not going forward with the
19 settlement.
20 UBS, obviously, was taken back by that and
21 so we have to divulge some things to you that have --
22 they previously asked for in discovery and we've now
23 found and it may change the dynamic of our
24 discussions. So we really did need to get that
25 quickly because we were actively working on a

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1 settlement agreement at the time.
2 Q You felt like given the status of the
3 restructuring and the disputes that existed between
4 UBS and Highland both in New York and in the
5 restructuring, that it was just the obligation of HCM
6 to provide this information to UBS, correct?
7 A Absolutely. We're -- we're certainly
8 entitled to litigate -- litigate hard, be aggressive
9 to protect the interest of the estate. We're not
10 entitled to defraud creditors and lie to them about
11 the situations.
12 Q And an active effort to not provide this
13 information to UBS that's set forth in Exhibit 57
14 would be an effort to defraud UBS, correct?
15 MR. MORRIS: Objection to the form of the
16 question.
17 MR. CLUBOK: Sorry. Let me ask that -- let
18 me rephrase it then.
19 BY MR. CLUBOK:
20 Q If there was an active effort to hide
21 Exhibit 57 from UBS, it would have been a fraud on
22 UBS, correct?
23 MR. MORRIS: Objection to the form of the
24 question.
25 A If it's a legal conclusion, I guess that

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1 might be the objection. It's certainly improper. And
2 I think in my opinion it would have been fraudulent.
3 BY MR. CLUBOK:
4 Q In your role that -- you know -- strike
5 that.
6 In the roles that you have had with respect
7 to managing HCM and the related entities' affairs, you
8 would consider it fraudulent to actively conceal
9 Exhibit 57 from UBS, correct?
10 A I would, yes. The debtor -- during the
11 case, the debtor is a trustee under the bankruptcy
12 code. Trustees are fiduciaries to the estate. Each
13 of the creditors have a interest or potential interest
14 in the estate. Not dealing with them fairly and
15 openly I believe to be against the requirements of the
16 person who manages that fiduciary, i.e., the debtor.
17 Q And would you believe that if you had a
18 legal team that was tasked with helping you and they
19 actively concealed Exhibit 57 and other information
20 like it that they would be engaging in fraud?
21 MR. MORRIS: Objection to the form
22 question.
23 A I think that's probably fair. What we've
24 come to learn is that there was personal interest that
25 would take this well beyond the scope of what normally

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1 would, in my view, be the scope of their employment.
2 And folks were acting contrary to the interest of
3 the -- of the debtor and the estate, notwithstanding
4 their fiduciary duties as lawyers for the debtor in
5 possession.
6 BY MR. CLUBOK:
7 Q Okay. We've talked about the insurance
8 policy that could have been used to satisfy at least
9 some of the judgment against CDO Fund. I want to talk
10 about the way that policy was acquired and I want to
11 ask you to turn to Tab-11, where we have Exhibit 2,
12 which is a purchase agreement dated August 7, 2017
13 between CDO Fund, CDO Hold Co and SOHC. Do you see
14 that?
15 A Yes.
16 (Deposition Exhibit 2 was received and
17 marked for identification, as of this date.)
18 BY MR. CLUBOK:
19 Q And by the way, I should point out if you
20 look at the signature page, fair to say that
21 Mr. Dondero signed on behalf of every so-called seller
22 entity?
23 A That's correct, yes.
24 Q And just to confirm, if you'd look back at
25 Exhibit 57, which was the insurance policy, you see

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1 that also Mr. Dondero signs for all of the funds,
2 correct?
3 **A That's correct.**
4 Q And in both cases, the countersignator is
5 Andrew Dean, who was identified as a director of
6 Sentinel Reinsurance at the time. Do you see that?
7 **A That's correct.**
8 Q So the purchase agreement, you -- you have
9 seen this before, right?
10 **A I have, yes.**
11 Q And if you turn to Exhibit A, is it your
12 understanding that this is a list of the assets that
13 were purportedly used to acquire the ATE policy?
14 **A That's correct, yes.**
15 Q Now the ATE policy, we looked at that
16 schedule a moment ago if you'd flip back to
17 Exhibit 10, you'd see there were three insureds
18 listed, right? CDO Fund, CDO Hold Co and SOHC?
19 **A Yes.**
20 Q And those were the three entities that
21 signed the insurance policy, correct?
22 **A That's right.**
23 Q But in this purchase agreement, there are
24 six different sellers?
25 **A Yes.**

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1 Q Including Highland Financial Partners,
2 which was the -- then -- of which SOHC was a
3 subsidiary of, correct?
4 **A Correct.**
5 Q By the way, you understand that -- are you
6 aware that UBS has now obtained a judgment that holds
7 HFP to be the alter ego of SOHC and therefore
8 responsible for the same judgment that SOHC is
9 responsible for?
10 **A I don't know if I was aware of that or not.**
11 **I just don't know.**
12 Q Okay. I'll just represent -- I'll
13 represent to you and we'll provide to your counsel
14 after this that there was a recent court order in
15 New York that issued a judgment against HFP as the
16 alter ego of SOHC and holding them accountable for the
17 same judgment as SOHC.
18 Do you have any idea why these six entities
19 would have transferred assets to pay for insurance
20 policy that was supposedly covering three entities?
21 **A No idea other than as directed by**
22 **Mr. Dondero to move all of the assets. The idea of**
23 **taking virtually all of your assets, when you're a**
24 **putative judgment debtor or a potential judgment**
25 **debtor, and using all of them to buy an insurance**

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1 **policy equal to some portion of the value of the**
2 **assets doesn't make any sense anyway. Meaning if I**
3 **have \$100 and I'm a potential judgment debtor, what**
4 **value do I get out of buying a \$100 insurance policy.**
5 **I should hold onto the \$100 and if I lose, just lose**
6 **that.**
7 Q Yeah. And, in fact, the ultimate value of
8 the assets transferred proved to be even more than
9 \$100 million according to Highland's calculations,
10 correct?
11 **A That's our estimate, yes.**
12 Q You understand that CDO Hold Co, like SOHC,
13 was a wholly-owned sub of HFP?
14 **A I think it was an indirect wholly-owned**
15 **sub.**
16 Q And same with HFC? Also in the HFP family?
17 **A I don't recall where HFC sat exactly, but**
18 **it would have been in that family.**
19 Q Okay. You know back in 2017, Highland was
20 claiming that HFP was not an alter ego of SOHC and
21 they should not be held liable as such. You're aware
22 of that?
23 **A Yes, yeah.**
24 Q And yet you see here that all of the assets
25 of HFP and its subs are being pooled to buy insurance

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1 purportedly for -- not for HFP, but for SOHC and the
2 two others identified, correct?
3 **A That's what it does, yes.**
4 Q And then of course Dondero signs on behalf
5 of all of the funds, right?
6 **A Correct.**
7 Q Do you know whose idea it was to create the
8 purchase agreement?
9 **A I've looked at a lot of documents on it. I**
10 **don't recall specifically.**
11 Q You filed a declaration in connection with
12 this motion to withdraw the answer and consent to
13 judgment. And I'm not going to go through your
14 declaration with you, but I take it you stand by your
15 declaration, everything you said in it?
16 **A I believe so, unless there's something in**
17 **there that has now proved incorrect.**
18 Q Yeah, let me put it another way.
19 You're not aware of any changes to your
20 declaration as far as you sit here today?
21 **A Yeah. If something changed, I would**
22 **forthrightly admit I was wrong and identify what it**
23 **was.**
24 Q Yeah. And, again, I'm just trying to save
25 a little time here.

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1 **A Yep.**
2 Q But I think in your declaration you said
3 that you understood the transferred assets conveyed to
4 Sentinel had a face value of more than 300 million and
5 a market value at the time of transfer of over
6 100 million?
7 **A That's our estimate, yes.**
8 Q Okay. And that as far as you know, that's
9 correct, those numbers?
10 **A Yes.**
11 Q Obviously, that's much greater than
12 \$25 million, which was supposed to be the premium
13 price, correct?
14 **A That's correct, yes.**
15 Q And indeed, it's even greater than the
16 total coverage that's supposedly being provided by the
17 policy which was only \$100 million, correct?
18 **A That's correct, yes.**
19 Q Based your experience, is there any good
20 faith justification for transferring over \$100 million
21 in assets to buy an insurance policy with this sort of
22 purported coverage?
23 **A Not a good faith one, no.**
24 Q Fair to say that had you known about this
25 purchase of assets and transfer of assets in

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1 connection with the insurance policy, you would have
2 also promptly provided all of that information to UBS?
3 **A Yes. And when we did discover, we did so.**
4 (Deposition Exhibit 3 was received and
5 marked for identification, as of this date.)
6 BY MR. CLUBOK:
7 Q If you turn to Tab~12, we've got Exhibit 3
8 there. That is a memo from Shawn Raver to Rick
9 Swadley regarding the policy?
10 **A Yes.**
11 Q And it attaches a tax compliance memo
12 regarding sale of assets to Sentinel. Do you see
13 that?
14 **A Yes.**
15 Q You've seen this memo now before today,
16 correct?
17 **A I have, yes.**
18 Q And this is another one that you had not
19 seen until you sort of uncovered all of the events in
20 connection with the insurance policy?
21 **A That's correct, yes.**
22 Q Fair to say that when this memo was written
23 in 2018, HCM had recorded the market value of those
24 assets that were transferred in connection with the
25 insurance policy as approximately 105 million?

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1 **A I believe that's correct, yes.**
2 Q You understand that all of the work --
3 strike that.
4 I think you testified earlier that you came
5 to learn that Matt DiOrio, who was a Highland employee
6 at the time, had been one of the directors at
7 Sentinel, correct?
8 **A That's correct, yes.**
9 Q Are you aware that Sentinel had three
10 directors but no employees that directly were paid by
11 Sentinel?
12 **A I've come to learn that, yes.**
13 Q And have you come to learn that all of the
14 business of Sentinel was done by various people who
15 were being paid by Highland largely, or maybe
16 entirely, in the legal department?
17 **A Yes, that's correct. And I think all of**
18 **the business of Sentinel was on behalf of Highland or**
19 **Highland-related entities.**
20 Q Were you -- so -- and have you come to
21 learn that work done on behalf of Sentinel continued
22 after the bankruptcy filing?
23 **A I have come to learn that, yes.**
24 Q And that work was done by Mr. Ellington,
25 Mr. Leventon, Mr. Sevilla, Mr. DiOrio, Ms. Irving and

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1 Ms. Vitiello?
2 **A Certainly what I've seen evidence of, and I**
3 **would put work in quotes, I see evidence that**
4 **Mr. Ellington, Mr. DiOrio, and I believe Mr. Leventon.**
5 **But certainly the first two and perhaps Mr. Sevilla**
6 **were actively involved in working on Sentinel matters**
7 **post petition.**
8 Q Prior -- strike that.
9 Did any of those individuals ever tell you
10 that they were working for Sentinel on Highland
11 Capital Management time?
12 **A No. And I -- they were full-time employees**
13 **of Highland.**
14 Q Highland Capital Management has a code of
15 ethics in effect today?
16 **A That's correct.**
17 Q And when did that policy take affect?
18 **A It's been in effect as long as I've known**
19 **about it. I would think it goes back to -- I don't**
20 **know exactly. It's been around as long as -- I think**
21 **that they've always had a code.**
22 Q It's applied throughout the whole time that
23 you've been involved with Highland, correct?
24 **A Absolutely, yes.**
25 Q Now, if you look at Exhibit -- Tab~13,

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1 which is Exhibit No. 157, I hope.
2 (Deposition Exhibit 157 was received and
3 marked for identification, as of this date.)
4 BY MR. CLUBOK:
5 Q Exhibit 157 is an email from Jason Post to
6 Sarah Goldsmith that copies a -- or attaches a copy of
7 the Highland Capital Management Compliance Manual. Do
8 you see that?
9 **A Yes.**
10 Q And this says that it was updated in
11 October of 2019. But presumably there was another
12 version of this before that. But this was the
13 operative one when you took over, correct?
14 **A That's my understanding. I don't know that**
15 **it was updated after that during the case. I don't**
16 **recall it being so. Post exit we've updated it.**
17 Q Yeah, I guess to be precise, I note on the
18 first page it says revised March 1, 2019?
19 **A Yes.**
20 Q Okay. But it was circulated, looks like,
21 at least in this exhibit, Exhibit 157, in October of
22 2019?
23 **A Yes, correct.**
24 Q And when was the bankruptcy?
25 **A October 16, 2019.**

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1 Q So this would have been recirculating the
2 compliance manual after the restructuring?
3 **A That's correct, yes.**
4 Q And fair to say that if you turn to page 23
5 of 36, which I think ends in Bates No. 65, is page 23
6 of the exhibit that is?
7 **A Yes.**
8 Q Bates labeled ends at 65, there's a whole
9 section on outside business activities and private
10 transactions. Do you see that?
11 **A Yes.**
12 Q And it says employees have to obtain the
13 approval of chief compliance officer prior to serving
14 as a director, officer, general partner or trustee or
15 consultant to any business, et cetera, et cetera. Do
16 you see that?
17 **A Yes.**
18 Q And also before accepting a second job, a
19 part-time job of any kind or engaging in any other
20 business outside the company. Do you see that?
21 **A Yes.**
22 Q Who was the chief compliance officer?
23 **A Thomas Surgent.**
24 Q Highland's Code of Ethics would have
25 required employees working for Sentinel to disclose

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1 that to Mr. Surgent, correct?
2 **A Correct.**
3 Q As far as you know, was there any
4 disclosures made since the bankruptcy about the work
5 that was being done by the individuals you've
6 identified on behalf of Sentinel?
7 **A Not to my knowledge.**
8 Q Was there ever a disclosure that Matt
9 DiOrio was actually acting as a director of Sentinel?
10 **A No.**
11 Q Are you aware that even after the -- are
12 you aware that Mr. DiOrio directed transfers of funds
13 that were purportedly owned by Sentinel even after the
14 bankruptcy?
15 **A Yes. I am now aware of that, yes.**
16 Q Did you have any idea about that during the
17 time it was happening?
18 **A No. I learned that through -- very**
19 **recently through the discovery that UBS did in this**
20 **litigation.**
21 Q Can you briefly describe what your
22 understanding -- the understanding you've come to have
23 about Mr. DiOrio's movement of assets?
24 **A Sure. As I said earlier, if we had known**
25 **that CDO Fund had this asset as an insurance policy,**

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1 **we would have certainly zealously guarded it and tried**
2 **to recover on it for the benefit of the UBS which**
3 **would have -- we would have expected to reduce**
4 **exposure on the loss that the UBS had against CDO**
5 **Fund, SOHC, and included Highland.**
6 **What we've come to learn is that Mr. DiOrio**
7 **was involved, and perhaps others, with transferring**
8 **assets from Sentinel to other subsidiaries in the**
9 **ultimate beneficial ownership universe of Mr. Dondero**
10 **and Mr. Ellington, including significant amounts of**
11 **notes owed by CLO Hold Co to -- originally owed to CDO**
12 **Fund and then they had been transferred to Sentinel**
13 **and they moved those to, I believe, Bray Royale and**
14 **then another board note as well, purportedly moved**
15 **because they were worthless, which we know, in fact,**
16 **to be untrue, at least in terms of the assets that**
17 **those entities have.**
18 **But there were other diminutions of the**
19 **policy including extensive approvals by Mr. DiOrio for**
20 **completely -- what appear to be completely out of the**
21 **ordinary course of expenditures by Mr. Ellington in**
22 **significant and embarrassing numbers.**
23 Q If you could look at Tab~18. That is an
24 exhibit that we're marking 158.
25 (Deposition Exhibit 158 was received and

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1 marked for identification, as of this date.)
2 BY MR. CLUBOK:
3 Q Is this a document you had seen before UBS
4 had uncovered it in discovery?
5 A **I don't recall unless I just looked at it**
6 **in connection with this -- preparing here that --**
7 **there's a similar one that DiOrio sends with respect**
8 **to a different asset. But this looks to be on the**
9 **Greenbriar asset.**
10 Q Yeah, if you look at the bottom of page
11 three, you see in July -- let's see.
12 A **2017.**
13 Q Actually I'm looking at the October 2017,
14 you see Chism is -- Carter Chism is working with
15 Lesley Thompson and JP Sevilla is copied on these
16 documents, as is Matt DiOrio. Do you see that?
17 A **Yes.**
18 Q If you work your way up now, up the email
19 towards present and just take a quick look through,
20 you could see that there's references to wire
21 transfers, wire instructions, et cetera. Do you see
22 that?
23 A **Yes.**
24 (Deposition Exhibit 159 was received and
25 marked for identification, as of this date.)

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1 BY MR. CLUBOK:
2 Q If you go to the next Tab~19, which is
3 Exhibit 159, you see a document dated January 10,
4 2020. It says it's from M880@hcmlp.com do you know
5 who that is?
6 A **That's a copier.**
7 Q Okay. So from a copier --
8 A **Yeah, you'd scan the document and send it**
9 **to yourself.**
10 Q Okay. And the document that -- then
11 Mr. DiOrio at this time was still employed by Highland
12 Capital Management?
13 A **Yes. This is -- you know, in the first**
14 **quarter of '20, it's a case he works in the legal --**
15 **it's post petition. He works in the legal department.**
16 Q And you could see on the next page, it
17 appears to be -- he talks about how there's August and
18 November '19 distributions on Valhalla CLO due to our
19 purchase of the notes from BONY. Do you see that?
20 A **Yes.**
21 Q And Sentinel Reinsurance is sending this
22 document. And it's signed by Matt DiOrio. Do you
23 see?
24 A **Yes.**
25 Q Do you have any idea what this is about?

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1 A **This is a CLO interest, preferred interest**
2 **in the CLO Valhalla that was transferred from either**
3 **SOHC or CDO Fund to Sentinel. And I think this is one**
4 **of the ones that had some difficulty in completing the**
5 **transfer. And he is making the claim on distributions**
6 **that would have been made to Valhalla. Here it's**
7 **\$1300 on behalf of Sentinel.**
8 Q Does Mr. DiOrio tell you anything at all
9 about this work he was doing with -- you know, with
10 the HCML copier in connection --
11 A **This would have been completely secret and**
12 **kept from the directors, certainly from me, from**
13 **anybody on the legal team at Pachulski or from the DSI**
14 **folks. This alerted us to this whole Sentinel**
15 **situation.**
16 Q Is there any obvious problem with Matt
17 DiOrio authorizing wire transfers from this account to
18 Sentinel during the bankruptcy?
19 A **I think it's -- I think it's a significant**
20 **problem, yes.**
21 Q Can you explain why?
22 A **Well, to the extent that this policy is an**
23 **asset that is controlled by the estate, this is**
24 **something the estate is supposed to be made aware of.**
25 **This policy would have benefited the estate by**

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1 **having -- have assets with which to satisfy the**
2 **subsidiary obligations to UBS and wouldn't have dug a**
3 **continuing deeper hole for Highland employees hiding**
4 **those assets.**
5 Q If you turn to Tab~21, which is a document
6 we'll mark as Exhibit 160.
7 (Deposition Exhibit 160 was received and
8 marked for identification, as of this date.)
9 BY MR. CLUBOK:
10 Q You could see this is dated January 8,
11 2021. Do you see that?
12 A **Yes.**
13 Q And you see there's still transfers being
14 made. It says Ordering Customer: Highland Financial
15 Corp. Did you know anything about this transfer?
16 A **No.**
17 Q Did you authorize it in any way?
18 A **I did not, no.**
19 Q Would this be problematic if somebody at
20 Highland had authorized this?
21 A **Yeah. This was -- you know, as we were**
22 **continuing to -- this is even -- this is even after we**
23 **have -- maybe right before we settled with UBS, but we**
24 **were certainly in the plan process and trying to**
25 **figure out how we were going to resolve claims with**

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1 **UBS. I don't believe we'd actually settled yet. This**
2 **is extremely problematic and it's for material amounts**
3 **of money.**
4 Q And by the way, Highland Finance Corp. is
5 100 percent subsidiary of Highland Financial Partners,
6 correct?
7 **A That's my recollection. I don't remember**
8 **if it's direct or indirect.**
9 Q If you want to glance just refresh your
10 recollection, Tab~42, you can just look behind the
11 blue sheet, there's an org chart. This was an
12 attachment to emails that were circulated at Highland
13 in May of 2020. And just to refresh your
14 recollection, take a look at HFP org chart. Go down.
15 **A It appears to be a direct subsidiary.**
16 Q Okay. So it's certainly the information
17 that was provided to you was that HFC was a direct
18 subsidiary, fully owned subsidiary of HFP, right?
19 **A Yes.**
20 Q Along with SOHC?
21 **A Correct.**
22 Q This information about this transfer from
23 Highland Financial Corp. to Sentinel would have been
24 very material to UBS, correct?
25 MR. MORRIS: Objection to form.

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1 MR. CLUBOK: Strike that.
2 BY MR. CLUBOK:
3 Q It would have been very material to the
4 litigation dispute between UBS and Highland, correct?
5 **A It certainly would have been a significant**
6 **issue.**
7 Q And it certainly --
8 **A And then post judgment are transferring**
9 **amounts of this size out of their bank accounts to**
10 **Sentinel.**
11 Q This information that's reflected in
12 Exhibit 160 should have been provided to UBS
13 unquestionably, correct?
14 **A In my opinion, yes.**
15 Q And had you known about it, you would have
16 insisted it be provided to UBS, correct?
17 **A Oh, absolutely, yes.**
18 Q But it was kept from you at the time it
19 happened, correct?
20 **A Correct.**
21 Q The funds -- you've known about the UBS
22 judgment since even before you took over as
23 independent director, right?
24 **A Well, the UBS decision I think which**
25 **predated the actual judgment.**

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1 Q Thank you. You've known about the decision
2 and the impending UBS judgment, correct?
3 **A That's correct.**
4 Q Did the funds ever make a claim on the
5 policy after the judgment was entered?
6 **A Yes.**
7 Q Approximately when did it do that?
8 **A In 2021 at the -- sometime in the first or**
9 **second quarter, end of the first, beginning of second.**
10 **After we left, we didn't know about the policies, so**
11 **it's good to learn about it, look at it, make sure we**
12 **weren't going to somehow hurt the ability to draw on**
13 **it and then be able to use the funds to satisfy the**
14 **obligations to UBS.**
15 Q The only reason you didn't make a claim on
16 the policy until the time that you did was because it
17 was actively concealed from you, correct?
18 **A That's correct, yes.**
19 (Deposition Exhibit 161 was received and
20 marked for identification, as of this date.)
21 BY MR. CLUBOK:
22 Q If you look at Tab~24, you'll see
23 Exhibit 161, which is the April 28, 2021 letter that
24 you wrote on behalf of CDO Fund officially making a
25 claim under the policy. Do you see that?

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1 **A That's correct.**
2 Q And this was as early as you reasonably
3 could do after learning about the policy and getting
4 your arms around what had happened here; is that fair?
5 **A That's right, yep. I'm just standing up.**
6 Q That's okay. And you sent that letter
7 expecting that -- strike that.
8 You sent that letter with the demand that
9 Sentinel would pay under the policies so that you
10 could in turn pay that money to UBS?
11 **A Yeah, looking at it, the first demand was**
12 **actually a couple of pages in. That's March 19th.**
13 **And we didn't get a satisfactory or any response to my**
14 **knowledge. So the first is an actual demand. So**
15 **that's almost starts the end of the first quarter.**
16 **And then the second letter is actually a reiteration**
17 **of our demand.**
18 Q Thank you. So Exhibit 161 is a reiteration
19 of a demand you had made previously in March of 2021
20 seeking coverage under the policy on behalf of CDO
21 Fund, correct?
22 **A Correct, and includes the -- a copy of the**
23 **judgment.**
24 MR. MORRIS: Andy, not to be a pest.
25 Fifteen minutes.

| | |
|--|---|
| <p>121</p> <p>1 MR. CLUBOK: Yeah.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q I see. And if you turn to the back of</p> <p>4 Exhibit 161, you'll see a copy of that original demand</p> <p>5 that's dated March 19, 2021, but may have been sent on</p> <p>6 or about March 24, 2021; do you see that?</p> <p>7 A I'd be surprised if it wasn't sent on the</p> <p>8 day that it's dated.</p> <p>9 Q I think if you just look at the first page</p> <p>10 of 161, it says on March 24th, you sent the formal</p> <p>11 demand. So maybe it was over a weekend or some delay?</p> <p>12 A Yeah, perhaps. It may have had to be</p> <p>13 done -- oh, because it was certified mail.</p> <p>14 Q Oh, okay. So you did the demand but you</p> <p>15 had to organize it to be sent by certified mail and</p> <p>16 all of that?</p> <p>17 A Correct.</p> <p>18 Q Got it.</p> <p>19 A And I assume that's because it was a policy</p> <p>20 requirement.</p> <p>21 Q Right. And if you turn to the next tab,</p> <p>22 you see Exhibit 162.</p> <p>23 (Deposition Exhibit 162 was received and</p> <p>24 marked for identification, as of this date.)</p> <p>25</p> | <p>123</p> <p>1 Management was acting as a manager of Sentinel?</p> <p>2 A That's incorrect. I did not know it</p> <p>3 because it's not something that was true.</p> <p>4 Q Well, it's not officially the case that</p> <p>5 Highland Capital Management was acting as manager for</p> <p>6 Sentinel. Is that what you mean?</p> <p>7 A I only deal in things that are official.</p> <p>8 Q But you do know that employees of Highland</p> <p>9 Capital Management, who you've since fired, were</p> <p>10 effectively managing Sentinel?</p> <p>11 A I know that now, yes.</p> <p>12 MR. MORRIS: Object to form of to question.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q There was never an investment management</p> <p>15 agreement though with Sentinel, correct?</p> <p>16 A That's correct.</p> <p>17 Q Or with SAS?</p> <p>18 A I don't know.</p> <p>19 Q Was there a shared service agreement with</p> <p>20 those two entities as far as you know?</p> <p>21 A Oh, did Highland have one with SAS? Not to</p> <p>22 my knowledge. Definitely didn't have one with</p> <p>23 Sentinel. And to my knowledge, no agreements with --</p> <p>24 shared service or any other type of agreement with SAS</p> <p>25 or -- or Sentinel --</p> |
| <p>122</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q That's the response you -- the first formal</p> <p>3 written response you received in response to your</p> <p>4 demand; is that correct?</p> <p>5 A Yes.</p> <p>6 Q So that was the initial response,</p> <p>7 Exhibit 162, correct?</p> <p>8 A Yes, I believe so.</p> <p>9 Q And now if you turn to next document, you</p> <p>10 see Exhibit 163, behind Tab~26.</p> <p>11 A Yes.</p> <p>12 (Deposition Exhibit 163 was received and</p> <p>13 marked for identification, as of this date.)</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q This is a letter that the director sent to</p> <p>16 you personally and at Highland Capital Management as</p> <p>17 opposed to CDO Fund, correct?</p> <p>18 A Correct.</p> <p>19 Q And it says here, "We understand that</p> <p>20 you're the person responsible for keeping up-to-date</p> <p>21 records and inventory of the assets which are owned by</p> <p>22 Sentinel and to which Highland Capital Manager [sic]</p> <p>23 acts as a manager." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Did you know that Highland Capital</p> | <p>124</p> <p>1 Q Do you see --</p> <p>2 A -- other than of course the policy.</p> <p>3 Q Do you see on Exhibits [sic] 163 where it</p> <p>4 says, "Consequently, attached as Schedule 1 to this</p> <p>5 letter is list of assets owned by Sentinel, which we</p> <p>6 understand to be managed by HCM"?</p> <p>7 A Yes.</p> <p>8 Q Did you -- did you know that -- or did you</p> <p>9 believe that HCM was supposed to be managing those</p> <p>10 assets on behalf of Sentinel?</p> <p>11 A It's just certainly not the case.</p> <p>12 Q It was not the case for you, but --</p> <p>13 A Correct.</p> <p>14 Q -- you have seen evidence that other</p> <p>15 employees of HCM, the ones that you've identified</p> <p>16 previously and have been fired, had been managing</p> <p>17 these assets in various ways; is that fair?</p> <p>18 MR. MORRIS: Object to the form.</p> <p>19 A They certainly were involved in dealing</p> <p>20 with different aspects of the assets. I don't know if</p> <p>21 you call managing them or reporting on them or</p> <p>22 transferring them.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q If you look at Tab~28, a document that's</p> <p>25 been marked as Exhibit 164.</p> |

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1 (Deposition Exhibit 164 was received and
2 marked for identification, as of this date.)
3 BY MR. CLUBOK:
4 Q You see a -- another letter from Collas
5 Crill, which was the -- I'm sorry. A letter from
6 Walkers that was Highland's counsel, back to the
7 counsel representing Sentinel, correct?
8 **A Yes.**
9 Q And in this letter -- I assume you
10 authorized this letter before it went out?
11 **A I don't recall it specifically, but that**
12 **would be the typical procedure. Not a lot goes out**
13 **without me authorizing it.**
14 Q You see in the third or fourth paragraph,
15 it notes that John Dondero and Ellington were
16 understood to be the beneficial owners of Sentinel?
17 **A Yes.**
18 Q And that's -- and that's certainly what you
19 understood at the time and continue to understand,
20 correct?
21 **A Correct.**
22 Q In this letter, it advises Sentinel that
23 there was a TRO, the TRO that's been entered in this
24 case, correct?
25 **A That's correct, yes.**

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1 Q And your lawyers ask Sentinel to -- if it
2 believes its entitled to receive any amounts, then
3 effectively provide you with the information to
4 support that, correct?
5 **A That's correct.**
6 Q Did Sentinel ever respond by providing any
7 information that justifies their claim over the assets
8 that are currently being restrained by the court?
9 **A Not that I recall. We certainly gave them**
10 **a lot of information about values over time and it**
11 **worked out -- what we believed to be with UBS a**
12 **satisfactory resolution of issues related to the**
13 **policy. But they never could justify that the**
14 **demand assets were theirs, that they otherwise**
15 **hadn't been transferred to them.**
16 Q If you turn to Tab~29, Exhibit 165.
17 (Deposition Exhibit 165 was received and
18 marked for identification, as of this date.)
19 BY MR. CLUBOK:
20 Q You see another letter from your lawyers to
21 Sentinel's lawyers in which you note, at the bottom of
22 paragraph one, you say -- your lawyers say, "In
23 circumstances where the event covered by the policy is
24 plainly crystallized and CDO Fund and Sentinel were
25 effectively under common control at the time that the

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1 policy was written, it's hard to conceive of any
2 proper basis for denial of coverage." Do you see
3 that?
4 **A Yes.**
5 Q Fair to say that based on information
6 you've uncovered, you believed that CDO Fund and
7 Sentinel were effectively under common control in
8 approximately August of 2017 when the policy was
9 written?
10 **A Yes, no doubt.**
11 Q And that common control was ultimately Jim
12 Dondero?
13 **A Ultimately, yes. And Ellington. He was**
14 **ultimately a beneficial owner, material amounts.**
15 Q Yes. With Jim Dondero having the
16 controlling interest in the control group that he
17 formed with Ellington?
18 **A And Ellington worked for Dondero.**
19 Q Yeah. If you could turn to Tab~35.
20 **A (Witness complies.)**
21 (Deposition Exhibit 167 was received and
22 marked for identification, as of this date.)
23 BY MR. CLUBOK:
24 Q Tab~35 is another email exchange that was
25 in early February 2021. Do you see that?

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1 **A Yes.**
2 Q And this is when you were trying to have
3 Matt DiOrio help you figure out what was going within
4 with the Greenbriar shares we talked about before?
5 **A Yes, yep.**
6 Q If you look at page three, the page that
7 ends -- sorry. Tab 30. Did I mark that one as an
8 exhibit? No. We're going to go back to Tab~34, and
9 I'll mark that one as Exhibit 166.
10 (Deposition Exhibit 166 was received and
11 marked for identification, as of this date.)
12 BY MR. CLUBOK:
13 Q And in Exhibit 166, you can see on page
14 three -- Do I have the right document here?
15 Yeah, on page three -- sorry. So
16 Exhibit 166 is an email exchange in late January of
17 2021 with Matt DiOrio and Mr. Romey and Mr. DiOrio.
18 And you see where Mr. DiOrio on page three says he
19 doesn't know the details about the account for CDO
20 Fund that had been receiving cash distributions for
21 Greenbriar. Do you see that?
22 **A Yes.**
23 Q But Mr. DiOrio at the time was director of
24 Sentinel who knew all about the transaction for
25 Sentinel, correct?

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1 **A We know that now, yes.**
2 Q So this was another example of a false
3 statement being made to people -- at least to people
4 who were working for you who would try to get
5 information from Mr. DiOrio, correct?
6 **A That is undoubtedly correct.**
7 Q And now if you turn to Tab~35, Exhibit 167.
8 You'll see where Mr. -- if you look at the bottom, the
9 first email, like at the last page.
10 **A (Witness complies.) Yep.**
11 Q There's emails that refer to DiOrio working
12 on tracking down the physical certificate of
13 Greenbriar shares. Do you see that?
14 **A Yes.**
15 Q And you can continue up and there's lots of
16 questions. And then on page that's been Bates labeled
17 3373, it says, finally -- DiOrio says, "My
18 understanding is they were" -- who is the intended
19 recipient of the transfer initiated by Carter? This
20 is all talking about Greenbriar. It says, "My
21 understanding is they were transferred to Maples FS in
22 Cayman as custodian for Sentinel Reinsurance Limited.
23 When delivery of the shares was not taken by Maples,
24 the certificates seemed to have been lost which is
25 what we were working with State Street to remedy." Do

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1 you see that?
2 **A Yes.**
3 Q And if you go to next email up the chain
4 turn the page to 3372, Mr. Demo says to Mr. DiOrio,
5 "Do we have any visibility into who Sentinel
6 Reinsurance is? Who owns them, what do they do?" Do
7 you see that?
8 **A Yes.**
9 Q January 27, 2021, right?
10 **A Yes.**
11 Q And Mr. DiOrio responds, "It's a
12 non-debtor, non-affiliate reinsurance company and I do
13 not know who or how it's owned." Do you see that?
14 **A Yes.**
15 Q Mr. DiOrio was a director of Sentinel at
16 the time he's telling you this, right?
17 **A That's correct.**
18 Q And he's a lawyer who is working for you at
19 Highland Capital Management?
20 **A Actually, he's not a lawyer. He worked in**
21 **the legal department and he was Ellington's friend.**
22 **And he worked in the legal department, but he was not**
23 **lawyer.**
24 Q Okay. But Mr. DiOrio was working in the
25 legal department for you at Highland Capital

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1 Management?
2 **A Yes.**
3 Q January 2021?
4 **A Yes.**
5 Q And when he's point blank asked about
6 visibility in the Sentinel Reinsurance, who owns them,
7 what do they do, et cetera, he flatly lies to you,
8 correct?
9 **A To Greg Demo, my lawyer, yes.**
10 Q Or yeah, let me say that again.
11 So Mr. Demo, who is your lawyer, and
12 Mr. Klos are asking Mr. DiOrio in this email exchange
13 point blank if he has any visibility in the Sentinel
14 Reinsurance and who owns them what they do, et cetera,
15 correct?
16 **A I think it would be more fair to say that**
17 **Demo and Romey -- because we were really using --**
18 **relying on outside counsel and outside consultants to**
19 **do this digging. Because when we started coming**
20 **across this, we wanted to make sure we left no stone**
21 **unturned. And we didn't blindly trust anybody, so we**
22 **were working through the Highland staff.**
23 **But I think it would be more fair to say**
24 **Demo and with the assistance of Romey were doing this**
25 **investigation.**

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1 Q Okay. So Mr. Demo, who is your outside
2 counsel, at your request, was trying to figure out
3 what Sentinel Reinsurance was, right?
4 **A That's correct.**
5 Q And he was emailing with Mr. DiOrio who was
6 then a director of Sentinel Insurance [sic] and a
7 friend of Mr.~Ellington's, correct?
8 **A That's correct, yes.**
9 Q And Mr. DiOrio at time worked in the
10 Highland Capital Management legal department and
11 ultimately reported up to you, correct?
12 **A Correct.**
13 Q And in this email exchange that we've
14 marked as Exhibit 167, Mr. DiOrio simply lies about
15 what he knows about Sentinel Reinsurance, correct?
16 **A That's correct.**
17 Q Okay. All right.
18 MR. CLUBOK: Let's go off the record.
19 THE VIDEOGRAPHER: Stand by. We are going
20 off the record. The time is 5:00 p.m.
21 (At 5:00 p.m. a recess was taken.)
22 (At 5:04 p.m. the deposition resumes.)
23 THE VIDEOGRAPHER: We're going back on the
24 record. The time is 5:04 p.m.
25

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1 BY MR. CLUBOK:
2 Q Mr. Seery, it's true that Highland Capital
3 Management has control of Multi-Strat by virtue of its
4 two roles; one, the indirect 100 percent owner of
5 Multi-Strat's general partner; and two, as
6 Multi-Strat's investment manager, correct?
7 A I believe that's fair. Certainly as
8 investment manager give basically full control over
9 Multi-Strat, yes.
10 Q And Highland Capital Management has control
11 of CDO Fund as a director and direct owner of CDO
12 Fund's general partner, correct?
13 A Yes, CDO Fund, yes.
14 Q So you are, obviously, aware that there's a
15 TRO that's currently in place that we're asking the
16 Court to extend, correct?
17 A Yes.
18 Q If the Court had not entered that
19 injunction, it's fair to say that Highland Capital
20 Management would have made or caused to make
21 additional transfers to Sentinel of assets that we
22 know were related to this ATE policy we've been
23 discussing?
24 A Yeah, I think that's fair. Certainly the
25 redeemed interests out of Multi-Strat would have been


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1 paid in full. I don't believe any -- there would have
2 been any assets transferred out of CDO Fund, certainly
3 not without my -- the ones that we saw earlier by
4 Mr. DiOrio were without my knowledge. We wouldn't
5 have transferred out of -- out of CDO Fund because we
6 wouldn't have had an obligation to. But on the
7 redeemed funds, we would have had an obligation to.
8 Q Okay. So to be clear, absent the TRO,
9 Highland Capital Management would have caused the
10 funds that are currently being restrained by the TRO
11 to have been transferred to Sentinel, correct?
12 A Yes.
13 Q And it is only with a continuing injunction
14 preventing that unless there's a further order by the
15 Court -- strike that.
16 It is only the continuing injunction that
17 prevents Highland Capital Management from being forced
18 to transfer those assets to Sentinel, correct?
19 A I think at least in part that that's
20 correct. In other part, we've also made a demand on
21 behalf of CDO Fund for the policy. And it has not
22 been paid. So while the transfer from Multi-Strat is
23 not from CDO Fund, it certainly would have caused me
24 pause that I'd be turning over money to Sentinel when
25 Sentinel is not paying on the policy.

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1 Q And that's because your understanding is
2 UBS has a claim to whatever is owed under the policy,
3 correct?
4 A Well, UBS has a claim against CDO Fund that
5 exceeds the policy limit and the policies should have
6 been paid.
7 Q Okay. Thank you very much.
8 MR. CLUBOK: I appreciate the additional
9 time. That's -- we do have some additional questions
10 that relate to the New York action and, pursuant to
11 the discussions that John and I have had, we'll pick
12 up and conclude that deposition another time.
13 MR. MORRIS: Okay. Thank you very much.
14 THE VIDEOGRAPHER: Okay. Let's go off the
15 record.
16 MR. CLUBOK: Thanks.
17 THE VIDEOGRAPHER: This marks the end of
18 the deposition of James Seery, Jr. We're going off
19 the record at 5:07 p.m.
20 THE COURT REPORTER: Counsel, your orders
21 for the record.
22 MR. MORRIS: Regular delivery is fine, no
23 rough draft.
24 MR. CLUBOK: Daily, Rough draft, Realtime.
25 (Time noted: 5:07 p.m.)

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1 CERTIFICATE
2 STATE OF NEW YORK)
3 : ss
4 I, Angela M. Shaw-Crockett, a Certified
5 Court Reporter, Certified Realtime Reporter,
6 Registered Merit Reporter and Notary Public within and
7 for the States of New York, New Jersey and
8 Connecticut, do hereby certify:
9 That JAMES SEERY, JR., the witness whose
10 deposition is herein before set forth, was duly sworn
11 by me and that such deposition is a true record of the
12 testimony given by such witness; that reading and
13 signing was not discussed.
14 I further certify that I am not related to
15 any of the parties to this action by blood or marriage
16 and that I am in no way interested in the outcome of
17 this matter.
18 In witness whereof, I have hereunto set my
19 hand this 8th day of August, 2022.
20 
21 -----
22 ANGELA M. SHAW-CROCKETT, CCR, CRR, RMR, CSR
23 LICENSE NO. XI00218400
24
25



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**HIGHLY CONFIDENTIAL
SUBJECT TO PROTECTIVE ORDER**

Transcript of Katie Lucas Irving

Date: November 15, 2021

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

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Conducted on November 15, 2021

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| 1 | 3 |
| 1 IN THE UNITED STATES BANKRUPTCY COURT | 1 APPEARANCES (CONTINUED): |
| 2 FOR THE NORTHERN DISTRICT OF TEXAS | 2 FOR HIGHLAND CAPITAL MANAGEMENT, L.P.: |
| 3 DALLAS DIVISION | 3 ROBERT J. FEINSTEIN, ESQ. (REMOTELY) |
| 4 ----- | 4 PACHULSKI STANG ZIEHL & JONES |
| 5 IN RE: § Chapter 11 | 5 780 Third Avenue |
| 6 § | 6 34th Floor |
| 7 HIGHLAND CAPITAL § Case No. 19-34054-SGJ11 | 7 New York, New York 10017-2024 |
| 8 MANAGEMENT, L.P., § | 8 (212) 561-7700 |
| 9 Debtor. § | 9 rfeinstein@pszjlaw.com |
| 10 ----- | 10 |
| 11 UBS SECURITIES LLC AND § | 11 THE VIDEOGRAPHER: |
| 12 UBS AG LONDON BRANCH, § | 12 Joseph McDermott |
| 13 § | 13 |
| 14 § | 14 |
| 15 § Adversary Proceeding | 15 |
| 16 Plaintiffs, § No. 21-03020-sgj | 16 |
| 17 vs. § | 17 |
| 18 HIGHLAND CAPITAL § | 18 |
| 19 MANAGEMENT, L.P., § | 19 |
| 20 Defendant. § | 20 |
| 21 ----- | 21 |
| 22 HIGHLY CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER | 22 |
| 23 VIDEOTAPED DEPOSITION OF | 23 |
| 24 KATIE LUCAS IRVING | 24 |
| 25 NOVEMBER 15, 2021 | 25 |
| 9:56 A.M. TO 7:09 P.M. | |
| Reported By: Kari Behan, CSR, RPR, CRR | |
| 2 | 4 |
| 1 A P P E A R A N C E S | 1 - - - |
| 2 FOR UBS SECURITIES LLC AND UBS AG LONDON BRANCH: | 2 I N D E X |
| 3 JASON R. BURT, ESQ. | 3 EXAMINATION OF KATIE LUCAS IRVING PAGE |
| 4 - and - | 4 |
| 5 SHANNON McLAUGHLIN, ESQ. | 5 BY MR. BURT..... 9 |
| 6 - and - | 6 CHANGES AND SIGNATURE..... 391 |
| 7 SARAH A. TOMKOWIAK, ESQ. (REMOTELY) | 7 REPORTER'S CERTIFICATION..... 392 |
| 8 - and - | 8 |
| 9 KATHRYN K. GEORGE, ESQ. (REMOTELY) | 9 E X H I B I T S |
| 10 LATHAM & WATKINS, LLP | 10 (Retained by counsel) |
| 11 555 Eleventh Street, N.W. | 11 Exhibit 93 E-mail dated April 21, 2021, 17 |
| 12 Suite 1000 | 12 BC SENBC SEN000065884 |
| 13 Washington, D.C. 20004-1304 | 13 Exhibit 94 E-mail dated 6/29/2021, BC 20 |
| 14 (202) 637-2200 | 14 SEN000000739 |
| 15 jason.burt@lw.com | 15 Exhibit 95 Amended Notice of Hearing 22 |
| 16 shannon.mclaughlin@lw.com | 16 Exhibit 96 E-mail dated 6/24/2021, BC 27 |
| 17 sarah.tomkowiak@lw.com | 16 SEN000074288 |
| 18 kathryn.george@lw.com | 17 Exhibit 97 E-mail dated 4/16/2021, 49 |
| 19 | 17 DISCSEN008612 |
| 20 FOR KATIE LUCAS IRVING: | 18 Exhibit 98 LinkedIn Profile 61 |
| 21 FRANCES A. SMITH, ESQ. | 19 Exhibit 99 Walkers Letter, dated May 24, 81 |
| 22 - and - | 19 2021 |
| 23 ERIC SODERFUND, ESQ. (REMOTELY) | 20 Exhibit 100 E-mail Exchange, dated 126 |
| 24 ROSS & SMITH, PC | 20 April 12th, 2019 |
| 25 Plaza of the Americas | 21 Exhibit 101 CIMA Inspection Report, 142 |
| 700 N. Pearl Street | 21 BC SEN000078777 |
| Suite 1610 | 22 Exhibit 102 E-mail and Actuarial Reports, 160 |
| Dallas, Texas 75201 | 22 dated December 31st, 2017 |
| (214) 377-7879 | |
| frances.smith@judithwross.com | |
| eric.soderfund@judithwross.com | |
| 21 MICHELLE HARTMANN, ESQ. | |
| 22 - and - | |
| 23 DEBRA A. DANDENEAU, ESQ. (REMOTELY) | |
| 24 BAKER & MCKENZIE, LLP | |
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| debra.dandeneau@bakermckenzie.com | |

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| <p style="text-align: center;">5</p> <p>1 EXHIBITS (CONTINUED):</p> <p>2 Exhibit 103 E-mail dated 6/20/2019, 171 <small>DISCSEN008408</small></p> <p>3 Exhibit 104 E-mail dated 10/3/2018, 184 <small>DISCSEN006464</small></p> <p>4 Exhibit 105 E-mail dated 10/22/2018, 199 <small>DISCSEN007044</small></p> <p>5 Exhibit 106 E-mail dated August 11th, 225 <small>2017, HCMUBS000565</small></p> <p>6 Exhibit 107 Letter dated November 17, 242 <small>2015, DISCSEN000097</small></p> <p>7 Exhibit 108 E-mail dated 3/5/2019, 257 <small>BC SEN000076061</small></p> <p>8 Exhibit 109 Judgment filed February 10, 311 <small>2020</small></p> <p>9 Exhibit 110 E-mail dated December 12, 331 <small>2017, HCMUBS002509</small></p> <p>10 Exhibit 111 E-mail dated 5/9/2019, 346 <small>BC SEN000005065</small></p> <p>11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | <p style="text-align: center;">7</p> <p>1 PROCEEDINGS:</p> <p>2 (Monday, November 15, 2021, 9:56 a.m.)</p> <p>3 THE VIDEOGRAPHER: We are now on record.</p> <p>4 The time is 9:56 a.m. on November the 15th, 2021. This</p> <p>5 action -- this case is action -- is entitled "UBS</p> <p>6 Securities, LLC, et al versus Highland Capital Management,</p> <p>7 L.P.," for the United States Bankruptcy Court for the</p> <p>8 Northern District of Texas, Dallas Division, Case</p> <p>9 No. 19-34054-SGJ11. The deponent is Katie Irving.</p> <p>10 Counsel may identify themselves. After</p> <p>11 which, the court reporter will swear in the witness.</p> <p>12 MR. BURT: Jason Burt on behalf of UBS; with</p> <p>13 me is my colleague Shannon McLaughlin.</p> <p>14 MS. SMITH: Frances Smith --</p> <p>15 MR. FEINSTEIN: Robert Feinstein with -- I'm</p> <p>16 sorry. Go ahead.</p> <p>17 MS. SMITH: Frances Smith with Ross & Smith</p> <p>18 on behalf of Mrs. Irving.</p> <p>19 MS. HARTMANN: Michelle Hartmann, Baker</p> <p>20 McKenzie, on behalf of Mrs. Irving.</p> <p>21 MR. FEINSTEIN: Robert Feinstein, Pachulski</p> <p>22 Stang Ziehl & Jones, on behalf of Highland Capital</p> <p>23 Management.</p> <p>24 KATIE LUCAS IRVING,</p> <p>25 after having been first duly sworn by the above-mentioned</p> |
| <p style="text-align: center;">6</p> <p>1 PREVIOUSLY MARKED EXHIBITS</p> <p>2 EXHIBITS PAGE</p> <p>3 Exhibit 2..... 286 <small>Purchase Agreement</small></p> <p>4 Exhibit 3..... 342 <small>E-mail dated September 12, 2018 UBSPROD4837351</small></p> <p>5 Exhibit 9..... 325 <small>E-mail dated August 11, 2017, HCMUBS000574</small></p> <p>6 Exhibit 14..... 328 <small>E-mail dated August 14, 2017, HCMUBS000853</small></p> <p>7 Exhibit 28..... 106 <small>E-mail dated April 10, 2019, HCMUBS003123</small></p> <p>8 Exhibit 48..... 335 <small>Settlement Analysis, USB vs. H, HCMUBS005304</small></p> <p>9 Exhibit 53..... 318 <small>E-mail dated June 16, 2020, UBSPROD000118</small></p> <p>10 Exhibit 55..... 294 <small>E-mail dated August 10, 2017, HCMUBS000349</small></p> <p>11 Exhibit 57..... 275 <small>E-mail dated October 26, 2017, UBSPROD1973053</small></p> <p>12 Exhibit 58..... 354 <small>Insurance Policy, MD_000010 through MD_000028</small></p> <p>13 Exhibit 81..... 331 <small>Schedule A</small></p> <p>14 Exhibit 84..... 368 <small>E-mail dated August 6, 2019, UBSPROD2572283</small></p> <p>15 16 17 18 19 20 21 22 23 24 25</p> | <p style="text-align: center;">8</p> <p>1 Certified Court Reporter, was examined and testified as</p> <p>2 follows:</p> <p>3 MS. SMITH: Do you mind if I make my couple</p> <p>4 of announcements first?</p> <p>5 MR. BURT: Please, go ahead.</p> <p>6 MS. SMITH: This deposition is subject to</p> <p>7 the confidentiality orders in the case, and we like the</p> <p>8 whole deposition to be marked "Highly Confidential" and</p> <p>9 "Subject to Protective Order."</p> <p>10 To the extent any privilege extends from</p> <p>11 Mrs. Lucas to any third party who is present here, we will</p> <p>12 rely upon the holder of the privilege to assert it. We</p> <p>13 want the record to reflect that Mrs. Lucas is still on her</p> <p>14 unpaid medical leave, but in the spirit of cooperation and</p> <p>15 to avoid further controversy, we have volunteered to</p> <p>16 produce her upon certain agreed-upon conditions today.</p> <p>17 We agree to present her today for up to</p> <p>18 three hours of deposition time, and she will be allowed</p> <p>19 breaks, as necessary. Counsel agreed.</p> <p>20 We agreed to move the deposition back to</p> <p>21 10:00 a.m. to accommodate Latham's request for two hours</p> <p>22 of prep time at Baker's office, and we had Baker attorneys</p> <p>23 and staff available at 8:00. Unfortunately, Latham did</p> <p>24 not show up until 9:10.</p> <p>25 As far as the Zoom, we want everyone who is</p> |

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| <p>1 not a party to the litigation to not appear, and we will 2 object to the presence of anyone who is not a party to the 3 litigation being on the Zoom. To the extent they are on, 4 we ask that Latham abide by the terms of the 5 Confidentiality Agreement and not allow anyone who is not 6 a party access to the documents or the deposition 7 transcript. 8 And that's all my announcements. 9 MR. BURT: And to complete that record, we 10 did agree up to three hours of deposition time today, up 11 to four hours deposition time tomorrow. We spoke with the 12 witness prior to the deposition, and we will play it by 13 ear how long we will go today. 14 Is that right? 15 THE WITNESS: Yes. 16 MR. BURT: Okay. 17 EXAMINATION 18 BY MR. BURT: 19 Q. Mrs. Irving, could you please state and spell 20 your full name for the record? 21 A. Sure. Katie, K-A-T-I-E, Irving, I-R-V-I-N-G. 22 MR. FEINSTEIN: I'm sorry to interrupt. 23 It's Robert Feinstein. I just wanted to make my 24 announcement before we got actually started and get into 25 other matters, as it relates to Frances's comment about</p> | <p>1 sure the deposition will proceed much more smoothly that 2 way instead of debating individual points or asking me: 3 Aren't you going to invoke the privilege? So that's my 4 standing position. Thank you. 5 MS. SMITH: Did you get that? 6 THE STENOGRAPHIC REPORTER: He's very 7 difficult. He's -- he's going to speak a lot today? 8 MS. SMITH: No. 9 THE STENOGRAPHIC REPORTER: Okay. All 10 right. I'm ready. 11 BY MR. BURT: 12 Q. Mrs. Irving, what is your address? 13 MS. SMITH: I -- I'm going to object to 14 that. 15 BY MR. BURT: 16 Q. Go ahead and answer. 17 MS. SMITH: We -- we'll be happy to 18 stipulate to her address off the record. 19 BY MR. BURT: 20 Q. I'd like the address on the record, please. 21 A. I'm not comfortable to give that. 22 Q. Okay. You're required, Mrs. Lucas, to answer my 23 questions today, and I ask you to please state your 24 address for the record. 25 A. I understand that. I can ask -- I mean, I can</p> |
| 10 | 12 |
| <p>1 privilege. As we have done in all prior depositions in 2 this adversary proceeding, Highland is not going to assert 3 the privilege when it comes to matters relating to the 4 core factual matters in the complaint to transfer assets 5 to Sentinel and so forth. 6 THE STENOGRAPHIC REPORTER: I can't hear 7 him. 8 MR. FEINSTEIN: And unless you hear from me, 9 you should assume that no privilege has been invoked. 10 MS. HARTMANN: Rob -- Rob -- 11 MR. FEINSTEIN: Yes. 12 MS. HARTMANN: -- the court reporter is not 13 hearing you at all. 14 MR. FEINSTEIN: Okay. 15 THE STENOGRAPHIC REPORTER: No. It's hard 16 to hear him. 17 MS. SMITH: It is muffled, yeah. 18 MR. FEINSTEIN: I'll do my best. I'm 19 working on, obviously, a webcam. 20 So let me just state it this way: It is not 21 Highland's intention to invoke the attorney-client 22 privilege on matters that are the core subject matter in 23 the complaint, such as the transfer of assets to Sentinel, 24 and that unless you hear from me invoking the privilege, 25 you should assume that we are not asserting that. And I'm</p> | <p>1 confer with counsel, but I'm not comfortable putting that 2 on the record. 3 MR. BURT: Are you -- counsel, are you 4 instructing her not to answer? 5 MS. SMITH: Yes. 6 MR. BURT: On what basis? 7 MS. SMITH: She has two high-risk babies at 8 home, and on a previous deposition, one of the deponents's 9 address was given out to someone not subject to the 10 confidentiality order. So she is happy to give you her 11 address offline, off the record, but she does not want to 12 put it on the record. 13 BY MR. BURT: 14 Q. Mrs. -- Mrs. Irving, have you been deposed 15 before? 16 A. I have. 17 Q. When was that? 18 A. I don't recall exactly. It's been several years 19 ago. 20 Q. How many times have you been deposed? 21 A. One. 22 Q. Okay. And what matter was that? 23 A. It was related to a litigation funding case; it 24 was a patent case. 25 Q. Okay. And on whose behalf did you testify?</p> |

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| <p style="text-align: right;">13</p> <p>1 A. On the acquirer of the patent who was suing for 2 infringement matters. 3 Q. Okay. Did -- did that -- was it a company? 4 A. It was a company, but I was not a corporate 5 representative. 6 Q. So you testified in your individual capacity? 7 A. Yes. 8 Q. Do you recall what court that was in? 9 A. I don't. 10 Q. Have you ever provided testimony in court? 11 A. I have not. 12 Q. I'd like to go over just a couple of ground 13 rules. Since you've depos- -- been deposed before, none 14 of these should be new. 15 Mrs. Irving, if you don't understand any of 16 my questions today, please ask for clarification; 17 otherwise, I will assume that you understood the question. 18 Is that fair? 19 A. Yes. 20 Q. And we've seen this already. Counsel may object, 21 but unless you are instructed not to answer, you are 22 required to answer my question. 23 Do you understand that? 24 A. Yes. 25 Q. Okay. Do you understand that you have taken an</p> | <p style="text-align: right;">15</p> <p>1 first. 2 Are they attorneys with Baker & McKenzie? 3 A. Yes. 4 Q. Okay. And -- and Frances is attorney -- an 5 attorney with another firm; is that right? 6 A. Yes. 7 Q. Okay. And you met with all three? 8 A. I did. 9 Q. For how long did you meet with them? 10 A. I don't recall exactly, likely four or 11 five hours. 12 Q. Did you review documents with them? 13 A. I did. 14 Q. About how many documents did you review? 15 A. No, I didn't review documents actually. I didn't 16 review documents with them. 17 Q. So no documents were discussed? 18 A. No documents, no. 19 Q. Okay. 20 A. Well, I said no documents were reviewed; 21 documents were discussed but not reviewed. 22 Q. What's the distinction you're trying to make 23 there? 24 A. The distinction I'm trying to make is they would 25 say: Do you have any recollection of this? You know,</p> |
| <p style="text-align: right;">14</p> <p>1 oath today and that you are testifying under oath? 2 A. Yes, I do. 3 Q. And that your testimony is the same as if it were 4 in front of a judge and jury? 5 A. Yes. 6 Q. And you understand that penalties of perjury 7 apply to your testimony today? 8 A. Yes, I do. 9 Q. Mrs. Irving, is there anything that would prevent 10 you from giving full and complete testimony today? 11 A. No. 12 Q. Going back to the -- the matter in which you were 13 deposed, did you testify -- was -- strike that. 14 Was HCMLP a party to that case? 15 A. It was not. 16 Q. Mrs. Irving, what did you do to prepare for 17 today's deposition? 18 A. I met with counsel last week, and that's 19 basically it. 20 Q. Okay. And to be clear, I'm not interested in the 21 content of those discussions. 22 But when you're referring to counsel, who, 23 specifically, are you referring to? 24 A. Deb, and Michelle and Frances. 25 Q. Okay. So Deb and Michelle, let's take them</p> | <p style="text-align: right;">16</p> <p>1 they may be referring to a note, but I didn't review 2 documents myself. 3 Q. So they showed you documents and asked if you had 4 a recollection? 5 A. No, they did not show me documents. That's the 6 distinction I'm making. 7 Q. I see. 8 A. Documents were discussed, but I didn't review 9 them in detail. 10 Q. So you didn't look at any documents? 11 A. I didn't, no, not that I recall. 12 Q. Mrs. Irving, do you know who is paying for your 13 counsel today? 14 A. I don't. 15 Q. You're not paying for them? 16 A. I'm not. 17 Q. Okay. And you don't have any idea who is paying 18 for them? 19 A. I do not know who is paying for the counsel. 20 Q. Do you know if you've ever been indemnified by 21 any entity -- 22 MS. SMITH: Object. 23 BY MR. BURT: 24 Q. -- for your testimony today? 25 MS. SMITH: Object to the form of the</p> |

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| 17 | <p>1 question.</p> <p>2 BY MR. BURT:</p> <p>3 Q. You can answer.</p> <p>4 A. Would you repeat that for me, please?</p> <p>5 Q. Have you been indemnified in any way for your</p> <p>6 participation in this lawsuit?</p> <p>7 A. I don't know.</p> <p>8 Q. No knowledge one way or the other?</p> <p>9 A. I don't know.</p> <p>10 Q. Okay. I'd like to show you an exhibit.</p> <p>11 MR. BURT: KL-46.</p> <p>12 We'll mark this as No. 9- -- Exhibit 93.</p> <p>13 (Exhibit 93 was marked for identification.)</p> <p>14 (Off-record discussion.)</p> <p>15 MS. SMITH: Shannon, can you upload the</p> <p>16 exhibits in the chat, please, so that Deb can look at them</p> <p>17 as well?</p> <p>18 MS. MCLAUGHLIN: Yes.</p> <p>19 MS. SMITH: And Eric is -- I think Eric is</p> <p>20 joining. I'd like Eric to be able to look at them.</p> <p>21 BY MR. BURT:</p> <p>22 Q. Mrs. Irving, have you had the chance to look at</p> <p>23 this document?</p> <p>24 A. Yes, I've just reviewed it.</p> <p>25 Q. Do you recognize it?</p> | 19 |
| 18 | <p>1 A. No, I do not.</p> <p>2 Q. Okay. And you see there's a front and a back</p> <p>3 page to this document?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And on the front page, is it correct that</p> <p>6 there is an e-mail at the top with a heading -- or not a</p> <p>7 heading, but a caption of Thomas P. Adamczak, CPA, from</p> <p>8 Beecher Carlson?</p> <p>9 A. I see that on the page, yes.</p> <p>10 Q. Do you know who Thomas Adamczak is?</p> <p>11 A. I believe he is an employer of Beecher Carlson.</p> <p>12 Q. Have you worked with Mr. Adamczak?</p> <p>13 A. Not -- not that I recall specifically, but the</p> <p>14 name is familiar to me.</p> <p>15 Q. And do you see below there is an e-mail from</p> <p>16 gps@cibfcib.com?</p> <p>17 A. I see that.</p> <p>18 Q. To Tom Adamczak, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Dated April 21st, 2021?</p> <p>21 A. I see that.</p> <p>22 Q. Okay. And then looking at the second page, do</p> <p>23 you see it's a Wire Transfer Debit Advice from</p> <p>24 FirstCaribbean International Bank?</p> <p>25 A. I see that.</p> | 20 |
| | <p>1 Q. And at the top, it says "Sentinel Reinsurance,</p> <p>2 Ltd.," correct?</p> <p>3 A. I see that.</p> <p>4 Q. All right. Now, drawing your attention to the</p> <p>5 date, it's dated Ap- -- 21-4-2021, correct?</p> <p>6 A. I see that, yes.</p> <p>7 Q. And the currency and amount states \$200,000; is</p> <p>8 that right?</p> <p>9 A. I see that.</p> <p>10 Q. And the beneficiary is Ross & Smith IOLTA; is</p> <p>11 that correct?</p> <p>12 A. I see that on the page, yes.</p> <p>13 Q. Do you know what firm Ross & Smith is?</p> <p>14 A. It's Frances's firm.</p> <p>15 Q. Okay.</p> <p>16 MS. SMITH: Excuse me.</p> <p>17 Shannon, can you please upload the document</p> <p>18 to the chat?</p> <p>19 MS. MCLAUGHLIN: It's being uploaded.</p> <p>20 MS. SMITH: Okay.</p> <p>21 BY MR. BURT:</p> <p>22 Q. All right. And you see there below, the</p> <p>23 Beneficiary Bank, there is another bank listed below, is</p> <p>24 that right, with additional wire detail?</p> <p>25 A. I see additional details and a beneficiary bank</p> | |

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7 (25 to 28)

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| <p>25</p> <p>1 I'm asking for your knowledge. 2 A. Could you repeat that for me, please? 3 Q. Did you have any understanding of what that 4 motion was? 5 A. I -- I don't think I understand your question. 6 It was a Motion to Quash, right? 7 Q. Right. 8 You had received a subpoena in this case, 9 correct? 10 A. Yes. 11 Q. The subpoena asked for you to produce documents, 12 correct? 13 A. Yes. 14 Q. It also asked for you to sit for deposition, 15 didn't it? 16 A. I don't know. 17 Q. You don't know that? 18 A. I don't know. 19 Q. Okay. And you're aware that your attorney had 20 filed a Motion to Quash that subpoena; is that right? 21 A. Yes. 22 Q. And was that attorney Ms. Smith, who is sitting 23 here today? 24 A. I don't know. 25 Q. You don't know if she was the attorney who moved</p> | <p>27</p> <p>1 MR. BURT: 49. 2 BY MR. BURT: 3 Q. Keep that exhibit handy. 4 MR. BURT: Mark this as 96? 5 THE STENOGRAPHIC REPORTER: 96. 6 (Exhibit 96 was marked for identification.) 7 THE WITNESS: Thanks. 8 BY MR. BURT: 9 Q. Mrs. Irving, let me know when you've had a chance 10 to review this exhibit. 11 A. Okay. I will. 12 (Witness reviews document.) Okay. 13 Q. Have you seen this e-mail chain before? 14 A. No. 15 Q. All right. Going to the second page, you see at 16 the very bottom, it's an e-mail -- this e-mail chain 17 begins with an e-mail from Gareth Pereira from Beecher 18 Carlson. 19 Do you know who Mr. Pereira is? 20 A. I don't. 21 Q. And it's sent to a cmc -- mcdonald@calderwood.ky, 22 and it looks like his name is Casey. 23 Do you know who that is referring to? 24 A. I don't. 25 Q. Do you know what Calderwood is?</p> |
| <p>26</p> <p>1 to quash? 2 A. I don't know. 3 As you know, I've been out on leave, and I 4 -- I don't know the details of who filed what motion or 5 what the -- I mean, counsel handled this for me, and I 6 haven't spoken to counsel very much, honestly. I trust 7 that they'll handle it in a way that's appropriate. 8 Q. Okay. And again, without revealing any contents 9 of what was discussed, did counsel -- did -- did you 10 discuss this motion with counsel? 11 MS. SMITH: Objection. 12 THE WITNESS: I don't recall. 13 BY MR. BURT: 14 Q. Okay. And when you're referring to "counsel," 15 are you referring solely to Ms. Smith or also the 16 attorneys from Baker & McKenzie? 17 A. My discussions have been with Ms. Smith 18 primarily. 19 Q. All right. Now, "primarily." Totally or -- 20 A. Primarily because we met to prep for depo this 21 prior week. 22 Q. Prior to meeting to prep for depo, had you had 23 any discussions with attorneys from Baker & McKenzie? 24 A. I don't remember. 25 Q. Okay.</p> | <p>28</p> <p>1 A. I believe it's a independent director firm in 2 Cayman. 3 Q. Have you ever worked with Calderwood? 4 A. Not that I recall, no. 5 Q. Do you know what it did? 6 A. I'm not understanding your question. 7 Q. What business was Calderwood in? 8 A. I believe it's a independent director business in 9 Cayman. 10 Q. In addition to that, do -- do you know anything 11 else that it was doing? 12 A. I don't. 13 Q. All right. And it cc's here a stephenleontsinis@ 14 collascrill.com. 15 Do you know who that is? 16 A. Yes. Stephen Leontsinis is counsel at Collas 17 Crill in Cayman. 18 Q. All right. Have you worked with him before? 19 A. I have. 20 Q. In what capacity? 21 A. I worked with him on a Cayman bank liquidation. 22 He was counsel that assisted in -- assisted in the 23 bankruptcy insolvency case there. 24 Q. He was counsel for whom? 25 A. He was counsel for -- I'm trying to remember -- I</p> |

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| <p style="text-align: right;">29</p> <p>1 don't remember exactly how he was engaged, but I worked 2 closely with him on some assets that were out of this 3 Cayman insolvency. 4 Q. Did he represent Highland Capital Management? 5 A. I don't -- not to my knowledge and not related to 6 the case I'm referencing. 7 Q. Did he represent -- do you know if he's ever 8 represented Highland Capital Management? 9 A. I don't know. 10 Q. Does he -- has he represented any of the SAS 11 entities? 12 MS. SMITH: Objection to form. 13 THE WITNESS: I don't know. 14 BY MR. BURT: 15 Q. How about Sentinel, has he represented Sentinel? 16 A. I don't know. 17 Q. The next person on this e-mail chain is Matt 18 DiOrio. 19 Who is that? 20 A. He was a colleague of mine. 21 Q. At which company? 22 A. He was employed by Highland Capital Management, 23 L.P. 24 Q. What was his job there? 25 A. He was a managing director.</p> | <p style="text-align: right;">31</p> <p>1 MS. SMITH: Objection, form 2 THE WITNESS: It appears that way. 3 BY MR. BURT: 4 Q. All right. And this e-mail was, again, to Casey 5 McDonald and cc's a number of people; is that right? 6 A. I see that, yes. 7 Q. Including Matt DiOrio; is that right? 8 A. I see him on the paper, yes. 9 Q. Okay. And he says, "Good morning, Casey. 10 Following on from last week, please can you provide your 11 approval through e-mail and also release the following 12 payments that have been set up in CIBC for Sentinel." 13 First one listed there is "Ross & Smith - 14 Legal expenses - \$75,854.90." 15 Do you see that? 16 A. I see that. 17 Q. And if we go back to Exhibit 94, the second CIBC 18 wire instruction, do you see what amount is listed there? 19 A. I see it. 20 Q. And what amount is that? 21 A. \$75,924.90 is the total cost, made up of two 22 components: \$75,854.90 and a commission, which I assume 23 is a fee of \$70 USD. 24 Q. Okay. So looking at the Wire Transfer Debit 25 Advice and the e-mail that Mr. Pereira sent on June 24th,</p> |
| <p style="text-align: right;">30</p> <p>1 Q. In what department did he work? 2 A. Legal. 3 Q. Is that the department you worked in as well? 4 A. Yes. 5 Q. You are not an attorney, are you? 6 A. I am not an attorney. 7 Q. Nor is Mr. DiOrio, correct? 8 A. He is not an attorney. 9 Q. All right. Then we see Mr. Adamczak again from 10 Beecher Carlson. 11 Moving to the e-mail that's just above 12 that -- you have to go to the first page to see where that 13 begins -- this is another e-mail from Gareth Pereira on 14 Thursday, the 24th of June, 2021; is that right? 15 A. I see it on the paper, yes. 16 Q. Okay. So referring back to Exhibit 94 -- excuse 17 me -- 95, the Amended Notice of Hearing. 18 A. Oh, yes. 19 Q. What was the date of that hearing, if you look at 20 the second page? 21 A. Looks like the hearing was rescheduled for 22 Thursday, June 24th, 2021, at 2:30 p.m. 23 Q. So the same day that Mr. Pereira was sending this 24 e-mail, correct? 25 A. It appears that --</p> | <p style="text-align: right;">32</p> <p>1 it appears that he's requesting approval for that 2 \$75,854.90 legal expense to be paid; is that right? 3 MS. SMITH: Objection to form. 4 THE WITNESS: It appears that way. 5 BY MR. BURT: 6 Q. And if you see up above in the chain, 7 Mr. McDonald responds -- he says, "Thanks, Gareth. I can 8 go in and approve, but as Wade and I don't have any 9 visibility into the legal bill, I'd appreciate Matt 10 confirming it's all in order and should be settled. And 11 as it's for US counsel, am I right in thinking that it is 12 coming out of the prefunded risk mitigation balance? Or 13 is there any additional background we could get on this 14 expense?" 15 You see that? 16 A. I see it. 17 Q. And then looking at the top e-mail, you see that 18 it's an e-mail from Mr. DiOrio? 19 A. I see it. 20 Q. And it's to Casey McDonald, correct -- 21 A. Yes. 22 Q. -- cc'ing, among others, Gareth Pereira and 23 Stephen Leontsinis at Collas Crill; is that right? 24 A. Among others, yes. 25 Q. And then Mr. DiOrio states, "This is an order and</p> |

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1 should be settled. The company indemnified a group of
2 former employees, myself included, a while back, and it
3 relates to our defense with respect to today's hearing
4 that I mentioned."
5 Is that what Mr. DiOrio wrote?
6 **A. I see it, yes.**
7 Q. Okay. And "today's hearing," do you recall we
8 looked at Exhibit 95, the hearing scheduled for June 24th
9 relating to the Motion to Quash, correct?
10 MS. SMITH: Objection to form.
11 THE WITNESS: Sorry. Can you tell me what
12 you're asking me?
13 BY MR. BURT:
14 Q. Sure. Let's look at the exhibit.
15 Exhibit 95, the Amended Notice of Hearing,
16 do you see that? And we've looked now twice. On page 2,
17 there was the Hearing on the Motion to Quash Subpoenas of
18 Former Employees scheduled for June 24th, 2021; is that
19 right?
20 **A. Yes.**
21 Q. And on this same day in the e-mail, in
22 Exhibit 96, Mr. DiOrio is stating that "the company
23 indemnified a group of former employees, myself included,
24 a while back, and it relates to our defense with respect
25 to today's hearing that I mentioned;" is that right?

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1 **A. Yes, I see that.**
2 Q. Okay. So it appears that Mr. DiOrio was
3 referring to the hearing on the Motion to Quash held on
4 June 24th, 2021?
5 MS. SMITH: Objection to form.
6 THE WITNESS: You would have to assume that.
7 I don't know.
8 BY MR. BURT:
9 Q. Was there any other hearing that you were aware
10 of?
11 **A. I don't know.**
12 Q. He states, "The company indemnified a group of
13 former employees."
14 Do you know what company he was referring
15 to?
16 MS. SMITH: Objection to form.
17 THE WITNESS: I don't. I would have to
18 assume.
19 BY MR. BURT:
20 Q. You would have to guess?
21 **A. Yes, I would have to assume.**
22 Q. Okay. And what is your guess as to what company
23 he was referring to?
24 MS. SMITH: Objection to form.
25 THE WITNESS: My sense is that it would be

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1 related to the entity which is sending the wire here,
2 Sentinel Reinsurance, Ltd.
3 BY MR. BURT:
4 Q. So your -- your guess is that Sentinel was
5 indemnifying a group of former employees, himself
6 included?
7 MS. SMITH: Objection to form.
8 THE WITNESS: If you're -- if you're
9 referencing Sentinel Reinsurance, Ltd., you could infer
10 that from these documents, but I don't have knowledge of
11 it, other than the documents you've just presented to me.
12 BY MR. BURT:
13 Q. Have you ever been told that you have been
14 indemnified?
15 **A. By any company, ever?**
16 Q. In relation to this lawsuit, have you ever been
17 told that you were indemnified?
18 **A. I don't recall.**
19 Q. You don't recall ever having been told that?
20 MS. SMITH: Objection to form.
21 THE WITNESS: I don't.
22 BY MR. BURT:
23 Q. Okay. How is it that you're not paying for your
24 own legal -- your own counsel?
25 **A. I don't know.**

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1 Q. Who told you that someone else would pay for your
2 counsel?
3 MS. SMITH: Objection to form.
4 THE WITNESS: I don't think I ever really
5 thought about it, honestly.
6 BY MR. BURT:
7 Q. You never thought about who would pay for your
8 attorneys?
9 **A. No.**
10 Q. Not once?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I said no. No, I haven't
13 thought about it.
14 BY MR. BURT:
15 Q. You just assumed someone would pay for it?
16 MS. SMITH: Objection to form.
17 THE WITNESS: I haven't thought about it.
18 BY MR. BURT:
19 Q. Are you a former employee of Sentinel?
20 **A. No. I have not ever been an employee of**
21 **Sentinel.**
22 Q. Have you ever attended a board meeting of
23 Sentinel?
24 **A. Not that I recall.**
25 Q. Do you recall ever hav-- -- I just want to be

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1 clear on the record. You don't ever recall having
2 attending a board meeting for Sentinel?
3 **A. I've attended meetings for Sentinel; I don't know**
4 **if any were classified as a -- as a board meeting in**
5 **however you're defining a board meeting, but I don't**
6 **recall a specific board meeting that I was attending.**
7 Q. So you don't understand what I mean when I say
8 "board meeting"?
9 MS. SMITH: Objection to form.
10 THE WITNESS: No, I don't know what you're
11 -- what you're referencing, whether you're thinking of
12 another meeting. I've attended meetings for Sentinel, but
13 not that I can recall as a -- as a board meeting.
14 BY MR. BURT:
15 Q. Okay. Now, when I say "board meeting," I -- I'm
16 referring to a meeting of the board of directors of
17 Sentinel in its official capacity.
18 Do you have that definition in mind?
19 **A. I understand what you're saying, yes.**
20 Q. Okay. Now, with that definition in mind, do you
21 recall ever having attended such a meeting on behalf of
22 Sentinel or for Sentinel?
23 **A. I don't. I don't.**
24 Q. Okay. What meetings did you attend?
25 **A. I attended a meeting with CIMA, which is the**

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1 **Cayman Islands Monetary Authority, in relation to**
2 **Sentinel, and I would ad hoc attend meetings either with**
3 **the administrator, or sometimes a board member would be**
4 **on.**
5 **I don't know if it was officially a board**
6 **meeting. I know there's certain corporate, you know,**
7 **oversights that have to be in place for it to be an**
8 **official board meeting. But I -- I have attended meetings**
9 **in relation to Sentinel, yes.**
10 Q. And why did you attend those meetings?
11 **A. Really just to run backup for -- for taking down**
12 **what requests were needed, what follow-ups were needed. I**
13 **had legacy knowledge of the structure for Sentinel in**
14 **various tax restructuring, tax matters. So it was helpful**
15 **sometimes for me to sit in.**
16 Q. How many meetings with CIMA did you attend?
17 **A. I believe two.**
18 Q. When were they?
19 **A. The one I remember was -- distinctly was in**
20 **August of 2019. And I believe there was another one, but**
21 **I can't recall when it was.**
22 Q. And what were these meetings all about with CIMA?
23 **A. The one in August of 2019 was in reference to**
24 **simplifying the Sentinel structure, the corporate**
25 **structure.**

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1 Q. Did CIMA have a request that Sentinel do that?
2 **A. Yes.**
3 Q. And why is that?
4 **A. I don't know.**
5 Q. They never told you why they wanted you to do
6 that?
7 MS. SMITH: Objection to form.
8 THE WITNESS: My sense was they wanted it
9 simplified. I don't have any further knowledge as to any
10 motivation beyond that.
11 BY MR. BURT:
12 Q. At that meeting, CIMA never explained why they
13 wanted the -- the Sentinel structure simplified?
14 **A. They wanted it simplified. I assume they thought**
15 **it was too complex. I don't know.**
16 Q. So I'm just trying to understand what the
17 regulator in the Cayman Islands told Sentinel when it was
18 -- when it told it to simplify. I would -- I would guess
19 that they would have a reason for that, and I'm just
20 trying to get your best knowledge as to what that reason
21 was.
22 **A. My best knowledge is that CIMA wanted it**
23 **streamlined -- wanted the structure of Sentinel**
24 **Reinsurance, Ltd., streamlined or simplified. I don't --**
25 **I don't know why they wanted it simplified. You would**

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1 **have to ask someone at CIMA.**
2 Q. Did CIMA ever provide a document that explained
3 what it wanted to Sentinel?
4 **A. Did it --**
5 MS. SMITH: Objection to form.
6 THE WITNESS: Could you repeat that? Sorry.
7 BY MR. BURT:
8 Q. Did CIMA ever provide a document, a letter, a
9 memo, anything like that, to Sentinel explaining why it
10 wanted it simplified?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I believe there was
13 correspondence, but I wasn't directly involved in that.
14 BY MR. BURT:
15 Q. Did you ever see the correspondence?
16 **A. I don't recall specifically.**
17 Q. Did you ever have any follow-up tasks to respond
18 or do anything in -- in -- pursuant to a CIMA request?
19 **A. Yes.**
20 Q. What was that?
21 **A. I took a look -- utilizing my legacy knowledge of**
22 **the structure, I took a look to see if it was feasible to,**
23 **you know, liquidate certain entities or, in some way,**
24 **follow the direction of the regulator to simplify the**
25 **structure.**

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| <p style="text-align: right;">41</p> <p>1 Q. Is that all you did?</p> <p>2 A. I would speak with outside tax counsel. I don't</p> <p>3 have direct knowledge of that. So I would talk to outside</p> <p>4 tax counsel to see: Is this a possible option?</p> <p>5 Obviously, we wanted to comply with the</p> <p>6 request of the regulator in Cayman.</p> <p>7 Q. Do you know if Sen- -- if Sentinel ever provided</p> <p>8 responses or any form -- or any letter back to CIMA for</p> <p>9 following up on its requests?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 THE WITNESS: Presumably, but I don't know</p> <p>12 for sure. That would be something likely handled by the</p> <p>13 administrator at Beecher Carlson.</p> <p>14 BY MR. BURT:</p> <p>15 Q. Did you ever have any role in drafting anything</p> <p>16 that went back to Sentinel -- or to CIMA?</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 THE WITNESS: Not that I recall.</p> <p>19 BY MR. BURT:</p> <p>20 Q. Okay. Well, we're going to come back to that.</p> <p>21 So looking back at Exhibit 96, were you</p> <p>22 aware that Mr. DiOrio had been indemnified by a company?</p> <p>23 A. No.</p> <p>24 Q. And it states that it relates to our defense with</p> <p>25 respect to today's hearing.</p> | <p style="text-align: right;">43</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: Not that I recall, no.</p> <p>3 BY MR. BURT:</p> <p>4 Q. How about with Mr. Leventon, did you ever discuss</p> <p>5 with him that you'd received a subpoena?</p> <p>6 A. No.</p> <p>7 Q. How about Mr. Sevilla?</p> <p>8 A. No, not that I recall.</p> <p>9 Q. How about Mr. Ellington, did you ever discuss</p> <p>10 with him that you received a subpoena?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. How about Mr. Dondero?</p> <p>13 A. No.</p> <p>14 Q. Did you ever speak with any of those individuals</p> <p>15 that I just mentioned on the fact that you had been</p> <p>16 subpoenaed for deposition?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Okay. Has any one of those individuals -- for</p> <p>19 the record, Mr. Ellington, Mr. Dondero, Mr. Leventon,</p> <p>20 Mr. Sevilla, or Mr. DiOrio, has any one of those</p> <p>21 individuals ever promised you anything in relation to this</p> <p>22 -- to the bankruptcy proceedings and your testimony?</p> <p>23 A. No. No.</p> <p>24 Q. Or the documents that you produced?</p> <p>25 A. No.</p> |
| <p style="text-align: right;">42</p> <p>1 Did you ever have any discussions with</p> <p>2 Mr. DiOrio about "our" defense?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Have you ever spoken with Mr. DiOrio at all about</p> <p>5 the bankruptcy proceeding?</p> <p>6 A. It's a very general question. We worked</p> <p>7 together, you know, as Highland was in bankruptcy,</p> <p>8 Highland Capital Management, L.P.</p> <p>9 Q. So the answer is "yes"?</p> <p>10 A. Could you maybe make your question a bit more</p> <p>11 specific?</p> <p>12 Q. Well, see, I'm just asking a broad question</p> <p>13 first, and then I'll drill down. Is that fair?</p> <p>14 A. Sure.</p> <p>15 Q. Okay. So my broad question is: Did you ever</p> <p>16 have discussions with Mr. DiOrio about the bankruptcy</p> <p>17 proceeding?</p> <p>18 A. Surely, I did.</p> <p>19 Q. Okay. And do you recall any of those</p> <p>20 discussions?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: Not specifically.</p> <p>23 BY MR. BURT:</p> <p>24 Q. Okay. Did you ever discuss with Mr. DiOrio, for</p> <p>25 example, the fact that you received a subpoena?</p> | <p style="text-align: right;">44</p> <p>1 Q. Do you currently work for Mr. Ellington?</p> <p>2 A. I'm on unpaid leave with Skyview.</p> <p>3 Q. And does he own Skyview?</p> <p>4 A. I don't know.</p> <p>5 Q. Does -- does -- do you work for him -- do you</p> <p>6 report -- when you go back, will you report to</p> <p>7 Mr. Ellington at Skyview?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I don't know. It hasn't been</p> <p>10 decided to my knowledge; I don't know.</p> <p>11 BY MR. BURT:</p> <p>12 Q. Is Mr. Ellington affiliated with Skyview, to your</p> <p>13 knowledge?</p> <p>14 MS. SMITH: Objection to form.</p> <p>15 THE WITNESS: I don't know what you mean by</p> <p>16 "affiliated," but I think he is somewhat involved with</p> <p>17 Skyview.</p> <p>18 BY MR. BURT:</p> <p>19 Q. Do you know if he owns it?</p> <p>20 A. I don't know, no. You asked me that earlier. I</p> <p>21 don't know.</p> <p>22 Q. Do you know if Mr. Dondero owns it?</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. So to be clear, you are not aware of ever</p> <p>25 having been offered an indemnification in this case?</p> |

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| <p style="text-align: right;">45</p> <p>1 A. Not that I recall.</p> <p>2 Q. And you have no knowledge of how it came to be</p> <p>3 that someone else is paying for your legal counsel?</p> <p>4 A. Honestly, no. I'm not an attorney, and I haven't</p> <p>5 really been in the nitty-gritty on this. I have been out</p> <p>6 on unpaid leave.</p> <p>7 Q. Well, you're a CPA, aren't you?</p> <p>8 A. I am, yeah.</p> <p>9 Q. Okay. And you have a background in finance?</p> <p>10 A. Yes.</p> <p>11 Q. Who pays the bills of something that you, I</p> <p>12 assume, care about as a CPA?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: Who pays the bills that I care</p> <p>15 about as a CPA?</p> <p>16 BY MR. BURT:</p> <p>17 Q. Who pays the bills is something, I would think,</p> <p>18 as a CPA you care about?</p> <p>19 MS. SMITH: Objection to form.</p> <p>20 THE WITNESS: I don't know who pays the</p> <p>21 bills. For this matter, presumably, you're asking me</p> <p>22 about, I don't know.</p> <p>23 BY MR. BURT:</p> <p>24 Q. So you didn't know that Sentinel was paying --</p> <p>25 A. No. I don't know.</p> | <p style="text-align: right;">47</p> <p>1 Q. You don't have any facts that would dispute what</p> <p>2 we have looked at in these documents, do you?</p> <p>3 MS. SMITH: Objection, form. She's</p> <p>4 answered.</p> <p>5 BY MR. BURT:</p> <p>6 Q. You can answer.</p> <p>7 A. I don't really know what you're asking me.</p> <p>8 Q. You don't have any facts to give us today that</p> <p>9 would dispute that Sentinel is paying for your</p> <p>10 representation here today?</p> <p>11 MS. SMITH: Objection, form; asked and</p> <p>12 answered.</p> <p>13 THE WITNESS: No. You've showed me</p> <p>14 documentation here. I don't have other information about</p> <p>15 it, no.</p> <p>16 MS. SMITH: Katie, are you doing okay?</p> <p>17 THE WITNESS: Yeah, I'm okay.</p> <p>18 MS. SMITH: You need a break?</p> <p>19 THE WITNESS: Thank you.</p> <p>20 MR. BURT: Yeah. Whenever you need a break,</p> <p>21 that's fine.</p> <p>22 MS. SMITH: Let's take a break.</p> <p>23 THE VIDEOGRAPHER: We are off the record at</p> <p>24 10:38 a.m.</p> <p>25 (Brief recess taken.)</p> |
| <p style="text-align: right;">46</p> <p>1 Q. -- for your representation in this adversary</p> <p>2 proceeding --</p> <p>3 A. Now I know.</p> <p>4 Q. -- you didn't know that?</p> <p>5 A. You showed me documentation, but no.</p> <p>6 Q. So you know it now?</p> <p>7 A. Yes. You just showed me documentation of it.</p> <p>8 Q. And you don't have any reason to disagree that</p> <p>9 Sentinel is paying for your representation in this</p> <p>10 adversary proceeding --</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 MR. BURT: Excuse me. Let me finish my</p> <p>13 question.</p> <p>14 BY MR. BURT:</p> <p>15 Q. You don't have any reason -- now I'll have to</p> <p>16 start over.</p> <p>17 You don't have any reason to disagree that</p> <p>18 Sentinel is paying for your representation in this</p> <p>19 adversary proceeding, do you?</p> <p>20 MS. SMITH: Objection to form.</p> <p>21 THE WITNESS: Do I have a reason to</p> <p>22 disagree?</p> <p>23 BY MR. BURT:</p> <p>24 Q. Yeah.</p> <p>25 A. I don't know.</p> | <p style="text-align: right;">48</p> <p>1 THE VIDEOGRAPHER: Back on the record at</p> <p>2 10:53 a.m.</p> <p>3 BY MR. BURT:</p> <p>4 Q. Mrs. Irving, do you have an engagement letter</p> <p>5 with Ross & Smith?</p> <p>6 A. I don't know.</p> <p>7 Q. How about with Baker?</p> <p>8 A. I don't know.</p> <p>9 Q. You've never signed an engagement letter, to your</p> <p>10 knowledge?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 THE WITNESS: I don't recall. But it hasn't</p> <p>13 been really my highest priority. I have been out on -- on</p> <p>14 leave, and I -- I don't know. I don't recall.</p> <p>15 BY MR. BURT:</p> <p>16 Q. And I understand that, and I'm just asking for</p> <p>17 your best recollection.</p> <p>18 And so what -- you don't recall ever having</p> <p>19 signed an engagement letter?</p> <p>20 A. Correct. I don't recall.</p> <p>21 Q. Okay. And it is correct that you are not</p> <p>22 personally paying for the representation?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: Correct, I'm not paying right</p> <p>25 now, no.</p> |

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1 BY MR. BURT:
2 Q. Okay. Do you have any knowledge why Sentinel is
3 paying the bills?
4 **A. I don't know.**
5 MS. SMITH: Objection to form.
6 MR. BURT: All right. We've marked the next
7 exhibit as 97.
8 (Exhibit 97 was marked for identification.)
9 BY MR. BURT:
10 Q. Go ahead and take a look at this e-mail chain,
11 and let me know when you're ready.
12 **A. (Witness reviews document.) Okay.**
13 Q. We've seen this name a couple of times, Thomas
14 Adamczak, that's on this e-mail, and I believe you
15 testified, and correct me if I'm wrong, that he is with
16 Beecher Carlson; is that right?
17 **A. Yes, I believe so.**
18 Q. And what is your understanding of the
19 relationship between Beecher Carlson and Sentinel?
20 **A. Beecher Carlson acts as the administrator for**
21 **Sentinel. I don't know if they currently do. At one**
22 **point, they acted as the administrator for Sentinel.**
23 Q. And at what point in time were you aware that
24 they were acting as the administrator?
25 **A. I don't recall specifically.**

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1 Q. When you've referred to the administrator of
2 Sentinel in -- in prior testimony today, you were
3 referring to Beecher Carlson; is that right?
4 **A. Yes.**
5 Q. Okay. So looking at this e-mail chain, the
6 bottom of page 1 begins with an e-mail from an
7 mdiorio@blacklandassociates.com.
8 Do you know whether that refers to Matt
9 DiOrio?
10 **A. He signed the e-mail Matt DiOrio, so I would**
11 **assume so.**
12 Q. Okay. Do you know what Blackland Associates is?
13 **A. No.**
14 Q. You're not in any way affiliated with or working
15 for Blackland Associates?
16 MS. SMITH: Objection to form.
17 THE WITNESS: No. I recall I have an e-mail
18 with Blackland Associates. At one point it was a separate
19 business, but I don't recall what it is.
20 BY MR. BURT:
21 Q. You said you had an e-mail. You had an e-mail
22 account, is that what you meant?
23 **A. Yes.**
24 Q. Okay. And it was a separate business from what?
25 What was it separate from?

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1 **A. From Highland or SAS.**
2 Q. Beyond that, do you have any knowledge of what
3 Blackland Associates did?
4 **A. I don't recall.**
5 Q. Did you ever use that e-mail address?
6 **A. I don't recall.**
7 Q. Was that prior to the bankruptcy of Highland or
8 post bankruptcy of Highland?
9 **A. Prior.**
10 MS. SMITH: Objection to form.
11 BY MR. BURT:
12 Q. Prior, okay.
13 So prior to the bankruptcy, you got an
14 e-mail address at Blackland Associates?
15 **A. (Witness nods head affirmatively.)**
16 Q. Okay. So looking at this e-mail Mr. DiOrio sends
17 on April 15th, 2021, again to Gareth Pereira at Beecher
18 Carlson and Tom Adamczak, along with another Beecher
19 employee, and in the e-mail, he says, "Please process the
20 three attached invoices. Wire instructions also attached.
21 Some at 3700; Collas Crill, 50,000; Baker McKenzie,
22 250,000;" is that right?
23 **A. I see it on this paper, yes.**
24 Q. And did you -- I believe you testified earlier --
25 and again, if I'm wrong, please correct me -- that Collas

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1 Crill represented Sentinel in the Caymans; is that right?
2 **A. I don't know.**
3 Q. You don't know?
4 The name Stephen Leontsinis, was he an
5 attorney at Collas Crill?
6 **A. Yes. To my knowledge, Stephen Leontsinis is with**
7 **Collas Crill.**
8 Q. And I apologize for mispronouncing his name.
9 Okay. So to your knowledge, he was. And
10 did he do work on -- for Sentinel?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I don't know.
13 BY MR. BURT:
14 Q. All right. Do you know whether Baker & McKenzie
15 represent Sentinel?
16 MS. SMITH: Objection to form.
17 THE WITNESS: I don't know.
18 BY MR. BURT:
19 Q. They represent you here today, correct?
20 **A. Yes.**
21 Q. On the first page of the exhibit, Tom responds,
22 "Thanks, Matt. What's the nature of the fees to Baker
23 McKenzie and Collas Crill? Are they related to the
24 Highland bankruptcy, settlement of that ATE matter, or
25 just general legal counsel costs? Thanks, Tom."

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| <p style="text-align: right;">53</p> <p>1 Do you know what he was referring to by 2 "settlement of the ATE matter"? 3 MS. SMITH: Objection to form. 4 THE WITNESS: I don't know. 5 BY MR. BURT: 6 Q. Have you ever heard the term "ATE" before? 7 A. Yes. 8 Q. What's your understanding of what ATE is? 9 A. ATE is likely referring to after the event, ATE, 10 after the event. It's a -- yeah. 11 Q. And do you know whether there's a type of 12 insurance policy that's called an ATE policy? 13 A. Yes. 14 Q. Okay. Do you know whether Sentinel ever had or 15 issued ATE policies? 16 A. Yes. 17 Q. Okay. Do you know how many they issued? 18 A. I don't. 19 Q. Are you aware of an ATE polishy -- policy issued 20 to the defendants in the New York litigation involving my 21 client UBS? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't know. 24 BY MR. BURT: 25 Q. You have no knowledge of that?</p> | <p style="text-align: right;">55</p> <p>1 issued by Sentinel? 2 MS. SMITH: Objection to form. 3 THE WITNESS: Yes. 4 BY MR. BURT: 5 Q. Okay. So I believe you testified you don't know 6 how many at issue; is that right? 7 A. Correct. 8 Q. What knowledge do you have of any ATE policy that 9 Sentinel issued? 10 A. I know of a -- I know Sentinel issued an ATE 11 policy. 12 Q. Okay. And to whom did it issue that policy? 13 A. I don't know. 14 Q. Do you know what amount it issued that policy? 15 A. I don't. 16 Q. Do you know anything about how the premium was 17 paid on that policy? 18 A. Yes. 19 Q. And what do you know? 20 A. I know there were certain assets used to pay for 21 the policy. 22 Q. Assets of whom? 23 A. I don't know. 24 Q. Do you know in what amount those assets were? 25 A. I don't know.</p> |
| <p style="text-align: right;">54</p> <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: Would you repeat the question? 3 BY MR. BURT: 4 Q. Sure. 5 Are you aware of whether there was an ATE 6 policy issued by Sentinel to the defendants in the New 7 York action that was brought by my client UBS? 8 MS. SMITH: Objection to form. 9 THE WITNESS: I don't know. 10 BY MR. BURT: 11 Q. Okay. Have you ever heard the -- of the entity 12 CDO Fund? 13 A. I've heard the name. 14 Q. Okay. Do you know whether they were ever 15 involved -- that entity and other related entities were 16 ever involved in the litigation against UBS in New York? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I don't know. 19 BY MR. BURT: 20 Q. Okay. Do you have any knowledge of any of the 21 ATE policies issued by Sentinel? 22 MS. SMITH: Objection to form. 23 THE WITNESS: Could you repeat that? 24 BY MR. BURT: 25 Q. Do you have any knowledge of any ATE policy</p> | <p style="text-align: right;">56</p> <p>1 Q. And do you know -- after-the-event insurance 2 policy, do you understand that to be relating to a 3 litigation -- a litigation insurance policy? 4 MS. SMITH: Objection to form. 5 THE WITNESS: Generally, I believe ATE is, 6 yes, related to litigation. 7 BY MR. BURT: 8 Q. So relating to the policy that you were just 9 discussing that you have knowledge of, do you know what 10 litigation it involved? 11 A. I don't. I'm not an attorney. I don't know. 12 Q. I understand; I'm just asking what you know. And 13 if your testimony is you don't know what litigation it 14 involved, that's fine. 15 A. Yeah, I don't know. 16 Q. I just want to -- okay. 17 Looking back at this Exhibit 97, Mr. DiOrio 18 responds, "The Collas Crill invoice is ATE -related. The 19 Baker invoice is general legal expense." 20 Do you know whether Collas Crill was working 21 on the litigation involved with that ATE policy? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't know. 24 BY MR. BURT: 25 Q. Do you know whether Baker & McKenzie was working</p> |

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| <p>57</p> <p>1 on that litigation? 2 A. I don't know. 3 Q. How about Ross & Smith, do you know whether they 4 were? 5 A. I don't know. I'm not copied on this e-mail; I 6 don't have any knowledge of this. 7 Q. I understand. And I'm asking what your knowledge 8 is, and I understand that you might not know, but I'm 9 going to ask. Is that fair? 10 A. Sure. 11 Q. Okay. So you don't know whether Baker was 12 representing any entity involved with the ATE -- in the 13 litigation related to the ATE policy? 14 A. I don't know. 15 Q. How about Ross & Smith? 16 A. I don't know. 17 Q. Did you ever understand that Sentinel was paying 18 for general legal expenses? 19 MS. SMITH: Objection to form. 20 THE WITNESS: It would make sense to me that 21 Sentinel would pay for legal expenses, but I don't -- I 22 don't know. 23 BY MR. BURT: 24 Q. For what legal expenses? What would make sense 25 to you?</p> | <p>59</p> <p>1 other invoice, if it's ATE-related, should be a legal 2 expense against that policy." 3 Did I read that correctly? 4 A. Is that a question for me? 5 Q. Yes, it is. 6 A. Yes, you read that correctly. 7 Q. Okay. And is that consistent with your 8 understanding that for an ATE insurance policy, legal 9 expenses can be expensed against that policy? 10 A. I don't know. 11 Q. Okay. And he says, "Now that I think about it, 12 Matt may have gotten them backwards. I would add that a 13 retainer is to be used to help settle ATE claim, and there 14 was a lot of general legal expenses already incurred!" 15 Did I read that correctly? 16 A. Yes. 17 Q. Okay. Do you know, one way or the other, whether 18 Mr. DiOrio had gotten this backwards, as Mr. Adamczak 19 states? 20 MS. SMITH: Objection to form. 21 THE WITNESS: No idea. I don't know. 22 BY MR. BURT: 23 Q. Okay. So you have no knowledge whatsoever about 24 this? 25 MS. SMITH: Objection to form.</p> |
| <p>58</p> <p>1 A. Legal -- legal expenses for the entity. 2 Q. Related to the ATE policy? 3 MS. SMITH: Objection to form. 4 BY MR. BURT: 5 Q. Is that what you mean? 6 A. I don't know. 7 Q. So why would it make sense to you that Sentinel 8 would just pay general legal expenses? 9 A. Likely would need legal advice on something or 10 involvement of an attorney. 11 Q. So is -- so Sentinel paying for its own attorney? 12 A. I don't know. 13 Q. Okay. All right. Looking at the top e-mail, 14 Mr. Pereira says, "Gareth, I believe the retainer should 15 be recorded as prepaid until we know there are changes 16 that eat against it for which we can expense. The other 17 invoice, if it is ATE-related, should be a legal expense 18 against that policy." 19 Is that consistent with your understanding 20 of how ATE policies work? 21 MS. SMITH: Objection to form. You misread 22 that. 23 MR. BURT: Well, okay. 24 BY MR. BURT: 25 Q. To be clear, it states in the second line, "The</p> | <p>60</p> <p>1 THE WITNESS: No. This is the first time 2 I'm seeing this. I -- I don't know. 3 BY MR. BURT: 4 Q. And you didn't know before sitting here today 5 that Sentinel was paying Baker McKenzie? 6 A. No. 7 Q. And you don't know whether Baker McKenzie was 8 involved or related in any way to the entities -- to the 9 parties for which the ATE policy had been issued? 10 A. I don't know. 11 MS. SMITH: Objection to form. 12 BY MR. BURT: 13 Q. Okay. I wanted to actually follow up on one 14 question about what you did to prepare for today. 15 Did you review any prior deposition 16 transcripts? 17 A. No. 18 Q. Did you review any hearing transcripts? 19 A. No. 20 Q. And I believe you said you didn't look at any 21 documents? 22 A. I did not look at documents, no. 23 Q. Okay. All right, Mrs. Lucas. 24 I -- I think you testified today that you 25 are not a lawyer; is that right?</p> |

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16 (61 to 64)

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| <p>61</p> <p>1 A. Correct.</p> <p>2 Q. Could you describe, please, your educational</p> <p>3 background?</p> <p>4 A. Sure. I went to Texas A&M University. My</p> <p>5 undergrad is in accounting. My master's is in finance.</p> <p>6 MR. BURT: I'll mark this as 98, I believe.</p> <p>7 THE WITNESS: Thanks.</p> <p>8 (Exhibit 98 was marked for identification.)</p> <p>9 MR. BURT:</p> <p>10 Q. Hopefully this document is a little more familiar</p> <p>11 to you.</p> <p>12 Do you recognize Exhibit 98?</p> <p>13 A. I recognize the information contained on this,</p> <p>14 not the exact document, but yes.</p> <p>15 Q. Okay. And is -- does it appear to be your</p> <p>16 LinkedIn -- a printout of your LinkedIn bio?</p> <p>17 A. It does appear to be that, yes.</p> <p>18 Q. Okay. So you mentioned -- and going down to</p> <p>19 "Education" -- that you have an undergraduate degree in</p> <p>20 accounting; is that right?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And then remind me, what was your</p> <p>23 master's degree in?</p> <p>24 A. Finance.</p> <p>25 Q. And both of those from Texas A&M?</p> | <p>63</p> <p>1 maybe 2009 or so.</p> <p>2 Q. Is it correct that you obtained both of those</p> <p>3 certifications, the CPA and the certified insolvency,</p> <p>4 prior to beginning work for Highland?</p> <p>5 A. Yes.</p> <p>6 Q. Now, listed at the bottom under your experience</p> <p>7 is FTI Consulting. Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Very briefly, can you describe what you did</p> <p>10 there?</p> <p>11 A. Sure.</p> <p>12 I was -- I started my career at FTI</p> <p>13 Consulting in 2007. I was involved with multiple</p> <p>14 bankruptcy matters, including subprime lending and -- and</p> <p>15 several other type of clients.</p> <p>16 Q. Well, that was the time for it, wasn't it?</p> <p>17 A. Yes.</p> <p>18 Q. And is that why you got the Certified Insolvency</p> <p>19 and Restructuring Advisor certification, because you were</p> <p>20 doing that work for FTI?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: It was offered by FTI and</p> <p>23 suggested that I attend the trainings and take the exams.</p> <p>24 BY MR. BURT:</p> <p>25 Q. Uh-huh.</p> |
| <p>62</p> <p>1 A. Yes.</p> <p>2 Q. Now, looking up at -- under "Summary" at the top,</p> <p>3 it states that you have specialties including that you're</p> <p>4 a certified public accountant, right?</p> <p>5 A. Yes.</p> <p>6 Q. When did you get your CPA license?</p> <p>7 A. 2007.</p> <p>8 Q. Was that here in Texas?</p> <p>9 A. Yes.</p> <p>10 Q. And you also list here a "Certified Insolvency</p> <p>11 and Restructuring Advisor."</p> <p>12 Can you describe what that is referring to?</p> <p>13 A. Sure. It's a specialized credential,</p> <p>14 essentially, that I obtained really just related to -- to</p> <p>15 insolvency specifically.</p> <p>16 Q. How did -- what did you have to do to attain that</p> <p>17 certification?</p> <p>18 A. There were several trainings and several exams.</p> <p>19 Q. And who issues -- or who -- who does the exam?</p> <p>20 Who administers it?</p> <p>21 A. It's called "AIRA," Association of Insolvency and</p> <p>22 Restructuring Advisors.</p> <p>23 Q. When did you do that? When did you obtain that</p> <p>24 certification? Let me be more precise.</p> <p>25 A. I don't recall exactly but early in my career,</p> | <p>64</p> <p>1 And you worked there for three years, right?</p> <p>2 A. Yes.</p> <p>3 Q. Next you went to Innovative Communications for</p> <p>4 one year in the Virgin Islands.</p> <p>5 What is Innovative Communications?</p> <p>6 A. Innovative ran all the telecomm in the USVI and</p> <p>7 BVI.</p> <p>8 Q. What took you there?</p> <p>9 A. It was a client of FTI. There was a</p> <p>10 restructuring going on.</p> <p>11 Q. So you actually left FTI and went to this -- to</p> <p>12 this other entity?</p> <p>13 A. I did.</p> <p>14 Q. Okay. And you were there for one year. Why just</p> <p>15 a year?</p> <p>16 A. I didn't like my boss.</p> <p>17 Q. That's fair.</p> <p>18 So you decided to -- to leave after a year,</p> <p>19 and you went to Ernst & Young; is that right?</p> <p>20 A. Yes.</p> <p>21 Q. And you came back to Dallas?</p> <p>22 A. I did.</p> <p>23 Q. All right. And what did you do at Ernst & Young?</p> <p>24 A. I worked in the restructuring group.</p> <p>25 Q. Okay. So it appears that your -- your work</p> |

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1 coming out of your degrees from 2007 to '13, at least
2 through that time period, was dealing mostly with
3 restructuring; is that fair?
4 **A. Yes.**
5 Q. Okay. And you stayed at Ernst & Young for
6 two years?
7 **A. Yes.**
8 Q. Did you have -- did you ever work in a legal
9 department at any of these entities?
10 **A. No.**
11 Q. Did they have specific restructuring departments
12 that you were in?
13 **A. For Ernst & Young, yes. For Innovative, I was in**
14 **the finance group. For FTL, yes, I was in the corporate**
15 **finance restructuring group.**
16 Q. All right. And then, in 2013, you leave Ernst &
17 Young, and that's when you first come to work for Highland
18 Capital; is that right?
19 **A. Yes.**
20 Q. Okay. What instigated that move from Ernst &
21 Young to Highland Capital?
22 **A. Highland was looking for someone to essentially**
23 **work on a incubator project related to litigation funding.**
24 **I thought it seemed like an interesting opportunity.**
25 Q. Did you have any involvement with litigation

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1 funding prior to that?
2 **A. No.**
3 Q. Okay. What about this struck you as interesting?
4 **A. I met the team; I thought it was a very**
5 **entrepreneurial environment.**
6 Q. Who was the team?
7 **A. Scott Ellington and J.P. Sevilla.**
8 Q. Anybody else?
9 **A. Not that I recall.**
10 Q. Did this -- this litigation funding, did it have
11 its own entity that -- that it worked under separate from
12 Highland Capital or --
13 **A. Yes.**
14 Q. And what entity was that?
15 **A. SAS Asset Recovery.**
16 Q. Okay. Had SAS Asset Recovery already been
17 established before you went over to Highland Capital?
18 **A. Yes.**
19 Q. Did SAS Asset Recovery have anything to do with
20 restructuring?
21 MS. SMITH: Objection to form.
22 THE WITNESS: Insofar as Cayman
23 liquidations, which would touch restructuring, would
24 potentially have the need for litigation funding for
25 claims out of those estates.

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1 **BY MR. BURT:**
2 Q. Was SAS Asset Recovery based in the Caymans?
3 **A. Yes.**
4 Q. And when you came over, did you work specifically
5 at SAS Asset Recovery or for Highland Capital Management?
6 MS. SMITH: Objection to form.
7 THE WITNESS: Highland Capital Management,
8 L.P., was my employer.
9 **BY MR. BURT:**
10 Q. And if we refer to that as "HCMLP," is -- will
11 you understand what I'm referring to?
12 **A. Yes.**
13 Q. Okay. So were you always paid out of HCMLP?
14 **A. Yes.**
15 Q. Never out of SAS Asset Recovery, Ltd.?
16 **A. Correct.**
17 Q. All right. It states in your LinkedIn that you
18 were a director of business development from 2013 to
19 February of 2020, for seven years.
20 Was that work all SAS Asset Recovery work?
21 **A. Not all of it, no.**
22 Q. Okay. What else did you do besides SAS Asset
23 Recovery?
24 **A. This really should be updated, honestly.**
25 **I worked -- my -- my role changed**

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1 **significantly while I was there. I was there for a long**
2 **time.**
3 **So I worked on SAS Asset Recovery matters; I**
4 **worked on private equity matters, a lot of ad hoc matters.**
5 Q. The private equity matters, was that for a
6 different entity?
7 **A. That was for HCMLP.**
8 Q. That was for HCMLP?
9 **A. Managed funds and investments.**
10 Q. Aside from SAS Asset Recovery and HCMLP, what
11 other entities under the Highland umbrella did you work
12 for?
13 MS. SMITH: Objection to form.
14 THE WITNESS: Did I work for?
15 **BY MR. BURT:**
16 Q. Or with.
17 **A. I worked with NexBank on several matters. I**
18 **worked with NexPoint. That's all I can recall for now.**
19 Q. What was NexBank?
20 **A. NexBank is a -- essentially an affiliate bank of**
21 **Highland Capital Management, L.P. There's a Shared**
22 **Services Agreement.**
23 Q. Between HCMLP and NexBank?
24 **A. To my knowledge, yes.**
25 Q. And when you say it was an affiliate bank, did it

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1 -- did NexBank fund HCMLP, or how --
2 **A. I don't know.**
3 Q. -- how were they affiliated?
4 MS. SMITH: Objection to form.
5 THE WITNESS: I don't know.
6 BY MR. BURT:
7 Q. You just know that they were affiliated in some
8 way?
9 **A. Yes.**
10 Q. What type of work did you do for NexBank?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I worked on distressed real
13 estate matter. I also had an opportunity for some
14 deposits at NexBank.
15 BY MR. BURT:
16 Q. What is NexPoint?
17 **A. The real estate group.**
18 Q. And real estate group, was it -- was it also
19 affiliated with HCMLP?
20 MS. SMITH: Objection to form.
21 THE WITNESS: To my knowledge.
22 BY MR. BURT:
23 Q. Do you know whether a Shared Services Agreement
24 existed between those two entities?
25 **A. I believe so, but I don't know for certain.**

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1 MR. BURT: One moment.
2 BY MR. BURT:
3 Q. So any other entities that you worked for during
4 these -- from 2013 to February 2020, other than HCMLP, SAS
5 Asset Recovery, NexBank, and NexPoint?
6 MS. SMITH: Objection to form.
7 THE WITNESS: I did not work for those
8 companies.
9 BY MR. BURT:
10 Q. Or worked with.
11 **A. Worked with.**
12 Q. Okay. Any others that you worked with?
13 MS. SMITH: Excuse me.
14 THE WITNESS: Not that I can recall.
15 BY MR. BURT:
16 Q. How about Sentinel?
17 **A. I did do ad woc [sic] -- ad hoc work for**
18 **Sentinel, yes.**
19 Q. Who asked you to do that?
20 MS. SMITH: Objection to form.
21 THE WITNESS: I don't know.
22 BY MR. BURT:
23 Q. When did you start doing that?
24 **A. I don't recall specifically.**
25 Q. Was it prior to HCMLP's bankruptcy?

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1 **A. Oh, certainly, yes.**
2 Q. Two/three years prior? Five years prior? Any
3 way you can gauge how prior -- how --
4 **A. Likely close to the beginning of my employment.**
5 Q. Okay. So for most of the time that you were --
6 looking again at your LinkedIn, that you were at Highland
7 Capital Management, you were also doing work with, on an
8 ad hoc basis, Sentinel; is that fair?
9 **A. Yes.**
10 Q. Was it pretty consistent that ad hoc work?
11 MS. SMITH: Objection to form.
12 THE WITNESS: No.
13 BY MR. BURT:
14 Q. Did it get busier at times than others?
15 **A. Yes.**
16 Q. When was it a busy time doing ad hoc work for
17 Sentinel?
18 **A. If Sentinel was contemplating a ATE, issuing an**
19 **ATE policy.**
20 Q. And what would you do if they were contemplating
21 that?
22 **A. There's a lot of synergy between an opportunity**
23 **in litigation funding and ATE in commonwealth**
24 **jurisdictions. So there would be analysis related to**
25 **whether issuing an ATE policy would be a complimentary**

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1 **business pitch to the litigation funding side.**
2 Q. How many times did you work on a contemplated ATE
3 for Sentinel?
4 **A. I don't know. More than five.**
5 Q. Do you know how many of those were actually
6 issued as policies?
7 **A. I don't recall.**
8 Q. Do you know whether all of them were issued as
9 policies?
10 MS. SMITH: Objection to form.
11 THE WITNESS: All of them were not issued as
12 policies.
13 BY MR. BURT:
14 Q. Do you know how many were?
15 **A. I do not know.**
16 Q. The one that we were referring to earlier that
17 you -- where you testified that certain assets were
18 transferred over to Sentinel, do you recall that
19 testimony?
20 **A. I do.**
21 Q. Okay. Is that one where you had done work
22 evaluating the ATE prior to the issuance of the policy?
23 **A. No.**
24 Q. You had not worked on that one?
25 MS. SMITH: Objection to form.

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19 (73 to 76)

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| <p style="text-align: right;">73</p> <p>1 THE WITNESS: I had not worked on that one, 2 that's the question? 3 BY MR. BURT: 4 Q. Well, you've described work that you would do 5 when an ATE was being considered -- 6 A. Uh-huh. 7 Q. -- correct? 8 Did you work on the consideration of that 9 ATE policy with your work? 10 A. I did not. 11 Q. Okay. Do you know who did? 12 A. I don't know. 13 Q. Okay. Moving up in your LinkedIn, above 14 "Director of Business Development," it says, "Managing 15 Director - Distressed" from February of 2020 through the 16 present. 17 Is that one of the areas you mentioned this 18 is outdated because you're no longer working -- 19 A. No. I didn't realize that I had updated it. 20 Yes, that is -- it's outdated insofar as it still says 21 "Highland Capital Management, L.P.," and I'm not an 22 employee of Highland Capital Management, L.P., any longer. 23 Q. I see. 24 What entity should be listed there? 25 A. Skyview.</p> | <p style="text-align: right;">75</p> <p>1 affirmatively.) 2 MR. BURT: At any time you need a break, 3 that's fine. 4 THE WITNESS: Thank you. 5 BY MR. BURT: 6 Q. Who informed you that you would now be working 7 for Skyview? 8 A. I don't recall. 9 Q. Do you need a break, Mrs. Irving? 10 A. No. 11 Q. And from -- from the time that your children were 12 born, up to this point, you've been on unpaid leave the 13 entire time? 14 A. (Witness nods head affirmatively.) 15 Q. Okay. And so you -- is that a "yes"? 16 A. Yes. 17 Q. Sorry. We need audible answers. 18 And you had -- so you haven't actually done 19 any work for Skyview? 20 A. Correct. 21 Q. I see. 22 When you were working for HCMLP, so prior -- 23 from February 2021 moving back, were you paid by HCMLP 24 that entire time? 25 A. Yes.</p> |
| <p style="text-align: right;">74</p> <p>1 Q. Skyview. 2 Have you worked for Skyview since February 3 of 2020? 4 A. I have been on unpaid leave since my children 5 were born in February of 2021. 6 Q. Was that 2021? 7 A. This year. 8 Q. This year, okay. 9 So from February 2020, the year prior, to 10 February of 2021 when your children were born were you 11 working for HCMLP or for Skyview? 12 A. HCMLP. 13 Q. Okay. So when you went on -- on leave for your 14 children, up to that point, you had been an employee of 15 HCMLP? 16 A. Yes. 17 Q. I see. 18 And while you've been on unpaid leave, you 19 switched over to Skyview? 20 A. Yes. My employer changed while I was in the 21 hospital, actually. 22 Q. That's bad timing. 23 A. Yeah. 24 MS. SMITH: Doing okay? 25 THE WITNESS: (Witness nods head</p> | <p style="text-align: right;">76</p> <p>1 Q. Okay. So you were never paid out of an SAS Asset 2 Recovery account? 3 A. Correct. 4 Q. Or by Sentinel? 5 A. Correct. 6 Q. Did you ever rece- -- other than a paycheck, did 7 you ever receive anything of value from another one of the 8 entities that we've talked about? 9 A. No. 10 MS. SMITH: Objection to form. 11 BY MR. BURT: 12 Q. At the point where you -- up to February 2021, 13 how much were you being paid? What was your salary in the 14 last year of employment for HCMLP? 15 A. I don't remember, honestly. 16 Q. Okay. Can you estimate it at all, about what it 17 was? 18 A. The salary component was roughly -- I honestly 19 don't know. There's -- there's a bonus structure, so I 20 don't -- I don't remember the bifurcation. 21 Q. I see. 22 So you had a salary -- a base salary, and 23 then you had a bonus structure that you were also eligible 24 for? 25 A. Yes.</p> |

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1 Q. And that was -- the bonus structure was also out
2 of HCMLP?
3 **A. Yes.**
4 Q. Were those annual bonuses or more often than
5 annual?
6 **A. They were annual bonuses paid over a two-year**
7 **period.**
8 Q. And how did you become eligible for the bonuses?
9 MS. SMITH: Objection to form.
10 THE WITNESS: It was determined by your --
11 who you directly reported to.
12 BY MR. BURT:
13 Q. Okay. And who did you directly report to?
14 **A. Scott Ellington.**
15 Q. How long did you directly report to
16 Mr. Ellington?
17 **A. The entirety of my time at HCMLP.**
18 Q. So that was about eight years?
19 **A. Yes.**
20 Q. Was he the head of the legal department?
21 **A. Yes.**
22 Q. Do you know why when you came over to HCMLP you
23 were placed in the legal department?
24 MS. SMITH: Objection to form.
25 THE WITNESS: My sense is that's where this

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1 incubator, you know, litigation-based business was
2 originating.
3 BY MR. BURT:
4 Q. Okay. Did you stay in the legal department the
5 entire time?
6 **A. I did. And private equity, essentially, moved**
7 **beneath the legal department. So when my title changed,**
8 **"Managing Director - Distressed," it was still beneath**
9 **legal but also with private equity.**
10 Q. Mr. DiOrio worked in the legal department as
11 well?
12 **A. Yes.**
13 Q. As did Mr. Leventon?
14 **A. Yes.**
15 Q. Mr. Sevilla as well?
16 **A. Yes.**
17 Q. Do you know whether there was a Shared Services
18 Agreement between HCMLP and Sentinel?
19 MS. SMITH: Objection to form.
20 THE WITNESS: I don't know.
21 BY MR. BURT:
22 Q. How about between Sentinel and SAS Asset
23 Recovery?
24 MS. SMITH: Objection to form.
25 THE WITNESS: I don't know.

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1 BY MR. BURT:
2 Q. While you were at HCMLP, was your e-mail address
3 kirving@highlandcapital.com?
4 **A. Yes. Or kirving@hcmlp.com.**
5 Q. All right. Did you also have a
6 kirving@sasmgt.com e-mail?
7 **A. Yes.**
8 Q. All right. Any others?
9 **A. The Blackland Associates's e-mail from very early**
10 **in my career. I don't know that it was ever used; I can't**
11 **access it.**
12 Q. All right. Did you ever use your personal e-mail
13 address for work matters?
14 **A. Generally not.**
15 Q. But at times, did you?
16 **A. Yes.**
17 **Highly Confidential**
18
19 **A. Yes.**
20 Q. All right. Now, in responding to the subpoena
21 you received in this case, did you search your Gmail
22 account?
23 **A. Yes.**
24 Q. All right. You received a preservation notice in
25 March, I believe, of this year, is that right, about that

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1 time frame?
2 **A. I'll take your word for it.**
3 Q. I understand that's -- that's right after your
4 children were born.
5 When did you search for documents in your
6 Gmail account?
7 **A. I don't -- I don't recall.**
8 Q. Do you recall how you searched for documents?
9 **A. Not specifically. I believe I -- I believe I --**
10 **no, I don't really remember, honestly.**
11 Q. You recall using search terms, for example,
12 within Gmail?
13 **A. I believe so, yes.**
14 Q. Do you have any recollection of what those terms
15 might have been?
16 **A. "SAS," I believe, was a search term.**
17 Q. Any others?
18 **A. I can't recall. I don't know.**
19 Q. Did you search for "Sentinel" in your Gmail?
20 **A. I don't recall. I -- likely I did. I had a**
21 **discussion with counsel and then searched, you know,**
22 **according to counsel's advice, but I can't remember the**
23 **details.**
24 Q. And without disclosing that advice, was that
25 Ms. Smith?

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21 (81 to 84)

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| <p style="text-align: right;">81</p> <p>1 A. I don't -- I don't remember.</p> <p>2 MR. BURT: I believe we're on 99.</p> <p>3 Mark this as 99.</p> <p>4 (Exhibit 99 was marked for identification.)</p> <p>5 BY MR. BURT:</p> <p>6 Q. While you're looking through that, Mrs. Irving,</p> <p>7 I'll just draw your attention down at the very bottom on</p> <p>8 the right-hand corner, there's something that says "KL_ "</p> <p>9 then has a bunch of zeros and two 9s.</p> <p>10 Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. You're probably familiar with this; we call that</p> <p>13 the "Bates number." And I'll represent to you that this</p> <p>14 is -- was produced to UBS by your counsel --</p> <p>15 A. Okay.</p> <p>16 Q. -- and so labeled --</p> <p>17 A. Okay.</p> <p>18 Q. -- as something that you had produced.</p> <p>19 A. (Witness reviews document.) Okay.</p> <p>20 Q. Do you recall finding these documents in your</p> <p>21 Gmail?</p> <p>22 A. I don't.</p> <p>23 Q. You don't have any reason to dispute that you</p> <p>24 produced these, do you?</p> <p>25 MS. SMITH: Objection to form.</p> | <p style="text-align: right;">83</p> <p>1 A. Okay.</p> <p>2 Q. Do you see that this is a court document entitled</p> <p>3 "Judgment"? Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And it was filed February 10th, 2020, in the</p> <p>6 County Clerk's Office in New York; is that right?</p> <p>7 A. I see that here.</p> <p>8 Q. Before today, sitting looking at it now, had you</p> <p>9 ever seen this document before?</p> <p>10 A. Not that I recall.</p> <p>11 Q. All right. And looking over, we call it, the</p> <p>12 "case caption" on the left-hand side in the Supreme Court</p> <p>13 of the State of New York, there was a legal action by UBS</p> <p>14 Securities, LLC, and UBS AG London Branch as Plaintiffs</p> <p>15 against a number of Highland Entities.</p> <p>16 Do you see that?</p> <p>17 A. I see that here, yes.</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 BY MR. BURT:</p> <p>20 Q. And listed as the Defendants is Highland Capital</p> <p>21 Management, L.P.; Highland CDO Opportunity Master Fund,</p> <p>22 L.P.; Highland Special Opportunities Holding Company;</p> <p>23 Highland Financial Partners, L.P.; Highland Credit</p> <p>24 Strategies Master Fund, L.P.; Highland Crusader Offshore</p> <p>25 Partners, L.P.; Highland Credit Opportunities CDO, L.P.,</p> |
| <p style="text-align: right;">82</p> <p>1 THE WITNESS: I don't know.</p> <p>2 BY MR. BURT:</p> <p>3 Q. Looking at the first document, a -- a letter</p> <p>4 dated 24th of May, 2021, the -- at the very top, the</p> <p>5 header is "Walkers."</p> <p>6 Do you recall ever having -- before today,</p> <p>7 reviewing this letter?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you know what Walkers is?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know how you came to be in possession of</p> <p>12 this document?</p> <p>13 A. I don't know.</p> <p>14 Q. Were you aware that on the 24th of May, Walkers</p> <p>15 wrote to Sentinel Reinsurance making a demand on the legal</p> <p>16 liability insurance policy for Sentinel Reinsurance, Ltd.?</p> <p>17 A. No.</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 BY MR. BURT:</p> <p>20 Q. Before sitting here today, did you know that a</p> <p>21 demand had been made on that policy?</p> <p>22 A. No.</p> <p>23 Q. Okay. Moving forward in this chain, you'll see</p> <p>24 at the end the Judgment. There's a document that begins</p> <p>25 on -- at the bottom, the Bates is KL_000036.</p> | <p style="text-align: right;">84</p> <p>1 and Strand Advisors, Inc.</p> <p>2 Did I read that correctly?</p> <p>3 A. I believe so.</p> <p>4 Q. Are there any entities that I just read that</p> <p>5 you've never heard of before?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I don't know. Multiple</p> <p>8 entities have very similar names. I've heard the names,</p> <p>9 but I -- I don't know for certain.</p> <p>10 BY MR. BURT:</p> <p>11 Q. Okay. Highland Capital Management, L.P., that's</p> <p>12 the Highland Capital Management we've been discussing, is</p> <p>13 that right --</p> <p>14 A. Yes.</p> <p>15 Q. -- HCMLP?</p> <p>16 Highland CDO Opportunity Master Fund, L.P.,</p> <p>17 have you heard of that before?</p> <p>18 A. I've heard the name, yes.</p> <p>19 Q. Do you know anything about that entity?</p> <p>20 A. No.</p> <p>21 Q. Highland Special Opportunities Holding Company,</p> <p>22 have you heard of that entity before?</p> <p>23 A. I've heard the name, yes.</p> <p>24 Q. Any knowledge of what it was?</p> <p>25 A. No.</p> |

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22 (85 to 88)

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| <p>85</p> <p>1 Q. Highland Financial Partners, L.P., have you heard 2 of that entity before? 3 A. I've heard the name. 4 Q. Any knowledge of it? 5 A. No. 6 Q. Highland Credit Strategies Master Fund, L.P., 7 have you ever heard of that? 8 A. Yes. 9 Q. Do you know what it did? 10 A. No. 11 Q. Highland Crusader Offshore Partners, L.P., have 12 you heard of that? 13 A. I don't know. I don't know. 14 Q. Okay. That one is a little less clear? 15 A. Yes. 16 Q. Highland Credit Opportunities CDO, L.P., how 17 about that one? 18 A. Yes, I've heard the name. 19 Q. Any knowledge of what it did? 20 A. No. 21 Q. How about Strand Advisors? 22 A. Yes. 23 Q. What is Strand Advisors? 24 A. If this is the same Strand Advisors, which I 25 don't know, I believe Strand Advisors was the GP of HCMLP.</p> | <p>87</p> <p>1 Q. Do you know whether Mr. Ellington was working on 2 that litigation? 3 MS. SMITH: Objection to form. 4 THE WITNESS: I don't know. 5 BY MR. BURT: 6 Q. Now, Mrs. Irving, drawing your attention back to 7 the ATE policy that you testified that you were aware of 8 where certain assets were transferred, do you know whether 9 that ATE policy had anything to do with the litigation 10 reflected here in Exhibit 99? 11 A. I don't know. 12 Q. Now, you testified that, as part of work that you 13 did on an ad hoc basis for Sentinel, you would do some -- 14 and correct me if I'm wrong -- but some type of pre-policy 15 diligence on -- on -- on ATE opp- -- ATE possibilities; is 16 that right? 17 A. Yes. 18 Q. Do you recall ever doing that type of work or 19 diligence in relation to this litigation in an AT- -- in a 20 potential ATE policy? 21 A. No. 22 Q. In 2020, February 2020, did you have any 23 knowledge that a judgment had been issued in favor of UBS? 24 A. No. 25 Q. You never heard anything about that?</p> |
| <p>86</p> <p>1 Q. And by "GP," do you mean general partner? 2 A. Yes. 3 Q. Of HCMLP? 4 A. Yes. 5 Q. Do you know who owned Strand Advisors? 6 A. No. 7 Q. Do you know whether it was in any way affiliated 8 with Mr. Dondero? 9 MS. SMITH: Objection to form. 10 THE WITNESS: I don't know. 11 BY MR. BURT: 12 Q. How about Mr. Ellington? 13 MS. SMITH: Objection to form. 14 THE WITNESS: I don't know. 15 BY MR. BURT: 16 Q. Now, were you aware that there was a litigation 17 involving various Highland Entities against UBS while you 18 were employed at HCMLP? 19 A. I heard UBS mentioned, yes. 20 Q. In the context of a litigation? 21 A. Yes. 22 Q. And what -- what do you recall hearing? 23 A. I don't remember. I just remember hearing UBS, 24 you know, in the legal department, but I don't recall 25 specifically.</p> | <p>88</p> <p>1 A. Not that I recall. 2 MS. SMITH: Objection to form. 3 BY MR. BURT: 4 Q. Okay. And if you look at page 2 of this 5 Judgment, in the paragraph that begins, "IT IS NOW HEREBY 6 ORDERED AND ADJUDGED..." 7 Do you see that in all caps; it's about in 8 the middle of the page? 9 A. Yes, I see that on the paper. 10 Q. Okay. It states, "IT IS NOW HEREBY ORDERED AND 11 ADJUDGED that Plaintiffs UBS Securities, LLC," and then it 12 lists an address, "are granted a judgment of \$519,374,149 13 and entitled to prejudgment interest in the amount of 14 9 percent simple interest per year from the date of the 15 breach, which the Court has determined is December 5th, 16 2008, for an overall judgment as of January 22nd, 2020, of 17 \$1,039,957,799.44, with additional interest per day 18 thereafter of \$128,065 until entry of judgment, to be 19 apportioned among Defendants as follows...", and then 20 there's an apportionment in the following paragraph. 21 Do you see where I just read? 22 A. I do. 23 Q. Did you have any knowledge of this \$1 billion 24 judgment being entered against the Highland Entities? 25 MS. SMITH: Objection to form.</p> |

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1 THE WITNESS: Not that I remember.
2 BY MR. BURT:
3 Q. It was never discussed in the legal department
4 that there was a billion-dollar judgment --
5 MS. SMITH: Objection to form.
6 BY MR. BURT:
7 Q. -- against the Highland Entities?
8 **A. I don't know if it was discussed within the legal**
9 **department, but I don't recall this.**
10 Q. It was never discussed with you; is that fair?
11 **A. Not that I recall.**
12 Q. Okay. You reported directly to Mr. Ellington; is
13 that right?
14 **A. Yes.**
15 Q. Do you recall Mr. Ellington ever discussing that
16 a billion-dollar judgment had been entered against the
17 Highland Entities?
18 MS. SMITH: Objection to form.
19 THE WITNESS: Not that I recall.
20 BY MR. BURT:
21 Q. And do you recall ever being asked to do any work
22 in relation to that judgment?
23 **A. I don't recall that, no.**
24 Q. How about as it relates to Sentinel and an ATE
25 policy, do you recall that ever being discussed in the

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1 context of a judgment against the Highland Entities?
2 MS. SMITH: Objection to form.
3 THE WITNESS: I don't know.
4 BY MR. BURT:
5 Q. You don't know, or you don't recall?
6 **A. I don't know.**
7 Q. Okay. All right.
8 All right. Well, we're going to come back
9 to that topic in a little bit. You can put that exhibit
10 to the side.
11 I was going to ask earlier, when we went
12 through your various e-mail addresses, Mrs. Irving, was
13 there -- how did you demarcate between using the Highland
14 Capital e-mail versus the SAS Management e-mail?
15 **A. Sure.**
16 **If it was a matter related to Highland or**
17 **any of the Highland funds, Highland-related assets, it**
18 **would be on the Highland e-mail.**
19 **If it were a purely Cayman-centric topic,**
20 **likely it would be on the SAS e-mail.**
21 Q. Any Cayman topic would be on SAS e-mail?
22 MS. SMITH: Objection to form.
23 THE WITNESS: I don't know that I can say
24 "any Cayman topic," but, generally, that was how it was
25 distinguished.

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1 BY MR. BURT:
2 Q. Okay. And why did you distinguish it that way?
3 **A. The default would be SAS for Cayman matters,**
4 **unless it related to something Highland; then it would be**
5 **on the Highland e-mail.**
6 Q. Okay. And did you have -- so take a typical --
7 take -- take a typical workday. Did you have both e-mail
8 accounts open during a workday, and some e-mails it would
9 -- you were looking at Highland Capital, and other e-mails
10 you were looking at SAS? Is that how you would do it?
11 **A. Sometimes, yes.**
12 Q. Okay. How -- how did you do it at other times?
13 **A. Sometimes I would only have my Highland e-mail**
14 **and not access to the SAS e-mail.**
15 Q. Was SAS forwarded to your Highland account?
16 **A. No.**
17 Q. All right. And I believe you said that some
18 e-mails did go to your personal e-mail address.
19 MS. SMITH: Objection to form.
20 BY MR. BURT:
21 Q. Is that right?
22 **A. Yes. I -- I forwarded a few e-mails to my**
23 **personal e-mail.**
24 Q. And why would you do that?
25 **A. If I needed to print them or needed easier access**

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1 **to them for some reason.**
2 Q. Before you -- I believe you testified that you
3 actually changed companies right in the middle of -- of
4 your children coming.
5 So it's -- it doesn't sound like you had an
6 opportunity to actually go in and clean out an office or
7 anything like that; is that right?
8 **A. I did collect some personal belongings while I**
9 **was very pregnant --**
10 Q. Right.
11 **A. -- from the HCMLP office.**
12 Q. Okay. So prior to giving birth, you were aware
13 that things were -- were switching?
14 **A. Yes. I -- well, I don't know if that's fair to**
15 **say I was aware things were switching. I don't know. But**
16 **I knew I wanted to get my personal items out. I wasn't --**
17 **I was on leave. I knew it was going to be limited on when**
18 **I could go back and get personal items.**
19 Q. Uh-huh.
20 Was -- was that the only reason you went to
21 get personal items, or was it also -- were you asked to
22 leave HCMLP?
23 MS. SMITH: Objection to form.
24 THE WITNESS: The reason I went to get my
25 personal items was because I was really pregnant, and I

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24 (93 to 96)

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| <p style="text-align: right;">93</p> <p>1 didn't know when I would be back and able to get them. 2 BY MR. BURT: 3 Q. Right. 4 So I'm just asking: Were you asked to -- to 5 leave HCMLP? 6 MS. SMITH: Objection to form. 7 THE WITNESS: I suppose I was asked to leave 8 when I was terminated -- 9 BY MR. BURT: 10 Q. Okay. 11 A. -- while I was in the hospital. 12 Q. And so you were terminated from HCMLP while in 13 the hospital? 14 A. I believe so, consistent with the other bulk 15 employee terminations. 16 Q. Okay. Since that time, since -- since being 17 terminated from HCMLP, have you had any communications 18 with Mr. Dondero? 19 A. No. 20 Q. How about with Mr. Ellington? 21 A. Yes. Really just to check in, personal matters. 22 Q. Other than personal-related communications, have 23 you had any communications with Mr. Ellington? 24 A. No. Only related to how I'm doing and, you know, 25 potentially, I intend to come back to work with him again.</p> | <p style="text-align: right;">95</p> <p>1 A. I don't. 2 Q. How about Thomas Surgent, do you know who that 3 is? 4 A. Yes. 5 Q. And what did he do? 6 A. He was the head of compliance and the deputy 7 general counsel. 8 Q. Have you had any communications with him? 9 A. During what time period? 10 Q. Since leaving HCMLP. Excuse me. 11 A. No, not that I recall. 12 Q. Do you know -- in relation to Sentinel, do you 13 know whether either of those two gentlemen had anything to 14 do with Sentinel Reinsurance? 15 MS. SMITH: Objection to form. 16 THE WITNESS: Either David Klaus or Tom 17 Surgent -- 18 BY MR. BURT: 19 Q. Correct. 20 A. -- had anything to do with Sentinel? 21 Q. Correct. 22 A. Thomas was well-aware of Sentinel as head of 23 compliance. I don't know about David Klaus. 24 Q. And you say he is "well-aware." 25 How did you know he was well-aware of</p> |
| <p style="text-align: right;">94</p> <p>1 Q. Okay. Apart from that, nothing else? 2 A. No. 3 Q. How about with Mr. Leventon? 4 A. No. General check-in. 5 Q. Nothing business-related? 6 A. No. 7 Q. How about with Mr. Sevilla? 8 A. Just personal. 9 Q. And Mr. DiOrio? 10 A. Personal. 11 Q. Nothing business-related? 12 A. No. 13 Q. Nothing related to the subpoenas? 14 A. No. 15 Q. How about with current HCMLP employees such as 16 David Klaus, have you had any communications with 17 Mr. Klaus? 18 A. I don't believe so. 19 Q. And do you know who Mr. Klaus is? 20 A. Yes. 21 Q. Okay. Who is he? 22 A. He was -- was the controller, essentially. I 23 don't know if that's his exact title, but function as 24 controller at HCMLP. 25 Q. Do you know what he is doing now?</p> | <p style="text-align: right;">96</p> <p>1 Sentinel? 2 A. I sat outside his office. In a trading-desk 3 environment, you hear a lot. I know that he, as head of 4 compliance, would have been involved and made certain 5 determinations related to affiliate or nonaffiliate for 6 various corporate disclosures. 7 Q. So you overheard things? 8 A. Yes. 9 Q. That Mr. Surgent was working on that related to 10 Sentinel? 11 A. Yes. 12 Q. How about related to an ATE policy, do you recall 13 that ever coming up, overhearing anything about that? 14 A. In relation to Mr. Surgent? 15 Q. Yeah. 16 A. I can't recall specifically; however, I do 17 believe hearing he was involved in it. 18 Q. And who told you that? 19 MS. SMITH: Objection to form. 20 THE WITNESS: It would just be general 21 hearing in the trading desk. It was all open. So you 22 would hear a lot of people on the phone. You would hear 23 people in meetings with doors open. It's quite a loud 24 environment. 25 BY MR. BURT:</p> |

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25 (97 to 100)

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| <p style="text-align: right;">97</p> <p>1 Q. So in that general open environment with 2 overhearing a lot of things, you never once heard that 3 there was a billion-dollar judgment against Highland? 4 MS. SMITH: Objection to form. 5 THE WITNESS: Not that I recall. 6 BY MR. BURT: 7 Q. All right. 8 And the ATE policy, you overheard that, that 9 Mr. Surgent was discussing that? 10 A. Yes. 11 Q. Anything else specifically related to that ATE 12 policy that you recall overhearing? 13 A. I don't know. 14 Q. Mrs. Irving, do you need a break? I think we 15 might have been going for about an hour. 16 A. I'm -- I'm okay for now. 17 MS. HARTMANN: Yeah. Lunch is here, so why 18 don't -- I don't know if you're moving into another topic. 19 MR. BURT: I am about to move into another 20 topic. So if this is a -- 21 MS. HARTMANN: So how long do you think 22 you'll need on the next topic? 23 MR. BURT: It'll be hefty. So if this -- we 24 can -- I'm perfectly fine to break for lunch here. 25 THE WITNESS: We can break if -- if you</p> | <p style="text-align: right;">99</p> <p>1 we've seen verbal looks; we've seen a bunch of things that 2 we think is entirely inconsistent with what Ms. -- Ms. 3 Dandeneau -- if it was personal, would you mind providing 4 those notes to us? 5 MS. HARTMANN: It's about our client crying 6 during your deposition. And, no, we're not going to 7 produce it, because it's -- we have an attorney-client 8 privilege. I'm not coaching; I'm not kicking; I have not 9 said a word. 10 MS. SMITH: We're four feet away. 11 MR. BURT: We've seen it. We're making a 12 record of it. 13 MS. HARTMANN: What -- can you be specific? 14 MR. BURT: Yes. No -- additional notes 15 being passed, additional things. 16 MS. HARTMANN: What -- what notes? 17 MR. BURT: Ms. Smith constantly looks over 18 for direction on when to object. We ask that it stop. 19 It's in- -- it's inconsistent with what Ms. Dandeneau 20 said. 21 MS. HARTMANN: We'd like a video of me, 22 then. 23 MR. BURT: And we have -- well, that's fine, 24 if you want to be on the deposition for the rest of the 25 day.</p> |
| <p style="text-align: right;">98</p> <p>1 think it makes sense. 2 (Off-record discussion.) 3 THE VIDEOGRAPHER: Off the record at 11:49 4 a.m. 5 (Lunch break taken.) 6 THE VIDEOGRAPHER: Back on record at 12:29 7 p.m. 8 MR. BURT: Following an example of 9 Ms. Smith, I -- I want to make a little bit of a record of 10 my own. Prior to this deposition, there were discussions 11 held between Mr. Clubok and Deb Dandeneau regarding 12 whether there would be any coaching of Ms. Smith during 13 this deposition by Baker attorneys, and it was represented 14 to Mr. Clubok that there would be absolutely no 15 interaction or coaching during the deposition, that there 16 would be no -- no note-passing, no kicking under the 17 table, anything of that sort. 18 What we have seen today is exactly the 19 opposite. There's been note-passing; there's been 20 communications, and it's directly contrary to the 21 representation that Ms. Dandeneau provided to Mr. Clubok, 22 and we ask that it stop. 23 MS. SMITH: There's been two notes passed, 24 and it was something personal. 25 MR. BURT: Well, we've seen notes passed;</p> | <p style="text-align: right;">100</p> <p>1 MS. HARTMANN: Yeah. You can put the video 2 on me, because that is entirely wrong. I have not coached 3 a single time, and I -- I -- 4 MR. BURT: And we -- 5 MS. HARTMANN: -- I am against everything 6 you're saying right now with regard to -- 7 MR. BURT: Well, that's fine. 8 MS. HARTMANN: -- it's not true. I have not 9 coached a single time. 10 MR. BURT: And we know that Baker is being 11 paid by Sentinel for this work. So we have that on the 12 record as well. 13 MS. HARTMANN: And I object to your 14 testimony. Would you like to be under oath? 15 MR. BURT: Well, we -- we have the witness's 16 testimony on that. 17 MS. HARTMANN: The witness did not say that. 18 You can video me -- 19 MR. BURT: Well, the -- the record speaks 20 for itself. 21 MS. HARTMANN: You can video me the entire 22 time. I have not coached a single time. I can send a 23 note saying: My client is crying. Should we take a 24 break? Because your questioning made her cry. 25 MR. BURT: The record and the video speaks</p> |

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1 for itself.

2 MS. HARTMANN: It does.

3 MR. BURT: Okay.

4 BY MR. BURT:

5 Q. Mrs. Irving, you -- I want to just follow up on a

6 couple of things before I move into a new topic.

7 You testified that the default was to use

8 your SAS e-mail for Cayman's related business; is that

9 right?

10 A. Yes.

11 Q. Why?

12 A. Because SAS is a Cayman company.

13 Q. Did somebody direct you to use SAS e-mails for

14 Cayman-related business?

15 A. Not that I recall.

16 Q. Were you aware that SAS e-mails resided on a

17 separate server from HCMLP e-mails?

18 A. Yes.

19 Q. And do you know why that is?

20 A. No.

21 Q. Do you know whether SAS e-mails have been

22 produced in this case?

23 MS. SMITH: Objection to form.

24 THE WITNESS: I don't know.

25 BY MR. BURT:

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1 Q. You also talked about diligence you would do

2 for -- prior to ATEs being done at Sentinel, right; you

3 would some -- on an ad hoc basis do diligence related to

4 those ATEs; is that right?

5 A. Yes, sometimes.

6 Q. Okay. Who instructed you to do that?

7 MS. SMITH: Objection to form.

8 THE WITNESS: I don't recall.

9 BY MR. BURT:

10 Q. Did Mr. Ellington?

11 A. I don't recall.

12 Q. And your testimony was -- and if I'm wrong,

13 please correct me -- that you do not -- you did not do

14 that diligence for the ATE that you did recall where funds

15 were transferred over to Sentinel; is that correct?

16 MS. SMITH: Objection to form.

17 THE WITNESS: That's correct.

18 BY MR. BURT:

19 Q. All right. Do you know if anybody did diligence

20 for that ATE?

21 A. I don't know.

22 Q. And when you did diligence, what did you do?

23 A. I would take a look at the recoverability of the

24 plaintiff, have discussions around likelihood of success

25 on a case. It would be in compliment to the litigation

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1 funding pitch.

2 Q. What else?

3 A. (No response.)

4 Q. That was all you did?

5 MS. SMITH: Objection to form.

6 THE WITNESS: Could you rephrase the

7 question?

8 BY MR. BURT:

9 Q. Well, I'm just trying to understand everything

10 that you did in relation to analyzing an ATE prior to an

11 ATE policy being issued by Sentinel. So that's what I'm

12 trying to understand, everything that you did.

13 So anything else in addition to what you've

14 just testified about?

15 A. My primary role was to look at recoverability.

16 Attorneys would diligence other matters that I wouldn't,

17 legal matters.

18 Q. And when you say "recoverability," what,

19 specifically, are you referring to?

20 A. Meaning if -- if there was an investment made

21 into a case, litigation funding or a ATE, would -- would

22 the business be able to get recoverability from whatever

23 the legal case was.

24 Q. Okay. And "the business" being the -- the

25 business that was -- that Sentinel was considering

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1 insuring; is that right?

2 A. Sorry. Could you say that again?

3 Q. You said "the business," whether the business

4 could recover, and I'm just wondering: Is that the

5 business that Sentinel was considering insuring?

6 A. Which the business could recover, yes, and --

7 yes.

8 Q. Okay. So the business at issue in the

9 litigation, you would analyze whether it could recover and

10 whether it was -- did you do analysis of whether it made

11 financial sense for Sentinel to issue that policy?

12 MS. SMITH: Objection to form.

13 THE WITNESS: It was more diligence on the

14 underlying case that I performed.

15 BY MR. BURT:

16 Q. Okay. Looking at allegations in the underlying

17 case, for example?

18 A. More on the financial side, more on the financial

19 side.

20 Q. So how much was at issue in this case?

21 A. Yes.

22 Q. What damages could be?

23 A. Yes.

24 Q. Did you have --

25 A. Who's getting a piece of the recovery.

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1 Q. Did you analyze the financial position of the
2 business that was seeking insurance?
3 **A. Not that I recall, primarily because most of the**
4 **potential clients were insolvent estates.**
5 Q. Okay. Were they -- were these potential clients
6 related in any way to HCMLP?
7 **A. No.**
8 Q. They were -- they were third-party entities with
9 no affiliation whatsoever with HCMLP?
10 **A. That's -- I think that's right. I'm not**
11 **100 percent sure.**
12 Q. Okay. Now, in the ATE policy that you are aware
13 of that was issued, do you know whether the insured in
14 that case was related in any way to HCMLP?
15 **A. I can't say with certainty.**
16 Q. All right. We'll come back to that.
17 And so -- again, so the record is clear,
18 you're not aware of whether diligence was conducted for
19 that ATE policy that you testified about?
20 **A. I --**
21 MS. SMITH: Objection to form.
22 THE WITNESS: I don't know.
23 BY MR. BURT:
24 Q. And you didn't do it?
25 **A. I did not do it, no.**

106

1 Q. Do you know when Sentinel was formed?
2 **A. It was prior to my starting at Highland, so**
3 **pre-2013.**
4 Q. Did you ever learn who decided to establish
5 Sentinel?
6 MS. SMITH: Objection to form.
7 THE WITNESS: I don't know.
8 BY MR. BURT:
9 Q. You don't know if you ever learned that?
10 **A. I don't know if I ever learned that.**
11 Q. Okay. This is -- this exhibit has been used in
12 prior deposition; it's No. 28.
13 **A. (Witness reviews document.) Okay.**
14 Q. Have you ever seen this before, Exhibit 28?
15 **A. I don't recall specifically. Presumably I've**
16 **seen it, since it looks like I was the author on the**
17 **e-mail.**
18 Q. Okay. So looking at the first page -- in fact,
19 there's two e-mails, and you're the author of both of
20 them, aren't you?
21 **A. I -- I see that here on this paper.**
22 Q. And it's from your SAS e-mail, it appears?
23 **A. It appears that way, yes.**
24 Q. Okay. And these -- both of these e-mails were
25 written in April of 2019, correct?

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1 **A. Yes.**
2 Q. And it was dealing with -- the subject on both of
3 them is "Entity Restructure Sentinel," isn't it?
4 **A. Yes.**
5 Q. Were you aware, prior to seeing this just now,
6 that this exhibit had been used in a prior deposition?
7 MS. SMITH: Objection to form.
8 THE WITNESS: Not -- no, not that I recall.
9 BY MR. BURT:
10 Q. No one had ever shown you this exhibit?
11 **A. I don't believe so.**
12 Q. Had anybody read to you this exhibit?
13 **A. Not that I remember.**
14 Q. Okay. Now, you write from your e-mail -- the
15 first e-mail to Stephen Beck on April 10th, 2019.
16 Who was Mr. Beck?
17 **A. He is tax counsel.**
18 Q. Where does he work?
19 **A. Meadows Collier.**
20 Q. And where is that located?
21 **A. I believe Steve's in Dallas.**
22 Q. And he is tax counsel for whom?
23 **A. I don't know.**
24 Q. Was he tax counsel for Sentinel?
25 MS. SMITH: Objection, form.

108

1 THE WITNESS: I don't know the details on
2 the engagement letter, as to who their contracting entity
3 is.
4 BY MR. BURT:
5 Q. Well, why would you have been writing to him with
6 this information and these questions if he weren't tax
7 counsel for Sentinel?
8 MS. SMITH: Objection to form.
9 THE WITNESS: I don't know how his
10 engagement letter is structured, but he would advise
11 around these matters.
12 BY MR. BURT:
13 Q. Oh, okay.
14 So he might not have been engaged by
15 Sentinel, but he might have advised on Sentinel?
16 **A. I don't know --**
17 MS. SMITH: Objection to form.
18 THE WITNESS: I don't know where his
19 engagement letter sits.
20 BY MR. BURT:
21 Q. I understand. I'd ask you to listen to my
22 question.
23 He might not have been enga- -- been engaged
24 by Sentinel, but he would offer advice surrounding
25 Sentinel; is that right?

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28 (109 to 112)

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| <p>109</p> <p>1 A. I don't know.</p> <p>2 Q. Well, you sent him this e-mail.</p> <p>3 A. Uh-huh.</p> <p>4 Q. Why did you send him this e-mail if you don't</p> <p>5 know?</p> <p>6 A. Because he is a professional that would provide</p> <p>7 tax guidance.</p> <p>8 Q. To whom?</p> <p>9 A. He would provide tax advice to Sentinel.</p> <p>10 Q. Okay. So --</p> <p>11 A. I don't know where his engagement letter sat</p> <p>12 specifically.</p> <p>13 Q. So he might have been engaged by another Highland</p> <p>14 entity, by another HCMLP entity; is that fair?</p> <p>15 A. No.</p> <p>16 Q. Okay. So who --</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 MR. BURT: Excuse me.</p> <p>19 BY MR. BURT:</p> <p>20 Q. So who would have engaged him if he were</p> <p>21 providing tax advice for Sentinel?</p> <p>22 A. It could have been someone else in the Cayman</p> <p>23 structure. It would not have been HCMLP.</p> <p>24 Q. Okay. So -- and when you refer to "Cayman</p> <p>25 structure," are you referring to the Cayman structure of</p> | <p>111</p> <p>1 BY MR. BURT:</p> <p>2 Q. Fair point. Let me be more precise.</p> <p>3 Was it common that outside counsel would</p> <p>4 provide advice for entities with whom they had no</p> <p>5 engagement?</p> <p>6 A. No.</p> <p>7 Q. That was not common?</p> <p>8 A. No.</p> <p>9 Q. But that was happening here?</p> <p>10 MS. SMITH: Objection to form.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. BURT:</p> <p>13 Q. It wasn't?</p> <p>14 A. No.</p> <p>15 Q. So did he have an engagement with Sentinel?</p> <p>16 A. I don't know where his engagement letter sat. He</p> <p>17 provided -- I think it says even in here: I appreciate</p> <p>18 we'll need to address client for this matter.</p> <p>19 I don't know exactly where the engagement</p> <p>20 letter sat. It could have sat anywhere in this ownership</p> <p>21 chain, which would have been impacted by advice where</p> <p>22 Sentinel was involved.</p> <p>23 Q. Well, see, and that was my question. Was that a</p> <p>24 common thing, that outside counsel wouldn't be engaged by</p> <p>25 the entity for which they were providing advice, but by</p> |
| <p>110</p> <p>1 Sentinel?</p> <p>2 A. Yes.</p> <p>3 Q. And that's on page 4 of this exhibit; is that</p> <p>4 right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 A. It appears that way, yes.</p> <p>8 Q. So he might have been engaged by one of the</p> <p>9 myriad of entities that is listed in this structure; is</p> <p>10 that fair?</p> <p>11 A. He could have been.</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: He could have been. I don't</p> <p>14 know. I don't know who his engagement letter was with.</p> <p>15 BY MR. BURT:</p> <p>16 Q. But what you do know is that he provided tax</p> <p>17 advice for Sentinel?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Was it common that outside counsel would</p> <p>20 provide advice for entities with whom they had no</p> <p>21 engagement?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: I didn't say he had no</p> <p>24 engagement; I said I don't know where the engagement</p> <p>25 letter sat.</p> | <p>112</p> <p>1 one of the other entities in the -- in the ownership</p> <p>2 chain?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: I don't recall. I don't know.</p> <p>5 BY MR. BURT:</p> <p>6 Q. So you write: Hi, Steve. Further to entity</p> <p>7 liquidations discussions last year, the Sentinel</p> <p>8 Reinsurance, Ltd., regulator Cayman Islands Monetary</p> <p>9 Authority (CIMA) is asking that the Sentinel structure be</p> <p>10 simplified, page 2 of the attached org chart. CIMA</p> <p>11 specifically called out Elderflower, Ltd.; Brave Holdings,</p> <p>12 Ltd.; Nimitz, Ltd.; Patton, Ltd.; and Sentinel Re</p> <p>13 Holdings, Ltd., in the report. I believe we discussed</p> <p>14 some of these liquidations last year.</p> <p>15 Okay. Now, earlier today in your</p> <p>16 deposition, you talked meetings that you attended with</p> <p>17 CIMA; is that right?</p> <p>18 A. Yes.</p> <p>19 Q. And I think you testified about an August 2019</p> <p>20 meeting with CIMA?</p> <p>21 A. I believe so, yes.</p> <p>22 Q. And you -- I believe you testified -- and if I'm</p> <p>23 wrong, please correct me -- that during that meeting CIMA</p> <p>24 discussed simplifying the Sentinel structure; is that</p> <p>25 right?</p> |

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29 (113 to 116)

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| <p>113</p> <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: From what I recall, yes. 3 BY MR. BURT: 4 Q. What was the other meeting that you recall 5 attending with CIMA? 6 A. I can't remember the details of the meeting, but 7 I believe there was another one. 8 Q. When was it? 9 A. I don't remember. 10 Q. Was it before or after the August 2019 meeting? 11 A. I don't remember. 12 Q. What was discussed at that meeting? 13 A. I don't recall specifically. 14 Q. Do you know whether you discussed the 15 simplification of the Sentinel structure? 16 MS. SMITH: Objection to form. 17 THE WITNESS: I don't -- I don't remember. 18 BY MR. BURT: 19 Q. You don't remember anything about that second 20 meeting? 21 MS. SMITH: Objection, asked and answered. 22 THE WITNESS: I don't. 23 BY MR. BURT: 24 Q. Okay. Other than those two meetings, were there 25 any other meetings with CIMA that you attended?</p> | <p>115</p> <p>1 MS. SMITH: Objection to form. 2 THE WITNESS: I don't know. 3 BY MR. BURT: 4 Q. You would discuss entity liquidations. Do you 5 know whether any entity liquidations actually occurred 6 between 2018 and 2019? 7 A. I don't know. 8 Q. Well, the last line of your first -- of the first 9 paragraph in this e-mail, you said: I believe we 10 discussed some of these liquidations last year, apparently 11 referring to Elderflower, Brave Holdings, Nimitz, Patton, 12 and Sentinel Re Holdings, Ltd.; is that right? 13 A. It appears so, yes. 14 Q. Do you recall discussing the liquidations of 15 those specific entities in 2018? 16 A. I don't recall it specifically, other than I see 17 it here on this paper. 18 Q. And you have no reason to disagree that that's 19 what you wrote? 20 MS. SMITH: Objection to form. 21 THE WITNESS: This seems reasonable based on 22 this paper. 23 BY MR. BURT: 24 Q. Okay. And if we look at page 4, let's take, 25 first, Elderflower.</p> |
| <p>114</p> <p>1 A. I don't recall. 2 Q. What were you referring to when you state -- when 3 you said you were talk -- you had discussed entity 4 liquidations last year? 5 A. Likely that there were significant carrying costs 6 to the various entities. So we constantly would review to 7 see how we could streamline to reduce carrying costs. 8 Q. And by "carrying costs," what are you referring 9 to specifically? 10 A. Registered office fees, directorship costs. 11 Those are the primary costs. 12 Q. So expenses associated with the various entities? 13 A. Yes. 14 Q. Okay. So you -- you had had discussions in 2018 15 about costs associated with the Sentinel structure? 16 A. It looks like it, yes. 17 Q. All right. Now, looking back at page 4 of this 18 document on the last page, if you can turn to that, 19 please -- 20 A. (Witness complies.) 21 Q. -- it says, "Sentinel structure as of 9th of 22 April 2019;" is that right? 23 A. I see that. 24 Q. Now, had any changes happened in the Sentinel 25 structure between 2018 and 2019?</p> | <p>116</p> <p>1 Do you see right under, at the top left, 2 "USP1," there's an entity called "Elderflower, Ltd.," 3 listed? 4 A. I see that. 5 Q. So Elderflower still existed in April of 2019, 6 correct? 7 MS. SMITH: Objection to form. 8 THE WITNESS: I don't know. I know that 9 this is a draft. I don't know. 10 BY MR. BURT: 11 Q. Well, this says, "Sentinel structure as of 9th of 12 April 2019," right? 13 A. Yes. And it says "Draft" on the bottom of the 14 page, and I don't know -- 15 Q. You don't know what? 16 A. I don't know whether there was any change within 17 April of 2019. 18 Q. Okay. So let's say March 31st of 2019. 19 Is that the structure? Was Elderflower in 20 the structure? 21 A. It would appear that way. I can't say for sure. 22 Q. Brave Holdings, Ltd., do you see under "USP2," 23 "Brave Holdings, Ltd., Cayman"? 24 A. Yes, I do. 25 Q. So as of at least the end of March 2019, Brave</p> |

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| <p>117</p> <p>1 Holdings, Ltd., appears to still have been an entity, 2 right?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 BY MR. BURT:</p> <p>5 Q. In the Sentinel structure?</p> <p>6 A. It appears that way, but I don't know for sure.</p> <p>7 Q. So it appears that it was not liquidated in 2018, 8 pursuant to discussions you might have had with tax 9 counsel?</p> <p>10 A. It appears still on this paper, which is marked 11 "Draft" in April 2019, so I would -- that's reasonable.</p> <p>12 Q. Okay. Do you have any recollection of it being 13 liquidated in 2018 or 2019?</p> <p>14 A. I don't recall.</p> <p>15 Q. Do you recall after meeting with CIMA that there 16 actually was some liquidations of these entities?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Okay. So you have a memory of that.</p> <p>19 Other than that, do you recall any of these 20 entities being liquidated?</p> <p>21 A. What do you mean by "these entities"?</p> <p>22 Q. Listed here on page 4 of this document.</p> <p>23 A. On page 4 or on page 1?</p> <p>24 Q. Page 4 in the Sentinel structure.</p> <p>25 A. The question is: Were any of these entities</p> | <p>119</p> <p>1 THE WITNESS: Other than it's a draft, I -- 2 I don't know.</p> <p>3 BY MR. BURT:</p> <p>4 Q. Is it consistent with your recollection of how 5 these entities were structured?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I don't remember.</p> <p>8 BY MR. BURT:</p> <p>9 Q. Do you know who USB -- USP1 is?</p> <p>10 A. No.</p> <p>11 Q. How about USP2?</p> <p>12 A. No.</p> <p>13 Q. No knowledge whatsoever?</p> <p>14 A. No.</p> <p>15 Q. Okay. We'll come back to that.</p> <p>16 You then state in your e-mail on page 1: We 17 have a five-year taint issue as Montage, Anthem, and 18 Mainspring used to be CFCs, de-CFC'D in October 2014. 19 What were you referring to there?</p> <p>20 A. Three entities which used to be controlled 21 foreign corps, as classified by Deloitte, who was our tax 22 advisor. There was a restructure in 2014 referenced here, 23 de-CFC'd in October of 2014.</p> <p>24 Q. What was that restructure?</p> <p>25 A. It was -- it was to -- to remove those three</p> |
| <p>118</p> <p>1 liquidated?</p> <p>2 Q. Other than the liquidation that happened pursuant 3 to what was going on with CIMA, do you have any 4 recollection of any of these other entities being 5 liquidated?</p> <p>6 A. I don't know.</p> <p>7 Q. And if we take Nimitz, Patton, and Sentinel Re 8 Holdings, Ltd., looking at -- looking at the structure, we 9 see, then, all three still listed: Nimitz, Ltd., at the 10 bottom; Patton, Ltd., both owners of Sentinel Re Holdings, 11 Ltd., correct?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: On this paper I see Nimitz and 14 Patton, Ltd., owning Sentinel Re Holdings, Ltd. 15 BY MR. BURT:</p> <p>16 Q. And Patton held 70 percent?</p> <p>17 A. Of value. That's what it says here.</p> <p>18 Q. And 91 percent of the vote?</p> <p>19 A. That's what it says here on this paper.</p> <p>20 Q. And Nimitz held 30 percent value and 9 percent of 21 the vote?</p> <p>22 A. That's what this paper says.</p> <p>23 Q. Okay. Any reason to disagree with what this 24 paper says?</p> <p>25 MS. SMITH: Objection to form.</p> | <p>120</p> <p>1 entities from controlled foreign corporation status, as 2 classified by the tax advisors.</p> <p>3 Q. Did they stay within the Sentinel ownership 4 structure?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: They appear here on page 4.</p> <p>7 BY MR. BURT:</p> <p>8 Q. Okay. What was the "taint" issue that you're 9 referring to?</p> <p>10 A. It's tax nomenclature.</p> <p>11 Q. And what does it refer to?</p> <p>12 A. I don't know exactly. I know there was some tax 13 issue where liquidating those entities would have caused a 14 tax burden.</p> <p>15 Q. You said -- and I'm reading from the transcript 16 here -- "as classified by Deloitte, our tax" -- "our" tax 17 advisor. Is that what you said?</p> <p>18 A. I don't have the transcript in front of me.</p> <p>19 Q. Would you like me to have the court reporter read 20 your testimony back to you --</p> <p>21 A. No.</p> <p>22 Q. -- so we can confirm that's what you said?</p> <p>23 A. It's okay.</p> <p>24 Q. Okay. What did you mean by "our" tax advisor?</p> <p>25 A. Deloitte advised across multiple Cayman entities</p> |

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| <p style="text-align: right;">121</p> <p>1 within the structure as shown here on page 3 and 4. 2 Q. 3 and 4. 3 So for both SAS and for Sentinel, Deloitte 4 advised? 5 A. Deloitte advised. 6 Q. Did Deloitte offer any other advice to any HCMLP 7 entities? 8 A. I don't know. 9 MS. SMITH: Objection to form. 10 BY MR. BURT: 11 Q. Okay. Do you know with whom Deloitte had an 12 engagement? 13 MS. SMITH: Objection to form. 14 THE WITNESS: I don't -- I don't know. 15 BY MR. BURT: 16 Q. Was their advice solely related to Cayman 17 entities? 18 A. I believe so. 19 MS. SMITH: Objection to form. 20 BY MR. BURT: 21 Q. You then state -- sorry -- going back to page 1 22 that you understood that this tax issue was prohibiting 23 liquidation of Elderflower and Brave Holdings, which you 24 will see on org chart. 25 Do you know why that was prohibiting</p> | <p style="text-align: right;">123</p> <p>1 Q. The only thing -- so your testimony here today 2 is: The only thing you recall about what CIMA was 3 requesting was simplification of the structure? 4 A. Do you mean at any time that CIMA was a regulator 5 for Sentinel Reinsurance, Ltd.? 6 Q. That's fair. Let me be more specific. 7 So I'm talking about in this time period of 8 2019, first half -- let's say the first three quarters of 9 2019. 10 What were the issues that you're aware of 11 that CIMA was asking about or requiring? 12 A. I recall there was an audit report. CIMA did 13 some type of review and had a -- a laundry list of 14 queries, but it wasn't something that I handled directly 15 apart from this piece of simplification of the structure. 16 Q. So your only involvement was with simplification 17 of the structure? 18 A. From what I recall, yes. 19 Q. Did you ever see that audit report? 20 A. I believe so. 21 Q. Okay. Did you review it? 22 A. Probably. 23 Q. And did you do work -- any -- did you do any work 24 in response to that audit report? 25 A. Related to the simplification of the structure.</p> |
| <p style="text-align: right;">122</p> <p>1 liquidation? 2 A. Because it would cause a tax burden. The taint 3 issue essentially relates to taxable -- tax liability. 4 Q. So is it correct that it wasn't preventing it in 5 a legal sense, but more tax would be incurred if there 6 were liquidations? 7 MS. SMITH: Objection to form. 8 THE WITNESS: I don't know. 9 BY MR. BURT: 10 Q. You then state: We are looking to address these 11 issues with CIMA ASAP. Could you please let us know when 12 you are able to discuss? 13 Why were you looking to address those issues 14 with CIMA ASAP? 15 A. I'd have to -- I'd have to go back and look. 16 Presumably, there was something prompting this e-mail. 17 Q. Do you recall what that was? 18 A. Not specifically. 19 Q. Okay. How about generally, do you recall what 20 that was? 21 A. Generally, CIMA requested simplification of the 22 structure as far back as I can recall. 23 Q. Okay. Was there anything else that CIMA was 24 requesting? 25 A. I don't know.</p> | <p style="text-align: right;">124</p> <p>1 That's all I recall. 2 Q. Okay. And aside from the simplification of the 3 structure, anything else that you might have done in 4 relation to the audit report? 5 MS. SMITH: Objection, asked and answered. 6 THE WITNESS: Not that I recall. 7 BY MR. BURT: 8 Q. Who else worked on responding to the audit 9 report? 10 MS. SMITH: Objection, form. 11 THE WITNESS: Beecher Carlson, Matt DiOrio, 12 the other directors of Sentinel at the time. I don't 13 recall who they were. 14 BY MR. BURT: 15 Q. What did Matt do? 16 MS. SMITH: Objection to form. 17 THE WITNESS: I -- I don't know. You have 18 to ask Matt. 19 BY MR. BURT: 20 Q. Well, I'm talking specifically about this -- you 21 -- you testified he worked in re- -- on a response to the 22 CIMA audit report, and I'm asking: Well, what did he do? 23 You understand the question? 24 A. I understand the question. 25 I don't recall specifically what the laundry</p> |

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Transcript of Katie Lucas Irving
Conducted on November 15, 2021

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| <p style="text-align: right;">125</p> <p>1 list of items were from CIMA that needed to be rectified, 2 but Matt would have reviewed those and handled or raised 3 them for consideration to the other directors or to 4 Beecher. 5 Q. Why -- why Matt? 6 MS. SMITH: Objection to form. 7 THE WITNESS: I don't know. 8 BY MR. BURT: 9 Q. You don't know why Matt would have worked on 10 this? 11 MS. SMITH: Objection to form. 12 THE WITNESS: I don't recall if he was a 13 director at this stage or not. He did work on Sentinel 14 matters within our team. 15 BY MR. BURT: 16 Q. How long did he work on Sentinel matters for? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I don't know. I -- I don't 19 know with certainty. I believe from the inception of his 20 employment, but I don't recall when that was. 21 BY MR. BURT: 22 Q. Let me ask it this way: The entire time that you 23 worked on Sentinel issues, did Matt also work on Sentinel 24 issues? 25 A. From what I recall, yes, mostly.</p> | <p style="text-align: right;">127</p> <p>1 Matt DiOrio to Tom Adamczak -- oh, excuse me, I got that 2 backwards. Strike that. 3 It's from Clayton Price to Matt DiOrio 4 cc'ing Tom Adamczak; is that right? 5 A. That's what I see here, uh-huh. 6 Q. And Mr. Adamczak and Mr. Price were both at 7 Beecher Carlson? 8 MS. SMITH: Objection, form. 9 BY MR. BURT: 10 Q. If you know? 11 A. I don't know. 12 Q. Well, Mr. Adamczak, we know, was. I think we've 13 talked about that earlier; is that right? 14 A. Yes. It -- and it shows here. 15 Q. Okay. 16 A. I don't know about Mr. Price. 17 Q. Okay. You never worked directly with Clayton 18 Price? 19 A. Not that I recall specifically, no. 20 Q. Okay. Have you ever seen this e-mail before? 21 A. Not that I recall. I note that I'm not included 22 on this e-mail either as a recipient or cc'd. 23 Q. I understand. 24 You see that the date of this e-mail was 25 April 12th, 2019?</p> |
| <p style="text-align: right;">126</p> <p>1 Q. It -- and is it correct that at one point he 2 became a director of Sentinel? 3 A. Yes. 4 Q. And you don't recall when that was, specifically? 5 A. I don't. 6 Q. Keep that exhibit handy. I'm going to mark a new 7 exhibit. I think this is our century-marked exhibit, 100. 8 (Exhibit 100 was marked for identification.) 9 THE WITNESS: Is this -- so what number is 10 this one? Because this one was 99. 11 MR. BURT: That had been used previously. 12 THE WITNESS: Okay. 13 MR. BURT: And so we are going sequentially 14 with our exhibit numbering. 15 THE WITNESS: Okay. 16 MR. BURT: So we're not renumbering that 17 one. I will refer to it as Exhibit 28. 18 THE WITNESS: Okay. 19 MR. BURT: Good question. It's a little 20 confusing. 21 THE WITNESS: (Witness reviews document.) 22 Okay. 23 BY MR. BURT: 24 Q. All right. So let's take a look at this e-mail 25 exchange. It appear -- it's a long e-mail. It's from</p> | <p style="text-align: right;">128</p> <p>1 A. I see that. 2 Q. All right. Now, looking at Exhibit 28, you see 3 that the date of the -- your e-mail is on -- in Exhibit 28 4 were April 10th, 2019? 5 A. Uh-huh. 6 Q. So this was two days later, is that right, 7 Exhibit 100? 8 A. I see that here on the paper, yeah. 9 Q. Okay. All right. So Mr. -- Mr. Price writes to 10 Mr. DiOrio: Matt, I have advised Karen at GCS of the 11 desire to engage their services regarding the corporate 12 governance matters identified in the CIMA Inspection 13 Report and to provide input for a future AML template for 14 use with on-boarding with policyholders on a risk-based 15 approach. 16 So a couple of questions there. Do you know 17 who Karen at GCS was? 18 A. I don't. 19 Q. How about the CIMA Inspection Report, do you know 20 what that was? 21 A. Yes. It's the report I referenced earlier. 22 Q. Okay. You called it an "audit report," but by 23 that -- 24 A. (Witness nods head affirmatively.) 25 Q. -- you -- you -- it was an inspection report --</p> |

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| 129 | <p>1 A. Yes.</p> <p>2 Q. -- is that right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Do you know when CIMA inspected Sentinel?</p> <p>5 MS. SMITH: Objection to form.</p> <p>6 THE WITNESS: I don't.</p> <p>7 BY MR. BURT:</p> <p>8 Q. And then he states in the next paragraph -- oh,</p> <p>9 strike that. I wanted to ask another question here.</p> <p>10 He says: To provide input for a future AML</p> <p>11 template for use with on-boarding of policyholders.</p> <p>12 Do you know what "AML" stands for?</p> <p>13 A. Yes.</p> <p>14 Q. What does it stand for?</p> <p>15 A. Anti-money laundering.</p> <p>16 Q. And do you know what he was referring to there as</p> <p>17 a "future AML template"?</p> <p>18 MS. SMITH: Objection to form.</p> <p>19 THE WITNESS: I do not know.</p> <p>20 BY MR. BURT:</p> <p>21 Q. Do you know if CIMA had found any issues</p> <p>22 with anti-money laun- -- any anti-money laundering issues</p> <p>23 with Sentinel?</p> <p>24 MS. SMITH: Objection to form.</p> <p>25 THE WITNESS: CIMA had not found any issues</p> | 131 | <p>1 Sentinel has yet to write true third-party business," were</p> <p>2 you aware of that fact in 2019?</p> <p>3 MS. SMITH: Objection to form.</p> <p>4 THE WITNESS: I believe so.</p> <p>5 BY MR. BURT:</p> <p>6 Q. Okay. So what do you understand that to mean,</p> <p>7 that Sentinel had not written any true third-party</p> <p>8 business?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 THE WITNESS: My understanding was that</p> <p>11 Sentinel had issued some captive D&O policies across</p> <p>12 varying entities within this structure. Sentinel didn't</p> <p>13 have approval, as I remember, in a timely fashion to be</p> <p>14 able to put forward any ATE to third parties. There was a</p> <p>15 timing delay in the need for litigation funding or ATE</p> <p>16 policies being sold, essentially, and regulatory approval</p> <p>17 on those policies.</p> <p>18 BY MR. BURT:</p> <p>19 Q. I want to break that answer down a little bit.</p> <p>20 A. Okay.</p> <p>21 Q. So, first, let's start with the D&O policies you</p> <p>22 just mentioned.</p> <p>23 A. Uh-huh.</p> <p>24 Q. So you're aware of Sentinel issuing captive D&O</p> <p>25 policies across varying entities within the structure; is</p> |
| 130 | <p>1 with AML, as far as I know.</p> <p>2 BY MR. BURT:</p> <p>3 Q. Okay. As far as you know, no issues with AML</p> <p>4 identified by CIMA?</p> <p>5 A. In relation to Sentinel Reinsurance, Ltd., no.</p> <p>6 Q. Okay. How about with respect to Sentinel Re</p> <p>7 Holdings, Ltd.?</p> <p>8 A. No. I'm not aware of any AML issues that were</p> <p>9 identified.</p> <p>10 Q. And then Mr. -- Mr. Price says: As we develop</p> <p>11 our joint response to CIMA, there are areas that Tom and I</p> <p>12 will need your input to varying degrees. The following is</p> <p>13 who I believe needs to be involved with each item and our</p> <p>14 approach on where we should hold our ground versus</p> <p>15 accepting CIMA's position. I believe our approach should</p> <p>16 demonstrate that Sentinel is a soundly funded,</p> <p>17 well-managed captive. They have no doubt, in my opinion,</p> <p>18 treated Sentinel as if it were a commercial Class B,</p> <p>19 romanette (iii), licensee writing open-market business.</p> <p>20 And although we pointed out to them that Sentinel has yet</p> <p>21 to write true third-party business, they were not going to</p> <p>22 change their stance since they had advised of the</p> <p>23 inspection.</p> <p>24 So stopping there, drawing -- and drawing</p> <p>25 your attention to the line "We pointed out to them that</p> | 132 | <p>1 that what you said?</p> <p>2 A. Yes.</p> <p>3 Q. What do you mean, first, by "captive D&O policy"?</p> <p>4 A. Meaning Sentinel Reinsurance, Ltd., would write</p> <p>5 insurance for another -- another entity, either in the</p> <p>6 structure chart you showed me previously --</p> <p>7 Q. Uh-huh.</p> <p>8 A. -- pages 4 and 3.</p> <p>9 Q. So let's just be clear on the record about that.</p> <p>10 Looking at Exhibit 28, we've looked at</p> <p>11 page 4, the Sentinel structure as of 9th of April 2019.</p> <p>12 So -- and referring specifically to this</p> <p>13 structure on page 4 --</p> <p>14 A. Okay.</p> <p>15 Q. -- is it correct that Sentinel would write</p> <p>16 captive D&O policies to entities within this structure, as</p> <p>17 reflected in Exhibit 28, page 4?</p> <p>18 A. Some of them. I can't recall specifically which.</p> <p>19 Q. And these entities were not considered</p> <p>20 third-party entities or third-party business, correct?</p> <p>21 MS. SMITH: Objection to form.</p> <p>22 THE WITNESS: It wasn't up to me to make</p> <p>23 that classification. I don't know.</p> <p>24 BY MR. BURT:</p> <p>25 Q. Well, I understand.</p> |

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1 But that's what the class-- -- that was what
2 Mr. Price was explaining here, right, that none of those
3 were actually true third-party business; is that correct?
4 MS. SMITH: Objection to form.
5 THE WITNESS: I don't know.
6 BY MR. BURT:
7 Q. You don't recall whether that was the case?
8 **A. I don't know.**
9 MS. SMITH: Objection to form.
10 THE WITNESS: That's not a piece I would
11 have handled. I don't know.
12 BY MR. BURT:
13 Q. What you know is that D&O policies were written
14 to entities within this structure, correct?
15 **A. Yes.**
16 Q. And then, looking at page 3 of Exhibit 28 -- and
17 for the record, this is the SAS structure as of 9th of
18 April, 2019 -- is it your testimony, Mrs. Irving, that
19 Sentinel would issue D&O policies to entities within this
20 structure as well?
21 **A. Some of them, yes, based on the advice of**
22 **Deloitte.**
23 Q. Do you recall which entities received those D&O
24 policies?
25 **A. I don't.**

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1 Q. Do you know whether there was any -- whether
2 there ever came a time when Sentinel ceased writing D&O
3 policies to captured entities?
4 MS. SMITH: Objection to form.
5 THE WITNESS: I don't know.
6 BY MR. BURT:
7 Q. Aside from the structures we see on pages 3 and 4
8 of Exhibit 28, were there any other Highland-related
9 entities or structures for which Sentinel was issuing D&O
10 policies?
11 **A. Not to my knowledge.**
12 Q. Were there any third parties, independent
13 entirely of these structures in Exhibit 28 or HCMLP, for
14 which Sentinel was writing D&O policies?
15 MS. SMITH: Objection to form.
16 THE WITNESS: Could you repeat that for me,
17 please.
18 BY MR. BURT:
19 Q. Sure. What I -- and I -- I want to be as precise
20 as I possibly can here.
21 So setting aside what we've seen in
22 Exhibit 28, these structures for SAS and Sentinel, and
23 setting aside HCMLP and any of its entities and related
24 entities, do you know whether Sentinel issued any other
25 D&O policies to independent third parties with no

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1 affiliation whatsoever to these structures?
2 MS. SMITH: Objection to form.
3 THE WITNESS: I don't know.
4 BY MR. BURT:
5 Q. There's no fact you could point me to today to
6 dispute what Mr. Price wrote here, that Sentinel has yet
7 to write true third-party business, is there?
8 MS. SMITH: Objection to form.
9 THE WITNESS: I don't know what Mr. Price
10 means by "true third-party business," how that's defined
11 by CIMA. I -- I don't know.
12 BY MR. BURT:
13 Q. Well, fair. And I'm just asking you: Can -- is
14 there any fact, anything you can point me to, to suggest
15 that Sentinel was writing D&O policies out on the open
16 market for -- for independent entities, companies that
17 would come out of the blue and say: Hey, we need some
18 insurance? Anything like that?
19 MS. SMITH: Objection to form.
20 THE WITNESS: I don't know.
21 BY MR. BURT:
22 Q. So nothing you can point me to today?
23 MS. SMITH: Objection to form.
24 THE WITNESS: I don't know. Not that I can
25 think of. I don't know.

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1 BY MR. BURT:
2 Q. Now, earlier -- so setting the D&O policies
3 aside -- and I'm reading from the -- the draft transcript
4 here -- after you stated that Sentinel issued captive D&O
5 policies across varying entities within this structure,
6 you then stated: Sentinel didn't have approval, as I
7 remember, in a timely fashion to be able to put forward
8 any ATE to third parties. There was a timing delay in the
9 need for litigation funding for ATE policies being sold,
10 essentially, and regulatory approval on those policies.
11 Is that consistent with what you recall
12 testifying to?
13 **A. Yes.**
14 Q. Okay. So you -- we've talked about one ATE
15 policy that you do recall being issued --
16 **A. Yes.**
17 Q. -- where funds came in to Sentinel.
18 Was that with a related entity?
19 **A. I don't know.**
20 MS. SMITH: Objection to form.
21 BY MR. BURT:
22 Q. Well, you testified here that it never was able
23 to put forward to, ATE, the third parties.
24 **A. From what I recall and what I meant by that**
25 **statement is CIMA was reviewing, policy by policy, when we**

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1 would – when the team would look at: This is a good
2 litigation funding play. It might have a good ATE
3 component as well.
4 That draft would go to Beecher – would go
5 to CIMA for approval before we were able to – before
6 Sentinel would be able to issue the policy, CIMA would
7 need to approve it on a policy-by-policy basis.
8 Q. Uh-huh.
9 A. At some point during my tenure, the policy
10 changed such that CIMA had – CIMA had some approval –
11 and I'm not in the detail of the approval – CIMA had some
12 approval which allowed ATE to be written with a
13 notification to CIMA and subsequent approval. There was a
14 nuance in the timing to allow for more commercial business
15 timing.
16 Q. I think I understand.
17 So to restate -- and if I get it wrong,
18 please let me know -- so it changed from requiring
19 preapproval by CIMA of an ATE policy to a situation where
20 Sentinel could issue the ATE policy, notify CIMA, and get
21 approval after the fact?
22 A. That's my understanding.
23 Q. All right. And do you know when that change
24 occurred?
25 A. I don't.

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1 Q. Do you know whether it affected any ATE policies
2 that were being considered at Sentinel?
3 MS. SMITH: Objection to form.
4 THE WITNESS: I don't recall specifically.
5 BY MR. BURT:
6 Q. Regarding the one -- the policies that you were
7 doing diligence for, did that change in timing affect any
8 of those?
9 A. The timing change would have made it more
10 commercially viable to – to pitch the litigation funding
11 and the ATE together, knowing that there wasn't a caveat
12 pending CIMA approval in relation to the ATE side.
13 Q. So were any ATE policies that you were doing
14 diligence on an issue because it was now more commercially
15 feasible?
16 MS. SMITH: Objection to form.
17 THE WITNESS: I don't recall specifically.
18 BY MR. BURT:
19 Q. So aside from the one ATE that you do recall
20 where funding came in, aside from that, do you recall any
21 other ATE policy being issued?
22 A. Many were contemplated, and I don't recall
23 specifically which, if any, were issued.
24 Q. Okay. How about generally? I understand
25 specifics might be murky in memory. But how about

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1 generally?
2 MS. SMITH: Objection to form.
3 THE WITNESS: I just don't remember.
4 BY MR. BURT:
5 Q. But you do recall the one?
6 A. Yes.
7 Q. Okay. Going back to Exhibit 100 --
8 A. Okay.
9 Q. -- the last paragraph from Mr. Price in this
10 e-mail states: It is my intention to hammer out as much
11 as possible this weekend as a first draft response. As
12 such, if there is anything further than what you and Katie
13 have already advised Tom, then please don't hesitate to
14 send me an e-mail.
15 Do you see that?
16 A. I do.
17 Q. What had you and Mr. DiOrio already advised Tom
18 about?
19 MS. SMITH: Objection to form.
20 THE WITNESS: I don't recall specifically.
21 BY MR. BURT:
22 Q. Do you recall any discussions with Mr. Adamczak
23 at Beecher Carlson regarding responding to CIMA?
24 A. Not specifically, but generally, it would have
25 been in relation to the ability to simplify the Sentinel

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1 structure, as requested by CIMA, without facing tax
2 issues.
3 Q. Anything else you might have spoken with
4 Mr. Adamczak about?
5 MS. SMITH: Objection to form.
6 THE WITNESS: Not that I recall.
7 BY MR. BURT:
8 Q. Do you have any knowledge of what Mr. DiOrio
9 might have spoken with Mr. Adamczak about?
10 MS. SMITH: Objection to form.
11 THE WITNESS: I would have to speculate. I
12 don't know what they spoke about.
13 BY MR. BURT:
14 Q. Any general understanding of what they spoke
15 of -- so, again, setting specifics aside. But any general
16 understanding of what they might have spoken about?
17 MS. SMITH: Objection to form.
18 THE WITNESS: My sense is they would have
19 spoken about CIMA's inspection report.
20 BY MR. BURT:
21 Q. How about you and Mr. DiOrio, what did you two
22 talk about in -- in regard to CIMA's inspection report?
23 MS. SMITH: Objection to form.
24 THE WITNESS: I'd have to speculate.
25 However, I know that we discussed overall structuring,

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Conducted on November 15, 2021

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| 141 | 1 like I mentioned previously. 2 BY MR. BURT: 3 Q. Uh-huh. Okay. 4 Looking down in this e-mail chain, 5 there's -- there's bolded headings and then a bunch of 6 numbers underneath them. 7 Do you see that in this e-mail? 8 A. I do. 9 Q. And I understand, Mrs. Irving, that you are not 10 copied on this e-mail. But I'm going to ask you a few 11 questions anyway to see if -- if you know anything about 12 it. 13 There's a section that states, "Introduction 14 to Findings, No Response." Do you see that? That's the 15 first heading. 16 A. I see that, yes. 17 Q. And then there's a heading that says, 18 "Inconsistent Representations and Inaccurate 19 Documentation." 20 Do you see that heading? 21 A. I see it. 22 Q. And then it says, "Acknowledge, Make Corrections, 23 and "Move Forward"; is that right? 24 A. I see that here on this paper, yes. 25 Q. All right. And then, underneath that heading, | 143 | 1 attention to specific things. 2 First, starting with this cover e-mail, 3 looking at the top, it is from a -- and I am going to mess 4 this name up -- Schliselo Dube, the Chief Analyst that 5 appears at CIMA, Cayman Islands Monetary Authority, to a 6 claytonprice@beechercarlson.com. 7 Do you see that? 8 A. I do. 9 Q. And in the cc line, there's a number of other 10 CIMA individuals cc'd, and also, Tom Adamczak at Beecher 11 Carlson is cc'd? 12 A. Yes. 13 Q. Now, looking at the top, you see "To: 14 claytonprice@beechercarlson.com." 15 Does that help refresh your recollection 16 about where he worked? 17 A. Yes. 18 Q. And can you say now that he did actually work at 19 Beecher Carlson? 20 MS. SMITH: Objection, form. 21 THE WITNESS: It appears so from this 22 documentation you handed me on 5/6/2019. 23 BY MR. BURT: 24 Q. No reason to disagree with that or to dispute 25 that; is that right? |
| 142 | 1 there's the number 5.2.2.1, and then A through H, correct? 2 A. Yes, I see that. 3 Q. And looking at E and F, it lists names. E states 4 "Matt and Katie." F states "Tom, Matt, and Katie." 5 Do you see that? 6 A. I do. 7 Q. What recollection do you have of any response you 8 might have worked on regarding inconsistent 9 representations and inaccurate documentation? 10 MS. SMITH: Objection to form. 11 THE WITNESS: I would have to reference the 12 underlying CIMA Inspection Report. 13 BY MR. BURT: 14 Q. That's -- that's totally fair. So let's do that. 15 MR. BURT: Oh, that's right. 16 We'll mark this as Exhibit 101. 17 (Exhibit 101 was marked for identification.) 18 BY MR. BURT: 19 Q. Now, I'm going to draw your attention to 20 specific -- this is a big packet, and I'm going to draw 21 your attention to specific portions. Of course, if you 22 want to read a little before and after that to get 23 context, that is perfectly fine. 24 A. Okay. 25 Q. But for convenience sake, I'll draw your | 144 | 1 MS. SMITH: Objection, form. 2 THE WITNESS: I don't think it's 3 controversial from this document. 4 BY MR. BURT: 5 Q. Okay. Flipping to the next page, there is a 6 letter from CIMA to the directors at Sentinel Reinsurance, 7 Ltd., Care Of Beecher Carlson, and it states here, at the 8 top of the -- the first paragraph of the letter -- well, 9 strike that. 10 The subject of the letter is "Sentinel 11 Reinsurance, Ltd., Final Inspection Report"; is that 12 right? 13 A. Yes. 14 Q. And it states: The Cayman Islands Monetary 15 Authority, the Authority, acknowledges receipt of 16 Clayton Price's e-mails dated 19 April, 2019, and 22nd 17 April, 2019, in response to the draft inspection reports 18 for Sentinel Reinsurance, Ltd., the Licensee. The 19 comments have been duly noted and, where applicable, the 20 Authority's reports amended accordingly. 21 Do you see that? 22 A. I do. 23 Q. All right. Now, keeping those dates in mind, 24 Clayton Price e-mails of 19 April, 2019, and 22nd April, 25 2019, do you recall e-mails going back to CIMA on those |

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| <p>145</p> <p>1 dates or around that time in April of 2019? 2 MS. SMITH: Objection, form. 3 THE WITNESS: Not specifically. 4 BY MR. BURT: 5 Q. Looking, again, at Exhibit 100 that we were just 6 looking at -- 7 A. Uh-huh. 8 Q. -- you see that the date there was April 12th, 9 2019? 10 A. I see that. 11 Q. Okay. And as we look -- if we look at 12 Exhibit 28 -- I know we're looking at a lot of exhibits, 13 but Exhibit 28, your e-mails to Mr. Beck and then to 14 others were on April 10th of 2019, correct? 15 A. I see that. 16 Q. So all around this same time -- time period, 17 right? 18 A. It appears that way, yes. 19 Q. And do you recall the work -- the e-mails that 20 you were sending in Exhibit 28 and the work that was being 21 referenced in Exhibit 100 related to responses to CIMA's 22 draft inspection report? 23 MS. SMITH: Objection to form. 24 THE WITNESS: I -- I believe so. I believe 25 all of this work is related to CIMA's inspection report.</p> | <p>147</p> <p>1 Sentinel conducted an inspection -- or -- excuse me -- 2 strike that -- CIMA conducted an inspection of Sentinel? 3 MS. SMITH: Objection to form. 4 THE WITNESS: It appears that's true. 5 BY MR. BURT: 6 Q. Okay. Flipping to page 3, there's a Table of 7 Contents, and then page 3, there's an Executive Summary. 8 Do you see that? 9 A. I do. 10 Q. It states, in 1.1, that: An on-site inspection 11 at the offices of Sentinel Reinsurance -- I should be 12 fulsome and read the whole thing. 13 So starting over: The Cayman Islands 14 Monetary Authority, the Authority, conducted an on-site 15 inspection -- the on-site inspection at the offices of 16 Sentinel Reinsurance, Ltd., the Licensee, from 4 March, 17 2019, to 11 March, 2019; is that right? 18 A. That's what the paper says. 19 Q. Were you at the Sentinel offices during that 20 inspection at any time? 21 MS. SMITH: Objection to form. 22 THE WITNESS: I don't believe so. 23 BY MR. BURT: 24 Q. So you never met -- you -- you mentioned two 25 meetings with CIMA, one in August of 2019.</p> |
| <p>146</p> <p>1 BY MR. BURT: 2 Q. Okay. Now, you can flip forward. There's a 3 blue, sort of -- or maybe this is just mine. 4 A. I don't have anything blue. 5 Q. Yeah. That's just in my mine. It's called a 6 slip sheet. 7 But, again, if you flip forward two pages, 8 you'll get to a page that has the actual CIMA logo on it. 9 A. Yeah. 10 Q. Yeah. Do you see that? 11 A. Uh-huh. 12 Q. And there it states: It's the final Prudential 13 Inspection Report for Sentinel Reinsurance, Ltd., 14 conducted on the 4th of March, 2019, to the 11th of March, 15 2019, issued on the 6th of May, 2019. 16 Do you see that? 17 A. I do. 18 Q. Does that help refresh your recollection of when 19 CIMA conducted the inspection of Sentinel? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I see it here on this paper. 22 I don't recall, specifically, these dates, but I see it 23 here on the paper. 24 BY MR. BURT: 25 Q. No reason to disagree that around that time</p> | <p>148</p> <p>1 Do you recall ever meeting with them at 2 Sentinel's offices? 3 A. No. 4 Q. Were you ever interviewed by CIMA? 5 A. No. 6 Q. 1.2, the summary states: The objective of the 7 on-site inspection was to assess the policies and 8 procedures, corporate governance structure, and internal 9 control environment of the Licensee. 10 You see that? 11 A. I see that. 12 Q. And were you aware that that was the objective of 13 the inspection? 14 MS. SMITH: Objection to form. 15 THE WITNESS: I don't know. 16 BY MR. BURT: 17 Q. Did you have any understanding at the time of why 18 CIMA was inspecting Sentinel? 19 A. Yes. 20 Q. What was your understanding? 21 A. That it was a routine inspection. There was a -- 22 a large amount of focus around AML in the Cayman Islands's 23 government and -- and regulatory bodies. There were 24 general inspections that started as a result of that. 25 Q. Had Sentinel ever been inspected prior to this</p> |

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1 time?
2 **A. Not that --**
3 MS. SMITH: Objection to form.
4 THE WITNESS: Not that I recall.
5 BY MR. BURT:
6 Q. Okay. But you recall CIMA being -- vigorously
7 investigating or inspecting regarding anti-money
8 laundering issues?
9 MS. SMITH: Objection to form.
10 THE WITNESS: Yes, but not specific to
11 Sentinel; it was a broader Cayman Islands's government
12 initiative.
13 BY MR. BURT:
14 Q. I see. So a general, sort of, focus on AML
15 issues --
16 **A. Yes.**
17 Q. -- with CIMA?
18 **A. Additional compliance measures put in place by**
19 **the regulators in Cayman.**
20 Q. Do you know when that was?
21 **A. I don't, but it will be public.**
22 Q. And did Sentinel make adjustments in light of
23 those new requirements?
24 MS. SMITH: Objection to form.
25 THE WITNESS: Sentinel made adjustments

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1 based on the findings in the CIMA Inspection Report.
2 BY MR. BURT:
3 Q. Okay. So let's look at 1.3: Results from the
4 on-site inspection revealed deficiencies in, one,
5 corporate governance; two, business plan; three,
6 outsourcing; four, risk management framework; five,
7 solvency and accounting policies; six, nature,
8 accessibility and retention of records; and, seven,
9 internal controls, policies, and procedures.
10 Do you see that?
11 **A. I do see that.**
12 Q. Were you aware that CIMA had found deficiencies
13 in each one of those areas at Sentinel?
14 MS. SMITH: Objection to form.
15 THE WITNESS: I was aware insofar as I
16 recall seeing this document before.
17 BY MR. BURT:
18 Q. Okay. And when did you see this document?
19 **A. I can't recall specifically but, presumably, in**
20 **tandem with CIMA issuing the document.**
21 Q. Who provided it to you?
22 **A. I don't -- I don't know. I don't know.**
23 Q. Was it Mr. DiOrio?
24 **A. I don't know.**
25 Q. Was it Mr. Adameczak?

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1 **A. I -- I don't know. It could have been either of**
2 **those. I don't know.**
3 Q. Did you ever receive e-mails directly from CIMA?
4 **A. No, not that I recall.**
5 Q. So someone at either Beecher Carlson or
6 affiliated with Sentinel must have provided it to you?
7 MS. SMITH: Objection to form.
8 THE WITNESS: I believe so.
9 BY MR. BURT:
10 Q. Do you know why you received a copy of it?
11 **A. Presumably because there was a question in**
12 **relation to the corporate structure we've talked about,**
13 **and as I recall, that was something CIMA wanted resolved.**
14 **So I was brought in to look at that.**
15 Q. Okay. So they brought you in specifically to
16 look at the corporate restructuring?
17 **A. From what I recall, yes.**
18 Q. All right. Do you recall that CIMA -- let's take
19 No. 1, corporate governance. Do you recall that CIMA had
20 found deficiencies in corporate governance?
21 **A. I don't recall it, but I see it here on the**
22 **report.**
23 Q. And -- and you recall receiving this and reading
24 it at the time?
25 MS. SMITH: Objection to form.

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1 THE WITNESS: This document's familiar to
2 me. Yes, I remember seeing this before.
3 BY MR. BURT:
4 Q. Did you speak about this document with
5 Mr. DiOrio?
6 **A. Presumably.**
7 Q. What do you recall talking with him about?
8 **A. Just general business matters. This report was**
9 **received; a response will need to be drafted and handled**
10 **appropriately, things like that.**
11 Q. Okay. How about with Mr. Ellington, did you ever
12 discuss this report with him?
13 **A. Not that I recall.**
14 Q. He was your direct report, though, wasn't he?
15 **A. Yes.**
16 Q. Wouldn't he have wanted to know about all these
17 issues that CIMA had found with Sentinel?
18 MS. SMITH: Objection to form.
19 THE WITNESS: Presumably, yes, he would want
20 to know about that. I just don't recall discussing it
21 with him specifically.
22 BY MR. BURT:
23 Q. How about generally, any -- any conversations
24 with him at all --
25 MS. SMITH: Objection to form.

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1 BY MR. BURT:
2 Q. -- about this report, this --
3 **A. He was aware of this report. My sense is Matt**
4 **DiOrio likely would have briefed him rather than me**
5 **briefing him.**
6 Q. And why is that?
7 MS. SMITH: Objection to form.
8 THE WITNESS: Because he was taking the lead
9 around discussions with Beecher and rectifying any issue
10 that CIMA found.
11 BY MR. BURT:
12 Q. Mr. DiOrio was the lead in respond- -- in working
13 with Beecher and responding to CIMA?
14 **A. From our internal team, I would say, yes, that's**
15 **a fair statement. Beecher really, as the administrator,**
16 **is the one who is supposed to tie up most of these loose**
17 **ends.**
18 Q. Okay. So it was the feeling among the team
19 internally that Beecher should really be leading out on
20 this; is that right?
21 **A. Yes.**
22 MS. SMITH: Objection to form.
23 THE WITNESS: Yes.
24 BY MR. BURT:
25 Q. And -- and so what was the feeling about the role

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1 that Sentinel had --
2 MS. SMITH: Objection to form.
3 BY MR. BURT:
4 Q. -- in responding to this?
5 **A. Sentinel was assisting Beecher, to my knowledge.**
6 **Beecher is the administrator and a hired professional for**
7 **a reason, and a lot of the reason is to make sure that**
8 **everything run at the company's compliance with CIMA's**
9 **requirements.**
10 Q. Who was -- when you say Sentinel was doing
11 certain things, who -- who are you referring to? Who at
12 Sentinel was doing that?
13 **A. The directors.**
14 Q. Okay. Do you recall who those were?
15 MS. SMITH: Objection to form.
16 THE WITNESS: I don't recall at this
17 specific time who the directors were, no.
18 BY MR. BURT:
19 Q. All right. But it was the directors at Sentinel
20 who were -- who were working for Sentinel to -- to address
21 these issues; is that right?
22 **A. Really, yes. Yeah.**
23 Q. Okay. But you weren't a director?
24 **A. I was not.**
25 Q. So why were you working on it?

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1 MS. SMITH: Objection to form.
2 THE WITNESS: Because I had knowledge it
3 would be helpful around making sure that everything was in
4 compliance with CIMA's requirements.
5 BY MR. BURT:
6 Q. So it was more than just the directors that were
7 working on this Sentinel response?
8 **A. I believe you said who from Sentinel was working**
9 **on it, but yes. Yes, I worked on providing information to**
10 **Beecher to make sure Beecher could provide a robust**
11 **response.**
12 Q. Who at HCMLP was working on a response aside from
13 you and Mr. DiOrio?
14 MS. SMITH: Objection to form.
15 THE WITNESS: I don't recall.
16 BY MR. BURT:
17 Q. How about at SAS Asset Recovery, Ltd.?
18 MS. SMITH: Objection to form.
19 THE WITNESS: SAS Asset Recovery, Ltd., did
20 not have employees.
21 BY MR. BURT:
22 Q. Okay. When you were doing this work -- you've
23 testified earlier that when you did Cayman's-related work
24 it was for SAS. You used your SAS e-mail, and it was
25 generally SAS-related, right?

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1 MS. SMITH: Objection to form.
2 BY MR. BURT:
3 Q. Was that your testimony? I think it was.
4 **A. Yes, that Cayman-related matters would be handled**
5 **on SAS e-mail.**
6 Q. Okay. So were you -- when doing this work, were
7 you using your SAS e-mail?
8 **A. I don't know.**
9 Q. Well, why wouldn't you have been if you used that
10 for Cayman's matters?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I just can't say with
13 certainty. I can guess, but I can't say with certainty.
14 I don't know.
15 BY MR. BURT:
16 Q. What's your guess?
17 **A. What's my guess? My guess is that, yes, this**
18 **would have been on my SAS e-mail.**
19 Q. Okay. Did you account for your time internally
20 any differently when you were working on an SAS-related
21 issue versus an HCMLP-related issue?
22 **A. No.**
23 Q. Okay. So SAS had no employees?
24 **A. Correct.**
25 Q. Everybody who worked on SAS-related issues was an

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40 (157 to 160)

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| <p>157</p> <p>1 HCMLP employee; is that right?</p> <p>2 MS. SMITH: Objection to form.</p> <p>3 THE WITNESS: I don't -- no, I don't think</p> <p>4 you can make that broad of a statement. There were HCMLP</p> <p>5 employees who worked on SAS matters; there were also other</p> <p>6 professionals who worked on SAS matters.</p> <p>7 BY MR. BURT:</p> <p>8 Q. And by "professionals," within HCMLP or --</p> <p>9 A. No.</p> <p>10 Q. -- other -- other entities, affiliated entities?</p> <p>11 A. No.</p> <p>12 Q. So third parties?</p> <p>13 A. Non- -- unrelated to HCMLP, yes.</p> <p>14 Q. I see.</p> <p>15 So you might have hired outside counsel or</p> <p>16 something?</p> <p>17 A. Yes.</p> <p>18 Q. I see. Yeah, fair enough.</p> <p>19 Okay. Aside from you and Mr. DiOrio at</p> <p>20 HCMLP, anybody else working on responding to the CIMA</p> <p>21 issues here identified in this exhibit?</p> <p>22 A. Perhaps J.P. Sevilla. Scott Ellington was aware</p> <p>23 of it; I don't know his involvement as to the granularity</p> <p>24 of responding to CIMA.</p> <p>25 Q. Okay. So he's more high level?</p> | <p>159</p> <p>1 Q. -- you don't respond -- do you recall whether you</p> <p>2 provided that assistance? And we can look at that</p> <p>3 specific -- 5.2.2.1, if you'd like.</p> <p>4 A. Yeah. Let me take a look at this.</p> <p>5 Q. It's on page 8 of 35.</p> <p>6 A. Okay.</p> <p>7 Q. And you'll see, when you get there, it has the</p> <p>8 same heading, "Inconsistent Representations and Inaccurate</p> <p>9 Documentation."</p> <p>10 Do you see that at the top?</p> <p>11 A. I do.</p> <p>12 Q. And then, just as in this e-mail, it has 5.2.2.1,</p> <p>13 and then it has A, B, C, D through H, which goes on to</p> <p>14 page 9, right?</p> <p>15 A. (No response.)</p> <p>16 Q. And you're listed under E. And E states -- this</p> <p>17 is from the CIMA letter -- in the introductory remarks:</p> <p>18 The actuarial report asserts that the Licensee is owned by</p> <p>19 SAS Asset Recovery, Ltd., and its affiliated entities</p> <p>20 (collectively SAS). SAS is not part of the Licensee's</p> <p>21 organization structure.</p> <p>22 Do you see that?</p> <p>23 A. I see that.</p> <p>24 Q. Do you recall working on a response to that</p> <p>25 criticism by CIMA?</p> |
| <p>158</p> <p>1 A. Scott Ellington?</p> <p>2 Q. Yeah.</p> <p>3 A. Yes.</p> <p>4 Q. Yeah. He didn't know the details as much; is</p> <p>5 that what you're saying?</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 THE WITNESS: I said he wouldn't have been</p> <p>8 involved in compiling all the information for the response</p> <p>9 to Beecher. But, yes, he is aware of this report.</p> <p>10 BY MR. BURT:</p> <p>11 Q. Would he have reviewed the response?</p> <p>12 MS. SMITH: Objection to form.</p> <p>13 THE WITNESS: I don't know. Probably, but I</p> <p>14 don't know.</p> <p>15 BY MR. BURT:</p> <p>16 Q. Did you provide him your drafts?</p> <p>17 A. I didn't draft a response. Beecher, as far as I</p> <p>18 recall, drafted a response to CIMA.</p> <p>19 Q. Okay. So looking again at Exhibit 100, where</p> <p>20 Mr. -- this is the e-mail from Mr. Price --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- to Matt DiOrio, under "Inconsistent</p> <p>23 Representations and Inaccurate Documentations" where he</p> <p>24 listed you and Matt under two items --</p> <p>25 A. Uh-huh.</p> | <p>160</p> <p>1 MS. SMITH: Objection to form.</p> <p>2 THE WITNESS: I'm trying to get context for</p> <p>3 what this is.</p> <p>4 BY MR. BURT:</p> <p>5 Q. Sure.</p> <p>6 A. What introductory remarks are they referencing,</p> <p>7 an actuarial report that I don't have in front of me?</p> <p>8 Q. I can show you that, if you'd like.</p> <p>9 A. Sure.</p> <p>10 It reads to me that -- that someone said the</p> <p>11 "Licensee," who is, presumably, Sentinel Reinsurance,</p> <p>12 Ltd., is owned by SAS, and SAS is not a part of the</p> <p>13 Licensee's organization structure.</p> <p>14 Q. Okay. And my question was just: Do you recall</p> <p>15 responding to that -- working on a response to that?</p> <p>16 A. I don't recall responding to that.</p> <p>17 Q. Okay.</p> <p>18 A. It's -- this is CIMA's report, and CIMA is the</p> <p>19 one saying "SAS is not a part of the Licensee's</p> <p>20 organization structure."</p> <p>21 MR. BURT: Are we on Exhibit 102?</p> <p>22 THE STENOGRAPHIC REPORTER: (Nods head.)</p> <p>23 MR. BURT: Mark this as 102.</p> <p>24 (Exhibit 102 was marked for identification.)</p> <p>25 BY MR. BURT:</p> |

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| <p>161</p> <p>1 Q. So I've handed you Exhibit 102, which is an 2 e-mail and accompanying actuarial reports dated December 3 31st, 2017, for Sentinel Reinsurance, Ltd. 4 Do you see that? 5 A. Yes. 6 Q. And then, on page 3 of that report, in the 7 "Introduction," it states: Risk International Actuarial 8 Consulting RA- -- (RIAC) has prepared this Actuarial 9 Analysis for Sentinel Reinsurance, Ltd., (Sentinel or the 10 Company), at the request of Mr. Tom Adamczak of Beecher 11 Carlson, the captive manager of Sentinel. Sentinel is a 12 captive insurance company domiciled in the Cayman Islands 13 and owned by SAS Asset Recovery, Ltd. 14 You see that? 15 A. I see that. 16 Q. And that appears to be what CIMA was referencing 17 in its letter, right? 18 A. Yes. CIMA is saying SAS is not part of a 19 Licensee's organization structure. 20 Q. Right. 21 And is that correct? 22 A. Yes. 23 Q. Okay. And so you don't recall whether you 24 prepared or worked on a response to CIMA regarding that, 25 do you?</p> | <p>163</p> <p>1 Q. Here it states: The Licensee's audited financial 2 statements and actuarial report for the year-ended 3 December 31st, 2017, state that the Licensee provides D&O 4 coverage to SAS Asset Recovery structure and its subsis- 5 -- its subsidiaries -- excuse me -- SAS. As per the 6 Licensee's business plan, the Licensee was approved to 7 provide D&O coverage to entities within the SAS Asset 8 Recovery structure/Sentinel structure... 9 And I'm going to stop there. 10 Is that consistent with your recollection, 11 that that was the approval for Sentinel to issue D&O 12 coverage within SAS and Sentinel structures? 13 MS. SMITH: Objection to form. 14 THE WITNESS: Yes, that's consistent, and 15 consistent with what I've described previously. 16 BY MR. BURT: 17 Q. Okay. And then it states: According to the 18 Authority's records, SAS and Sentinel structures are not 19 in the same organization structure. The following 20 entities, which are part of the Sentinel structure, have 21 D&O policies issued by the Licensee: Montage Holdings, 22 Ltd.; Greystone IV, Ltd.; Kind Holdings, Ltd.; Brave 23 Holdings, Ltd.; Loyal Holdings, L.P.; Anthem, Ltd.; 24 Mainspring, Ltd.; HAL Holdings, L.P.; Nimitz, Ltd.; 25 Patton, Ltd. There is a clear contradiction between the</p> |
| <p>162</p> <p>1 A. I don't recall. 2 Q. So let's flip in Exhibit 101, the CIMA letter, to 3 page 10, which is the "Management Comments and Response," 4 and there's, under E, on page 10 right in the middle, it 5 states: The Licensee acknowledges the inaccuracy within 6 the actuarial report regarding the structure and has 7 requested the appropriate correction within the actuary's 8 2018 report. 9 A. I see that. 10 Q. Did you work on that at all? 11 A. No. 12 Q. Did you have any conversations with the actuary? 13 A. No. 14 Q. Did you ever provide the actuary information? 15 A. Not that I recall. 16 Q. Did you ever review the actuarial reports? 17 A. Not that I recall. 18 MS. SMITH: Objection to form. 19 BY MR. BURT: 20 Q. You can set the actuary report aside. 21 A. Okay. 22 Q. Then looking back, let's look at number F -- or 23 Item F on page 8 of the CIMA letter, under "Inconsistent 24 Representations and Inaccurate Documentation." 25 A. Okay.</p> | <p>164</p> <p>1 information on the business plan and that on the audited 2 financial statements and actuarial report for the 3 year-ended December 31st, 2017. 4 Did I read that correctly? 5 A. Yes. 6 Q. My first question is: Does that refresh your 7 recollection about which Sentinel -- which entities within 8 the Sentinel structure received D&O policies? 9 MS. SMITH: Objection to form. 10 THE WITNESS: It does. Insofar as this 11 exact timing, those were the policies CIMA, I guess, saw 12 on the audited financial statements and actuarial report, 13 as read from this document. 14 BY MR. BURT: 15 Q. Right. 16 And did you work on a response to this in 17 CIMA's finding that there was a contradiction between the 18 information on the business plan and the audited financial 19 statements and actuarial report? 20 A. I don't recall specifically, but it's likely that 21 I would have assisted in differentiating CIMA's 22 designation of SAS Asset Recovery structure and its 23 subsidiaries from these other entities named. 24 Q. Okay. So you would have helped with that, making 25 the points clear which entities are where --</p> |

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1 **A. Yes.**
2 Q. -- and how -- how, if at all, they were related.
3 Is that fair?
4 **A. That's fair.**
5 Q. Okay. So let's look at page 10 again, to
6 "Management Comments."
7 **A. Uh-huh.**
8 Q. Under F, it states: The Licensee acknowledges
9 the Authority's comment related to the confusion
10 pertaining to the Sentinel structure versus the SAS
11 structure as both are different, although affiliated,
12 under common ownership.
13 I'm going to stop there.
14 Did you help draft that language?
15 MS. SMITH: Objection to form.
16 THE WITNESS: Not that I recall.
17 BY MR. BURT:
18 Q. Okay. Is that consistent with your
19 understanding, though, that Sentinel and SAS, although
20 different, are affiliated under common ownership?
21 MS. SMITH: Objection to form.
22 THE WITNESS: I can't say whether they are
23 affiliated. I do believe there is some common ownership.
24 BY MR. BURT:
25 Q. And do you know who that common -- or what that

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1 common ownership is?
2 **A. Yes, but I'd need to look at the org chart.**
3 Q. You can look at the org chart.
4 By that, you're referring to Exhibit 28 and
5 the org chart's listed there, right?
6 **A. Yes.**
7 MS. SMITH: Objection to form.
8 THE WITNESS: SAS Holdings/SPV, Ltd.,
9 appears on each -- page 3 and 4 in this Exhibit 28.
10 BY MR. BURT:
11 Q. Okay. So let's -- yeah. So let's break that
12 down to make sure the record is clear.
13 Looking at page 3, the SAS structure, as of
14 9th of April 2019, right there at the top in the middle,
15 it says, "SAS Holdings/SPV, Ltd."; is that right?
16 **A. Yes.**
17 Q. Was that a Cayman's entities?
18 MS. SMITH: Objection to form.
19 THE WITNESS: Yes. It's a Cayman Islands's
20 entity, to my knowledge.
21 BY MR. BURT:
22 Q. And then if we look at page 4 under the Sentinel
23 structure, as of 9th April, 2019, it states: SAS
24 Holdings/SPV, Ltd., and in paren, it says "Cayman"; is
25 that right?

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1 **A. Yes, I see that.**
2 Q. Is that the same entity?
3 **A. To my knowledge, yes.**
4 Q. So when -- in the management response when it's
5 referring to common ownership, that may have been one
6 thing that it was referring to, the SAS Holdings/SPV,
7 Ltd.?
8 **A. Perhaps.**
9 MS. SMITH: Objection to form.
10 BY MR. BURT:
11 Q. Okay. Now, you'll see on -- on pages 3 and 4 of
12 Exhibit 28, there's USP's 1 and 2 are listed on both, and
13 I know before, I think regarding Sentinel, you stated you
14 didn't know who that was referring to.
15 Is that still your testimony?
16 **A. Yes. I understand, generally, who it would be**
17 **referring to, but I don't have specifics around ownership**
18 **at that level.**
19 Q. Okay. Generally, what is your understanding?
20 **A. Generally, USP1 and 2 would be domestic, meaning**
21 **U.S. entities, non-Cayman entities.**
22 Q. Uh-huh.
23 **A. Generally, it would be Mr. Ellington and**
24 **Mr. Dondero in theory, but I don't know where it's owned,**
25 **who a beneficiary is, any domestic -- I don't have any**

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1 **domestic knowledge as to how it's held, how the economic**
2 **benefit flows or anything like that.**
3 Q. Understood.
4 But -- but, generally, the ownership somehow
5 goes up to Mr. Ellington on the one hand, and Mr. Dondero
6 on the other?
7 MS. SMITH: Objection to form.
8 THE WITNESS: At one time, yes.
9 BY MR. BURT:
10 Q. Okay.
11 **A. At one time, yes.**
12 Q. And -- and we're talking about the Sentinel
13 structure, Exhibit 4 --
14 **A. Yes.**
15 Q. -- or -- excuse me -- Exhibit 28, page 4?
16 Now, with regards to the SAS structure, we
17 have USP1 and USP2. Is that the same with regard to SAS
18 that USP1 and USP2 would refer in some way to ownership
19 rolling up somehow to Elling- -- to Mr. Ellington and
20 Mr. Dondero?
21 MS. SMITH: Objection to form.
22 THE WITNESS: I believe so.
23 BY MR. BURT:
24 Q. Okay. Now, also in the SAS structure, it lists
25 4 USPs. Do you know who that is referring to?

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| <p>169</p> <p>1 A. I don't.</p> <p>2 Q. Okay. We'll come back to that.</p> <p>3 And so in addition to the common ownership</p> <p>4 referred to in the management discussion in the CIMA</p> <p>5 response, isn't it fair to say that part of that common</p> <p>6 ownership was also that Mr. Dondero and Mr. Ellington had</p> <p>7 ownership of both SAS and Sentinel?</p> <p>8 MS. SMITH: Objection to form.</p> <p>9 THE WITNESS: I don't know that that's fair</p> <p>10 to say, because I don't know how the domestic entities are</p> <p>11 held.</p> <p>12 BY MR. BURT:</p> <p>13 Q. Is it your testimony that USP1 and USP2 refers to</p> <p>14 an entity, or could it refer to an individual?</p> <p>15 MS. SMITH: Objection to form.</p> <p>16 THE WITNESS: It could be either.</p> <p>17 MR. BURT: One moment, please.</p> <p>18 MS. SMITH: Is now a good time to take a</p> <p>19 break?</p> <p>20 MR. BURT: Sure.</p> <p>21 THE VIDEOGRAPHER: Off the record at 1:43</p> <p>22 p.m.</p> <p>23 (Brief recess taken.)</p> <p>24 THE VIDEOGRAPHER: Back on record at</p> <p>25 2:00 p.m.</p> | <p>171</p> <p>1 related to that that we will mark as 103, I believe.</p> <p>2 (Exhibit 103 was marked for identification.)</p> <p>3 MR. BURT: Is that right, 103?</p> <p>4 THE STENOGRAPHIC REPORTER: Yes.</p> <p>5 (Off-record discussion.)</p> <p>6 THE WITNESS: Thanks.</p> <p>7 (Witness reviews document.) Okay.</p> <p>8 BY MR. BURT:</p> <p>9 Q. Okay. So Exhibit 103, as you see, has</p> <p>10 three pages, two pages of e-mail and then a chart, an</p> <p>11 organizational chart, and I'd like to start with the first</p> <p>12 e-mail in the chain that begins on page 1 from a Leonna</p> <p>13 Saintvil, to Clayton Price at Beecher, cc'ing, a number of</p> <p>14 other CIMA employees and Tom Adameczak. It says: Good</p> <p>15 day, Clayton. Thank you for your e-mails --</p> <p>16 And for the record, it's dated June 20th,</p> <p>17 2019.</p> <p>18 -- I have a few questions. Can you please</p> <p>19 explain the purpose of the following businesses. And he</p> <p>20 lists a number of businesses. And then number 2, he says:</p> <p>21 Is USP1 and USP2 individuals? If so, please amend the</p> <p>22 organizational chart.</p> <p>23 So keeping number 2 in mind, Mrs. Irving,</p> <p>24 and then going to the first page again, Mr. Price responds</p> <p>25 to Leonna Saintvil, and says: Leonna, to answer questions</p> |
| <p>170</p> <p>1 MR. BURT: So making a record, Counsel and I</p> <p>2 spoke offline, and Counsel has represented to me, and I</p> <p>3 accept her representation, that there were no substantive</p> <p>4 notes passed between them. And so, again, I accept your</p> <p>5 representation of that and make the record clear. We</p> <p>6 thought we had seen it, but we believe you when you say</p> <p>7 that it did not happen, so...</p> <p>8 MS. HARTMANN: And just for the record,</p> <p>9 Ms. Smith did pass me a note. I did not pass any note to</p> <p>10 her with the -- writing on it.</p> <p>11 MR. BURT: Okay.</p> <p>12 MS. SMITH: And the note had nothing to do</p> <p>13 with the substance of the deposition. It was one personal</p> <p>14 comment.</p> <p>15 MR. BURT: So we accept your representation</p> <p>16 as officers of the Court and we will move on. We</p> <p>17 appreciate that clarification.</p> <p>18 MS. HARTMANN: Thank you.</p> <p>19 MS. SMITH: Thank you.</p> <p>20 MR. BURT: No problem.</p> <p>21 BY MR. BURT:</p> <p>22 Q. Okay. So Mrs. Irving, we were looking at a bunch</p> <p>23 of documents, but we'll start again looking at Exhibit 28</p> <p>24 that has the structures. And we were talking about USP1</p> <p>25 and USP2. I'd actually like to show you another document</p> | <p>172</p> <p>1 from earlier today... and then number two, he says: USP1</p> <p>2 and USP2 are individuals. U.S. Person 1 and U.S. person</p> <p>3 2, who are known to CIMA. As referenced in my e-mail with</p> <p>4 the org chart, USP1 is Scott Ellington, while USP2 is</p> <p>5 James Dondero. The org chart has been revised to include</p> <p>6 their names.</p> <p>7 Do you see that?</p> <p>8 A. I see it.</p> <p>9 Q. Do you recall this org chart being revised to</p> <p>10 include their names?</p> <p>11 MS. SMITH: Objection to form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MR. BURT:</p> <p>14 Q. Okay. Does this help refresh your recollection</p> <p>15 as to the identity of USPs 1 and 2 in the Sentinel</p> <p>16 structure?</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 THE WITNESS: I see at this point in time</p> <p>19 this was a representation made by Beecher.</p> <p>20 BY MR. BURT:</p> <p>21 Q. And do you have any reason to disagree with that</p> <p>22 representation?</p> <p>23 MS. SMITH: Objection to form.</p> <p>24 THE WITNESS: No.</p> <p>25 BY MR. BURT:</p> |

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1 Q. Well, it wasn't just a representation by Beecher.
2 It went to the regular -- the regulator in the Caymans,
3 right?
4 MS. SMITH: Objection to form.
5 THE WITNESS: As far as I can tell on this
6 paper, yes, that was what was communicated to the
7 regulator.
8 BY MR. BURT:
9 Q. Okay. Did you ever communicate that ownership of
10 Mr. Ellington and Dondero to Beecher?
11 A. I don't know.
12 Q. Okay. Let's look at the org chart that was
13 provided. This was the last page of this exhibit.
14 And it states: Sentinel structure following
15 entity eliminations as of 18th June, 2019. Note removal
16 of Sentinel Re Holdings, Ltd., is pending CIMA approval.
17 And up at the top now, in the more
18 streamlined structure on the left, it lists Scott
19 Ellington, and on the right, it lists James Dondero; is
20 that correct?
21 A. I see that here on this paper, yes.
22 Q. And in the middle, still, we have SAS
23 Holdings/SPV, Ltd.; is that right?
24 A. I see it here, yes.
25 Q. Now, tracing up from the bottom, the Sentinel

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1 Reinsurance, Ltd., the ownership interests, do you see at
2 the bottom when it splits into a right and left,
3 70 percent of the value goes to the right to Mainspring,
4 Ltd.; 30 percent of the value goes to the left to Montage
5 Holdings, Ltd.
6 Is that right?
7 A. I see that here, yes.
8 Q. 91 percent of the vote goes to Mainspring; 9
9 percent of the vote goes to Montage Holdings. Is that
10 right?
11 A. Sorry. Could you repeat that, please?
12 Q. Sure.
13 I'm -- I'm talking specifically about the
14 voting interests.
15 A. Okay.
16 Q. And 91 percent of the vote -- voting interest in
17 Sentinel Reinsurance, Ltd., goes to Mainspring, Ltd., and
18 9 percent of the vote goes to Montage Holdings, Ltd.?
19 A. I see that.
20 Q. All right. Now, that 70/30 split between
21 Mainspring and Montage, was that consistent with your
22 understanding of the reorganization of the structures that
23 you've testified you worked on at this time?
24 MS. SMITH: Objection to form.
25 THE WITNESS: Yes.

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1 BY MR. BURT:
2 Q. And moving up, looking at Mainspring, above it is
3 Loyal Holdings, L.P., and directly above Loyal Holdings is
4 James Dondero with 99.5 percent of the value and 9 percent
5 of the vote.
6 Do you see that?
7 A. I see it.
8 Q. So of the 70 percent of Sentinel Reinsurance and
9 its -- of the ownership that went to Mainspring,
10 99.5 percent of that ownership went to James Dondero,
11 correct?
12 A. I see --
13 MS. SMITH: Objection to form.
14 THE WITNESS: I see that here.
15 BY MR. BURT:
16 Q. Is that consistent with your memory?
17 MS. SMITH: Objection to form.
18 THE WITNESS: I don't recall.
19 BY MR. BURT:
20 Q. Well, you've testified that this is what you were
21 tasked with, with the structure of Sentinel and all of the
22 entities and taking entities out, correct; part of the
23 liquidation?
24 A. Yes.
25 Q. In fact, you were working on that in 2018, even

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1 before the CIMA meetings, right?
2 MS. SMITH: Objection to form.
3 THE WITNESS: I was working on streamlining
4 the structure, yes.
5 BY MR. BURT:
6 Q. Yeah. So this was something that you worked on
7 for at least a year, the streamlining of the structure of
8 Sentinel; isn't that right?
9 MS. SMITH: Objection to form.
10 THE WITNESS: I wouldn't say I worked on it
11 for a year, but yes, it was -- it was known that we wanted
12 to simplify the structure.
13 BY MR. BURT:
14 Q. Okay. I mean, I'm not saying you worked on it
15 every day. But it was a project, an ongoing project that
16 lasted for at least a year until here, 18th of June 2019,
17 you can report to CIMA that Sentinel now has a new
18 organizational structure, correct?
19 MS. SMITH: Objection to form. She's not
20 reporting at all on this.
21 BY MR. BURT:
22 Q. Isn't that right?
23 A. Sorry. Could you repeat your question, please?
24 Q. What I was saying was, this organizational
25 structure is sent to CIMA, as we see in this exhibit, as

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1 -- and it shows the Sentinel structure as 18th of June,
2 2019, right?
3 **A. I see that here --**
4 Q. And this --
5 **A. -- yes.**
6 Q. Excuse me.
7 And this is a project that you had worked
8 on, not every day, but an ongoing project for at least a
9 year; is that right?
10 **A. That's -- that's fair. I worked on it in pieces**
11 **at various points in time, yes.**
12 Q. And isn't it also fair, then, to say that you
13 knew that of the 70 percent of value in Sentinel
14 Reinsurance that went to Mainspring, Ltd., that that
15 ultimately was owned by Mr. Dondero?
16 MS. SMITH: Objection to form.
17 THE WITNESS: I don't know.
18 BY MR. BURT:
19 Q. You have no idea whether Mr. Dondero held that?
20 Is that your testimony under oath today?
21 **A. No.**
22 **Could you read back your prior question that**
23 **I responded "I don't know" to.**
24 MR. BURT: Madam Court Reporter, would you
25 mind reading it beginning at 14:09:13, 160-1.

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1 (Requested material was read back.)
2 THE WITNESS: No. I wouldn't say that
3 that's fair, no.
4 BY MR. BURT:
5 Q. Okay. Why not?
6 **A. Because I don't have knowledge of -- of what**
7 **happens, kind of, anywhere on the domestic side. And as**
8 **noted, these were two U.S. person individuals. I -- I**
9 **don't know.**
10 Q. Well, I want to make sure I'm understanding that.
11 So are you saying that on the domestic side Mr. Dondero
12 might not have had 99 percent ownership in Loyal Holdings,
13 which owned Mainspring, Ltd.?
14 MS. SMITH: Objection to form.
15 THE WITNESS: My sense is, this is
16 represented to CIMA. I fully believe that the accurate
17 representation was presented to CIMA at the time.
18 BY MR. BURT:
19 Q. Okay. So then on left, of the 30 percent value
20 that goes to Montage Holdings, that's owned by HAL
21 Holdings, and 99 percent of that is owned by Scott
22 Ellington, correct?
23 **A. I see that here on this chart, yes.**
24 Q. Any reason to dispute that this was the corporate
25 structure of Sentinel on -- as of June 18th, 2019?

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1 MS. SMITH: Objection to form.
2 THE WITNESS: No reason to dispute that.
3 BY MR. BURT:
4 Q. And so ultimately, SAS Holdings has -- if we're
5 looking at the left side, 1 percent of the value goes to
6 Greystone IV in the Cayman.
7 Do you see that?
8 **A. I see it.**
9 Q. 91 percent of the vote goes to Greystone IV in
10 the Cayman, right?
11 **A. I see that here.**
12 Q. So of the 30 percent that went to Montage and
13 then to HAL, 99 percent of that 30 percent went to Scott
14 Ellington, and 1 percent of that 30 percent goes to
15 Greystone, right?
16 **A. That's what this chart says.**
17 Q. And again, you don't have any reason to disagree
18 with this chart, do you?
19 MS. SMITH: Objection to form.
20 THE WITNESS: I -- I don't.
21 BY MR. BURT:
22 Q. And then on the right-hand side, 70 percent of
23 the ownership Sentinel goes to Mainspring, up to Loyal,
24 which owns Mainspring; 99.5 of that ownership goes to
25 Mr. Dondero; 5 percent of that goes to Kind Holdings,

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1 Ltd., in the Caymans; is that right?
2 **A. That's what this paper says.**
3 Q. 91 percent of the vote goes to Kind Holdings, but
4 only 9 percent of the vote goes to Mr. Dondero; is that
5 right?
6 **A. That's what the paper says.**
7 Q. Why did -- why was it structured in such a way
8 that ownership and vote was different?
9 **A. It was based --**
10 MS. SMITH: Objection to form.
11 THE WITNESS: Sorry, Frances.
12 It was based on a structure set up by
13 Deloitte.
14 BY MR. BURT:
15 Q. When did Deloitte set that up?
16 **A. I believe 2014.**
17 Q. So Deloitte had set up a structure that split
18 ownership interests off from the same -- from -- from the
19 voting rights in Sentinel?
20 **A. Yes.**
21 Q. Do you know why Deloitte did that?
22 **A. I don't know.**
23 Q. Well, you're a CPA. Did you work with Deloitte
24 on that?
25 **A. I did.**

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| <p>181</p> <p>1 MS. SMITH: Objection to form. 2 BY MR. BURT: 3 Q. Okay. So what did they tell you about that? 4 A. That it was a tax-structuring suggestion. 5 Q. To suggest what? 6 A. It was their -- it was Deloitte's advice to set 7 the structure up in the way that you are seeing it. 8 Q. So in some way, splitting off the -- the 9 percentage of vote that an entity had versus its ownership 10 interest was tax advice given to you -- or given to 11 Sentinel by Deloitte? 12 MS. SMITH: Objection to form. 13 THE WITNESS: Deloitte advised as to that, 14 yes. 15 BY MR. BURT: 16 Q. Who at Deloitte gave that advice? 17 A. I don't remember. 18 Q. Do you recall any of the names at Deloitte that 19 you worked with at the time? 20 A. I don't. 21 Q. So in total, looking at the amount of ownership 22 in Sentinel that SAS Holdings has, it has, on the Montage 23 holding side, 1 percent of 30 percent, and on the 24 Mainspring side, .5 percent of 70 percent, correct? 25 A. I see that here, yes.</p> | <p>183</p> <p>1 Mr. Dondero and Mr. Ellington, in fact, did not own the 2 ownership interests that are presented here on this -- on 3 this page? 4 MS. SMITH: Objection to form. 5 THE WITNESS: No. As I -- as I stated 6 before, full disclosure would have been made to the Cayman 7 Islands Monetary Authority. 8 BY MR. BURT: 9 Q. Okay. Now, up above SAS Holdings SPV, Ltd., is 10 something called ITA, and then it says: - Red Cross. 11 Do you know what that is referring to? 12 A. Yes. 13 Q. What is that? 14 A. ITA is the trustee. 15 Q. The trustee of what? 16 A. Of the SAS Holdings SPV, Ltd., shares. 17 Q. So that corporation, SAS Holdings SPV, Ltd., had 18 shares and they were held in trust by ITA? 19 A. That's my understanding. 20 Q. Were they exclusively held by ITA, or were they 21 held by anyone else? 22 MS. SMITH: Objection, form. 23 THE WITNESS: My understanding was they were 24 held by ITA. 25 BY MR. BURT:</p> |
| <p>182</p> <p>1 Q. Okay. So as far as ownership goes, isn't it fair 2 to say that SAS Holdings SP, Ltd., had a -- a very small 3 percentage of the ownership of Sentinel Reinsurance, Ltd.? 4 MS. SMITH: Objection to form. 5 THE WITNESS: In terms of value as presented 6 on this chart, it's smaller, yes. 7 BY MR. BURT: 8 Q. Does that -- 9 A. -- than the vote component. 10 Q. Ex- -- excuse me. Yeah. 11 Well, I'm not comparing it with the vote 12 component. What I'm comparing it with is the ownership 13 interest that go to Mr. Ellington and Mr. Dondero. And 14 isn't it fair to say that the percentage of ownership of 15 SAS Holdings SPV, Ltd., is much, much smaller than the 16 ownership interest of Mr. Ellington and Mr. Dondero in 17 Sentinel Reinsurance, Ltd.? 18 MS. SMITH: Objection to form. 19 THE WITNESS: The value is smaller as 20 presented here, yes. 21 BY MR. BURT: 22 Q. Okay. Does that conflict in any way with your 23 recollection of how this was structured? 24 A. I don't recall. 25 Q. Can you point me to any facts to suggest that</p> | <p>184</p> <p>1 Q. Okay. And do you know who owned ITA? 2 A. No. 3 Q. Do you know whether Mr. Dondero and Ellington 4 were in any way affiliated with ITA? 5 MS. SMITH: Objection, form. 6 THE WITNESS: Not to my knowledge. 7 MR. BURT: One moment. 8 All righty. Apologies for the slight delay. 9 We'll mark this as Exhibit 104. 10 (Exhibit 104 was marked for identification.) 11 THE WITNESS: Excuse me. Thank you. 12 BY MR. BURT: 13 Q. And just so you know, I'm actually not going to 14 ask -- other than to identify the e-mail, I'm not going to 15 ask you any questions about the substance of the e-mail, 16 but there's an attachment that I want to show you. 17 A. Okay. 18 Q. Of course, for context, you can see here there -- 19 the e-mail is from Matt DiOrio -- the top e-mail, I should 20 say, is from Matt DiOrio to Tom Adamczak, cc'ing you, 21 Katie Irving. I keep getting the to and froms mistaken; I 22 apologize. 23 It's from Jonathan Arbeit at Beecher Carlson 24 to Matt DiOrio and Alli Devins, cc'ing Tom Adamczak and 25 yourself, kirving@sasgmt.com, and it's dated October 3rd,</p> |

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| <p>185</p> <p>1 2018. 2 So this is prior to the reorganization that 3 we were just looking at; is that right? 4 A. It -- yes, it appears to be in October 2018. 5 Q. Okay. And here Jonathan Arbeit at Beecher refers 6 to -- he says: "Hi, Matt, Katie, the capital rebalancing 7 schedule is attached. Please let me know if you have any 8 questions." And there's an attachment, we can see, at 9 capitalbalancing.xls. 10 You see that? 11 First, who is Jonathan Arbeit at Beecher? 12 A. It looks like, from this e-mail signature, he's a 13 senior accountant. 14 Q. Do you recall having e-mails with him or 15 conversations? 16 A. Not specifically, no. 17 Q. All right. All right. And then turning to the 18 attachment of this, which is five pages in, it's an Excel 19 printout with some green and yellow on it, and at the top, 20 it says: Sentinel Reinsurance, Ltd., Rebalancing? 21 A. Does it say "1" at the bottom of the page? 22 Q. It says: Sentinel Reinsurance, Ltd., 23 Rebalancing. It's the right one. And then it has a 24 "Summary" box. 25 A. Okay. I see that.</p> | <p>187</p> <p>1 30 percent Nimitz. 2 Do you see that? 3 A. I see that. 4 Q. Okay. So keeping your finger there, if we go 5 back to Exhibit 28, which is the structure before the 6 changes, on the last page, the Sentinel structure, do you 7 see that the Patent -- excuse me -- the Patton, Ltd., 8 entity comes off the right of Sentinel Re Holdings, Ltd., 9 and has 70 percent value. Is that right? 10 A. I see -- I see that here. 11 Q. And, ultimately, it goes up -- the ownership up 12 to USP2 and to SAS Holdings/SPV, Ltd., right? 13 A. I see that here on the chart. 14 Q. All right. And then, here, in Exhibit 104, it 15 lists: Dondero, 70 percent Patton; is that right? 16 A. I see that. 17 Q. So isn't it fair to conclude from that that 18 Mr. Dondero is USP2, as reflected in Exhibit 28? 19 MS. SMITH: Objection to form. 20 THE WITNESS: You can conclude whatever 21 you'd like from these documents. 22 BY MR. BURT: 23 Q. Well, I'm asking you: Isn't it true that 24 Mr. Dondero was -- in fact, owned 70 percent of Sentinel, 25 as reflected in Exhibit 28, page 4, and as reflected in</p> |
| <p>186</p> <p>1 Q. All right. And in the summary, it says: 2 Ellington contributes 2.624.509.33 in cash to Sentinel 3 Reinsurance, Ltd. Sentinel Reinsurance, Ltd., loans -- 4 and then it says: XXXX to Dondero Ellington -- excuse 5 me -- to Dondero Entity. Effectively, 30 percent of loan 6 comes from Ellington. 7 Do you see that? 8 A. I see it. 9 Q. Do you recall Mr. Ellington contributing 10 \$2.6 million to Sentinel Reinsurance? 11 MS. SMITH: Objection to form. 12 THE WITNESS: I don't recall. 13 BY MR. BURT: 14 Q. Is this news to you as something you've never 15 heard of before today sitting here looking at this 16 document? 17 A. I just don't recall. 18 Q. All right. Did you know that Mr. Ellington was 19 funding Sentinel in that way? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I don't recall. 22 BY MR. BURT: 23 Q. And as you look at -- looking at this 24 spreadsheet, underneath the "Summary" box on the right 25 side, it says: Dondero, 70 percent Patton; Ellington,</p> | <p>188</p> <p>1 Exhibit 104, identifying him as a 70 percent owner of the 2 Patton line of ownership? 3 MS. SMITH: Objection, form. 4 THE WITNESS: I don't think that's exactly 5 fair. 6 BY MR. BURT: 7 Q. Why not? 8 A. Because -- because the 70 percent value, as you 9 referenced before, that flows to Patton on this chart that 10 you're showing me is further bifurcated above in the 11 ownership chain. 12 Q. Uh-huh. 13 A. So whereas this attachment on 104 exhibit says 14 "Dondero, 70 percent Patton," it's not technically 15 correct, as far as I would read it. 16 Q. Sure. Well, let's look at how that ownership is 17 split up from Patton. 18 15.89 percent goes to Anthem, Ltd., right? 19 A. I see that here. 20 Q. 84.11 percent goes to Mainspring, Ltd., correct? 21 A. I see that here. 22 Q. But then those combine back together into Loyal 23 Holdings, Ltd., right? 24 A. Uh-huh. 25 Q. Now, as part of the restructuring that happened</p> |

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| <p>189</p> <p>1 where you eliminated entities, is it true that you 2 eliminated that middle portion? 3 A. What middle portion? 4 Q. Of Anthem and Mainspring. 5 MS. SMITH: Objection to form. 6 THE WITNESS: From what I recall, there was 7 a -- a merger or something wherein Anthem and Mainspring 8 combined. 9 BY MR. BURT: 10 Q. Okay. So they combined into one entity, but 11 Patton was eliminated, right? 12 A. It appears so. 13 Q. And then Loyal Holdings is still there, both pre 14 and post restructuring, right? 15 A. I see that. 16 Q. All right. So, so far, 70 percent of the value, 17 if we're looking at pre-April 2019, is at Loyal Holdings, 18 and of that 70 percent, 99 percent goes to USP2, right? 19 A. I see that. 20 MS. SMITH: Objection to form. 21 BY MR. BURT: 22 Q. And -- and then there's a Kind Holdings, Ltd., 23 and a Brave Holdings, Ltd., both in the Caymans, which 24 each -- which split the remaining .5 percent of value, 25 right?</p> | <p>191</p> <p>1 detail is important to you? 2 A. Yes. 3 MS. SMITH: Objection to form. 4 BY MR. BURT: 5 Q. Okay. And then looking at the left-hand side, 6 30 percent of value of Nimitz, Ltd. -- of Sentinel Re 7 Holdings goes to Nimitz, Ltd., right? 8 A. Here on Exhibit 28? 9 Q. Yes. 10 A. Yes. 11 Q. And Nimitz, Ltd., is eliminated as part of the 12 restructuring, right? 13 A. I see that here, uh-huh. 14 Q. And then you -- looking at 28, rather than Mont- 15 -- excuse me -- then Nimitz goes to Montage Holdings, 16 which still exists after the restructuring, correct? 17 A. I see that here. 18 Q. And that flows up on HAL Holdings, which exists 19 after the restructuring, correct? 20 A. I see that. 21 Q. And from there, 99 percent of the value flows to 22 Elderflower, Ltd., and then directly to USP1, correct? 23 A. I see that on Exhibit 28. 24 Q. All right. And the only difference between 25 Exhibit 28 and the -- and what's shown in the</p> |
| <p>190</p> <p>1 A. They split the remaining 1 percent -- 2 Q. 1 percent. 3 A. -- of value. 4 Q. You're right. Thank you for the correction. 5 And then on the Brave Holdings's side, that 6 .5 percent of value flows up to USP2, correct? 7 A. I see that here on the chart, yes. 8 Q. So 99.5 percent of the 70 percent goes to USP2; 9 isn't that true? 10 A. I see that from the chart. 11 Q. So is your criticism of Exhibit 104 that Beecher 12 should have been more precise that it's not 70 percent, 13 that it's 99.5 percent of 70 percent? 14 MS. SMITH: Objection to form. 15 THE WITNESS: I believe you asked me if I 16 thought it was accurate, and for me, no, that's -- that's 17 not an accurate depiction to put "Dondero, 70 percent 18 Patton. " 19 BY MR. BURT: 20 Q. So you want to be so precise, you would rather 21 that it say it's 99.5 percent of 70 percent of Patton is 22 owned by Dondero, because that's what would reflect what's 23 on the flow -- on the structure, right? 24 A. I think that would be a better depiction. 25 Q. So that would be -- those level -- that level of</p> | <p>192</p> <p>1 restructuring is, after HAL Holdings, Elderflower is 2 eliminated? 3 MS. SMITH: Objection to form. 4 BY MR. BURT: 5 Q. In terms of where that 99 percent value goes? 6 A. Specific -- 7 MS. SMITH: Objection to form. 8 THE WITNESS: Specifically, as related to 9 Elderflower, I see, yes, that Elderflower was eliminated 10 on the restructured chart, which was provided to CIMA. 11 BY MR. BURT: 12 Q. All right. And the 1 percent value that doesn't 13 go up to Elderflower and USP1, goes to Greystone the IV, 14 which is the same in both pre and post restructuring, 15 right? 16 A. I see that here. 17 Q. Okay. So of the 30 percent value that split off 18 from Sentinel Re Holdings that went to Nimitz, 99 percent 19 of that 30 percent went to USP1, ultimately, correct? 20 MS. SMITH: Objection to form. 21 THE WITNESS: I see that as represented on 22 these documents in front of me. 23 BY MR. BURT: 24 Q. All right. And then looking at Exhibit 104, 25 because we like to be precise here, you would have said:</p> |

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1 99 percent of 30 percent is what Ellington's ownership
2 interest of Sentinel is, right?
3 MS. SMITH: Objection to form.
4 THE WITNESS: I -- I think it would be more
5 precise to not put "30 percent Ellington Nimitz."
6 BY MR. BURT:
7 Q. But it would have been more precise to say
8 "99 percent of 30 percent Ellington Nimitz," correct?
9 **A. Yes. But I don't know -- I don't know if it's**
10 **accurate to put "Ellington/Dondero" in it. I don't -- I**
11 **didn't put this together; I don't know what they're --**
12 Q. Well, let's -- let's look --
13 **A. -- referencing.**
14 Q. -- let's look at Exhibit 103 again, and what was
15 -- what was represented to CIMA in the e-mail from Leonna
16 Saintvil.
17 **A. Right.**
18 Q. Number 2: USP1 and USP2 are individuals, U.S.
19 Person 1 and U.S. Person 2, who are known to CIMA, as
20 referenced in my e-mail with the org chart, USP1 is Scott
21 Ellington, while USP2 is James Dondero.
22 That's what your administrator told CIMA,
23 the regulator, isn't it?
24 **A. Right. On June 20th, 2019. Exhibit 104 is dated**
25 **October 3rd, 2018.**

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1 Q. And so you're saying that Beecher may have just
2 been totally wrong pre-2018, and that now Mr. Dondero and
3 Ellington weren't actually the owners; they were just
4 wrong here. Is that your testimony?
5 MS. SMITH: Objection to form.
6 THE WITNESS: I'm not saying Beecher's
7 wrong; I'm saying they're not very precise in their
8 depiction on this paper that I'm looking at.
9 BY MR. BURT:
10 Q. Okay. So it's precision that you're -- that
11 you're quarreling with, not the actual fact that
12 Mr. Dondero owned 99.5 percent of Patton and Mr. Ellington
13 owned 90 percent -- 99 percent of the 30 percent of
14 Nimitz, right?
15 MS. SMITH: Objection to form.
16 THE WITNESS: I just think this could have
17 been a bit more clear.
18 BY MR. BURT:
19 Q. You would have been clearer, right, if you had
20 put this together?
21 **A. Probably.**
22 Q. Okay. I want to go back to, I believe -- it's
23 the CIMA letter. I think it's 10- -- 101. Thank you.
24 **A. The CIMA Inspection Report?**
25 Q. Yeah. Thank you. Yes, the CIMA Inspection

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1 Report.
2 **A. Okay.**
3 Q. Just one moment, please.
4 **A. Uh-huh.**
5 Q. Apologies.
6 Okay. I want to look at page 14 of the --
7 of the CIMA Inspection Report. And bef- -- before we read
8 that -- actually, if you could pull out Exhibit 100 one
9 more time, which is --
10 **A. Uh-huh.**
11 Q. -- the e-mail that lists all of the various
12 sections and -- and who Beecher was recommending be
13 responsible for the response.
14 And on page 2 of that, there's -- there's a
15 section that says, "Succession Planning."
16 Do you see that?
17 **A. I do.**
18 Q. And under 5.2.5.1, it states: Matt -- and then:
19 Katie mentioned the two others, Jan and Damien, having
20 insurance knowledge.
21 Do you recall what that is referring?
22 **A. Yes. Jan and Damien were other directors of**
23 **Sentinel Reinsurance, Ltd.**
24 Q. At what time?
25 **A. I don't recall.**

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1 Q. So this e-mail is April of 2019.
2 Is it fair that they were directors around
3 that time, April of 2019?
4 **A. I would assume so.**
5 Q. Okay. And is it Jan Neveril and Damien -- Damien
6 Austin?
7 **A. Yes.**
8 Q. Okay. Were they -- were they located in the
9 Caymans, or did they live in Dallas?
10 **A. No, they're in Cayman.**
11 Q. Cayman?
12 And if we go now back to page 14 of the CIMA
13 letter --
14 **A. Uh-huh.**
15 Q. Well, actually, before I ask that, do you recall
16 having a conversation with Beecher about the directors, as
17 reflected here?
18 MS. SMITH: Objection to form.
19 THE WITNESS: Not specifically.
20 BY MR. BURT:
21 Q. All right. So under "Succession Planning" --
22 before I ask that, you said "not specifically."
23 How about generally, do you recall any
24 general discussions with -- with Beecher Carlson about the
25 directors?

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| 197 | <p>1 A. No.</p> <p>2 Q. So on page 14, "Succession Planning," 5.2.5.1,</p> <p>3 the finding is: The Licensee has a board comprising of</p> <p>4 four directors. Of the four directors, only one director</p> <p>5 has direct insurance business expertise and experience.</p> <p>6 However, the Authority observed that the Licensee's CGF</p> <p>7 does not only lack a criteria for appointment of directors</p> <p>8 and balancing of skills and experience on the board, but</p> <p>9 it also does not entail a succession plan for those</p> <p>10 currently serving as directors. Should the single</p> <p>11 director with insurance industry experience being</p> <p>12 incapacitated, the board will not have sufficient</p> <p>13 expertise to adequately provide oversight of management</p> <p>14 and the Licensee's affairs.</p> <p>15 Do you recall that criticism of CIMA?</p> <p>16 A. I see it --</p> <p>17 MS. SMITH: Objection to form.</p> <p>18 THE WITNESS: I see it here.</p> <p>19 BY MR. BURT:</p> <p>20 Q. And do you recall having any conversations with</p> <p>21 Beecher responding to that criticism?</p> <p>22 MS. SMITH: Objection to form.</p> <p>23 THE WITNESS: No.</p> <p>24 BY MR. BURT:</p> <p>25 Q. If you look at page 15, under "Management</p> | 199 | <p>1 on behalf of Sentinel?</p> <p>2 A. No.</p> <p>3 MR. BURT: Mark this as Exhibit --</p> <p>4 THE STENOGRAPHIC REPORTER: 105.</p> <p>5 MR. BURT: -- 105.</p> <p>6 (Exhibit 105 was marked for identification.)</p> <p>7 MS. HARTMANN: Jason, do you have another</p> <p>8 one? If not, that's okay.</p> <p>9 MR. BURT: Oh. It's right here.</p> <p>10 MS. HARTMANN: Okay. That's for you?</p> <p>11 MR. BURT: Yep.</p> <p>12 MS. HARTMANN: Okay.</p> <p>13 MR. BURT: That was a bad toss.</p> <p>14 MS. SMITH: I didn't get one.</p> <p>15 MS. HARTMANN: Oh, you didn't get one?</p> <p>16 MR. BURT: Like, a really bad toss. Here</p> <p>17 you go.</p> <p>18 MS. SMITH: 105?</p> <p>19 MR. BURT: 105, yes.</p> <p>20 THE WITNESS: (Witness reviews document.)</p> <p>21 Okay.</p> <p>22 BY MR. BURT:</p> <p>23 Q. Okay. Now we're going to look at a number of</p> <p>24 e-mails in here, but I actually want to start with the</p> <p>25 last two.</p> |
| 198 | <p>1 Response," 5.2.5.4, it states: The Licensee's board is</p> <p>2 composed of four directors. However, the Licensee has</p> <p>3 two, not one, directors with direct insurance business</p> <p>4 expertise and experience, Jan Neveril and Damien Austin,</p> <p>5 rendering the statement inaccurate that the Licensee would</p> <p>6 be left with insufficient expertise...</p> <p>7 And it goes on.</p> <p>8 Did you have any part in drafting that?</p> <p>9 A. Not that I recall.</p> <p>10 Q. But according to Exhibit 100, you had told</p> <p>11 Beecher, at some point, that both Jan and Damien have</p> <p>12 insurance knowledge, right?</p> <p>13 MS. SMITH: Objection to form.</p> <p>14 THE WITNESS: I don't know if I told Beecher</p> <p>15 specifically, but --</p> <p>16 BY MR. BURT:</p> <p>17 Q. Well, it says: Katie mentioned the two others.</p> <p>18 A. Okay.</p> <p>19 Q. Do -- do you recall that?</p> <p>20 A. No, I don't recall that.</p> <p>21 Q. Okay. Mrs. Irving, was there ever a time when</p> <p>22 you had authority for Sentinel to approve payments or</p> <p>23 invoices?</p> <p>24 A. No.</p> <p>25 Q. Do you recall ever approving a payment or invoice</p> | 200 | <p>1 There's an e-mail on Monday, October 22nd,</p> <p>2 2018 -- this is the second e-mail in the chain -- from Tom</p> <p>3 Adamczak at Beecher to you, katieirving@sasmanagement.com,</p> <p>4 cc'ing Matt DiOrio and Alli Devins.</p> <p>5 And he states here: Agreed -- and, again,</p> <p>6 we'll look at the other e-mails in a moment. He says:</p> <p>7 Assuming that Beecher is to be the initiator on all</p> <p>8 payments -- sorry. I should state for the record, the</p> <p>9 subject is: RE: Sentinel DSAs.</p> <p>10 Agreed. Assuming that Beecher is to be</p> <p>11 initiated on all payments, perhaps something like the</p> <p>12 following would be appropriate: One, Beecher receives</p> <p>13 invoices submitted for payment and verifies they have not</p> <p>14 already been processed; two, Beecher obtains initial</p> <p>15 approval to pay for Matt DiOrio, (alternatively, J.P. and</p> <p>16 Katie, depending on availability or nature of the</p> <p>17 invoice.)</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. And he goes on to explain what else happens. And</p> <p>21 he says: Let me know if you have any comments or changes.</p> <p>22 We can formalize this, or something like it, as policy, if</p> <p>23 you want. Tom.</p> <p>24 You then respond on October 22nd, the same</p> <p>25 day, in fact, just 14 -- 12, 13 minutes later, saying:</p> |

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| <p style="text-align: right;">201</p> <p>1 This looks okay to me. Thank you. Do you have the 2 necessary tokens log-in input info for CIBC? 3 So do you recall this e-mail exchange? 4 A. No. 5 Q. You don't recall approving that, in the 6 alternative, you and J.P. could provide initial approval 7 to pay Beecher Sentinel invoices? 8 MS. SMITH: Objection to form. 9 THE WITNESS: No. J.P. and I did not have 10 authority to pay anything from Sentinel. However, this 11 e-mail, if you read the balance of it, Items 3, 4, 5 and 12 6, this is mostly like a gut check so that the invoice 13 could be put forward to the directors, who would have the 14 authority to pay it. 15 BY MR. BURT: 16 Q. So by "gut check," you mean when he states 17 "initial approval to pay"? Is that the "gut check" that 18 you're referring to? 19 A. Yes. 20 Q. So Mr. DiOrio, Mr. Sevilla, or yourself would 21 provide a gut check on -- on the invoice that came in and 22 whether Sentinel should pay; is that fair? 23 MS. SMITH: Objection to form. 24 THE WITNESS: That's what Tom Adamczak is 25 suggesting in this e-mail.</p> | <p style="text-align: right;">203</p> <p>1 A. Yes. 2 Q. And the directors were paid for their service -- 3 services as Sentinel directors? 4 A. Yes. 5 MS. SMITH: Objection to form. 6 BY MR. BURT: 7 Q. Was Mr. DiOrio paid for his services as a 8 Sentinel director? 9 MS. SMITH: Objection to form. 10 THE WITNESS: I don't know. 11 BY MR. BURT: 12 Q. You -- you just testified that directors were 13 paid. Would Mr. DiOrio have been an exception to that 14 when he was a Sentinel director? 15 A. I don't know. I know the outside directors were 16 paid. 17 Q. So he was an inside director? 18 MS. SMITH: Objection to form. 19 THE WITNESS: No. I know the -- I know that 20 Jan and -- well, I don't know if it's Jan and Damien. 21 There were directors based in Cayman who were paid. 22 BY MR. BURT: 23 Q. And you saw some of those invoices? 24 A. I believe so, yes. 25 Q. Did you ever see an invoice to pay Mr. DiOrio</p> |
| <p style="text-align: right;">202</p> <p>1 BY MR. BURT: 2 Q. Well -- and then you said, "This looks okay to 3 me," right? 4 A. Yes, I wrote, "This looks okay to me." 5 Q. You don't say anywhere: Wait, I don't have 6 authority to -- to make an initial approval; I can't do 7 that. You don't say that, do you? 8 A. I said -- 9 MS. SMITH: Objection to form. 10 THE WITNESS: -- "This looks okay to me. 11 Thank you." 12 BY MR. BURT: 13 Q. Right. 14 And how many times did you provide that gut 15 check? 16 MS. SMITH: Objection to form. 17 THE WITNESS: I don't know. 18 BY MR. BURT: 19 Q. Do you recall receiving invoices for Sentinel and 20 looking at them? 21 A. I would receive invoices like registered office 22 fees or, in this case, Director Service Agreements, DSAs. 23 Q. Uh-huh. 24 So you would receive those and look at 25 those?</p> | <p style="text-align: right;">204</p> <p>1 from Sentinel? 2 A. Not that I recall, no. 3 Q. So DSAs, some overhead expenses for Sentinel, 4 things like that, you would see those invoices? 5 A. Generally, yes. 6 Q. How about payments on policies, would you see 7 those? 8 MS. SMITH: Objection to form. 9 THE WITNESS: No. 10 BY MR. BURT: 11 Q. So if Sentinel was paying out on a policy, you 12 wouldn't have seen that? 13 A. No. 14 Q. Did you have any knowledge of Sentinel ever 15 paying on one of the D&O policies that it had issued? 16 MS. SMITH: Objection to form. 17 THE WITNESS: Not that I recall. 18 BY MR. BURT: 19 Q. Meaning you don't recall Sentinel ever having 20 paid on a D&O policy? 21 MS. SMITH: Objection to form. 22 THE WITNESS: Not that I recall, no. 23 BY MR. BURT: 24 Q. On the ATE policy that you have testified about 25 today that you know did exist, do you recall Sentinel ever</p> |

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1 paying on that?
2 **A. I don't know.**
3 Q. Okay. Let's go back in this e-mail chain, and
4 if -- if we look at the first e-mail in the chain, it's --
5 which was on page 4, the Bates at the bottom has 7047.
6 And it's from you, katieirving@sasmanagement.com to
7 Lesley Thompson and Andrew Dean.
8 Who were they?
9 **A. I believe they were directors for Sentinel**
10 **Reinsurance, Ltd., at MaplesFS.**
11 Q. And you cc on this e-mail Dilip Massand. Who was
12 he?
13 **A. Dilip Massand --**
14 Q. Yep.
15 **A. -- he -- he was a consultant, essentially, for**
16 **some SAS matters in the Middle East.**
17 Q. Why would you have cc'd him on a Sentinel DSA
18 e-mail?
19 **A. Presumably because he was going to be added as a**
20 **new director.**
21 Q. Okay. Then you also add Matt DiOrio and
22 J.P. Sevilla, correct?
23 **A. I see them here.**
24 Q. Pete Kranz, who is that?
25 **A. He worked with Beecher Carlson.**

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1 Q. And then Tom Adamczak, we know, was at Beecher,
2 right?
3 **A. (Witness nods head affirmatively.)**
4 Q. And Jonathan Arbeit, I believe, was at Beecher as
5 well?
6 **A. Correct.**
7 Q. And so you state: Directors please see the
8 attached DSAs for new Sentinel directors and, subject to
9 review and approval, please provide countersigned copies.
10 Do you see that?
11 **A. I see that.**
12 Q. Do you recall participating in this process in
13 October of 2018 of bringing on new directors and old
14 directors stepping off Sentinel?
15 MS. SMITH: Objection to form.
16 THE WITNESS: Vaguely.
17 BY MR. BURT:
18 Q. What do you recall about that?
19 **A. Just that it happened. I recall the need for new**
20 **directors who had direct insurance knowledge.**
21 Q. So prior to that time, did -- when --
22 Mrs. Thompson and Mr. Dean, when they were serving as
23 directors, did they not have direct insurance knowledge?
24 MS. SMITH: Objection to form.
25 THE WITNESS: I'm sure they did have direct

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1 insurance knowledge.
2 BY MR. BURT:
3 Q. So why, then, did you just testify that there was
4 a need to bring on directors with direct insurance
5 knowledge?
6 **A. Because two directors were leaving who had direct**
7 **insurance knowledge, and there was a need for new**
8 **directors to have insurance knowledge.**
9 Q. Why were -- why were Lesley Thompson and
10 Andrew Dean leaving?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I don't know.
13 BY MR. BURT:
14 Q. Okay. Mrs. Thompson responds to you: Thanks for
15 sending these through.
16 She talks about board resolutions to approve
17 the appointment of Damien and Jan -- is it "Jan" or "Jan"?
18 **A. "Jan."**
19 Q. -- Jan and to accept the resignation of Andrew
20 and myself and to authorize or ratify the signing of the
21 DSAs. Given that Andrew and I will be stepping down, the
22 DSAs may be best signed by either Matt or Dilip or the
23 shareholder if deemed more appropriate.
24 Do you see that?
25 **A. I do.**

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1 Q. Who was she referring to when she says "or the
2 shareholder"?
3 MS. SMITH: Objection to form.
4 THE WITNESS: I don't know.
5 BY MR. BURT:
6 Q. Were you aware that sha -- a shareholder could
7 sign these types of board resolutions?
8 MS. SMITH: Objection to form.
9 THE WITNESS: Only insofar as she's telling
10 me this, and she is a director. I don't know.
11 BY MR. BURT:
12 Q. Did you ever have a shareholder of Sentinel sign
13 anything for Sentinel, a board resolution?
14 MS. SMITH: Objection to form.
15 THE WITNESS: Not that I recall.
16 BY MR. BURT:
17 Q. All right. She then says: We should also take
18 the opportunity to update the authorized signatories for
19 both the CIBC and the Maples's client money account to
20 remove Andrew and myself and replace with others, as
21 appropriate.
22 What is the CIBC account she is referring
23 to?
24 **A. CIBC is a bank in Cayman. So, presumably, it's a**
25 **bank account.**

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1 Q. And do you know what that bank account was for
2 Sentinel? Was it one of Sentinel's accounts?
3 MS. SMITH: Objection to form.
4 THE WITNESS: I don't know.
5 BY MR. BURT:
6 Q. You don't recall if Sentinel had a CIBC account?
7 MS. SMITH: Objection to form.
8 THE WITNESS: I didn't think that was your
9 prior question. From this document, it looks as though
10 there was a CIBC account.
11 BY MR. BURT:
12 Q. And putting the document aside, what is your
13 recollection about the -- about Sentinel's banking with
14 CIBC?
15 **A. I believe there was an account at one time, and I**
16 **-- I don't know. It's not something I managed.**
17 Q. Moving to page 3, moving up in the e-mail chain,
18 Mrs. Thompson e-mails with you and Andrew Dean on Tuesday,
19 October 16th. She talks about following up on this. What
20 is the anticipated date for meeting to record the change
21 in directors and signatories? And she goes on.
22 Moving up from that, she then says, on
23 October 19th, three days later: Dear All, we
24 haven't heard -- as we haven't heard any objections to the
25 below-proposed date, please note that Andrew and I will be

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1 circulating our resignation letters, effective today,
2 later this afternoon.
3 Do you recall that?
4 **A. No.**
5 Q. And you respond then, on Friday, October 19th,
6 the same day, to Lesley Thompson and say: Lesley, please
7 hold until Tuesday while we gather signatures, and please
8 instruct drafting the resolutions to approve the change.
9 We need a smooth transition on this, please.
10 Do you recall that e-mail?
11 **A. No.**
12 Q. Do you know why you said you needed a smooth
13 transition?
14 MS. SMITH: Objection to form.
15 THE WITNESS: Because sometimes things can
16 move very slowly, and we needed to make sure that there
17 was no lapse in directorship.
18 BY MR. BURT:
19 Q. Was CIMA doing its investigation at this time
20 with Sentinel?
21 MS. SMITH: Objection, form.
22 THE WITNESS: I don't know. I don't know.
23 BY MR. BURT:
24 Q. You don't recall?
25 **A. I don't know.**

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1 Q. Sitting here today, do you know whether the
2 change in directors had anything to do with the CIMA
3 investigation?
4 MS. SMITH: Objection to form.
5 THE WITNESS: It wasn't an investigation; it
6 was an inspection, a routine inspection.
7 BY MR. BURT:
8 Q. Call it what you want.
9 Routine inspection, did this have anything
10 to do with the CIMA routine inspection?
11 **A. I don't --**
12 MS. SMITH: Objection to form.
13 THE WITNESS: I don't know. I don't know.
14 BY MR. BURT:
15 Q. Did you gather the signatures on these board
16 resolutions?
17 **A. I don't know.**
18 Q. You don't recall doing that?
19 **A. I don't recall.**
20 Q. Was it common for you to -- to e-mail with board
21 members of Sentinel?
22 MS. SMITH: Objection to form.
23 THE WITNESS: It wasn't uncommon.
24 BY MR. BURT:
25 Q. Okay. And what would you typically e-mail about?

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1 **A. Generally, it would be the mundane general**
2 **business OPEX, registered office fees or directorship fees**
3 **or something like that.**
4 Q. So to get their approval for those types of
5 things?
6 **A. Not --**
7 MS. SMITH: Objection to form.
8 THE WITNESS: Not necessarily their
9 approval. That's something Beecher would generally
10 obtain.
11 BY MR. BURT:
12 Q. Uh-huh.
13 **A. But looping them in or something like that.**
14 Q. Okay. Now, in this time period of-- of October
15 of 2018, the -- the late part of October 2018, do you
16 recall ever attending a board meeting of Sentinel?
17 **A. I don't recall.**
18 Q. Moving up in the chain, Mrs. Thompson says: Hi,
19 Katie, the 23rd is acceptable. And then you respond:
20 Good morning, Lesley, confirming you've instructed
21 resolutions per below.
22 And then, at the very top of this page, and
23 -- and if you look at the -- page 1, you'll see it's an
24 e-mail from you on Monday, October 22nd, to
25 Lesley Thompson. You state: Matt and Dilip should not

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| <p style="text-align: right;">213</p> <p>1 have signing authority for bank accounts, only documents. 2 You see that? 3 A. I see it. 4 Q. Why did Matt and Dilip not have signing authority 5 for bank accounts? 6 MS. SMITH: Objection to form. 7 THE WITNESS: I don't remember. 8 BY MR. BURT: 9 Q. Well, this is e -- this is an e-mail from you, 10 and you're giving that instruction. 11 You don't have any recollection of why it 12 was that Mr. DiOrio and Dilip should not have signing 13 authority for bank accounts? 14 MS. SMITH: Objection to form. 15 THE WITNESS: I don't remember. I can 16 speculate, but I don't remember. 17 BY MR. BURT: 18 Q. What's your general understanding of why they 19 couldn't have signing authority on a bank account for 20 Sentinel? 21 MS. SMITH: Objection to form. 22 THE WITNESS: Likely tax-related or 23 U.S.-person-related. 24 BY MR. BURT: 25 Q. What do you mean by "U.S.-person-related"?</p> | <p style="text-align: right;">215</p> <p>1 A. I meant sign -- they can sign documents and not 2 have authority over the bank accounts. 3 Q. And by "documents," you meant other documents 4 that a Sentinel board member would be authorized to sign? 5 A. Yes. 6 Q. Tom then responds to you, and he -- he responds 7 just to you and cc's Mr. DiOrio and states: Katie, is it 8 your intention to require two directors to sign to release 9 payments? That might prove to be problematic if one is 10 out. Just my thoughts, Tom. 11 You then respond on the same day: No, one 12 director should be fine. We do need a clear process 13 between this team, Beecher, and CIBC for banking payments 14 from Sentinel. 15 Do you see that? 16 A. I do. 17 Q. Why is it that Beecher Carlson, "Tom," was asking 18 you about what your intentions for releasing payments at 19 Sentinel was? 20 MS. SMITH: Objection to form. 21 THE WITNESS: It's really just a checks and 22 balances, you know: Would this feel sufficient from a 23 treasury management perspective? 24 BY MR. BURT: 25 Q. And, here, you're instructing Beecher, the</p> |
| <p style="text-align: right;">214</p> <p>1 A. That it was more streamlined to have Cayman 2 signatories on the Cayman banking accounts. 3 Q. Because Matt was in Texas here, right? 4 A. Yes. 5 Q. Where was Dilip? 6 A. UAE. 7 Q. In the UAE. 8 What did you mean by they should not 9 have signing -- when you said "only documents," what did 10 you mean by that? Did they have signing authority for 11 documents, like they could sign resolutions, things like 12 that? 13 A. By "only documents," I really meant any nonbank 14 account authority that a director would have for signatory 15 authority. 16 Q. Okay. So other than signing on bank accounts, 17 they had authority to sign whatever else was necessary for 18 Sentinel as a director? 19 MS. SMITH: Objection to form. 20 THE WITNESS: I don't know. 21 BY MR. BURT: 22 Q. Well, you wrote this. 23 A. I did. 24 Q. So I'm trying to get -- I'm trying to understand 25 what -- what it is that you meant by this.</p> | <p style="text-align: right;">216</p> <p>1 administrator, on how many directors should sign on behalf 2 of Sentinel, right? 3 MS. SMITH: Objection to form. 4 THE WITNESS: I'm conveying one director 5 seems fine to me; I'm not instructing them. 6 BY MR. BURT: 7 Q. Did they have -- did Beecher ignore your advice 8 and say: Nah, we think two is required? Could they have 9 done that? 10 A. Yes. 11 Q. So you had no authority over Beecher? 12 A. No. 13 Q. Okay. How about Mr. DiOrio, did he have 14 authority over Beecher? 15 MS. SMITH: Objection to form. 16 THE WITNESS: I don't think so. 17 BY MR. BURT: 18 Q. Could you-all at HCMLP ultimately tell Beecher 19 what to do, and they would have to follow, or were they 20 instructing you what to do as -- as it pertained to 21 Sentinel? 22 MS. SMITH: Objection to form. 23 THE WITNESS: Beecher generally instructed 24 us what to do. 25 BY MR. BURT:</p> |

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1 Q. You said "generally." Was that the rule: We
2 accept the direction of Beecher, and we do what they say?
3 MS. SMITH: Objection to form.
4 THE WITNESS: As far as I recall.
5 BY MR. BURT:
6 Q. So if that's the case, why is he asking you about
7 how many directors should be required to pay?
8 MS. SMITH: Objection to form.
9 THE WITNESS: I don't know why he's asking
10 me that.
11 BY MR. BURT:
12 Q. Well, you don't tell him that. You don't say:
13 Why are you asking me? You're the administrator.
14 You direct him: No, one is fine. Don't
15 you?
16 **A. That's what the paper says, yes.**
17 Q. And then you instruct him further: We do need a
18 clear process between this team, Beecher, and CIBC for
19 banking payments from Sentinel.
20 What did you mean by "this team"?
21 MS. SMITH: Objection to form.
22 THE WITNESS: Probably the team on the
23 e-mail.
24 BY MR. BURT:
25 Q. Which was who?

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1 **A. It appears here on the paper, me, Tom, and Matt.**
2 Q. Well, Tom was Beecher.
3 **A. Right.**
4 Q. So who is "this team"?
5 **A. Probably me and Matt.**
6 Q. Just you and Matt?
7 MS. SMITH: Objection to form.
8 THE WITNESS: I don't know.
9 BY MR. BURT:
10 Q. Well, you wrote it, so I want to understand what
11 you meant by it.
12 **A. I don't know.**
13 Q. And, frankly, I have a hard time believing you
14 don't know.
15 **A. I don't know. Matt and I are the only ones on**
16 **the e-mail.**
17 Q. So were you and Matt the Sentinel team at HCMLP?
18 MS. SMITH: Objection to form.
19 THE WITNESS: HCMLP didn't have a "Sentinel
20 team."
21 BY MR. BURT:
22 Q. Well, then, why were you working on it?
23 MS. SMITH: Objection to form.
24 THE WITNESS: Because I was -- I was
25 instructed, or asked, to work on it.

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1 BY MR. BURT:
2 Q. And by whom?
3 **A. Probably my boss, Scott Ellington.**
4 Q. Okay. He asked you to work on Sentinel, didn't
5 he?
6 **A. I think so.**
7 Q. And never, at any time, were you a Sentinel
8 employee, were you?
9 **A. I was not a Sentinel employee.**
10 Q. You were a HCMLP employee, weren't you?
11 **A. Yes, I was.**
12 Q. And you've been very clear about this in this
13 deposition, that you were only ever employed by HCMLP
14 until 2021, right?
15 **A. Yes.**
16 Q. And, yet, here you are as an HCMLP employee
17 directing Beecher what it should do as it pertains to the
18 Sentinel bank accounts, weren't you?
19 MS. SMITH: Objection. You're badgering
20 her.
21 MR. BURT: This is not badgering.
22 THE WITNESS: You're pointing at me a lot.
23 MR. BURT: I'm holding my glasses.
24 THE WITNESS: And pointing them at me a lot.
25 Beecher asked my comfort level here.

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1 Beecher easily could have said: We need two directors.
2 BY MR. BURT:
3 Q. And that wasn't my question.
4 **A. Would you repeat your question, please?**
5 Q. Sure. Let's go back.
6 Yet, here you are as an HCMLP employee
7 directing Beecher what it should do as it pertains to the
8 Sentinel bank accounts, weren't you?
9 **A. No.**
10 Q. Are you denying that that's what you were doing
11 here?
12 MS. SMITH: Objection to form.
13 THE WITNESS: I don't understand what you're
14 asking me here.
15 BY MR. BURT:
16 Q. You don't?
17 **A. I just said I don't understand what you're asking**
18 **me.**
19 Q. Okay. You don't understand that I'm asking you
20 why it is that you, as an HCMLP employee, can tell Beecher
21 what it should do as it respects the Sentinel bank
22 accounts?
23 MS. SMITH: Objection to form.
24 THE WITNESS: I don't know.
25 BY MR. BURT:

| | |
|--|--|
| <p style="text-align: right;">221</p> <p>1 Q. Why did there have to be a clear process between 2 you and Mr. DiOrto, Beecher, and CIBC for banking payments 3 from Sentinel? 4 A. Because Beecher, the administrator for Sentinel, 5 Beecher does all the accounting for Sentinel. CIBC was 6 the bank. So say, for example, I have a director fee or a 7 registered office fee that comes to my desk, I need to 8 know: Who do I send that to? Does it go direct to the 9 directors? Does it go through Beecher? How is Beecher 10 going to account for it? How is this going to be a 11 seamless process to make sure that everything is 12 completed. 13 Q. Well, here is my question: Why is that coming to 14 you at all? You just said Beecher does all the 15 accounting. 16 MS. SMITH: Objection to form. 17 BY MR. BURT: 18 Q. Why does it come to you? 19 A. It -- it could potentially come to me in a batch 20 of other invoices or something. So say I get a large 21 batch with multiple entities, then the Sentinel ones would 22 be going to Beecher for their review. 23 Q. So let's break that apart. 24 A batch of what, invoices? 25 A. Yeah, like registered office.</p> | <p style="text-align: right;">223</p> <p>1 notification process to the directors that payments were 2 made on time. That's what I mean by -- by the clear 3 process. 4 Q. I see. 5 Was it just entities in the SAS structure 6 and the Sentinel structure for which you would receive 7 invoices? 8 A. Yes. 9 Q. No others? 10 A. Not that I recall. 11 Q. Okay. How about in relation to HCMLP entities, 12 did you receive invoices for them? 13 MS. SMITH: Objection, form. 14 THE WITNESS: Not that I recall. 15 BY MR. BURT: 16 Q. Okay. All right. That's helpful. 17 Okay. You can set that aside for a moment. 18 I believe -- correct me if I'm wrong -- I 19 just want to double-check something -- you're not aware of 20 there having been a -- a Shared Services Agreement between 21 HCMLP and Sentinel, right? 22 MS. SMITH: Objection to form. 23 THE WITNESS: I don't know. 24 BY MR. BURT: 25 Q. But you don't know if there was one?</p> |
| <p style="text-align: right;">222</p> <p>1 Q. So you get a batch and -- for -- for a bunch of 2 different entities, a bunch of invoices? 3 A. I could, yes. 4 Q. And those all come to you? 5 A. They could, yes. 6 Q. An HCMLP employee, right? 7 A. Yes. We have established that I'm -- I was only 8 ever employed by HCMLP -- 9 Q. Right. 10 A. -- up until my termination, yes. 11 Q. And -- and then -- so but all of these various 12 entities and their invoices are coming to you at HCMLP, 13 right -- 14 MS. SMITH: Objection, form. 15 BY MR. BURT: 16 Q. -- in a batch, to use your words? 17 A. The Sentinel and SAS structure charts, which 18 you've shown me, entities on those charts could have bills 19 that would come to me in a batch, not HCMLP-related 20 invoices -- 21 Q. Okay. 22 A. -- totally separate and apart from HCMLP. 23 Cayman entity -- Cayman-related invoices 24 would come to me. If it was Sentinel-related, I needed to 25 make sure the administrator was aware, there was a proper</p> | <p style="text-align: right;">224</p> <p>1 A. I don't know. 2 Q. You never saw one? 3 A. I don't know, no. 4 Q. Listen to my question. 5 You never saw one? 6 A. I don't know. I don't recall. 7 Q. You don't recall ever seeing one? 8 A. (Witness shakes head negatively.) 9 Q. Okay. How about any other agreement between 10 HCMLP and Sentinel? 11 A. I don't recall. 12 Q. What percentage of your time would you say was 13 spent on Sentinel-related tasks? 14 A. During which time period? 15 Q. Well, I think you said that, from the time you 16 started until the time you left, you were working on 17 Sentinel ad hoc? 18 A. Uh-huh. 19 Q. So I'm just wondering: How much of your time, 20 during that entire time period, would you say you spent on 21 Sentinel? 22 A. A very small amount. 23 Q. Okay. And what do you mean by that? 24 A. That I would work on Sentinel matters ad hoc, as 25 needed, but I -- I didn't spend a lot of time related to</p> |

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1 **Sentinel.**
2 Q. In addition to the CIBC account, do you know
3 whether Sentinel had any other accounts?
4 MS. SMITH: Objection to form.
5 THE WITNESS: From the documentation that
6 you showed me today, it appears there was a Maples's
7 account of some type.
8 BY MR. BURT:
9 Q. Do you know what that was?
10 **A. I don't recall.**
11 Q. What was Maples?
12 **A. Maples is a law firm in Cayman. MaplesFS is**
13 **Maples Fiduciary Services, which is a fiduciary arm,**
14 **essentially, in Cayman.**
15 Q. Okay.
16 MR. BURT: I think we're on 106.
17 THE STENOGRAPHIC REPORTER: (Nods head.)
18 (Exhibit 106 was marked for identification.)
19 THE WITNESS: Thanks.
20 (Witness reviews document.)
21 BY MR. BURT:
22 Q. Mrs. Irving, when you're ready, my question for
23 you is whether you recognize this document?
24 **A. I -- I don't.**
25 Q. All right. Looking at the bottom, on page 1 of

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1 Exhibit 106, do you see there's an e-mail from you on
2 Friday, August 11th, 2017, to carterchism@
3 highlandcapital.com, cc'ing Mr. Sevilla.
4 Who is Carter Chism?
5 **A. He worked in the settlements group.**
6 Q. And here you write: Sentinel wiring instructions
7 for cash arising from transaction are below. Thank you.
8 Beneficiary Bank: Bank of New York Mellon at an address
9 in New York, and it has the ABA number, SWIFT number. And
10 on the back, it says, "Account Name: MaplesFS, Ltd.,"
11 with an account number. Reference: Sentinel Reinsurance,
12 Ltd.
13 Do you see that?
14 **A. Yes.**
15 Q. What was -- what were the wiring instructions
16 here that you were providing?
17 **A. Sentinel Reinsurance, Ltd.'s wiring instructions.**
18 Q. For its account at Bank of New York Mellon?
19 **A. No; for its account at MaplesFS, Ltd. Bank of**
20 **New York Mellon is a correspondent bank.**
21 Q. Well, it says the account name is MaplesFS, Ltd.,
22 right?
23 **A. Right.**
24 Q. And that account was held at Bank of New York
25 Mellon, which I'll refer to as "BONY." Is that fair?

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1 **A. Yes.**
2 Q. All right. Did Sentinel ever have a BONY
3 account?
4 MS. SMITH: Objection, form.
5 THE WITNESS: I don't know.
6 BY MR. BURT:
7 Q. So do you recall -- the transaction that you're
8 referring to, do you recall what transaction that was?
9 **A. Likely it was related to the ATE policy.**
10 Q. All right. And so you're providing wiring
11 instructions for cash arising from that transaction.
12 Do you recall the cash that was wired as
13 part of the ATE policy?
14 **A. No.**
15 Q. But you don't disagree that cash was wired to
16 Sentinel as part of that policy, do you?
17 MS. SMITH: Objection, form.
18 THE WITNESS: It appears so from this
19 e-mail, the document you handed me.
20 BY MR. BURT:
21 Q. To an account name of MaplesFS, Ltd., located at
22 BONY, right?
23 **A. Yes.**
24 Q. If it related to the ATE policy, that money was
25 coming to Sentinel, wasn't it?

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1 **A. Yes.**
2 Q. Because Sentinel was the insurer, providing the
3 ATE --
4 MS. SMITH: Objection.
5 THE WITNESS: The insurer, yes.
6 BY MR. BURT:
7 Q. Right. That's what I said.
8 **A. This is Sentinel's bank account. If the question**
9 **is whether this is MaplesFS, Ltd., bank account, no.**
10 **That's how this is structured. BONY is a correspondent**
11 **bank, which holds an account for MaplesFS, Ltd., who is a**
12 **fiduciary.**
13 **The fiduciary then holds the account for**
14 **Sentinel Reinsurance, Ltd. So that's why you see this**
15 **last line "Reference: FC" -- "FFC," for further credit,**
16 **to Sentinel Reinsurance, Ltd., and then the client account**
17 **number.**
18 Q. Got it.
19 And then Mr. Chism, in the e-mail back to
20 you on the same day, he says: Please confirm this serves
21 as instructions to wire cash from all HFP funds and all
22 CDO funds to the account listed in the instruction below.
23 Do you see that?
24 **A. I see that. Yes, on this paper, yes, I see that.**
25 Q. Is that consistent with your recollection that

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1 all cash from HFP funds and all cash from CDO funds was
2 wired to Sentinel as part of the ATE transaction in August
3 of 2017?
4 MS. SMITH: Objection to form.
5 THE WITNESS: I don't know. I just provided
6 the wiring instructions. I don't know that.
7 BY MR. BURT:
8 Q. Well, he's asking you if -- he's asking you to
9 confirm if this serves as the instruction to wire cash
10 from all of these HFP funds and all of the CDO funds?
11 MS. SMITH: Objection to form.
12 THE WITNESS: Looks like there are a lot of
13 people on this e-mail chain. I didn't respond. I didn't
14 have authority to -- to say that.
15 BY MR. BURT:
16 Q. Mr. Willmore, David Willmore, in the above
17 e-mail, who it lists as CPA Senior Manager Fund Analysis,
18 who is he?
19 A. He is a fund -- I think he is an accountant, a
20 fund accountant.
21 Q. Where does he work?
22 A. HCMLP.
23 Q. Okay. He says, on the same day: FYI, I've
24 entered wires to move all of CDO funds cash to Sentinel.
25 There were two wires: one for 7-million-some-odd money,

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1 and one for 2-million-some-odd, right?
2 A. I see that here.
3 Q. And then, at the top, you e-mail -- you remove
4 everybody else from the chain and just e-mail J.P. Sevilla
5 and say: I called Willmore, and he advised the other cash
6 wires are in process, FYI.
7 What other wires, cash wires, were you
8 referring to?
9 A. I don't know.
10 Q. Why would you have called Will- -- Mr. Willmore
11 to ask that question?
12 A. I don't know.
13 Q. Do you recall asking him that question?
14 A. No.
15 Q. Do you recall being involved in -- in providing
16 these wiring details as part of this transaction in August
17 of 2017?
18 MS. SMITH: Objection, form.
19 THE WITNESS: I can see here that I provided
20 the wire details. I didn't recall providing them prior to
21 you showing me this document.
22 BY MR. BURT:
23 Q. Did someone ask you to provide the wire details?
24 MS. SMITH: Objection to form.
25 THE WITNESS: I don't remember.

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1 BY MR. BURT:
2 Q. Would you have just done that on your own
3 initiative?
4 A. I don't remember.
5 MR. BURT: Give me one moment, please.
6 Okay. My apologies.
7 BY MR. BURT:
8 Q. You said -- I believe you said that you didn't
9 have any authority to confirm the wiring of all cash from
10 the HFP funds and all cash from the CDO funds, right; you
11 didn't have that authority?
12 A. Correct.
13 Q. Who did have that authority?
14 A. I don't know. That's above my pay grade. I
15 would note that there are other very, very senior people
16 here on this e-mail: Thomas Sargent, Cliff Stoops, Frank
17 Waterhouse. I -- I don't know.
18 Q. Would they have had that authority?
19 A. I don't know.
20 Q. Would Mr. Ellington have had that authority?
21 A. I don't know.
22 Q. Okay. As part of the transaction in August, do
23 you recall whether there were assets, other than cash,
24 that were transferred?
25 A. I believe there were assets other than cash, yes.

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1 Q. What were those assets?
2 A. It was a -- it was an amalgamation of things from
3 what I recall.
4 Q. When did you first learn of this transfer?
5 MS. SMITH: Objection to form.
6 THE WITNESS: I don't know.
7 BY MR. BURT:
8 Q. Was it before August 11th, 2017?
9 MS. SMITH: Objection to form.
10 THE WITNESS: I don't know.
11 BY MR. BURT:
12 Q. I mean, did you learn of the transaction on the
13 day of that you were providing the wiring instructions?
14 A. I don't remember.
15 Q. Can you give me your best estimate of when you
16 first learned -- thinking back, when you first learned of
17 the transaction in the ATE policy at issue?
18 MS. SMITH: Objection to form.
19 THE WITNESS: My best guess would be I
20 learned sometime around the time of the transfer. I was
21 not involved in any meetings related before that, that I
22 can remember.
23 BY MR. BURT:
24 Q. So you didn't have anything to do -- and I think
25 you've testified, you didn't do any diligence on this ATE

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1 policy, right?

2 **A. Correct.**

3 Q. Were there any other considered ATE policies for

4 which you did not do diligence?

5 MS. SMITH: Objection to form.

6 THE WITNESS: I don't know.

7 BY MR. BURT:

8 Q. Because you've talked about, I think you said

9 before, you recall around five or so for which you did do

10 diligence potential ATE policies, right?

11 **A. Yes, I do recall that.**

12 Q. Do you know whether there were any other -- so

13 I'm trying to be as precise as I can here.

14 So you testified about that, there were five

15 or so that you did do diligence on; you did not do

16 diligence on this one.

17 Were there any other considered ATEs for

18 which you did not do diligence?

19 MS. SMITH: Objection to form.

20 THE WITNESS: Possibly, but I can't recall.

21 BY MR. BURT:

22 Q. All right. What -- what would possibly have been

23 one?

24 **A. A litigation funding matter with a ATE coupled on**

25 **it that I wasn't as involved with.**

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1 Q. Do you recall what that was?

2 **A. No.**

3 Q. Okay. So you're just speculating that there

4 might have been something like that?

5 **A. Yeah, it's possible. Yeah, I don't know.**

6 Q. Okay. Let's go back to the CIMA letter. I

7 believe it's Exhibit 101.

8 **A. I got it.**

9 Q. Is that 101?

10 **A. Uh-huh.**

11 Q. All right. And I want to go to page 17 of that

12 letter. And at the very bottom of 17, there's "Business

13 Plan" in 5.3, and then, 5.3.1, an "Insurance Program"

14 heading.

15 Do you see that?

16 **A. Yes.**

17 Q. 5.3.1.1 states: As per the updated business plan

18 provided to the Authority for the purpose of the on-site

19 inspection, the Licensee was approved to write directors &

20 officers liability ("D&O"); Industry Loss Warranty

21 Catastrophe Excessive Loss ("ILW"), and ATE coverages.

22 Currently, the Licensee issues D&O and ATE policies only.

23 The Authority noted the following violations of the

24 Licensee's business plan regarding the Licensee's

25 insurance programs...

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1 So I'm going to stop there for a moment.

2 Do you know why no ILW policies were issued

3 by Sentinel?

4 **A. Yes.**

5 Q. Why is that?

6 **A. There was never a case there that made economic**

7 **sense for reinsurance.**

8 Q. Okay. So never made financial sense --

9 **A. Right.**

10 Q. -- for the company?

11 Did -- did Sentinel consider issuing those

12 policies to third parties, or were they always, in some

13 way, related parties?

14 **A. Third parties.**

15 Q. And those were never issued?

16 **A. Not to my knowledge.**

17 Q. Then, under A, it states: At the point of

18 approval of the current ATE cover, the Licensee

19 represented to the Authority that it initially expected to

20 write up to ten policies per year at an average premium of

21 \$500,000 per policy. As per the Audited financial

22 statements for year ended December 31, 2017 ("the

23 financial statements"), the Licensee has only written one

24 ATE policy at a premium of U.S. 59 million.

25 And we'll stop there.

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1 Did you know that Sentinel had only written,

2 at this time of this letter in 2019, only one ATE policy?

3 MS. SMITH: Objection to form.

4 THE WITNESS: I see it written here.

5 BY MR. BURT:

6 Q. Right.

7 My question is: Did you know that at the

8 time?

9 MS. SMITH: Objection to form.

10 THE WITNESS: I don't know.

11 BY MR. BURT:

12 Q. You don't know if you knew that?

13 **A. I don't know.**

14 Q. Did any -- you -- now, you testified you did

15 five -- there were about five instances of diligence on

16 other ATE policies that you did.

17 Isn't it fair to conclude that none of those

18 were actually issued?

19 MS. SMITH: Objection to form.

20 THE WITNESS: I'd say, yeah, it's fair to

21 conclude that.

22 BY MR. BURT:

23 Q. Then it states: Those charged with governance

24 could not explain how a product line that was initially

25 intended to generate circa U.S. 5 million per year from

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1 ten policies ended up generating U.S. 59 million from only
2 one policy.
3 Did you know that the issuance of that
4 policy was so incon- -- was inconsistent with the business
5 plan?
6 MS. SMITH: Objection to form.
7 THE WITNESS: No.
8 BY MR. BURT:
9 Q. You didn't know that?
10 **A. I don't think so.**
11 Q. Had you ever seen the Sentinel business plan?
12 MS. SMITH: Objection to form.
13 THE WITNESS: I don't know.
14 BY MR. BURT:
15 Q. Did you know that it was the plan to issue up to
16 ten ATE policies per year?
17 MS. SMITH: Objection to form.
18 THE WITNESS: I don't know.
19 BY MR. BURT:
20 Q. You don't recall?
21 **A. I don't recall.**
22 Q. Do you know who would know that?
23 **A. Who would know what?**
24 Q. Who would know that Sentinel had initially
25 expected to write up to ten policies per year at an

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1 average premium of 500,000 per policy?
2 **A. Beecher Carlson would be the one that would**
3 **manage the business plan.**
4 Q. They managed the business --
5 **A. Uh-huh.**
6 Q. So was it Beecher Carlson who said: Sentinel is
7 going to issue up to ten policies per year at a premium of
8 500,000 per policy? That was a Beecher Carlson decision;
9 is that right?
10 MS. SMITH: Objection to form.
11 THE WITNESS: No, I didn't say it was a
12 Beecher Carlson dec- -- decision; I said they would have
13 known because they managed the business plan. I don't
14 know who would know that -- what you're asking.
15 BY MR. BURT:
16 Q. How about who -- who made the decision at
17 Sentinel that this is what we want to do with ATE policy?
18 Who -- do you know who that would be?
19 **A. I don't know.**
20 Q. Then it states, at the very end of this page: As
21 per the financial -- turn over -- statements, the ATE
22 cover accounts for U.S. 59 million of the U.S. 60 million
23 written.
24 So what this is saying -- I believe, and
25 correct me if I'm wrong -- that the 59 million received

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1 from this one ATE policy, according to the financial
2 statement, constituted \$59 million of the \$69 million in
3 policies that had been written on behalf of Sentinel.
4 Did you know that?
5 **A. I see it here on this document. And you said "69**
6 **million."**
7 Q. Excuse me. 59 million.
8 **A. It's 59 million of the 60 million written is what**
9 **this document says.**
10 **Q. Right.**
11 **So from inception of Sentinel to the time of**
12 **this document in 2019, Sentinel had issued about**
13 **\$60 million worth of policies, and 59 million of that was**
14 **from that one ATE policy; isn't that right?**
15 MS. SMITH: Objection to form.
16 **THE WITNESS: That's what this document is**
17 **saying.**
18 BY MR. BURT:
19 **Q. Do you have any reason to dispute that?**
20 MS. SMITH: Objection to form.
21 **THE WITNESS: No.**
22 BY MR. BURT:
23 **Q. And then it states: Being 98 percent of business**
24 **transacted that year. This gives the impression that**
25 **deliberately misleading information in terms of the number**

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1 **and magnitude of expected transactions relating to the ATE**
2 **coverage was provided to the Authority at the time of**
3 **approval, only for the single transaction in that line of**
4 **business to be ballooned 118 times after approval.**
5 **Were you aware of that, that CIMA had found**
6 **that problem at Sentinel?**
7 MS. SMITH: Objection to form.
8 **THE WITNESS: I recall reading the**
9 **inspection report when it came out; I don't recall,**
10 **specifically, that point.**
11 BY MR. BURT:
12 **Q. Do you recall discussing that point with anybody?**
13 **A. No.**
14 **Q. Do you know whether that was a concern at**
15 **Sentinel?**
16 MS. SMITH: Objection to form.
17 **THE WITNESS: I don't know.**
18 BY MR. BURT:
19 **Q. Okay. Did it cause you any concern as a CPA --**
20 **and as we've seen -- as we've looked at financial**
21 **documents, you have a keen attention to detail.**
22 **Did it cause you any concern as a CPA that**
23 **Sentinel was running its business in this way?**
24 **A. No.**
25 **Q. No concern whatsoever?**

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1 **A. I wouldn't be concerned about Sentinel's business**
2 **with -- with Beecher managing the business plan and**
3 **communicating with CIMA.**
4 Q. So because of Beecher, you didn't have concerns?
5 MS. SMITH: Objection to form.
6 THE WITNESS: I didn't have concerns.
7 BY MR. BURT:
8 Q. None?
9 **A. I said I didn't have concerns.**
10 Q. Well, I just want -- I want the record to be
11 perfectly clear that, of the 60 million policies issued,
12 59 million of that came from a single transaction, that
13 one ATE, and that there was no other ATE policy ever
14 written, and that caused you no concerns?
15 MS. SMITH: Objection to form.
16 THE WITNESS: No. No.
17 BY MR. BURT:
18 Q. Okay. Great.
19 MR. BURT: Can we take a break? I
20 apologize. I think we've been going about an hour.
21 MS. SMITH: Been going, like, an hour and
22 20.
23 MR. BURT: Oh, so, yeah, we definitely need
24 a break.
25 THE VIDEOGRAPHER: Off the record at 3:20

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1 p.m.
2 (Brief recess taken.)
3 THE VIDEOGRAPHER: Back on record at 3:44
4 p.m.
5 THE WITNESS: We were on break.
6 (Exhibit 107 was marked for identification.)
7 BY MR. BURT:
8 Q. Mrs. Irving, during the break, I had marked as an
9 exhibit, Exhibit 107, and I've handed that to you. Go
10 ahead and -- actually, just -- I'll, again, direct you to
11 specific pages. It's a long exhibit.
12 So just go ahead and look at the first
13 letter, actually, pages 1 and 2.
14 **A. (Witness reviews document.) Okay.**
15 Q. All right. Now, this is a letter of Beecher
16 Carlson to CIMA that goes back a few years, November 17th,
17 2015; is that right?
18 **A. I see that on the paper, yes.**
19 Q. Okay. And before seeing it here today, have you
20 ever seen this letter before?
21 **A. Not that I recall.**
22 Q. It's written by Mr. Peter Kranz at Beecher
23 Carlson.
24 Did you ever work with Mr. Kranz?
25 **A. Yes, I believe I did.**

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1 Q. And what did you understand his role to be with
2 respect to Sentinel?
3 **A. I think he is, like, the primary relationship**
4 **partner.**
5 Q. From Beecher Carlson?
6 **A. Yes.**
7 Q. Got it.
8 And they're -- they're talking about, in May
9 of -- of 2017 -- or -- excuse me -- strike that.
10 They're talking about an inquiry from CIMA
11 in May of 2015, and he's responding in November of 2015,
12 about proposed changes to the ownership structure of
13 Sentinel.
14 Do you recall that in 2015?
15 **A. I -- I don't recall.**
16 Q. He says here under No. 1: Formal notification
17 regarding the reason behind the proposed changes to the
18 ownership structure of Sentinel. The ultimate beneficial
19 owners, UBOs, are unable to have day-to-day physical
20 presence in the Cayman Islands. UBOs feel that such
21 presence is crucial to Sentinel, and so they've made it a
22 priority for Sentinel to have a real tangible and physical
23 presence on the island. In that respect, Sentinel's
24 organizational structure was designed to maximize the UBO
25 strong relationships with highly respected business

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1 partners on island in Grand Cayman.
2 Do you recall this, in 2015, developing
3 strong relationships with highly respected business
4 partners in Cayman?
5 MS. SMITH: Objection to form.
6 THE WITNESS: I don't recall specifically.
7 BY MR. BURT:
8 Q. Okay. How about generally, what do you recall
9 about this?
10 **A. I don't know.**
11 Q. Okay. I actually want to, while we're looking at
12 this, go back to exhibit -- our favorite exhibit -- we've
13 looked at it a lot -- the -- the structure of SAS and
14 Sentinel. I want to focus just for a moment on SAS --
15 **A. Okay.**
16 Q. -- in Exhibit 28.
17 And we've noted that there are -- at the top
18 of the -- of the structure there was USP1, 4 USPs, SAS
19 Holdings, S- -- SPV, Ltd., and USP2, right?
20 **A. I see that here, uh-huh.**
21 Q. And I believe I asked you if you knew who -- who
22 the 4 USPs were, and you said you did not?
23 **A. No, I don't -- I don't remember.**
24 Q. Okay. So let's look at this document a little
25 bit further.

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| | |
|--|---|
| <p style="text-align: right;">245</p> <p>1 On No. 3 -- and this is Exhibit 107; should 2 be more specific -- on Item 3 in the letter, it says: 3 Identity details of 4 USPs at the top of the ownership 4 structure. Please see the attached -- please see attached 5 the Register of Directors and Officers for Rotunda V, or 6 Roman numeral V, Ltd., which reflects the names of the 7 four individuals each holding a 9.9 ownership interest and 8 the fifth individual holding a 14.3 percent ownership 9 interest. 10 Okay. Do you see where I was reading there? 11 A. Yes. Under No. 3? 12 Q. Yes. 13 A. Uh-huh. 14 Q. And so I want to turn now to -- it's the fourth 15 page in this exhibit with a register of members of 16 Rotunda. 17 A. Yes, I see it. 18 Q. And, here, you see there's column headings, "Name 19 of Member," "Address," "Date of Entry of Member," et 20 cetera, right? 21 A. Yes. 22 Q. And the first entity listed there is Maples 23 Corporate Services, Ltd., no -- no certificate issued; one 24 share acquired. Is that right? 25 A. I see that here.</p> | <p style="text-align: right;">247</p> <p>1 BY MR. BURT: 2 Q. The next person listed is Matthew DiOrio; number 3 of shares acquired, 9.9. 4 Were you aware that he was one of the 4 USPs 5 listed in the SAS structure? 6 A. I don't remember. I mean, this is a really long 7 time ago. I don't remember. 8 Q. Did you ever have knowledge that Matt, 9 Mr. DiOrio, was a U.S. person in the ownership structure 10 of SAS? 11 A. I don't know. 12 Q. Next person listed is Brian Mitts. Do you know 13 who that is? 14 A. Yes. 15 Q. Who is Mr. Mitts? 16 A. He works with NexPoint. 17 Q. What does he do with NexPoint? 18 A. I don't know. 19 Q. And can you remind me, please, of the 20 relationship between NexPoint and Sentinel or SAS. 21 MS. SMITH: Objection to form. 22 THE WITNESS: No relationship, to my 23 knowledge. 24 BY MR. BURT: 25 Q. None at all?</p> |
| <p style="text-align: right;">246</p> <p>1 Q. Next -- it lists -- the next person or entity or 2 member listed is Scott Ellington, and the number of shares 3 acquired, it lists as 14.3 percent -- or -- excuse me -- 4 14.3 shares; is that right? 5 A. I see that here. 6 Q. And as we refer back to the first page of this 7 document, under No. 3, you recall that Beecher Carlson is 8 providing information here about who the 4 USPs are; is 9 that right? 10 A. I -- I see it on the document. 11 Q. Right. 12 The next person listed is David Kramer with 13 9.9 shares acquired. Do you see that? 14 A. I see it. 15 Q. Who is David Kramer? 16 A. I don't know. 17 Q. You've never heard that name before? 18 A. I may have heard the name, but I don't know who 19 he is. 20 Q. Do you recall anything at all about him? 21 A. No. 22 Q. Are you aware that he was one of the USPs listed 23 in the SAS structure? 24 MS. SMITH: Objection, form. 25 THE WITNESS: I don't know.</p> | <p style="text-align: right;">248</p> <p>1 A. I mean, no relationship to my knowledge. I don't 2 know what you're asking, other than -- I don't know. 3 Q. Yeah. Well, that's what I'm asking, if they are 4 at all affiliated or related in any way. 5 A. No. Not to my knowledge, no. 6 Q. And then the last person issued -- or listed here 7 is Marcia Maslow with 9.9 shares acquired. 8 Do you know who that is? 9 A. Yes. 10 MS. SMITH: Objection to form. 11 BY MR. BURT: 12 Q. Who is that? 13 A. That is Scott Ellington's sister. 14 Q. All right. Were you aware that she was one of 15 the 4 USPs listed in the SAS structure? 16 A. I don't remember. 17 Q. So before sitting here today and seeing this 18 document, did you ever have any knowledge of any of these 19 individual that we just went through, that they were in 20 the SAS ownership structure, aside from Mr. Ellington, who 21 we've talked about before? 22 A. I just don't remember. I mean, this is 2015. 23 I -- I -- I don't remember. Actually, this says 24 January 2014. There's been a lot -- a lot going on since 25 then.</p> |

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|-----|--|-----|--|
| 249 | 1 Q. Fair enough. 2 The very last page of this -- of this 3 document -- so it has the Bates at the very bottom of -- 4 that ends in 139, if you just go to the very last page. 5 This is a letter dated 13th of November, 6 2015, to CIMA from Christopher Wat- -- Watler and 7 Andrew Dean. 8 Do you see that -- 9 A. Yes. 10 Q. -- who I'm referring to? 11 Who -- who are Christopher Wal- - Watler and 12 Andrew Dean? 13 A. They're independent directors with MaplesFS. 14 Q. Were they independent directors of Sentinel? 15 MS. SMITH: Objection, form. 16 THE WITNESS: I don't know. 17 BY MR. BURT: 18 Q. I believe we saw -- didn't Mr. Dean resign the 19 same day as Mr. Lesley Thompson as a director of Sentinel? 20 Didn't we see that in a previous exhibit? 21 A. I believe you showed me a document, yes. 22 Q. Okay. So Mr. Dean was a -- was, at one point at 23 least, a Sentinel director; is that fair? 24 A. Based on the documentation you showed me, yes. 25 Q. Do you have any independent recollection of that, | 251 | 1 Q. So, here, the letter says: Dear, sir, Sentinel 2 Reinsurance, Ltd., the Company, we have been asked to 3 certify that Scott Ellington and James Dondero are the 4 majority ultimate beneficial owners of the UBOs of the 5 Company. In making this certification, we have reviewed 6 the current register of members of each of the subsidiary 7 companies listed in the attached structure chart, listed 8 as Appendix A. It is our understanding that the UBOs 9 shall continue to exclusively manage all capital 10 contributions. 11 Do you see where I was reading there? 12 A. I see where you were reading, yes. 13 Q. What do you recall about Mr. Dondero and 14 Ellington exclusively managing all capital contributions 15 of Sentinel? 16 MS. SMITH: Objection to form. 17 THE WITNESS: I don't recall. 18 BY MR. BURT: 19 Q. Did you know that they were exclusively managing 20 all capital contributions? 21 MS. SMITH: Objection to form. 22 THE WITNESS: I don't know. 23 BY MR. BURT: 24 Q. Did you ever have a discussion with Mr. Ellington 25 about that? |
| 250 | 1 that he was a director? 2 A. Not -- no. 3 Q. But you do recall that these were both 4 independent directors of Maples? 5 A. That's what I recall. 6 Q. So let's look at this -- 7 A. Sorry, MaplesFS. 8 Q. MaplesFS. 9 And -- and remind me what the FS stands for. 10 A. Fiduciary Services. 11 Q. All right. 12 And remind me what the relationship between 13 MaplesFS and Sentinel is, if any? 14 A. No relationship. Maples is the law firm, though. 15 So when you say "Maples," it's -- it's counsel. When you 16 say "MaplesFS," it's the fiduciary. 17 Q. Fiduciary to whom? I just want to be clear on 18 that. 19 A. Whoever the client. 20 Q. Was Sentinel a client of Maples? 21 A. Insofar as these were the directors -- 22 MS. SMITH: Objection to form. 23 THE WITNESS: Insofar as they were 24 directors, yes. 25 BY MR. BURT: | 252 | 1 A. Not that I recall. 2 Q. How about with Mr. Dondero? 3 A. No. 4 Q. And did you know that Mr. Ellington and Dondero 5 were the majority ultimate beneficial owners of the UBOs 6 of Sentinel? 7 MS. SMITH: Objection, form. 8 THE WITNESS: At what point in time? 9 BY MR. BURT: 10 Q. Well, we're looking here at 2015. Did you know 11 in 2015? 12 A. I don't recall. 13 Q. Did you know at any point in time? 14 MS. SMITH: Objection, form. 15 THE WITNESS: I don't know insofar as the 16 definition here of "ultimate beneficial owners." 17 BY MR. BURT: 18 Q. You don't know what that means? 19 A. Not in this context, no. 20 Q. Okay. And you've heard the term "UBO" before? 21 A. I have heard the term before, yes. 22 Q. And what's your understanding of the term? 23 A. Essentially that everything would roll up to that 24 person, but I don't know if it's -- but I don't know if 25 it's legal, tax. I don't -- I don't know the detail |

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1 behind it.
2 Q. Okay. But this is, again, a letter from Beecher
3 Carlson to CIMA representing that Messrs. Ellington and
4 Dondero are the UBOs of the company, right?
5 A. It appears, yes, that Beecher -- no, this isn't
6 from Beecher. This is from --
7 Q. Excuse me. You're right.
8 A. -- Christopher Watler and Andrew Dean.
9 Q. That's right.
10 A. And it's not signed in the MaplesFS capacity. I
11 don't know -- there's no Exhibit A. I can't see what's
12 included there, but it looks like them personally. It's
13 not signed by MaplesFS.
14 Q. How do you know they were signing -- that they
15 were representing MaplesFS here?
16 MS. SMITH: Objection to form.
17 BY MR. BURT:
18 Q. Why would MaplesFS be communicating with CIMA
19 about the ownership of Sentinel?
20 A. Because MaplesFS was the employer of Christopher
21 Watler and Andrew Dean.
22 Q. The employer? I thought you testified that they
23 were independent directors.
24 A. Yeah. So MaplesFS can be an independent director
25 and -- as a corporate director, or it can employ

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1 individuals who operate in an individual capacity as
2 director -- independent director.
3 Q. And to be clear -- I didn't -- sorry. I didn't
4 mean to cut you off.
5 To be clear, they were the -- the
6 independent directors of Sentinel, right?
7 A. Yes.
8 Q. Okay. All right.
9 MR. BURT: Oh, thank you.
10 MS. HARTMANN: They are saying the power
11 went off.
12 MS. SMITH: Can you hear everyone?
13 MR. BURT: I guess if people on the Zoom
14 can't hear, they'll let us know.
15 MS. DANDENEAU: Hey, this is Deb. We can --
16 are we off the record? We can -- it's just Katie is
17 coming -- maybe we need to readjust the mic. Katie is
18 coming in a little bit weaker. We can hear everybody
19 else.
20 MR. BURT: I think we do need to go off the
21 record, because it looks like these are out of power.
22 So...
23 THE VIDEOGRAPHER: We are off the record at
24 3:58 p.m.
25 (Brief recess taken.)

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1 THE VIDEOGRAPHER: Back on record at 3:59
2 p.m.
3 BY MR. BURT:
4 Q. In Exhibit -- I can't remember which exhibit it
5 was, but it showed the Sentinel reorganization. It was,
6 like, around 103 or 104. That's it, KL_3 --
7 MS. McLAUGHLIN: 103.
8 BY MR. BURT:
9 Q. 103. In Exhibit 103, we saw the -- the
10 reorganization of Sentinel, and at the very top, there was
11 an entity ITA.
12 A. Let me find what you're referencing.
13 Q. Yeah.
14 A. Hold on.
15 Q. Take your time. It's Exhibit 103.
16 MS. SMITH: Here you go.
17 THE WITNESS: Oh, thanks. Okay.
18 Yes, I see "ITA" at the top on this paper.
19 BY MR. BURT:
20 Q. Right.
21 And I believe you testified earlier, and if
22 I get this wrong, just let me know, that it was a -- a
23 trustee of the SAS Holdings/SPV, Ltd., shares; is that
24 right?
25 A. Yes. ITA is a Cayman trustee.

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1 Q. Okay. So ITA is located in the Caymans?
2 A. Yes.
3 Q. Do you know who -- did ITA have any employees?
4 A. I don't know.
5 Q. Did you ever work with ITA?
6 A. Yes.
7 Q. In what capacity?
8 A. General, paying trustee fees, things like that.
9 Q. Because they were the trustee of SAS
10 Holdings/SPV?
11 A. Yes.
12 Q. Do you know whether ITA ever attended a Sentinel
13 board meeting?
14 MS. SMITH: Objection to form.
15 THE WITNESS: I don't know.
16 BY MR. BURT:
17 Q. Do you know whether ITA ever had any voter-ship
18 interest -- voting interest in Sentinel?
19 MS. SMITH: Objection to form.
20 THE WITNESS: It had voting interest in
21 Sentinel?
22 BY MR. BURT:
23 Q. Right. So let me strike that. That wasn't
24 precise.
25 So they are the trustee of the SAS

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1 Holdings/SPV shares, right?
2 **A. As far as I understand it, yes.**
3 Q. And -- and we know that, from this -- from these
4 organization charts that most of the voting interest in
5 Sentinel went up to SAS Holdings, the majority of the
6 voting interest?
7 MS. SMITH: Objection to form.
8 BY MR. BURT:
9 Q. Is that -- is that correct?
10 **A. That's what the charts have shown, yes.**
11 Q. And do you know how SAS Holdings/SPV exercised
12 that voting interest in Sentinel?
13 **A. I don't.**
14 Q. Do you know whether ITA exercised the voting
15 interest on behalf of SAS Holdings and Sentinel?
16 **A. I don't know.**
17 MR. BURT: I'll mark this, I believe, as
18 108.
19 (Exhibit 108 was marked for identification.)
20 BY MR. BURT:
21 Q. And, again, this is a -- a bigger one, so I'll
22 just -- I'll direct you to the portions that I have
23 questions about, and of course, if you want to review
24 other portions for context, please do.
25 So showing you what's been marked as

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1 Exhibit 108, at the top, there is an e-mail from -- and
2 again, I'll get the name wrong, but Schliselo Dube at CIMA
3 to Clayton Price dated March 5th, 2019.
4 Do you see that at the top there?
5 **A. I see it on the paper, yeah.**
6 Q. Yeah.
7 And -- and there's four attachments to this
8 e-mail listed here, right?
9 **A. Okay.**
10 Q. And I'll represent to you that we have attached
11 the four attachments as part of this exhibit. So all four
12 are there.
13 And the first thing I want to do is -- is
14 look at the -- I believe it's the third attachment. So
15 it's -- it has the heading "Resolutions of ITA Global
16 Trust, Ltd. (The "Trustee") of the Trust."
17 **A. Okay. Hold on.**
18 Q. It's -- the Bates ends in 76075.
19 **A. Okay. Yes, I see it.**
20 Q. All right. And -- so here at the top, it says,
21 "Resolutions of ITA Global Trust, Ltd., declared pursuant
22 to a Deed dated 17 February 2015." And in the
23 "Whereas" -- the first "Whereas" clause, it states: The
24 Trustee wishes to establish an Advisory Board to advise
25 the Trustee and guide the decision-making of the Trustee

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1 of the ITA Trust in its role as an indirect shareholder in
2 Sentinel Reinsurance, Ltd.
3 All right. And we'll stop there. So that's
4 the first "Whereas" clause.
5 Do you see where I was reading there? You
6 see that text that I was reading, Mrs. Irving?
7 **A. 1.1.1?**
8 Q. No. It was above in the "Whereas" -- the first
9 "Whereas" clause.
10 **A. Oh -- oh, yes, I see where you're reading at.**
11 Q. Yeah.
12 Now, were you aware at any time that ITA
13 established an advisory board to advise ITA as its -- in
14 its role as an indirect shareholder of Sentinel?
15 MS. SMITH: Objection, form.
16 THE WITNESS: I don't recall.
17 BY MR. BURT:
18 Q. What knowledge, if any, do you have of there
19 being an advisory board to ITA?
20 **A. I don't know.**
21 Q. Have you ever heard of that before today?
22 **A. Not that I recall.**
23 Q. Did anyone ever mention to you that: Hey,
24 there's -- we have an -- ITA has an advisory board
25 advising on Sentinel issues?

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1 **A. I -- I don't recall.**
2 Q. Do you know whether this advisory board ever
3 attended a Sentinel board of directors meeting?
4 **A. I don't know.**
5 Q. Do you know who was on this advisory board?
6 **A. No.**
7 Q. All right. Looking down under No. 1 -- well --
8 excuse me -- before we get to that, let's look at the
9 second "Whereas" clause to be complete: A form of Deed of
10 Amendment (the "Deed of Amendment") establishing the
11 Advisory Board of the ITA Trust ("the Advisory Board") was
12 approved and executed by the Trustee on the 10th of
13 August 2017.
14 Do you see that under the second "Whereas"
15 clause?
16 **A. I see it.**
17 Q. We'll look at that Deed of Amendment that was
18 executed on August 10th in just a moment.
19 But before we do, does -- the time frame,
20 the beginning of August 2017 in relation to Sentinel, does
21 that stand out in any way to you?
22 MS. SMITH: Objection, form.
23 THE WITNESS: Not that I recall.
24 BY MR. BURT:
25 Q. Do you recall looking earlier at wire

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1 instructions that you ga- -- that you provided for cash
2 transfers to Sentinel as part of the AT- -- ATF [sic]
3 insurance policy?
4 **A. I recall looking at wire instructions I provided**
5 **on a prior exhibit.**
6 Q. Okay. I just want to make sure that we're clear
7 on dates here, which I'm trying -- so it's -- Exhibit 106
8 is what we looked at earlier where you had provided the --
9 the wiring instructions to Carter Chism.
10 **A. Yes, I see it.**
11 Q. And the date was August 11th, 2017, right?
12 **A. Yes, I see it.**
13 Q. And so on August 11th, 2017, it -- it appears
14 that there were some funds transferred into Sentinel as
15 part of the ATE policy?
16 MS. SMITH: Objection, form.
17 THE WITNESS: I don't know. I can only just
18 see what's on these papers.
19 BY MR. BURT:
20 Q. Do you have any reason to dispute what is here on
21 these papers?
22 MS. SMITH: Objection, form.
23 THE WITNESS: I don't know.
24 BY MR. BURT:
25 Q. Okay. Well, the day prior, August 10th, if we

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1 can go back to Exhibit 108, the third attachment, the day
2 before, that you provided these wire instructions, an
3 advisory board was established at ITA to advise ITA in
4 respect to Sentinel.
5 Do you see that?
6 **A. I see, yes, here on the paper with that date,**
7 **yes.**
8 Q. And then, as -- as we look under No. 1, "Advisory
9 Board," it says, 1.1 -- well, first says: The undersigned
10 being the Trustee of the ITA Trust hereby resolves as
11 follows: 1, Advisory Board, that the Advisory Board be
12 and is hereby established in accordance with the Deed of
13 Amendment as follows: 1.1.1, the Advisory Board shall
14 consist of such number of members all being individuals as
15 the Trustee determines from time to time and shall
16 initially be two members; namely, Scott B. Ellington and
17 James D. Dondero.
18 Do you see that?
19 **A. I see it.**
20 Q. Is this the first time you're learning that
21 Mr. Ellington and Mr. Dondero made up the advisory board
22 advising ITA as to Sentinel matters?
23 **A. I don't --**
24 MS. SMITH: Objection to form.
25 THE WITNESS: I don't remember any of this.

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1 BY MR. BURT:
2 Q. Okay. So this is all new today, as you look at
3 this?
4 **A. I just don't remember this.**
5 Q. If you flip to the next page, page 2 of this
6 resolution, I'm -- I'm just actually wondering who -- if
7 you can recognize the signature here, "For and on Behalf
8 of ITA Global Trust as Trustee."
9 Do you know whose -- who might have signed
10 that?
11 **A. No, I don't -- no, I don't recognize this.**
12 Q. It looks like there's two signatures.
13 So you don't recognize either of them?
14 **A. No.**
15 MS. SMITH: Objection, form.
16 THE WITNESS: No.
17 BY MR. BURT:
18 Q. All right. Do you have any independent knowledge
19 of who was a -- the trustee of the ITA trust?
20 **A. No.**
21 Q. Did you ever deal with the trustee of the ITA
22 trust?
23 **A. I don't know who the trustee was, so no.**
24 Q. If we look at the -- the fourth attachment, which
25 is the actual -- the actual Deed, Deed of Amendment dated

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1 10th of August 2017, again the day before you were issuing
2 the wire instructions, it states, on page 2 of the Deed,
3 that: It is made on the 10th day of August 2017 by ITA
4 Global Trust, Ltd., whose principal office is at
5 Suite 4210, 2nd Floor, Canella Court, Camana Bay, and then
6 gives the P.O. Box in the Grand Cayman.
7 Do you recognize that address?
8 **A. No.**
9 Q. Oh, I did want to come back to -- sorry.
10 A little unrelated, I think prior we were
11 talking about a Sentinel office in the Caymans. Is it
12 correct that Sentinel actually had a physical office in
13 the Caymans?
14 MS. SMITH: Objection to form.
15 THE WITNESS: I don't know.
16 BY MR. BURT:
17 Q. Okay. You don't know whether it did or not?
18 **A. I don't -- yeah, I don't know.**
19 Q. Did you ever go to the Caymans to do any Sentinel
20 business?
21 **A. I attended meetings of CIMA.**
22 Q. And where were those meetings held?
23 **A. CIMA's office.**
24 Q. Was there ever any time where you -- where you --
25 when you went to an office that was told to you was a

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67 (265 to 268)

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1 Sentinel office?
2 **A. I don't recall.**
3 Q. All right. So I want to look down under No. 2,
4 Amendment, 2.2 specifically. It says: The following new
5 clause 3.5 shall be inserted following Clause 3.4. Quote
6 3.5: Power to establish an Advisory Board whose members
7 all being individuals shall be appointed by the Trustee.
8 The primary function of the Advisory Board is to advise
9 the Trustee and guide the decision-making of the Trustee
10 in its role as an indirect shareholder in Sentinel
11 Reinsurance, Ltd.
12 So that was language that we had seen in the
13 prior ex- -- prior attachment; is that right?
14 **A. Yeah. May I stop you for a second?**
15 Q. Sure.
16 THE WITNESS: I don't know if -- Deb, are
17 you there? I don't know if Deb is trying to dial back in
18 or something, but it says "Deb" on my screen. It doesn't
19 match that screen.
20 MR. BURT: Do we need to go off the record
21 for this?
22 MS. MCLAUGHLIN: I think yes, because we
23 have to figure out the sound again.
24 MR. BURT: Okay. Let's go off the record.
25 THE VIDEOGRAPHER: Off the record at 4:11

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1 p.m.
2 (Brief recess taken.)
3 THE VIDEOGRAPHER: Back on record at 4:15
4 p.m.
5 BY MR. BURT:
6 Q. So, Mrs. Irving, looking at the last page of the
7 Deed of Amendment, I think it's the same two signatures as
8 the authorized signator. And I don't believe you
9 recognize those signatures?
10 **A. I don't recognize that.**
11 Q. Do you know on the -- the witness here is Shannon
12 Lather. Do you know who that is?
13 **A. Nope.**
14 Q. I want to look now at the second attachment to
15 this exhibit that begins on -- ends in Bates 76067. And
16 the top says: Sentinel Advisory Committee Discussions.
17 Do you see where I'm -- where I am in the document?
18 **A. Yes, where it says: Q1 2017?**
19 Q. Exactly.
20 **A. Yes.**
21 Q. So here, and over the next five or six page,
22 under the heading Sentinel Advisory Committee Discussions,
23 we see a number of entries. The first: "Q1 2017 -
24 2/2/2017. Discussion of potential ATE policy and
25 engagement of actuary. Review of investment returns."

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1 And it's signed by Scott Ellington as the recording
2 member.
3 Do you see that?
4 **A. I see it.**
5 Q. Do you recognize Mr. Ellington's signature?
6 **A. Yes.**
7 Q. That is his signature?
8 **A. Yes.**
9 Q. Did you know that he was meeting as part of a
10 Sentinel Advisory Committee in February of 2017 to discuss
11 these issues?
12 MS. SMITH: Objection, form.
13 THE WITNESS: No, I don't know about this.
14 BY MR. BURT:
15 Q. All right. Looking at the second page: "Q2
16 2017. Disc- -- on May 4, 2017, "Discussion re: Audit."
17 Noth- -- no knowledge about that?
18 **A. No.**
19 Q. Page 3, "Q3 2017. 8/4/2017. Discussion of
20 potential ATE policy and engagement of actuary.
21 Discussions re audit."
22 Did you know about that?
23 **A. I don't know about -- No, I don't know about any
24 of these.**
25 Q. About none of those?

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1 **A. No.**
2 Q. So you didn't know that Mr. Ellington and
3 Mr. Dondero were -- were meeting as an advisory committee
4 to discuss these issues?
5 **A. No.**
6 MS. SMITH: Objection, form.
7 BY MR. BURT:
8 Q. Looking at "Q4 2017," on November 7th, 2017, it
9 says: "Documentation of ATE policy and closing of same."
10 Is that right?
11 **A. Sorry. Could you tell me which Bates number
12 you're looking at?**
13 Q. Sure. 76070.
14 **A. 76070. Okay. Quarter 4, 2017.**
15 Q. Correct. The first bullet is: Documentation of
16 ATE policy and closing of same. The second bullet is:
17 "Settlement of transferred investment portfolio."
18 You see that?
19 **A. I see it here on this page, yeah.**
20 Q. What did you know about Mr. Ellington's
21 involvement with the ATE policy?
22 MS. SMITH: Objection, form.
23 THE WITNESS: I don't know.
24 BY MR. BURT:
25 Q. So separate -- setting this document aside, I'm

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1 just asking you a broader question: What did you know, if
2 anything, about Mr. Ellington's involvement with the ATE
3 policy?
4 MS. SMITH: Objection, form.
5 THE WITNESS: I don't know.
6 BY MR. BURT:
7 Q. Did you have no knowledge whether he was involved
8 in it?
9 **A. I would be guessing. I -- I don't know.**
10 Q. So I -- you know, I'm asking as broadly as I can:
11 Any recollection about Mr. Ellington being involved in any
12 way with the ATE policy? I'm trying to ask that as broad
13 as I can, any recollections that you might have.
14 **A. I would assume he would have been involved, but I**
15 **don't know to what level.**
16 Q. And why would you assume that?
17 **A. Because he was the head of legal and worked**
18 **closely with Thomas Surgent who was aware of this**
19 **transaction, based on prior e-mails. Thomas reported to**
20 **Scott.**
21 Q. Okay. And Mr. Ellington -- is it correct that
22 Mr. Ellington never told you that he was part of an
23 advisory committee dealing with -- meeting and dealing
24 with these issues that we see in this exhibit?
25 MS. SMITH: Objection, form.

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1 THE WITNESS: I don't recall.
2 BY MR. BURT:
3 Q. The second bullet is: "Settlement of transferred
4 investment portfolio."
5 Do you know when that refers to?
6 **A. It seems to be related to the transaction. I --**
7 **I don't know.**
8 Q. And is it correct that -- again setting the
9 document aside, is it correct that there was an investment
10 portfolio transferred to Sentinel as part of the
11 transaction?
12 MS. SMITH: Objection to form.
13 THE WITNESS: My sense was it was a bucket
14 of random assets.
15 BY MR. BURT:
16 Q. Okay. From -- from whom? Who were those assets
17 coming from?
18 **A. The insured, but I don't recall who the insured**
19 **is.**
20 Q. All right. And do you know which litigation it
21 involved?
22 MS. SMITH: Objection to form.
23 THE WITNESS: No, only -- only because you
24 showed me some documents today. I'd have to go back and
25 look. I don't know.

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1 BY MR. BURT:
2 Q. Okay. Well, we'll come back to that.
3 Flipping to the page that ends in 76072,
4 under: Q2 2018, May 4th, 2018, the second bullet there
5 is: Discuss consolidating the banking relationship at
6 CIBC.
7 Were you aware that there were discussions
8 about Sentinel consolidating the banking relationship at
9 CIBC in 2018?
10 **A. No.**
11 Q. Going to page -- the next page, 76073: Q3 2018,
12 August 1st, 2018, it -- the first bullet is: "Audit
13 completed in July and approved by CIMA." So we've
14 discussed a lot about a 2019 in- -- inspection that CIMA
15 did.
16 Do you know what a 2018 CIMA audit was?
17 **A. This says: "Audit completed in July and approved**
18 **by CIMA."**
19 Q. Uh-huh.
20 **A. Sentinel Reinsurance, Ltd., would have an**
21 **independent audit by independent auditors as required**
22 **under the Cayman regulation, every year. Very normal,**
23 **very regular, every year there were audited financials as**
24 **required under -- under the law.**
25 Q. And who was -- who provided the audit?

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1 **A. I don't know.**
2 Q. It then states: "Hear- ..." -- the second
3 bullet: "Hearing related to the ATE policy finished with
4 in resolution."
5 What does that refer to, if you know?
6 MS. SMITH: Objection to form.
7 THE WITNESS: I don't know what that means.
8 BY MR. BURT:
9 Q. Then it states: "No change in expectations of
10 the outcome."
11 Any knowledge of that?
12 **A. No. I don't know.**
13 Q. The final bullet is: "NOOR," N-O-O-R in all
14 caps, "account closure requested."
15 Do you know what the NOOR account was?
16 **A. Yes. It was a -- it was either a bank or**
17 **investment account, some type of asset account.**
18 Q. Of Sentinel's?
19 **A. I don't know.**
20 Q. On the last page of -- of this exhibit -- or this
21 attachment, 76074: "Q4 2018... Portfolio management with
22 respect to the increasing cash on hand required by CIMA
23 for the active ATE policy."
24 Now, do you see where I was reading there?
25 **A. I see where you were reading.**

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1 Q. When -- in your work for Sentinel, did you ever
2 have any work dealing with increasing the cash on hand or
3 meeting req- -- CIMA cash requirements at Sentinel?
4 **A. Not that I recall.**
5 Q. And then second bullet is: Updated the actuary
6 report for anticipating -- for anticipated the outcome of
7 the underlying ATE litigation discussed. Expectation
8 largely unchanged.
9 Do you see that bullet?
10 **A. I see it.**
11 Q. And I believe you testified earlier that you --
12 you never had anything to do with the actuarial reports
13 related to Sentinel; is that right?
14 **A. That's right. I don't recall anything related to**
15 **the actuary reports.**
16 Q. And -- and you don't recall any discussions with
17 the actuary?
18 **A. I don't.**
19 Q. Or reviewing the reports at all?
20 **A. I don't.**
21 Q. All right. And then the last bullet is:
22 "Banking relationship moved to CIBC."
23 Were -- do you see that?
24 **A. I see it.**
25 Q. Were you aware at the time in November of 2018

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1 that Sentinel moved its banking relationship to CIBC?
2 MS. SMITH: Objection to form.
3 THE WITNESS: Not that I recall.
4 BY MR. BURT:
5 Q. Okay. What do you recall about banking --
6 Sentinel's banking relationship in 2018?
7 **A. Nothing. I -- I don't know.**
8 Q. I think we've gone through -- we've listed a
9 number of accounts previously in the deposition that
10 Sentinel might have had, bank accounts, at CIBC. I think
11 we saw a BONY wiring instructions, and I think MaplesFS
12 was another account you mentioned.
13 Is that right, or am I getting that wrong?
14 MS. SMITH: Objection, form.
15 THE WITNESS: I don't recall a BONY account.
16 BY MR. BURT:
17 Q. Okay. Well, we looked at that document for --
18 with wiring instructions to a Sentinel BONY account, and I
19 think you explained that, actually.
20 Do you recall that?
21 **A. I do. It's -- I would recharacterize what you're**
22 **saying. It was a MaplesFS account held at BONY --**
23 Q. Okay.
24 **A. -- for the benefit of Sentinel.**
25 Q. For the benefit of Sentinel. Thank you for being

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1 more precise. Okay.
2 Aside from those accounts, were you aware of
3 any other banking accounts that Sentinel -- bank accounts
4 that Sentinel might have had?
5 **A. Only the NOOR account that was referenced in**
6 **here.**
7 Q. Oh, so that was related -- that was a Sentinel
8 account?
9 **A. I don't know if it was Sentinel Reinsurance, Ltd.**
10 Q. Okay. Could it have been the other Sentinel
11 entity?
12 **A. It could have, yeah. I don't know.**
13 Q. All right. And what was the purpose of that
14 account?
15 **A. I don't know.**
16 Q. Do you know whether money ever went in and out of
17 that account for Sentinel?
18 **A. I don't know.**
19 MR. BURT: Pardon me. Just give me a moment
20 here.
21 THE WITNESS: Uh-huh.
22 BY MR. BURT:
23 Q. Okay. Switching topics a little bit here.
24 I want to show you a new exhibit, and this
25 has been previously marked in a deposition as Exhibit 57,

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1 so we don't need to mark this one.
2 So starting just on the -- on the first
3 page, the e-mail in Exhibit 57, you see it's an e-mail
4 from Isaac Leventon to Chris Dunn, dated the 26th of
5 October 2017; is that right?
6 **A. I see that.**
7 Q. And it has attachment, UBS_ATE.PDF; is that
8 right?
9 **A. I see that here.**
10 Q. Do you know what "UBS_ATE" refers to?
11 **A. No.**
12 Q. All right. Mr. Leventon says -- to Mr. Dunn:
13 "Please see attached. Please label all communications
14 related to this project as Privileged as all documents are
15 being drafted at the request of the Legal Team."
16 Were you considered a member of the legal
17 team?
18 MS. SMITH: Objection, form.
19 THE WITNESS: Yes. I was on the legal
20 team -- well, I don't know how "legal team" is defined
21 here, but I worked in the legal department, if that's the
22 question you're asking.
23 BY MR. BURT:
24 Q. And Mr. Leventon here is listed as the assistant
25 general counsel, right?

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|---|---|
| <p style="text-align: right;">277</p> <p>1 A. I see that here.</p> <p>2 Q. Yeah. Who is Chris Dunn?</p> <p>3 A. He worked in either settlements or accounting.</p> <p>4 Q. All right. Turning to the next page: Legal</p> <p>5 Liability Insurance Policy. If you want, Mrs. Irving, go</p> <p>6 ahead and take a moment to flip through this, and let me</p> <p>7 know if you recognize this insurance policy.</p> <p>8 A. (Witness complies.)</p> <p>9 Q. And signature pages are at the back.</p> <p>10 A. Yes, this is familiar.</p> <p>11 Q. Okay. What do you recall about this document?</p> <p>12 A. I just recall seeing it before.</p> <p>13 Q. In what context did you see it?</p> <p>14 A. I don't remember.</p> <p>15 Q. Did you see it as a member of the legal team?</p> <p>16 MS. SMITH: Objection, form.</p> <p>17 THE WITNESS: No -- I don't know.</p> <p>18 BY MR. BURT:</p> <p>19 Q. Mr. Leventon's e-mail stated that: "All</p> <p>20 documents are being drafted at the request of the Legal</p> <p>21 Team."</p> <p>22 Do you know if the legal team drafted this</p> <p>23 legal liability insurance policy?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't know who drafted it?</p> | <p style="text-align: right;">279</p> <p>1 Q. And you -- and do you recognize Mr. Dondero's</p> <p>2 signature?</p> <p>3 A. No, but I haven't seen it a lot.</p> <p>4 Q. The next entity below that is: Highland CDO</p> <p>5 Holding Company, signed by James Dondero with a title of</p> <p>6 Director; is that right?</p> <p>7 A. I see it, uh-huh.</p> <p>8 Q. And then: Highland Special Opportunities Holdings</p> <p>9 Company, signed by James Dondero as its Director; is that</p> <p>10 right?</p> <p>11 A. I see that on this paper.</p> <p>12 Q. Do you recall ever seeing a draft of this</p> <p>13 document before it was signed?</p> <p>14 MS. SMITH: Objection, form.</p> <p>15 THE WITNESS: No.</p> <p>16 BY MR. BURT:</p> <p>17 Q. You don't recall or you did not see one?</p> <p>18 A. I don't recall.</p> <p>19 Q. Did you have anything to do with the preparation</p> <p>20 of this document or the obtaining of signatures on this</p> <p>21 document?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Do you recall that this is related to the ATE</p> <p>24 policy that we have been discussing today, that Sentinel</p> <p>25 issue?</p> |
| <p style="text-align: right;">278</p> <p>1 A. I don't. I don't recall.</p> <p>2 Q. Did you ever see -- so looking, first, at page 16</p> <p>3 of 16 with the Bates that ends in 3071, it's one of the</p> <p>4 signature pages --</p> <p>5 A. Okay.</p> <p>6 Q. -- you see it as -- the insurer is listed as</p> <p>7 Sentinel Reinsurance by Andrew Dean, Director, and there's</p> <p>8 a signature there; is that right?</p> <p>9 A. I see that.</p> <p>10 Q. Do you recognize Mr. Dean's signature?</p> <p>11 A. I don't.</p> <p>12 Q. And then the insureds are listed as: Highland</p> <p>13 CDO Opportunity Master Fund, By: Highland CDO Opportunity</p> <p>14 Fund GP, L.P. -- it's general partner -- By: Highland CD</p> <p>15 Op- -- CDO Opportunity GP, LLC, its general partner; By:</p> <p>16 Highland Capital Management, L.P., its sole member; By:</p> <p>17 Strand Advisors, Inc. its general partner; and then it is</p> <p>18 signed by Mr. Dondero, correct?</p> <p>19 A. I see that here.</p> <p>20 Q. With the title of President listed; is that</p> <p>21 right?</p> <p>22 A. In one case, yes.</p> <p>23 Q. That's right. With respect to the Highland CDO</p> <p>24 Opportunity Master Fund, L.P., entities; is that right?</p> <p>25 A. Yes, I see that here.</p> | <p style="text-align: right;">280</p> <p>1 A. Yes, it looks like the policy.</p> <p>2 Q. And as we saw in the CIMA letter, it was the sole</p> <p>3 ATE policy that Sentinel issued, correct?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 THE WITNESS: You're asking me to -- to tell</p> <p>6 you what I read earlier on this CIMA report?</p> <p>7 BY MR. BURT:</p> <p>8 Q. I'm asking -- I'm asking you to confirm that it's</p> <p>9 the sole insurance -- ATE insurance policy that Sentinel</p> <p>10 issued, as we saw earlier in the CIMA report?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 THE WITNESS: I don't know. I only know</p> <p>13 what you put forth here with these documents.</p> <p>14 BY MR. BURT:</p> <p>15 Q. Okay. You don't know if there was any other ATE</p> <p>16 policies?</p> <p>17 A. No, I don't know.</p> <p>18 Q. Okay. You recall seeing this legal liability</p> <p>19 insurance policy. Did you ever see any others related to</p> <p>20 an ATE Sentinel policy?</p> <p>21 A. I don't recall.</p> <p>22 Q. Looking at page 17 -- well, I think it's a typo</p> <p>23 at the bottom. It's Bates number that ends in 3070.</p> <p>24 A. Okay.</p> <p>25 Q. It's the schedule.</p> |

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| <p>281</p> <p>1 A. Yes, page 17 of 16. 2 Q. Yeah. That doesn't make much sense. 3 But we're looking at the same page, I 4 believe, the schedule page. It lists the insurer as 5 Sentinel Reinsurance, and the insured as Highland CDO 6 Opportunity Master Fund, L.P., Highland CDO Holding 7 Company, and Highland Special Opportunities Holding 8 Company, correct? 9 A. I see that here. 10 Q. And the date of commencement of period of the 11 insurance is August 1st -- 1st, 2017, right? 12 A. I see that here. 13 Q. Were you aware that this insurance policy 14 commenced on August 1st, 2017? 15 MS. SMITH: Objection, form. 16 THE WITNESS: I don't remember. 17 BY MR. BURT: 18 Q. And then it lists the Legal Action. And -- the 19 Legal Action begins with: UBS Securities, LLC, and UBS AG 20 London Branch versus various Highland Entities and Strand 21 Advisors; is that right? 22 A. I see that listed here, yes. 23 Q. Yeah. Does that refresh your recollection about 24 which legal action this ATE policy was issued for? 25 MS. SMITH: Objection, form.</p> | <p>283</p> <p>1 Q. Okay. And do you recall ever discussing that 2 this ATE policy was related to the UBS litigation, with 3 anybody at Sentinel or HCMLP? 4 MS. SMITH: Objection, form. 5 THE WITNESS: Not that I recall. 6 BY MR. BURT: 7 Q. All right. So although you saw this document, 8 you don't have any recollection of considering or learning 9 what it was for? 10 MS. SMITH: Objection, form. 11 THE WITNESS: No, not -- no. 12 BY MR. BURT: 13 Q. Okay. You never asked: Hey, what's -- what's 14 this ATE policy? What's this legal action involved with? 15 A. I didn't ask about the underlying legal action. 16 Q. Okay. As part of the diligence you did on other 17 A- -- potential ATE policies, you did look at what the 18 underlying legal action was, didn't you? 19 A. Yes. 20 Q. But you weren't asked to do that with this one, 21 were you? 22 MS. SMITH: Objection, form. 23 THE WITNESS: I don't recall looking at the 24 underlying legal action here. 25 BY MR. BURT:</p> |
| <p>282</p> <p>1 THE WITNESS: It says here on the paper. 2 I'm reviewing the paper. Yes, I can read what it says 3 under Legal Action. 4 BY MR. BURT: 5 Q. Well, my question is whether that refreshes your 6 recollection about this ATE policy? 7 MS. SMITH: Objection, form. 8 THE WITNESS: No, not really. 9 BY MR. BURT: 10 Q. It does not? 11 A. No. I mean, I can read this here, but I don't 12 have any other knowledge of it. 13 Q. Setting aside -- or excuse me. Strike that. 14 Do you have any reason to dispute that this 15 policy was issued for this particular legal action? 16 MS. SMITH: Objection, form. 17 THE WITNESS: I don't know. I'm just 18 looking at this that you've handed me. I don't know. 19 BY MR. BURT: 20 Q. So setting this aside for a moment, the -- the 21 document, I just want to get your best testimony about 22 what you recall about this ATE policy. 23 Do you recall it being related to the UBS 24 litigation? 25 A. No. That's not something I recall.</p> | <p>284</p> <p>1 Q. My question is: You don't -- you were not asked 2 to look at the others -- 3 A. I don't recall being asked to look at it. 4 Q. All right. Under Limit of Liability it states: 5 \$100 million in aggregate. 6 Do you see that at the bottom there? 7 MS. SMITH: Objection, form. 8 THE WITNESS: I see it on this paper, yes. 9 BY MR. BURT: 10 Q. And the premium is listed as \$25 million, right? 11 A. I see that here. 12 Q. Do those amounts stand out to you? Do you recall 13 those amounts as related to this ATE policy? 14 A. No. 15 Q. Do you have any knowledge or any idea, 16 Mrs. Irving, whose idea it was to issue this ATE policy? 17 A. No. 18 Q. Do you have any idea of the purpose of the 19 policy? 20 A. Only insofar it's -- as it's an ATE policy, 21 after-the-event insurance policy. 22 Q. Beyond that, what's plain on the -- on the text 23 of the insurance policy itself, do you have any knowledge 24 of what the purpose of issuing the policy was? 25 A. No.</p> |

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1 Q. Do you know who drafted the policy?
2 **A. I don't remember.**
3 Q. Do you know whether it came from the legal
4 department at HCMLP?
5 MS. SMITH: Objection, asked and answered.
6 THE WITNESS: I don't know.
7 BY MR. BURT:
8 Q. Do you know who negotiated the policy on behalf
9 of Sentinel?
10 MS. SMITH: Objection, form.
11 THE WITNESS: No, I don't know.
12 BY MR. BURT:
13 Q. How about on behalf of CDO -- Highland CDO
14 Opportunity Master Fund, L.P., do you know who negotiated
15 the policy?
16 **A. I don't know who negotiated the policy for any**
17 **party.**
18 Q. Okay. So you wouldn't know whether they were
19 arm's-length transactions or arm's-length negotiations?
20 MS. SMITH: Objection, form.
21 THE WITNESS: I don't know who negotiated
22 this.
23 BY MR. BURT:
24 Q. Okay. I want to show you -- you can set that
25 aside for a moment. I want to now show you another --

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1 this has also been previously marked as -- this is
2 Exhibit 2, actually.
3 **A. (Witness reviews document.)**
4 Q. Now I'm showing you what's been marked as
5 Exhibit 2, which is a -- which is entitled a Purchase
6 Agreement.
7 Do you see that?
8 **A. I see it.**
9 Q. It states: This -- This Purchase Agreement (the
10 "Agreement") dated as of August 7, 2017 (the "Effective
11 Date), is entered into by Sentinel Reinsurance, Ltd., the
12 (Purchaser) and each of Highland CDO Opportunity Master
13 Fund, L.P., Highland CDO Holding Company and Highland
14 Special Opportunities Holdings Company (together,
15 "Sellers").
16 See that?
17 **A. I see it.**
18 Q. Now, you've testified that you are familiar, not
19 necessarily with the legal action that this ATE policy
20 related to, but with the fact that such an ATE policy
21 was -- ATF -- excuse me -- policy was issued, right?
22 **A. What do you mean by "ATF policy"?**
23 Q. An after-the-fact insurance policy?
24 **A. I've never heard --**
25 Q. Excuse me. ATE. I'm getting my numbers

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1 confused.
2 **A. Okay.**
3 Q. It's getting later in the day.
4 **A. Okay.**
5 Q. An ATE policy, an after-the-event policy.
6 MS. SMITH: Objection, form. I'm sorry, I
7 didn't follow the question.
8 MR. BURT: I didn't either. So --
9 THE WITNESS: Good, 'cause I didn't either.
10 BY MR. BURT:
11 Q. You have testified that you did know that there
12 was an ATE policy and certain assets flowed into Sentinel,
13 right, in this deposition?
14 MS. SMITH: Objection, form.
15 THE WITNESS: I was aware of an ATE policy,
16 yes.
17 BY MR. BURT:
18 Q. Did you ever review the Purchase Agreement
19 associated with that policy?
20 **A. It seems familiar.**
21 Q. All right. So looking here at Exhibit 2, this
22 does seem familiar?
23 **A. Yes.**
24 Q. All right. When did you see this?
25 **A. I don't know.**

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1 Q. Was it before or after it was executed?
2 **A. I don't know.**
3 Q. Did you have anything to do with drafting this
4 document?
5 **A. No.**
6 Q. Do you know who did?
7 **A. No.**
8 Q. Do you know whether it came from the legal
9 department?
10 **A. I don't know.**
11 Q. Did you have anything to do with helping to get
12 these -- this document signed?
13 **A. Not that I recall.**
14 Q. Looking at -- under the Recitals or underneath
15 Recitals, the first paragraph that begins with No. 1:
16 Payment of Premium, says: Purchaser agrees to accept the
17 assets listed in Schedule A hereto as 100 percent payment
18 of the Premium, including an as yet unpaid or contingent
19 financial proceeds or other benefits related thereto, with
20 the explicit undertaking that if anything of value is
21 received by the Sellers, such cash or other item of value
22 shall be held in trust for the Purchaser and promptly
23 remitted thereto (the "Transferred Interest). Sellers
24 undertake that immediately following signing this
25 Agreement, they will each take all such steps and execute

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1 all such documents to vest legal and beneficial ownership
2 free from liens or encumbrances (as hereinafter defined)
3 in all of the Transferred Interest in the Purchaser.
4 You see that?
5 **A. Yes, I see that.**
6 Q. Were you aware of this Payment of Premium
7 provision in this document?
8 **A. Yes.**
9 Q. Okay. What do you recall about this?
10 **A. That the insured did not have cash to pay an**
11 **insurance premium, and as such, assets were purchased**
12 **under this Purchase Agreement, as consideration.**
13 Q. How did you learn that the insured did not have
14 cash?
15 **A. I don't remember.**
16 MS. SMITH: Objection, form.
17 THE WITNESS: I don't remember.
18 BY MR. BURT:
19 Q. But you were aware that the insured didn't have
20 cash to pay the premium?
21 **A. I believe so.**
22 Q. And who did you understand the insured to be at
23 the time?
24 **A. Some fund. I don't remember specifically.**
25 Q. Is it the entities we -- we see at the top in the

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1 first paragraph?
2 MS. SMITH: Objection, form.
3 BY MR. BURT:
4 Q. The Highland CDO Opportunity Master Fund, the
5 Highland CDO Holding Company, and Highland Special
6 Opportunities Holding Company?
7 **A. That's what this paper says.**
8 Q. Any reason to dispute that?
9 MS. SMITH: Objection, form.
10 THE WITNESS: I don't know. All the -- all
11 the names blend together, and there are a trillion
12 entities, so I don't know.
13 BY MR. BURT:
14 Q. So in -- in lieu of cash, what did you understand
15 to be provided to -- in payment of the premium?
16 MS. SMITH: Objection, form.
17 THE WITNESS: Assets.
18 BY MR. BURT:
19 Q. Okay. Let's -- looking at -- drawing your
20 attention to Schedule A, which begins on the fifth page of
21 this document -- go ahead and look at that and let me know
22 if you've seen this schedule before.
23 **A. (Witness reviews document.) It seems familiar.**
24 Q. What, if anything, do you recall about this
25 schedule?

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1 **A. That it was a listing of assets under the**
2 **Purchase Agreement.**
3 Q. Did you have anything to do with getting these
4 assets transferred to Sentinel?
5 MS. SMITH: Objection, form.
6 THE WITNESS: Yes, but I don't remember
7 specifically.
8 BY MR. BURT:
9 Q. All right. How about generally, what do you
10 recall about getting these assets transferred?
11 **A. Generally, I recall providing wiring**
12 **instructions, and there may have been some other kind of**
13 **blocking and tackling between connecting the proper people**
14 **from the Highland side and Maples.**
15 Q. Did you do any diligence whatsoever on the assets
16 listed in Schedule A?
17 **A. No.**
18 Q. Any valuation?
19 **A. No.**
20 Q. Do you know if such valuation or diligence was
21 conducted?
22 **A. No idea.**
23 Q. Do you know who would have compiled this list on
24 Schedule A?
25 **A. I don't.**

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1 Q. Were -- so is it correct that you were never
2 asked at any time to review this schedule or provide any
3 input or correction to it?
4 MS. SMITH: Objection, form.
5 THE WITNESS: Not to my recollection, no.
6 BY MR. BURT:
7 Q. Do you know whether this schedule came through
8 the legal department at HCMLP?
9 **A. What do you mean by "came through"?**
10 Q. Did anybody within the legal department review
11 this schedule?
12 **A. I have no idea.**
13 Q. Now, Mr. Dondero, if you look at page 3, signs,
14 again on behalf of the seller, all of the selling
15 entities. What do you know, if anything, about his
16 diligence into these assets?
17 MS. SMITH: Objection, form.
18 THE WITNESS: I don't know about
19 Mr. Dondero's diligence.
20 BY MR. BURT:
21 Q. Okay. At Sentinel, do you know if anybody at
22 Sentinel reviewed this schedule prior to agreeing to issue
23 the policy?
24 **A. I don't know.**
25 Q. Who at Sentinel would have been responsible for

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1 reviewing -- for performing diligence on this type of
2 transaction to ensure that these were actual assets --
3 MS. SMITH: Objection, form.
4 BY MR. BURT:
5 Q. -- of value?
6 A. I don't know.
7 Q. Would the -- would the board have been
8 responsible for that?
9 A. I -- I don't know.
10 Q. How about the beneficial owners, would they have
11 been responsible for that?
12 A. I don't know.
13 MS. SMITH: Objection, form.
14 BY MR. BURT:
15 Q. So regarding the governance at Sentinel and who
16 was responsible to ensuring the bona- -- the bonafides of
17 the transaction, you don't know who at Sentinel would have
18 done that?
19 A. I don't know.
20 Q. But you didn't?
21 MS. SMITH: Objection, form.
22 THE WITNESS: I didn't what?
23 BY MR. BURT:
24 Q. You didn't perform diligence on behalf of
25 Sentinel regarding assets?

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1 A. I did not.
2 Q. Do you know if Mr. DiOrio did?
3 A. I don't know.
4 Q. All right.
5 (Off-record discussion.)
6 BY MR. BURT:
7 Q. This has been previously marked as deposition
8 Exhibit 55.
9 Again, there's multiple pages here, and
10 Mrs. Irving, I-- I have specific questions that I can
11 draw your attention to, but go ahead and if you would like
12 to take a moment to familiarize yourself, that's fine.
13 A. Okay. (Witness reviews document.)
14 MS. SMITH: I need to take, like,
15 one minute.
16 MR. BURT: Whatever you need. We will go
17 off the record.
18 THE VIDEOGRAPHER: We are off the record at
19 4:46 p.m.
20 (Brief recess taken.)
21 THE VIDEOGRAPHER: We are back on the
22 record. Time is 4:55 p.m.
23 BY MR. BURT:
24 Q. Mrs. Irving, we were just -- I was just pulling
25 the exhibit up again, Exhibit 2, the Purchase Agreement.

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1 Just a couple of wrap-up questions about that and the
2 Schedule A that's listed there.
3 Were there any assets in this -- listed in
4 this Schedule A that were not successfully transferred to
5 Sentinel?
6 A. I don't know.
7 Q. Who would know that, if anyone?
8 A. I don't know.
9 Q. You don't know who was in charge of making sure
10 these assets were transferred over to Sentinel?
11 A. I don't.
12 Q. Were any of these transferred assets moved from
13 Sentinel after the transfer in 2017?
14 MS. SMITH: Objection, form.
15 THE WITNESS: I recall there being something
16 related to an audit, some type of worthless assets or --
17 there was some batch of assets, I believe, that were
18 transferred at CIMA or the auditor's direction. I don't
19 remember which.
20 BY MR. BURT:
21 Q. When was that?
22 A. I don't remember.
23 Q. What entity were they transferred to?
24 A. I can't remember the name of the entity.
25 Q. Was it an SAS entity?

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1 A. Yes.
2 Q. Was it Sebastian Clark?
3 A. Yes.
4 Q. Okay. And what was Sebastian Clark?
5 A. It was -- it was just an empty entity.
6 Q. Was it a shell?
7 MS. SMITH: Objection, form.
8 THE WITNESS: What do you mean by "shell"?
9 BY MR. BURT:
10 Q. Just a -- a shell entity sitting out there with
11 no assets or employees?
12 A. Correct.
13 Q. Okay. Do you know why it existed?
14 A. Yes.
15 Q. And why was that?
16 A. When -- SAS, when you're talking SAS as a brand
17 would have new, or potential new, litigation funding
18 cases, there would often be shell entities that could
19 contract with whoever the new plaintiff would be under NDA
20 or whatever. There would be separate entities for various
21 litigation funding matters.
22 Q. And that's why the shells were set up underneath
23 the SAS structure, for that purpose?
24 A. Yes.
25 Q. Was Sebastian Clark used in that way?

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1 **A. It was a shell.**
2 Q. Right.
3 But was it used in that way that you just
4 described?
5 MS. SMITH: Objection, form.
6 THE WITNESS: Not that I recall. I don't
7 know.
8 BY MR. BURT:
9 Q. But -- but assets from Sentinel were transferred
10 to Sebastian Clark?
11 **A. From what I recall, yes.**
12 Q. Okay. Was Sebastian Clark set up specifically to
13 receive assets from Sentinel?
14 **A. No.**
15 Q. So it was a shell entity available under the SAS
16 structure that was used to receive the worthless assets of
17 Sentinel?
18 MS. SMITH: Objection, form.
19 THE WITNESS: It received assets from
20 Sentinel, yes.
21 BY MR. BURT:
22 Q. I thought I heard you say that they were
23 worthless or an audit had determined they were worthless;
24 is that right?
25 **A. I believe so, yes.**

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1 Q. Okay. What do you know about that audit?
2 **A. Nothing.**
3 Q. Do you know who performed it?
4 **A. No.**
5 Q. Any other transfers, aside from the transfer to
6 Sebastian Clark, that you're aware of from these assets
7 listed in Schedule A to the Purchase Agreement?
8 **A. Not that I'm aware of.**
9 Q. All right. I think I -- I had given you
10 Exhibit 55; is that right?
11 **A. Yes.**
12 Q. Okay. So let's take a look at Exhibit 55.
13 And this is an e-mail chain with attachments
14 in the June 2017 time frame moving forward to the
15 August 2017 time frame.
16 Do you see that in the e-mail chain?
17 **A. I do.**
18 Q. The first e-mail is on June 6th, 2017, from a Kim
19 Willey, or "Willey," @aswlaw.com.
20 Do you know who that was?
21 **A. Nope.**
22 Q. And she sends the e-mail to a
23 paulscrivener@solomonharris.com.
24 Do you know Mr. Scrivener?
25 **A. I don't believe so.**

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1 Q. Okay. And moving up in the chain, drawing your
2 attention to the e-mail dated August 10th, 2017, from
3 Lesley Thompson right in the middle of the -- of that
4 page.
5 Do you see that, the Lesley Thompson e-mail
6 at 1701? We're on the --
7 **A. Oh, I see it.**
8 Q. -- the page that ends in Bates 350.
9 **A. Okay. At the bottom or in the middle?**
10 Q. In the middle --
11 **A. Okay.**
12 Q. -- there's an e-mail from Lesley --
13 **A. Oh, yes, I see here. "Dear J.P. and Katie"?**
14 Q. Exactly.
15 So, there, Mrs. Thompson says: Dear J.P.
16 and Katie, thank you for all the information and
17 supporting documentation to the recommendation regarding
18 the new ATE policy to be written by Sentinel Reinsurance,
19 Ltd.
20 You see that?
21 **A. I see it.**
22 Q. What information and supporting documentation had
23 you provided to Mrs. Thompson regarding the new ATE
24 policy?
25 **A. I do not remember.**

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1 Q. Do you recall ever sending her information and
2 supporting documentation?
3 **A. No.**
4 Q. Do you know whether Mr. Sevilla did?
5 **A. I don't know.**
6 Q. Do you have any reason to disagree that
7 Mrs. Thompson somehow received, from either you or
8 Mr. Sevilla, information and supporting documentation?
9 MS. SMITH: Objection to form.
10 THE WITNESS: I don't know if she received
11 information. I don't know.
12 BY MR. BURT:
13 Q. Okay. And then Mrs. Thompson -- you -- so just
14 to be clear, you don't recall ever sending information and
15 supporting documentation to Mrs. Thompson; is that right?
16 **A. I -- I don't remember.**
17 Q. So this is August 10th, 2017, the day before you
18 issued the -- the wire instructions. And thinking back to
19 that time, do you recall any discussions or interactions
20 with Mrs. Thompson regarding the new ATE policy?
21 MS. SMITH: Objection, form.
22 THE WITNESS: I didn't issue any wiring
23 instructions; I provided them via the prior e-mail chain.
24 But do I recall --
25 BY MR. BURT:

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| 301 | <p>1 Q. Fair.</p> <p>2 A. -- speaking or giving her -- I don't recall</p> <p>3 interactions with her, no.</p> <p>4 Q. Okay. Then she -- you don't -- and you don't</p> <p>5 recall receiving this e-mail?</p> <p>6 A. I don't recall this, no.</p> <p>7 Q. She states: One final question: Can you please</p> <p>8 confirm that in the event of an adverse loss, which --</p> <p>9 which exceeds the existing assets/equity of the Company,</p> <p>10 the shareholders will inject the necessary capital in</p> <p>11 order for the Company to meet its obligations and maintain</p> <p>12 its solvency.</p> <p>13 Do you recall that question coming from</p> <p>14 Mrs. Thompson, one of the Sentinel directors?</p> <p>15 A. No.</p> <p>16 Q. Were you aware that shareholders were being asked</p> <p>17 to inject necessary capital for the Company, Sentinel, to</p> <p>18 meet its obligations?</p> <p>19 MS. SMITH: Objection, form.</p> <p>20 THE WITNESS: Could you repeat what you just</p> <p>21 said, please?</p> <p>22 BY MR. BURT:</p> <p>23 Q. Do you recall that the shareholders of Sentinel</p> <p>24 were being asked to inject necessary capital in order for</p> <p>25 the Company, Sentinel, to meet its obligations and</p> |
| 302 | <p>1 maintain its solvency?</p> <p>2 MS. SMITH: Objection, form.</p> <p>3 THE WITNESS: They are not asked to inject</p> <p>4 capital from what I'm reading here.</p> <p>5 BY MR. BURT:</p> <p>6 Q. Right.</p> <p>7 In the event of an adverse loss, which</p> <p>8 exceeds the existing assets/equity of the Company, she is</p> <p>9 asking that you confirm that the shareholders will inject</p> <p>10 the necessary capital in that scenario.</p> <p>11 Did you know that she was asking that?</p> <p>12 A. Did I know she was asking this? I mean, I got</p> <p>13 the e-mail where she's asking. I don't recall anything</p> <p>14 other than reading this e-mail.</p> <p>15 Q. You don't recall any discussions after the fact</p> <p>16 about this e-mail?</p> <p>17 A. I don't.</p> <p>18 Q. Did you ever speak with Mr. Sevilla and ask: Who</p> <p>19 are the shareholders? What is she asking this for?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Nothing?</p> <p>22 A. Not that I recall.</p> <p>23 Q. Don't recall anything?</p> <p>24 A. (Witness shakes head negatively.)</p> <p>25 Q. Okay. Mr. Sevilla then responds: Lesley, the</p> |
| 303 | <p>1 shareholders have made a fundamental commitment, both</p> <p>2 fiscally and governance-wise, to Sentinel Reinsurance for</p> <p>3 the long term, including in the situation of an adverse</p> <p>4 loss.</p> <p>5 Do you see that?</p> <p>6 A. I see it.</p> <p>7 Q. Do you see that you were cc'd on that e-mail?</p> <p>8 A. Yes.</p> <p>9 Q. And were you aware that the shareholders had made</p> <p>10 this fundamental commitment?</p> <p>11 MS. SMITH: Objection, form.</p> <p>12 THE WITNESS: I see it here on the e-mail.</p> <p>13 BY MR. BURT:</p> <p>14 Q. In August -- early August of 2017, what was your</p> <p>15 understanding of who the shareholders were?</p> <p>16 A. I don't remember.</p> <p>17 Q. Well, we've gone through all those organization</p> <p>18 charts and looked at all that in detail today.</p> <p>19 A. Yes. I'd have to check the dates on all the org</p> <p>20 charts and go back and see this date and then see who the</p> <p>21 shareholders were at that point.</p> <p>22 Q. So was Sentinel constantly reorganizing its</p> <p>23 ownership and who -- and who owned what?</p> <p>24 A. No.</p> <p>25 Q. Okay. And we saw earlier a Beecher Carlson</p> |
| 304 | <p>1 letter from 2015 listing Mr. Dondero and Ellington as the</p> <p>2 ultimate beneficial owners of Sentinel. Do you recall</p> <p>3 that?</p> <p>4 MS. SMITH: Objection, form.</p> <p>5 THE WITNESS: Yes, I recall that.</p> <p>6 BY MR. BURT:</p> <p>7 Q. And we've seen these organ- -- organization</p> <p>8 charts in 2019 that listed Mr. Dondero and Ellington as</p> <p>9 the USPs owning the majority -- the vast majority of the</p> <p>10 shares of Sentinel.</p> <p>11 Do you recall seeing that and talking about</p> <p>12 that today in your deposition?</p> <p>13 A. I do recall what you're talking about, yes.</p> <p>14 Q. So do you have anything to offer that in 2017, at</p> <p>15 the time of the transaction, that Mr. Dondero and</p> <p>16 Ellington were not the shareholders being referred to</p> <p>17 here?</p> <p>18 MS. SMITH: Objection, form.</p> <p>19 THE WITNESS: The shareholders would be</p> <p>20 whoever owns at the time, not necessarily -- this doesn't</p> <p>21 say "UBO." This doesn't say "USP." Doesn't say</p> <p>22 "beneficial owner." It said "shareholders." I don't know</p> <p>23 what J.P. was referring to here.</p> <p>24 BY MR. BURT:</p> <p>25 Q. You don't have any idea of how he was using the</p> |

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| <p>305</p> <p>1 term "shareholders" of Sentinel here? 2 A. No. 3 Q. Was that a term he didn't use usually? 4 MS. SMITH: Objection, form. 5 THE WITNESS: Could you rephrase that for 6 me, please? 7 BY MR. BURT: 8 Q. Is that not a term that he used to describe who 9 owned Sentinel? He didn't use the term "shareholders"? 10 A. He would have used the term "shareholders," but 11 he would be specific around ownership chain. 12 Q. Okay. Well, here, a director is asking him this 13 question, and he's stating that they've made a 14 fundamental -- the shareholders made a fundamental 15 commitment. Right? 16 A. I see that on the paper, yeah. 17 Q. And is it your testimony here under oath that you 18 have no idea who he was referring to when he said 19 "shareholders"? 20 A. I don't know what J.P. is referring to. I don't 21 know what J.P. is drafting this for. You'd have to ask 22 him. 23 Q. Okay. Can you point me to any facts that 24 suggests that it was not Mr. Dondero and Ellington who 25 were shareholders at this time? I'm just -- do you have</p> | <p>307</p> <p>1 You see that at the top? 2 A. I do. 3 Q. So "Helen" refers to Helen Kim here? 4 A. Yes. 5 Q. So you were sending this e-mail to Helen Kim 6 requesting JD execute the attached; isn't that right? 7 A. That's what it appears from this document. 8 Q. Who is Ms. Kim? 9 A. She is our paralegal. 10 Q. Okay. And why were you sending this to Ms. Kim? 11 A. Because she would handle execution, gathering 12 signatures, and other paralegal-type duties. 13 Q. Okay. Now looking at the attachment to this -- 14 that begins at page 4 -- you see the first attachment is 15 the Unanimous Written Resolution of the Board of Directors 16 of the Company, of Sentinel Reinsurance, Ltd.? 17 A. I see that. 18 Q. And, then, you see on the next pages there are 19 signature pages of Christopher Watler and Andrew Dean 20 dated August 10th, 2017? 21 A. I see that. 22 Q. Did you have anything to do with obtaining those 23 signatures? 24 A. Not that I recall. 25 Q. Why were you involved in getting Mr. Dondero's</p> |
| <p>306</p> <p>1 any facts to support that? 2 MS. SMITH: Objection, form. 3 THE WITNESS: Just my belief that those two 4 individuals were not the direct shareholders of -- 5 BY MR. BURT: 6 Q. In August of 2017, they were not the direct 7 shareholders? 8 A. Not directly, no. 9 Q. Were they the ultimate beneficial owners? 10 MS. SMITH: Objection, form. 11 THE WITNESS: I don't know. 12 BY MR. BURT: 13 Q. Okay. Well, looking at the first page of this 14 document, after Mr. Sevilla's e-mail, Mrs. Thompson says: 15 Thanks, J.P. We will send the signature pages shortly. 16 And then Mrs. Thompson provides -- in the 17 next e-mail, she sends along the signed directors 18 resolution along with the signature pages for the ATE 19 policy and Purchase Agreement. 20 Do you see where I'm reading there? 21 A. I do. 22 Q. And then she says: Once the signature pages have 23 been collated, please can you send us a full copy for our 24 records? And you respond: Helen, request JD execution of 25 the attached, please. Thank you.</p> | <p>308</p> <p>1 signature? 2 A. I believe J.P. was out of the office, and I was 3 helping him with anything he needed on this transaction. 4 Q. And that was on August 10th of 2017, correct? 5 MS. SMITH: Objection, form. 6 BY MR. BURT: 7 Q. Looking at the date of the e-mail. 8 A. This e-mail is dated August 10th, 2017, and I'm 9 asking Helen to please have this executed. 10 Q. One moment. 11 Okay. I want to show you -- KL_53 -- a new 12 exhibit. And while she is getting that out, I actually 13 wanted to ask a question about Mr. Surgent. I think 14 you've mentioned his name a couple times, and we've seen 15 him on an e-mail or two today. 16 I think -- and correct me if I'm wrong. But 17 you've testified that Mr. Surgent knew about this 18 transaction, the APA and the ATE policy; is that right? 19 A. Yes. 20 Q. And -- and how is it that -- that Mr. Surgent 21 knew about the transaction? 22 A. I don't know how he knew about it. 23 Q. Okay. Why is it that you can testify here today 24 that you know that he did know about it? 25 A. Because I sat outside of his office in a</p> |

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| <p style="text-align: right;">309</p> <p>1 trading-desk environment, and he's quite loud. 2 Q. So it goes back to that, that you -- you 3 overheard him talking about this specific insurance 4 policy? 5 A. Yes. 6 Q. And you overheard him talking about the APA? 7 A. I don't recall that specifically. 8 Q. Okay. How about the ATE specifically and what it 9 was insuring, did you hear him talking about that? 10 MS. SMITH: Objection, form. 11 THE WITNESS: I don't recall those details. 12 BY MR. BURT: 13 Q. Okay. Do you re- -- did Mr. Surgent have 14 authority to approve the ATE or the APA? 15 A. Approve for who? 16 Q. Well, for any entity. Let's take Sentinel first. 17 Would he have had authority on behalf of 18 Sentinel? 19 A. No. 20 MS. SMITH: Objection, form. 21 BY MR. BURT: 22 Q. How about on behalf of the insureds, the CDO 23 entities and SOHC? 24 A. I don't know the answer to that. 25 Q. Okay. And he did not sign, on behalf of the</p> | <p style="text-align: right;">311</p> <p>(Exhibit 109 was marked for identification.) 2 THE WITNESS: Could I just add on the last 3 question that there are -- 4 BY MR. BURT: 5 Q. Yeah. 6 A. -- there are multiple people -- I mean, everyone, 7 I feel like, was involved in this transaction at Highland. 8 It was no secret. I mean, he could have been talking to 9 anybody. 10 Q. And when you say "everyone," what -- is there, 11 like, a group, like legal department, or just, like, 12 everybody on the floor was talking about it? 13 A. It was fairly general knowledge. So he could 14 have been speaking with whoever loudly in his office. I 15 don't know. 16 Q. Right. 17 And -- and when you say it was gen- -- 18 "fairly general knowledge," you're referring, 19 specifically, to Sentinel issuing the ATE policy was 20 fairly general knowledge? 21 MS. SMITH: Objection, form. 22 THE WITNESS: The ATE policy in general, I 23 feel like, was -- was not a secret at Highland. 24 BY MR. BURT: 25 Q. Okay. How about the APA and the assets that were</p> |
| <p style="text-align: right;">310</p> <p>1 insureds, any of the documents related to the ATE, 2 correct? 3 A. I saw -- yes. I saw that his signature was not 4 included in these documents. 5 Q. Okay. When -- when you were sitting outside 6 overher- -- hearing Mr. Surgent talking about these issues 7 loudly, sounds like, did -- do you know who he was talking 8 to? 9 A. No. 10 Q. Would he have conversations with Mr. Ellington 11 about the ATE that you overheard? 12 A. Not that I recall specifically. 13 Q. Was it with members of the legal team that he was 14 having these discussions? 15 A. I don't remember. 16 Q. Okay. So you don't remember who the other party 17 on these conversations -- these very loud conversations 18 were? 19 A. I don't. 20 Q. All right. Yeah, let's show it. 21 So we've looked at this before, but I did 22 want to get it in as its own exhibit. 23 MR. BURT: I think 109 or 110. 24 MS. McLAUGHLIN: 109. 25 MR. BURT: 109.</p> | <p style="text-align: right;">312</p> <p>1 being transferred, is that something that was pretty 2 well-known too? 3 A. Yes. 4 Q. So that was something that HCML- -- HCMLP 5 employees were talking about on the floor, and they 6 overheard Mr. Surgent talking about it, something that was 7 just a normal part of business? 8 A. Yes. 9 Q. Okay. Now, again, I -- I've shown this to you 10 before, but now it's its own exhibit, just to tie this up. 11 See that this is the Judgment, again, from 12 the New York State Court in the UBS litigation against the 13 various Highland Entities, where we saw before the 14 Judgment had been entered in the amount of just over a 15 billion dollars. 16 Is that right? You see that? 17 MS. SMITH: Objection, form. 18 THE WITNESS: Is this a different document 19 than before? 20 BY MR. BURT: 21 Q. It -- it -- before we had looked at it as an 22 attachment to another exhibit. This is a standalone -- a 23 standalone document, but it's the same document that was 24 in the attachment. 25 A. Okay.</p> |

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1 Q. All right. Now, what I'm interested in,
2 actually, here is -- is, again, dates and timelines.
3 So, here, we see that the date of this was
4 February 10th, 2020; is that right?
5 **A. I see that date here, yes.**
6 Q. Do you know whether HCMLP ever entered
7 bankruptcy?
8 **A. Yes.**
9 MS. SMITH: Objection, form.
10 BY MR. BURT:
11 Q. Which is what brings us together here today.
12 And when did it enter bankruptcy? No, I'm
13 not looking for a specific date, but approximately when,
14 to your knowledge.
15 **A. I believe it was in October 2019.**
16 Q. Okay. And so that would have been in relation to
17 this Judgment about four, or some odd -- about four months
18 prior to this Judgment, is that accurate, four or
19 five months?
20 **A. Sure.**
21 Q. Now, as part of bankrupt -- the bankruptcy
22 proceedings, are you familiar with an independent board
23 being placed in charge of HCMLP?
24 **A. Yes.**
25 Q. Okay. When did that occur, to your recollection?

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1 **A. I really don't remember.**
2 Q. Did it follow close in time to the filing of
3 bankruptcy?
4 MS. SMITH: Objection, form.
5 THE WITNESS: I really don't remember when
6 the independent board was put in place.
7 BY MR. BURT:
8 Q. If I were to say early January, early 2020, would
9 that sound about right?
10 **A. I honestly don't remember.**
11 Q. Were they put in place prior to you being
12 terminated by HCMLP?
13 **A. Yes.**
14 Q. Okay. And, of course, it was after HCMLP
15 fired -- filed for bankruptcy; is that fair?
16 **A. Yes.**
17 Q. So sometime between October 2019 and
18 February 2021, the independent board was put in place?
19 **A. Yes.**
20 Q. Now, you just said that, you know, discussions of
21 Sentinel and the ATE policy, that was -- that was being
22 discussed on the floor, it was common knowledge, right,
23 normal part of business, pretty much everybody knew about
24 it? Is that right?
25 **A. It was -- it was common knowledge, I'd say, yes.**

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1 Q. Did you ever discuss it with the independent
2 board?
3 MS. SMITH: Objection, form.
4 THE WITNESS: No. It was a transaction from
5 however long ago. No, I did not.
6 BY MR. BURT:
7 Q. Okay. Do you know whether these discussions on
8 the floor at Sentinel continued about -- regarding the ATE
9 policy and the Asset Purchase Agreement, do you know
10 whether these discussions continued on the floor and with
11 Mr. Surgent after the independent board had been put in
12 place?
13 **A. I don't know.**
14 Q. But your testimony here today is that you never
15 discussed the ATE policy with the independent board?
16 **A. I did not discuss the ATE policy with the
17 independent board.**
18 Q. And is there a reason why you didn't discuss it
19 with the board?
20 **A. I didn't --**
21 MS. SMITH: Objection, form.
22 THE WITNESS: I didn't really discuss
23 anything with the independent board.
24 BY MR. BURT:
25 Q. You had no discussions with the board?

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1 **A. Maybe one one-off meeting with Judge Nelms, but,
2 no, that wasn't part of my day-to-day to discuss anything
3 directly with the independent board.**
4 Q. I see.
5 So we get -- looking at this exhibit, we get
6 the Judgment in February of 2020 relating to the case that
7 the ATE policy was issued to insure against.
8 What discussions, if any, occurred at
9 Highland regarding the ATE policy after the judgment came
10 down?
11 MS. SMITH: Objection, form.
12 THE WITNESS: I don't know.
13 BY MR. BURT:
14 Q. Did you have any discussions with anyone about
15 the policy -- the ATE policy after the judgment came down?
16 **A. No.**
17 Q. And there's a billion-dollar judgment that's just
18 come down against these Highland Entities; there's an ATE
19 policy to insure, as we saw, up to a hundred million, and
20 you don't recall any discussions about that after the
21 judgment comes down?
22 **A. I don't.**
23 Q. Did Mr. DiOrio ever dis- -- raise it with you?
24 MS. SMITH: Objection, form.
25 THE WITNESS: Not that I recall.

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1 BY MR. BURT:
2 Q. Nothing like: Hey, I'm an independent director
3 of Sentinel, and we ought to actually pay on this policy,
4 nothing like that?
5 **A. Not that I recall.**
6 Q. How about Mr. Ellington? Did you ever discuss it
7 with him? Did he ever ask: Hey, what are we doing about
8 this ATE policy in light of the Judgment?
9 MS. SMITH: Objection, form.
10 THE WITNESS: Not that I recall.
11 BY MR. BURT:
12 Q. Mr. Leventon, no discussions with him either?
13 **A. No, not that I recall.**
14 Q. So did this ATE policy and the APA go from being
15 widely discussed on the floor to, when the independent
16 board comes in, no one's talking about it anymore?
17 **A. No, it --**
18 MS. SMITH: Objection, form.
19 THE WITNESS: -- the ATE policy was
20 discussed when I overheard Thomas discussing it related to
21 the timing of this transaction. When this -- at the time
22 of this transaction, I would hear him talking about the
23 transaction.
24 BY MR. BURT:
25 Q. Well, your testimony was broader than that, I

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1 think. You said that it was fairly common knowledge; it
2 was part of day-to-day business; everybody knew about the
3 ATE policy; it was discussed, the APA. I think that's
4 what you said earlier.
5 **A. I sh- -- yes. I should be more clear that at the**
6 **time of the transaction, at the time these documents were**
7 **signed, around this time, it was knowledge within the**
8 **firm.**
9 Q. Okay. Did those discussions cease after a
10 certain period of time?
11 MS. SMITH: Objection, form.
12 THE WITNESS: I believe so.
13 BY MR. BURT:
14 Q. And when the judgment comes down, you never hear
15 anyone say: Hey, there's a judgment for a billion
16 dollars; we ought to look at that ATE policy?
17 MS. SMITH: Objection, form.
18 THE WITNESS: I just don't recall.
19 MR. BURT: KL_4.
20 BY MR. BURT:
21 Q. This has been previously marked as Deposition
22 Exhibit 53.
23 Now, I -- actually, there -- there's a
24 number of e-mails, and feel free to look at them, but what
25 I'm interested in is actually just on the first page.

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1 **A. Let me just read this for context, please.**
2 Q. Sure. Take your time.
3 **A. (Witness reviews document.) Okay.**
4 Q. All right. So at the very top, do you see that
5 Mr. Leventon sends this e-mail chain to Mr. DiOrio, cc'ing
6 you and Mr. Sevilla, on June 16th, 2020, right?
7 **A. I see that.**
8 Q. All right. And is that -- that's after the
9 bankruptcy, right?
10 MS. SMITH: Objection, form.
11 THE WITNESS: June 16th, 2020, is after
12 HCMLP filed for bankruptcy.
13 BY MR. BURT:
14 Q. Okay. And it's after the date of judgment that
15 we looked at in the previous exhibit that was on
16 February 10th, 2020?
17 **A. June 16th, 2020, yes, is after the date on this**
18 **paper, February 10th, 2020.**
19 Q. Okay. So in the e-mail directly below from
20 Lawrence Kemp to Isaac Leventon, he states: Hi, Isaac,
21 hope all is well. I'm trying to wrap up the Sentinel Re
22 audit for the year ended December 31, 2019, and I need
23 your help with the following items: Can you give me a
24 brief update on what happened during the year? The
25 actuary has provided the following table with likely

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1 outcomes of the case. Per their report, you have agreed
2 that these estimates are reasonable.
3 Do you see that?
4 **A. I see it on the paper, yes.**
5 Q. And, again, I think you said you didn't have
6 anything to do with the actuarial reports or the
7 percentages in those reports, right?
8 **A. Not that I recall.**
9 Q. Okay. So -- and do you know who Lawrence Kemp
10 is?
11 **A. No.**
12 Q. All right. So he's asking Mr. Leventon for an
13 update on June 16th, 2020, four months after the judgment
14 was entered, and then Mr. Leventon forwards this to
15 DiOrio, cc'ing you.
16 Do you recall receiving this e-mail chain?
17 **A. No.**
18 Q. Do you know why he would have sent it to you?
19 MS. SMITH: Objection, form.
20 THE WITNESS: No.
21 BY MR. BURT:
22 Q. Was there ever any discussion that you were a
23 part of with Mr. Leventon regarding the fact that a
24 judgment had been entered in the UBS litigation?
25 **A. Not that I recall.**

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1 Q. Do you know whether Mr. Leventon ever told the
2 actuary that a judgment had been entered triggering the
3 ATE policy?
4 MS. SMITH: Objection, form.
5 THE WITNESS: I don't know what Mr. Leventon
6 told the actuary.
7 BY MR. BURT:
8 Q. Okay. No dis- -- and you had no discussions with
9 Mr. DiOrio or Mr. Sevilla either about the fact that a
10 judgment had been entered and what -- what the impact of
11 that was?
12 **A. Not that I recall.**
13 Q. So to your knowledge, there were no dis- -- from
14 what I'm learning -- and if I'm wrong, just let me know --
15 what I'm hearing is that there was no discussion at any
16 point, ever, that you were aware of regarding the ATE
17 policy after the UBS judgment was entered in February of
18 2020?
19 MS. SMITH: Objection, form.
20 THE WITNESS: I can't say never, ever, ever,
21 but I don't recall.
22 BY MR. BURT:
23 Q. You don't recall any such discussion?
24 **A. I don't.**
25 Q. And I'm asking you as broadly as I can.

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1 **A. I just don't recall.**
2 Q. One moment, please.
3 Do you know -- thinking back to the asset --
4 the APA itself, do you know whether any of the
5 transferring entities -- so the -- the entities that
6 purchased the insurance -- whether they had any assets
7 left after transferring the assets listed in Schedule A to
8 the APA?
9 **A. I don't know.**
10 Q. Do you know who might know that?
11 **A. I don't.**
12 Q. One moment.
13 If you could pull up the APA for me, I do
14 want to look at Schedule A again.
15 **A. Can you tell me the exhibit number?**
16 Q. Sure. It's Exhibit 2.
17 **A. Okay.**
18 Q. Looking at Schedule A, which lists the assets
19 that were transferred, did you know at the time the value
20 of the assets that were transferred?
21 **A. No.**
22 MS. SMITH: Objection, form.
23 BY MR. BURT:
24 Q. Were you ever part of a discussion where it was
25 discussed: What is the value that were -- these funds

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1 we're transferring to Sentinel?
2 **A. No. And this didn't come to us in the litigation**
3 **funding capacity. So, no, I didn't really look at the**
4 **value here as I would in, say, another ATE policy which**
5 **would be coupled with litigation funding.**
6 Q. So how did it come to you, then? What was
7 different this time?
8 **A. I don't remember. I don't know.**
9 Q. Who first told you about it?
10 **A. I don't know.**
11 Q. So you do know that it came to you in a different
12 way than the typical litigation funding ATE policy that
13 you would have done, right?
14 **A. It did, insofar as it didn't come from a Cayman**
15 **liquidator or one of the contacts that I was working for**
16 **business development purposes, but I don't recall who**
17 **specifically told me about this.**
18 Q. Okay. And in addition to -- following up on who
19 specifically told you -- so again, more generally -- do
20 you have any recollection of -- in general, of who knew
21 about this and who brought it to your attention?
22 MS. SMITH: Objection, form.
23 THE WITNESS: I don't remember who brought
24 this to my attention. It was common knowledge, like I
25 said before, at the time of the transaction at the firm.

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1 The head of compliance knew about it.
2 BY MR. BURT:
3 Q. Who was --
4 **A. -- Thomas Surgent.**
5 Q. Thomas Surgent, yep.
6 **A. Apparently, the other people listed on the**
7 **e-mails knew about it: Cliff Stoops, Frank Waterhouse.**
8 **There were a lot of people on that e-mail chain.**
9 Q. Right.
10 Well, and you were on that e-mail chain too,
11 right?
12 **A. I was on the e-mail chain, yes.**
13 Q. Yeah.
14 So you knew about it as well at the time; it
15 was common knowledge, as you said?
16 **A. (Witness nods head affirmatively.)**
17 Q. Do you know whether it was the intent to transfer
18 all of the assets -- not just cash, but all of the assets
19 out of CDO fund and those other entities in Schedule A?
20 MS. SMITH: Objection, form.
21 THE WITNESS: Do I know if it was the intent
22 to transfer all assets?
23 BY MR. BURT:
24 Q. Right. To -- to take all of the assets of these
25 entities listed in Schedule A and transfer them to

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| <p style="text-align: right;">325</p> <p>1 Sentinel? 2 A. I don't know. 3 Q. You don't recall that being discussed? 4 A. I don't. 5 Q. Okay. This has been previously marked as 6 Deposition Exhibit 9. 7 MS. SMITH: Jason, give me a little bit more 8 of a scoot here. 9 MR. BURT: Oh, sorry. Oh, no, you're right. 10 Here you go. 11 THE WITNESS: (Witness reviews document.) 12 Okay. 13 BY MR. BURT: 14 Q. What I'm interested in -- this is actually a 15 further -- we've looked at some of these e-mails before, 16 and then there's more e-mails in the chain. 17 And what I'm interested in here is 18 Mr. Stoops's reference to "the list of securities not 19 eligible for DTC settlement and instructions for physical 20 delivery to BNY for all funds." 21 Do you see that at the top e-mail? 22 A. I do. 23 Q. What do you recall about the list of securities 24 not eligible for DTC settlement? 25 A. I remember discussing briefly with the settlement</p> | <p style="text-align: right;">327</p> <p>1 seen the -- the wiring instructions that you provided. 2 What did you have to do with securities 3 being transferred? 4 MS. SMITH: Objection, form. 5 THE WITNESS: It looks like I provided an 6 address pursuant -- like, on this e-mail, it looks like I 7 provided an address, but other than that, I really don't 8 remember. 9 BY MR. BURT: 10 Q. Right. 11 And are you referring to the e-mail -- the 12 August 11th e-mail at 2:57 p.m.? 13 A. I am. 14 Q. And that's the address of Lesley Thompson? 15 A. Yes. 16 Q. And is that the address that physical security 17 should be sent to; do you know? 18 A. I don't know. 19 Q. Well, let's look at the e-mail right below that 20 from Clifford Stoops to you and others where he says: All 21 cash has been sent. Working on DTC securities. Still 22 waiting on delivery instructions for physicals from legal. 23 A. So, yes, I'm responding to Cliff's e-mail. 24 Q. Okay. So the physical securities were to be sent 25 to Lesley Thompson at Sentinel Reinsurance, Ltd., c/o</p> |
| <p style="text-align: right;">326</p> <p>1 guys that some assets are on this DTC exchange, which I'm 2 not familiar with -- 3 Q. Okay. 4 A. -- really, and some assets were not on that 5 exchange, as far as I'm aware. 6 Q. And when you're referring to "assets," you're 7 referring to assets listed on Schedule A to the APA? 8 MS. SMITH: Objection, form. 9 THE WITNESS: Yes, that's what I'm inferring 10 from this. 11 BY MR. BURT: 12 Q. Okay. And do you recall, without -- you know, 13 I'm not asking for the specific name of the security. 14 Do you recall anything about why certain 15 securities were not eligible for DTC settlement? 16 A. No. 17 Q. Okay. And do you recall that there was also 18 physical delivery of securities to BNY? 19 MS. SMITH: Objection, form. 20 THE WITNESS: I don't recall, but I see it 21 here on this e-mail you handed me. 22 BY MR. BURT: 23 Q. Right. 24 And what -- Mrs. Irving, what did you have 25 to do with the securities that were transferred? We've</p> | <p style="text-align: right;">328</p> <p>1 MaplesFS, 4th Floor, Boundary Hall, Cricket Square, again 2 Grand Cayman, Cayman Islands? 3 A. I see that here. 4 Q. And so that's the address you provided. 5 Do you know whether she received them? 6 A. I don't know. 7 (Off-record discussion.) 8 BY MR. BURT: 9 Q. All right. This has been previously marked as 10 Deposition Exhibit 14, another e-mail chain on August 10th 11 and 11th of 2017. 12 A. (Witness reviews document.) Okay. 13 Q. All right. Now, this begins, it appears, with a 14 missed call from -- that you missed from Carter Chism on 15 August 10th, 2017. 16 You see that at the bottom? 17 A. Yes, I do. 18 Q. And then you e-mail him on August 10th: Hey, 19 Carter, transaction should close shortly. Do you have 20 everything you need in order to push the button on 21 securities transfer, please? 22 Do you recall this e-mail to Mr. Chism? 23 A. No. 24 Q. Do you recall working with Mr. Chism on the 25 transfer of the Schedule A assets?</p> |

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| <p>329</p> <p>1 A. Yes. 2 Q. And what did Mr. Chism do? 3 A. He was the settlements op's guy. 4 Q. Did he deal with both securities and cash? 5 A. I don't know. 6 Q. All right. And then, the next e-mail up, you -- 7 you state, again on August 10th: Hi, Carter, docs are 8 being counter-executed as we speak. We should be good to 9 go in relation to trade. Please get it rolling, and let 10 me know if you need anything from our side. Thank you. 11 You see that? 12 A. I see it. 13 Q. And you cc'd Mr. Sevilla on this, right? 14 A. Yes. 15 Q. Were you and Mr. Sevilla overseeing the 16 counter-execution of the APA and the ATE at this time? 17 MS. SMITH: Objection to form. 18 THE WITNESS: I don't remember. 19 BY MR. BURT: 20 Q. All right. Were you overseeing the -- the 21 transfer of the assets listed in Schedule A? 22 MS. SMITH: Objection to form. 23 THE WITNESS: No, we were not overseeing 24 that. 25 BY MR. BURT:</p> | <p>331</p> <p>1 this has been previously marked as Exhibit 81. 2 (Exhibit 110 was marked for identification.) 3 THE WITNESS: Thanks. 4 (Witness reviews document.) 5 Is this the attachment to this e-mail just 6 in color? 7 BY MR. BURT: 8 Q. Exactly. 9 A. Okay. 10 Q. That's correct. Exhibit 81 is just the color 11 attachment to Exhibit 110. 12 A. Okay. 13 Q. Do you recall following up with Mrs. Thompson 14 about the receipt of securities following -- the days 15 following the transaction? 16 A. I don't recall, but I see it in this e-mail 17 chain. 18 Q. Right. 19 Do you recall her sending you a Schedule A 20 marked in orange and green to signify certain securities 21 that have been -- that had been received? 22 A. I don't recall, but I see it -- see this document 23 you handed me, which has orange and green. 24 Q. Okay. So looking at that document, Exhibit 81, 25 prior to sitting here today looking at it, do you recall,</p> |
| <p>330</p> <p>1 Q. Okay. But you were dealing with it? 2 A. Sure. 3 Q. Yeah. So I'm just trying to understand what, 4 exactly, was your involvement on August 10th and 11th with 5 respect to the transfer of the securities. You've pro- -- 6 we've seen you providing instructions and addresses. 7 Anything else that you did with respect to 8 those transactions? 9 A. I don't believe I provided any instructions, but 10 let me know if you're referencing something specific. 11 Q. The wiring instructions -- 12 A. Yes, I did -- 13 Q. -- for cash. 14 A. I did send wiring instructions, and I did send 15 the address -- physical address of the director at 16 MaplesFS. 17 Q. But you had no say in what assets were being 18 transferred or how they were to be transferred -- 19 A. No. 20 Q. -- anything like that? 21 A. No. 22 Q. Okay. Just one final -- well, it's two 23 documents, but one quick line of questioning to just wrap 24 this up about the transfer itself. 25 So we'll mark this as Exhibit 110, and then</p> | <p>332</p> <p>1 at any time, reviewing this document that Mrs. Thompson 2 provided to you? 3 MS. SMITH: Objection, form. 4 THE WITNESS: I don't really recall. 5 BY MR. BURT: 6 Q. Who tasked you with following up to ensure that 7 all assets were transferred and received by Sentinel? 8 MS. SMITH: Objection, form. 9 THE WITNESS: Could you break that question 10 apart for me, please? 11 BY MR. BURT: 12 Q. Sure. I'm just trying to understand why you were 13 doing this. 14 Did somebody ask you to follow up and ensure 15 that all transfers of the assets listed in Schedule A had 16 been received by Sentinel? 17 MS. SMITH: Objection, form. 18 THE WITNESS: I don't remember. 19 BY MR. BURT: 20 Q. So you don't know why you were doing -- you were 21 e-mailing with Mrs. Thompson about this and receiving 22 highlighted copies of Schedule A? 23 A. I don't remember who asked me to work on this. 24 Q. So, just in general, what do you recall about 25 this -- this work in following up with Mrs. Thompson on</p> |

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1 these assets?

2 **A. I was acting kind of as a point person between**

3 **Lesley Thompson and whatever else she needed related to**

4 **this -- a liaison, if you will -- with the Highland team.**

5 Q. Okay. So you were sort of in the middle between

6 Mrs. Thompson and the Highland team to ensure that she was

7 getting what she needed?

8 **A. I mean, as to these, kind of, administerial**

9 **requests, yes.**

10 Q. Okay. And did -- and you don't recall whether

11 someone on the Highland team asked you to do that?

12 MS. SMITH: Objection, form.

13 THE WITNESS: I don't remember.

14 BY MR. BURT:

15 Q. Do you recall at any time in -- as these assets

16 are being transferred looking at the value of the assets

17 to ensure that the right amount had been transferred?

18 **A. No, I don't remember that.**

19 Q. Do you have any knowledge of any valuation that

20 was done of these assets after they were transferred?

21 MS. SMITH: Objection, form.

22 THE WITNESS: Not that I recall.

23 BY MR. BURT:

24 Q. So you don't recall that there was any valuation

25 of the assets, or you just don't recall whether it

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1 happened?

2 MS. SMITH: Objection to form.

3 THE WITNESS: Yeah. Could you repeat that,

4 please?

5 BY MR. BURT:

6 Q. I'm trying to understand if -- if you don't

7 recall whether there was any valuation ever done? You

8 just don't remember; is that your testimony?

9 **A. I don't remember asset valuation on these assets.**

10 Q. I see. Okay.

11 So on -- at either Highland or Sentinel, you

12 don't recall?

13 **A. I -- I don't.**

14 Q. Okay. Was there a team at Highland or Sentinel

15 who -- who usually did this -- an asset valuation?

16 MS. SMITH: Objection, form.

17 THE WITNESS: I don't know.

18 BY MR. BURT:

19 Q. Was that with -- did legal -- was legal ever

20 tasked with valuing assets in a -- in an APA -- in any

21 APAs, anything like that?

22 **A. I don't know.**

23 Q. Was that work that you ever did?

24 **A. Not that I recall.**

25 Q. All right. This has been previously marked as

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1 Deposition 48 -- Exhibit 48.

2 And, again, I -- I want to just draw your

3 attention to a couple of these slides. If you need to

4 review context, that's fine.

5 But you'll see it's a -- it's a slide deck,

6 "Settlement Analysis, UBS vs.," and then it has an "H"

7 within a shield.

8 Is that the Highland symbol, HCMLP symbol?

9 **A. I don't know.**

10 Q. All right. Have you ever seen this deck before?

11 **A. Let me review it. But upon first blush, it's not**

12 **familiar to me.**

13 Q. Okay.

14 **A. (Witness reviews document.)**

15 **This is not familiar to me.**

16 Q. Okay. So I just want to look at a -- a couple of

17 slides since it's not familiar and just ask you one or two

18 questions.

19 **A. Okay.**

20 Q. And it's a little tricky the way this was

21 printed, but Slide 8 is -- has the title "UBS Settlement:

22 Structure Summary."

23 **A. Okay.**

24 Q. And Step 1 says: HFP/CDO Fund buy \$90 million AP

25 -- ATE policy from Sentinel.

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1 Does that \$90 million figure ring any bells

2 with you?

3 **A. No.**

4 Q. Then it states: ATE premium equals all assets in

5 HFP/CDO Fund.

6 Do you see that?

7 **A. I see it.**

8 Q. And were you familiar with the fact that the AT-

9 -- ATE premium was to consist of all assets of HFP and CDO

10 Fund?

11 MS. SMITH: Objection, form.

12 THE WITNESS: No, I was not familiar with

13 that.

14 BY MR. BURT:

15 Q. Do you know who would have been familiar with

16 that?

17 **A. No.**

18 Q. All right. Now going back, actually, to Slide 6,

19 it's if -- the title is "If Highland settles..."

20 Do you see that?

21 **A. I see it.**

22 Q. And No. 1 says: Sentinel controls HFP/CDO Fund

23 assets, currently \$94 million.

24 Do you see that?

25 **A. I see it written here, yeah.**

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1 Q. Do you know how that figure, \$94 million, was
2 arrived at?
3 MS. SMITH: Objection to form.
4 THE WITNESS: No idea.
5 BY MR. BURT:
6 Q. Number 2 says: Sentinel and HCMLP can use
7 HFP/CDO Fund assets to generate cash to pay UBS
8 settlement, Citi, and outstanding legal fees.
9 Do you see that?
10 **A. I see it.**
11 Q. Do you know why it would -- it states here that
12 Sentinel and HCMLP can use the HFP/CDO Fund assets to
13 generate the cash to pay a settlement?
14 **A. No idea.**
15 Q. All right. Then, on Slide 10, just -- one final
16 slide, the title is "UBS Settlement: Step 1 - ATE
17 Policy," and says, "Actor: Scott's Team."
18 Did you know any Scotts at Highland -- at
19 HCMLP?
20 **A. Yes.**
21 Q. And who was that?
22 **A. My direct report, Scott Ellington.**
23 Q. Okay. So the "Actor" here was Scott's team,
24 Mr. Ellington, and it states -- I'm looking at the text
25 that's over the arrows -- HFP/CDO Fund send all their

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1 assets (\$94m) as ATE premium to Sentinel. In exchange,
2 Sentinel writes a \$90 million ATE policy for UBS
3 liability.
4 Do you see that?
5 **A. I see it.**
6 Q. Were you involved, in any way, with the
7 discussions, as a member of Scott's team, that was
8 determining this strategy?
9 MS. SMITH: Objection to form.
10 THE WITNESS: Not that I recall.
11 BY MR. BURT:
12 Q. How about the fact that HFP/CDO fund would send
13 all their assets? Do you recall that ever having been
14 discussed in Scott's team?
15 **A. I don't.**
16 MS. SMITH: Objection to form.
17 BY MR. BURT:
18 Q. And then, on the very last page of this deck,
19 there's a listing of HFP entities and CDO Fund entities
20 and various assets which they held.
21 **A. Sorry. Which page are you on?**
22 Q. The very last page of the deck.
23 **A. Okay.**
24 Q. Yeah.
25 MS. SMITH: 5321?

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1 MR. BURT: That's right, yep.
2 BY MR. BURT:
3 Q. Do you see that?
4 **A. I see it.**
5 Q. And total assets listed there is 94,057,547.
6 Do you see that listed in -- it's in black
7 there.
8 **A. I see it on this page, yes.**
9 Q. All right. You had no knowledge at the time that
10 the asset -- the total assets were -- was being valued by
11 Scott's team at \$94 million of these entities?
12 MS. SMITH: Objection, form.
13 THE WITNESS: I don't know who valued these.
14 I don't know.
15 BY MR. BURT:
16 Q. You were never involved in such a valuation?
17 **A. No.**
18 Q. And, again, as -- as a member of Scott's team,
19 was there any member of Scott's team, that you were aware
20 of, who would have been involved in such a valuation?
21 MS. SMITH: Objection, form.
22 THE WITNESS: I don't know.
23 BY MR. BURT:
24 Q. At any time, did members of Scott's team perform
25 these types of valuations of assets held by various HCMLP

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1 entities?
2 MS. SMITH: Objection, form.
3 THE WITNESS: Could you repeat that?
4 BY MR. BURT:
5 Q. Yeah.
6 So setting this aside, I'm just wondering:
7 In general, was it a task of Scott's team at any time to
8 value the assets of an HCMLP entity or entities?
9 MS. SMITH: Objection, form.
10 THE WITNESS: Not that I recall.
11 BY MR. BURT:
12 Q. That was -- that would have been different teams
13 at HCMLP that would have done that?
14 **A. HCMLP had a dedicated valuation team.**
15 Q. Who was on that team?
16 **A. I can't remember.**
17 Q. But that was independent of Scott's team?
18 **A. It was -- it was a -- not legal team; it was a**
19 **valuation team separate from the legal team.**
20 Q. Okay. Did you ever have anything to do with a
21 tax analysis of -- of the ATE policy?
22 MS. SMITH: Objection, form.
23 THE WITNESS: I remember some discussion
24 with counsel around -- I remember some discussion with
25 counsel around the in- -- income or something like that,

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| <p>341</p> <p>1 the ongoing -- any ongoing income from the assets and 2 whether it would be taxable. 3 BY MR. BURT: 4 Q. To Sentinel? 5 A. Yes. 6 Q. And what outside counsel are you referring to? 7 A. Steve Beck. 8 Q. Where was he at? 9 A. Meadows Collier. 10 Q. Was that -- remind me, was that a Cayman's entity 11 or a U.S. entity? 12 A. No. He's out of Dallas. 13 Q. Out of Dallas, okay. 14 So -- and he was outside counsel to Highland 15 -- to HCMLP? 16 A. No. He was outside counsel -- we talked about 17 this earlier at length. He was outside counsel to various 18 entities. I don't recall where the engagement letter 19 sat -- 20 Q. Right. 21 A. -- but he provided guidance around the 22 Sentinel -- and taxes. 23 [Simultaneously speaking.] 24 BY MR. BURT: 25 Q. Excuse me.</p> | <p>343</p> <p>1 A. No. 2 Q. Okay. You see it's a memorandum from Shawn Raver 3 to Tax Files on Highland Capital letterhead dated 4 June 30th, 2018. RE: Tax Consequences of Sentinel 5 Acquisition of HFP CDO Opportunity Assets. 6 Right? 7 A. I see that on this paper. 8 Q. Now, one question, looking at page 2 of this memo 9 at the bottom, and I'm just interested in amounts here. 10 It states: The aggregate purchase price 11 paid by Sentinel for the assets was \$25 million. The 12 aggregate fair market value of the assets on the date of 13 the transaction was \$105,647,679. 14 You see that? 15 A. I see the paragraph you're reading, yes. 16 Q. Okay. And I think we've established you didn't 17 have any knowledge of these amounts at the time; is that 18 fair? 19 A. No, I don't recall. 20 Q. It says: The document effectuating the 21 transition -- excuse me -- the transaction did not 22 allocate the purchase price among the assets acquired by 23 Sentinel. 24 See that? 25 A. I do see that.</p> |
| <p>342</p> <p>1 It was that same outside counsel that we 2 discussed earlier -- 3 A. Yes. 4 Q. -- who you are referring to? I see. 5 Do you know who Shawn Raver is? 6 A. That name seems familiar, but I don't know. 7 Q. I'm showing you what's been ar- -- what's been 8 previously marked as Deposition Exhibit 3. 9 Do you need a break, Mrs. Irving? Are 10 you -- 11 A. No, I'm okay. Thank you. 12 Q. And we'll start just on this first page, and then 13 I'll -- I'll take you to the attachment. 14 You see this is from Shawn Raver to 15 Rick Swadley both with @highlandcapital.com e-mails? 16 A. I see that, uh-huh. 17 Q. And the date is 12th of September 2018, right? 18 A. I see that here, yes. 19 Q. And then there's an attachment that says, 20 "Tax_Compliance_Memo_(2017)_Sale_of_Assets_to_Sentinel." 21 Is that the attachment that's listed there? 22 A. I see that printed here, yes. 23 Q. Okay. Now, flipping to the next page -- and 24 just, at a very high level, do you recall ever having seen 25 this tax -- excuse me -- this memorandum?</p> | <p>344</p> <p>1 Q. Now, was it -- in your dealings with Sentinel -- 2 well, strike that. 3 I'm just wondering: As -- as a CPA, does it 4 make sense to purchase an insurance policy in which you 5 overpay by four times the amount of the premium? 6 MS. SMITH: Objection, form. 7 THE WITNESS: I wasn't acting as a -- as a 8 CPA. I'm not functioning as a CPA at all related to this 9 transaction. 10 BY MR. BURT: 11 Q. Right. 12 But I'm just wondering: From a financial 13 perspective -- and we've gone through your credentials -- 14 whether you have any thoughts of giving assets that are 15 worth more; in this case, by four times, than the policy 16 coverage -- than the pre- -- excuse me -- than the 17 premium? 18 MS. SMITH: Objection, form. 19 THE WITNESS: You're asking my -- my 20 thoughts about this? 21 BY MR. BURT: 22 Q. Yeah. 23 Does that make sense to you? 24 MS. SMITH: Objection, form. 25 THE WITNESS: It would depend on the</p> |

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| <p style="text-align: right;">345</p> <p>1 circumstance. 2 BY MR. BURT: 3 Q. Okay. So it might make sense to overpay a 4 premium by four times to purchase an insurance policy? 5 MS. SMITH: Objection, form. 6 THE WITNESS: It could. 7 BY MR. BURT: 8 Q. And what would those circumstances be? 9 A. If -- I mean, we are just doing hypotheticals 10 here? 11 Q. Not a hypothetical. I'm looking at these numbers 12 in this memo. 13 I'm not asking you to testify as an expert; 14 I'm asking for -- as a lay witness, as a CPA, whether that 15 makes financial sense to you to overpay by four times? 16 A. I don't -- 17 MS. SMITH: Objection, form. 18 THE WITNESS: I don't know in relation to 19 this transaction. 20 BY MR. BURT: 21 Q. Okay. Looking -- now turning to page 4 of this 22 memo, the last paragraph on page 4, the paragraph begins: 23 It is clear the transaction had economic substance. 24 Do you see that paragraph? 25 A. Yes.</p> | <p style="text-align: right;">347</p> <p>1 Mrs. Irving, in the e-mails. The attachment is one of the 2 actuarial documents, which you've testified you never saw, 3 so we won't worry about that. 4 A. Okay. 5 Q. So just looking at the e-mails, beginning on the 6 first page, in the middle, there's an e-mail from Tom 7 Adamczak to Jason Stubbs on May 9th, 2019. 8 You see that? 9 A. I see it. 10 Q. And I may have asked you this before: But do you 11 know who Jason Stubbs is? 12 A. I don't know who that is. 13 Q. And Risk International, no idea? 14 A. No idea. 15 Q. Okay. And Mr. Adamczak writes: I have a few 16 edits based on the recent examination. And so we're in 17 the May 2019 time period. 18 It says, page 3, first paragraph: Need to 19 recognize SAS and Sentinel structures, both different, as 20 CIMA made the point during exam. 21 Not -- do you see that, where I just read? 22 A. Yeah, I see it. 23 Q. Do you know what he is referring to there? 24 A. No. 25 Q. All right. The next bullet, page 3, third</p> |
| <p style="text-align: right;">346</p> <p>1 Q. All right. Now, five lines down, there's a line 2 that begins: In addition, Sentinel is not related... 3 Do you see that? 4 A. I do. 5 Q. There it says: In addition, Sentinel is not 6 related to the seller entities, and each side to the 7 transaction was independent of the other. There are no 8 facts to indicate the transaction was not the result of 9 arm's-length negotiations. 10 Is that consistent with your understanding 11 of the transaction? 12 MS. SMITH: Objection, form. Oh, also calls 13 for a legal conclusion. 14 MR. BURT: I'm just asking whether it's 15 consistent with her recollection. 16 THE WITNESS: Sentinel was not related to 17 the seller entities, yes, agree. 18 BY MR. BURT: 19 Q. Okay. And the seller entities, we've looked -- 20 are listed in Schedule A to the APA, right? 21 A. I -- yes, I believe so. 22 Q. Okay. We'll mark this as 111. 23 (Exhibit 111 was marked for identification.) 24 BY MR. BURT: 25 Q. And I'm only interested in this exhibit,</p> | <p style="text-align: right;">348</p> <p>1 paragraph, says: I want to get Matt to weigh in here as 2 it references the ATE coverage being provided to 3 unaffiliated entities. Yet, we keep making the point to 4 CIMA that all are related in some way. Sentinel UBO 5 ultimately controls the insureds. 6 Do you see that? 7 A. I see it. 8 Q. Were you involved in discussions with CIMA in 9 which that point was made to CIMA, that the Sentinel UBO 10 ultimately controls the insureds? 11 MS. SMITH: Objection to form. 12 THE WITNESS: I don't think this makes any 13 sense. So, no, since I don't think this makes any sense, 14 no, I wasn't discussing that with CIMA. 15 BY MR. BURT: 16 Q. What doesn't make sense to you? 17 A. I don't think it's very well written. It says: 18 We keep making the point to CIMA that all -- I don't know 19 what "all are related in some way. Sentinel UBO 20 ultimately controls insureds." 21 Q. Well, if you look at the first line, he states: 22 Want to get Matt to weigh in here as it references the ATE 23 coverage being provided to unaffiliated entities. And the 24 "ATE coverage," as we've examined at length today, related 25 to the litigation involving UBS, correct?</p> |

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| 349 | 1 MS. SMITH: Objection, form. 2 THE WITNESS: You're saying the -- sorry. 3 Could you repeat that? 4 BY MR. BURT: 5 Q. Sure. 6 The ATE coverage -- I'll ask it a different 7 way -- involved the entities on Schedule A transferring 8 assets to Sentinel -- Schedule A to the APA, transferring 9 assets to Sentinel -- 10 A. Okay. 11 Q. -- and obtaining an insuran- -- an ATE insurance 12 policy in exchange, right? 13 A. My understanding, yes, that's right. 14 Q. Okay. And here he is stating "it," referring to 15 the audit -- the actuarial draft, references the coverage 16 being provided to unaffiliated entities. Yet, "we" keep 17 making the point to CIMA that "all" are related in some 18 way. 19 MS. SMITH: Objection, form. 20 BY MR. BURT: 21 Q. Sentinel UBO ultimately controls insureds. The 22 "insureds" being the CDO Fund and other entities we've 23 seen in prior exhibits, right? 24 A. What's the question? 25 Q. The "insureds" refers to the entities that | 351 | 1 discussion with Sentinel -- or -- excuse me -- with CIMA? 2 A. No. I don't think this makes any sense, no. 3 Q. So put the document down. I am asking you a 4 question, whether you recall that topic ever being 5 discussed with CIMA during your meetings that you attended 6 with CIMA, that the Sentinel owners controlled the 7 insureds? 8 A. I don't recall that. 9 Q. You don't recall that coming up in your meetings 10 with CIMA? 11 A. I don't. 12 MR. BURT: Yeah. Is it okay if we take 13 five? 14 MS. SMITH: Yep. 15 MR. BURT: I think we are probably at six -- 16 THE VIDEOGRAPHER: We are off the record at 17 6:01 p.m. 18 (Brief recess taken.) 19 THE VIDEOGRAPHER: Back on record at 6:16 20 p.m. 21 BY MR. BURT: 22 Q. Mrs. Irving, we were -- I just wanted to ask a 23 couple of wrap-up questions with respect to the -- the ATE 24 policy. 25 Did you ever work to determine the business |
| 350 | 1 purchased the insurance? 2 A. I agree the insureds is referring to the entities 3 which purchased the insurance, yes. 4 Q. Do you disagree that the Sentinel -- Sentinel 5 UBO, ultimate beneficial owner, ultimately controls the 6 insureds? 7 MS. SMITH: Objection, form. 8 THE WITNESS: This whole sentence makes no 9 sense to me. 10 BY MR. BURT: 11 Q. So back out. Did you -- you've met with CIMA, 12 and you said at least twice, right? 13 A. Yes, I have met with CIMA. 14 Q. Okay. Once was in August in 2019, and to the 15 best of your knowledge, you can't recall when the other 16 meeting was -- 17 A. Right. 18 Q. -- is that right? 19 A. That's right. 20 Q. Both meetings were at CIMA's offices? 21 A. Yes. 22 Q. Did this ever come up, any representation to CIMA 23 that you remember, that Sentinel -- the owners of Sentinel 24 controls the insureds, the entities that are insured under 25 the ATE policy? Do you ever recall that coming up in a | 352 | 1 rationale for the ATE policy? 2 A. No. 3 Q. Do you know whether anyone did? 4 MS. SMITH: Objection, form. 5 THE WITNESS: I don't know. 6 BY MR. BURT: 7 Q. You weren't involved in that at all? 8 A. Not that I recall. 9 Q. How about the Asset Purchase Agreement, did you 10 ever work to determine the business rationale for 11 transferring all of those assets out of CDO Fund to this 12 -- in those various entities? 13 MS. SMITH: Objection, form. 14 THE WITNESS: No. 15 BY MR. BURT: 16 Q. Okay. Do you know if Sentinel had the means to 17 pay out the policy in 2017 if the insureds had come asking 18 for payment? 19 A. I don't know. 20 Q. Who would know that? 21 A. CIMA or the administrator. 22 Q. So Beecher Carlson would know that? 23 A. Maybe. 24 Q. Anybody at HCMLP who was working on the ATE? 25 MS. SMITH: Objection, form. |

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| <p style="text-align: right;">353</p> <p>1 THE WITNESS: Sorry. Could you repeat that 2 whole question, please? 3 BY MR. BURT: 4 Q. Sure. 5 Was any -- would -- anybody at HCMLP, who 6 was working on the ATE or the Asset Purchase Agreement, 7 would -- would they know whether Sentinel had the means to 8 pay out on the policy in 2017? 9 A. I don't know. 10 MS. SMITH: Objection, form. 11 BY MR. BURT: 12 Q. How about in -- let me know if your answer is the 13 same in relation to the 2020 time period, whether Sentinel 14 had the means to pay out on the policy. 15 A. No idea. 16 Q. Okay. And with respect to who might know, would 17 your answer be the same: CIMA and, perhaps, Beecher 18 Carlson? 19 A. Yes. 20 Q. All right. Do you know who the creditors of 21 Sentinel are? 22 MS. SMITH: Objection, form. 23 THE WITNESS: What do you mean by 24 "creditors"? 25 BY MR. BURT:</p> | <p style="text-align: right;">355</p> <p>1 A. (Witness reviews documents.) 2 I don't recognize these at all. 3 Q. Okay. Okay. Understood. 4 So setting those aside, do you have any 5 knowledge of the insurance premium on the ATE being 6 adjusted at any time? 7 A. Not that I recall. 8 Q. So looking at Endorsement 1, it states: The 9 premium, as stated in the schedule, is adjusted to 10 \$68,362,333.62 to include the total fair value of received 11 assets. Premium received consists of cash of 11 million 12 -- some-odd million, miscellaneous receivables of 13 1.753 million, and investment portfolio of 55.525 million 14 as measured at fair value on the transfer date. 15 Do you see that? 16 A. I see it, yes. 17 Q. And Lesley Thompson signs at the bottom as the 18 director, right? 19 A. Uh-huh. 20 Q. So you have no knowledge of this, the 21 readjustment of the premium? 22 A. That is not familiar to me. 23 Q. Okay. Or the values of -- the value of 68 24 million listed here in this? 25 MS. SMITH: Objection to form.</p> |
| <p style="text-align: right;">354</p> <p>1 Q. So what do you understand creditor to mean in the 2 context of -- you have an insurance company, Sentinel, 3 with creditors. You understand what a creditor would be? 4 A. Presumably would be someone who is owed money. 5 Q. Right. And maybe loaned to Sentinel, or loaned 6 assets, contributed capital? 7 MS. SMITH: Objection, form. 8 THE WITNESS: I don't know who the creditors 9 of Sentinel would be. 10 BY MR. BURT: 11 Q. Okay. All right. I'm going to hand you -- 12 sorry. One moment. Let me find it in my own notes. Oh, 13 that's right, 34 -- no, I'm sorry. I'm confusing myself. 14 This is -- this has been previously marked 15 as Deposition Exhibit 58. 16 Now, the first pages of this document, MD_10 17 through MD_26 is the insurance policy that we've looked at 18 previously. So I'd like to go to MD_27 and look at both 19 this page and the next page; MD_27 having the "Sentinel 20 Reinsurance" heading at the top, and stating, "Endorsement 21 No. 1," and MD_28 having the "Sentinel" heading at the top 22 and stated "Endorsement No. 2." 23 Go ahead and take a look at that, 24 Mrs. Irving, and when you're ready, let me know if you 25 recognize these documents.</p> | <p style="text-align: right;">356</p> <p>1 THE WITNESS: I -- I'm not familiar with 2 this. 3 BY MR. BURT: 4 Q. Okay. And is it -- is your answer the same with 5 respect to Endorsement 2, no knowledge of that either? 6 A. I'm not familiar with this. 7 Q. And, here, we see that the premium is reduced to 8 \$59,362,333.62. 9 That's unfamiliar to you? 10 A. I'm not familiar with this, yeah. 11 Q. It states that: 9 million has been prepaid by 12 the insured -- 13 A. Excuse me. 14 Q. -- to the insurer to cover risk mitigation costs, 15 which include, but are not limited to, legal defense 16 costs. 17 Do you recall or have any knowledge of 18 9 million being paid by the insured to the ATE policy? 19 MS. SMITH: Objection to form. 20 THE WITNESS: This 9 million is not familiar 21 to me. 22 BY MR. BURT: 23 Q. Okay. And then: The limit of indemnity is 24 reduced to 91 million in the aggregate to correlate with 25 prefunding the risk mitigation costs of 9 million.</p> |

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1 Do you recall the -- the limit being reduced
2 from 100 million to 91 million?
3 **A. I don't.**
4 Q. Do you know who might know about this, aside from
5 Mrs. Thompson who signed?
6 **A. I don't.**
7 Q. Now, going back to something we discussed earlier
8 today -- what number is this --
9 MS. MCLAUGHLIN: 101.
10 BY MR. BURT:
11 Q. -- looking at Exhibit 101, the CIMA letters that
12 we've looked at earlier --
13 MS. MCLAUGHLIN: It's the one with the
14 orange tab at the top.
15 MR. BURT: Oh, yes, that's right.
16 THE WITNESS: Oh, thanks.
17 BY MR. BURT:
18 Q. All right. Now, I -- looking at that first page,
19 the very first e-mail from Mr. Price at Beecher Carlson to
20 CIMA, various CIMA individuals -- and we've looked at this
21 before. But there are four attachments, and I want to
22 look, specifically, at the third attachment, which is
23 Sentinel Reinsurance, Ltd., Final On-site Inspection
24 Report, AML-Specific Report.
25 **A. Okay.**

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1 Q. Do you recall there being two reports being
2 issued by CIMA at this time in, approximately, May of
3 2019?
4 **A. No, I don't recall that.**
5 Q. All right. Let's flip to that. So it's the
6 third attachment.
7 MR. BURT: What's the Bates?
8 MS. MCLAUGHLIN: It's where the orange tab
9 is.
10 MR. BURT: Oh, it's where the orange tab is.
11 THE WITNESS: Oh, okay.
12 BY MR. BURT:
13 Q. And -- and the heading here -- again, it has the
14 CIMA, I guess, logo on it, and it states: Final AML-CFT
15 and Sanctions Inspection Report for Sentinel Reinsurance,
16 Ltd., conducted on 4th of March 2019 to the 11th of
17 March 2019 and issued on 6th of May 2019.
18 Do you see that?
19 **A. I see it.**
20 Q. And were you aware that CIMA, as part of its
21 inspection, was doing an AML inspection?
22 MS. SMITH: Objection, form.
23 THE WITNESS: I don't know.
24 BY MR. BURT:
25 Q. And I believe you testified earlier that you

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1 understood "AML" to refer to anti-money laundering; is
2 that right?
3 **A. Yes.**
4 Q. Do you have an understanding of what "CFT" refers
5 to?
6 **A. No.**
7 Q. Okay. Well, let's look at this. I'll draw your
8 attention to just a few portions of this.
9 First, page 5 of 13, there under heading
10 5.2, "AML Findings" -- well, hold on. Excuse me just one
11 second.
12 Okay. Yeah. Drawing your attention to 5.2,
13 "AML Findings," on page 5 of 13, and under finding
14 5.2.1.1; do you see where I'm at?
15 **A. I do.**
16 Q. And it states there at the beginning: On
17 August 1st, 2017, the Licensee entered into an insurance
18 contract to provide ATE cover to Highland CDO Opportunity
19 Master Fund, L.P., Highland CDO Fund Holding Company, and
20 Highland Special Opportunities Holding Company, all
21 affiliates of SAS Asset Recovery.
22 Do you see that?
23 **A. I do.**
24 Q. And it says: The premium for the coverage was
25 initially set at 25 million with an indemnity limit of

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1 100 million. Subsequently, an undated endorsement was
2 affected adjusting the premium cover -- for the coverage
3 to 68.3 million, consisting of U.S. 1 million cash, U.S.
4 1.8 million, and miscellaneous receivables, and U.S.
5 55.5 million in investment portfolio.
6 And do you see that?
7 **A. Yes. I think you said "1 million cash"; it says
8 "11 million cash."**
9 Q. Thank you for correcting me. You're absolutely
10 right, 11 million cash.
11 And do you recall -- we just looked at -- I
12 know you hadn't seen it before, but we just looked at that
13 endorsement?
14 **A. Yes, you just showed me an endorsement.**
15 Q. Okay. Further: Subsequently, another undated
16 endorsement was affected reducing the premium for the
17 coverage and the indemnity limit to U.S. 59.3 million and
18 U.S. 91 million respectively. U.S. 9 million was set
19 aside as prepaid fund -- to cover risk mitigation costs,
20 including, but not limited to, legal defense costs for
21 then ongoing case.
22 Do you see that?
23 **A. I see it.**
24 Q. And is that consistent with Endorsement No. 2
25 that we looked at? I understand that you had not seen

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| <p>361</p> <p>1 that before today. 2 MS. SMITH: Objection to form. 3 THE WITNESS: I'd have to review if it's 4 consistent, but you did show me a second endorsement, yes. 5 BY MR. BURT: 6 Q. Okay. Then it states: Those charged with 7 governance could not explain why the premium was adjusted 8 from U.S. 25 million to U.S. 68.3 million without a 9 commensurate adjustment to the indemnity limit provided or 10 why the initial pricing for the policy was subsequently 11 deemed not sufficient. 12 My question is: Were you aware of that? 13 A. Was I aware of what? 14 Q. This finding that I just read. 15 MS. SMITH: Objection to form. 16 THE WITNESS: I don't know. 17 BY MR. BURT: 18 Q. Okay. Looking down into the second paragraph -- 19 I don't want to read the whole second paragraph, but about 20 five or six lines up from the bottom, there's a sentence 21 that begins with: Those charged with the Licensee's 22 governance... 23 Can you tell me when you see that? 24 A. Yes, I see it. 25 Q. It states: Those charged with the Licensee's</p> | <p>363</p> <p>1 in investments and cash vested prior to being transferred 2 to the Licensee for settlement of the ATE coverage 3 premium. 4 Did you have -- did you have any knowledge 5 about where the ownership in the 68.3 million had vested, 6 if it had vested prior to the transfer? 7 A. No. I don't even know what this is talking 8 about. 9 Q. Okay. And the finding -- ultimate finding is: 10 The above matters cast significant doubt on the economic 11 substance and business purpose of the transaction relating 12 to the ATE coverage. 13 Were you aware that CIMA had made that 14 finding with respect to the ATE? 15 A. Not that I recall. 16 Q. You don't recall having any discussions with 17 anybody at Sentinel or HCMLP or Beecher Carlson about this 18 finding? 19 A. I don't. 20 Q. Looking at page 7 of 13, there is a section that 21 begins with the title "Highland Multi-Strategy Credit 22 Fund, Ltd." 23 Do you see that? 24 A. I do. 25 Q. Are you familiar with that entity, Highland</p> |
| <p>362</p> <p>1 governance could not explain the basis upon which the 2 investments had been valued on or about August 1st, 2017, 3 for the purpose of premium settlement. Also, they could 4 not explain the reason why the information that was relied 5 on to value the investments for the purpose of premium 6 settlement could not be readily provided to the auditors 7 upon request, considering that the policy inception and 8 the financial statements audit were only a few months 9 apart. 10 Okay. Do you see where I was just reading? 11 A. I do see where you were just reading, yes. 12 Q. Did you have anything to do with what I just 13 read, the finding that the valuation could not be 14 explained to CIMA? 15 A. No. I -- 16 MS. SMITH: Objection to form. 17 THE WITNESS: I have no idea about this. 18 BY MR. BURT: 19 Q. Okay. And I think you've testified, but just to 20 be clear: You don't know who was involved in the 21 valuation of the assets, if anybody? 22 A. I don't know. 23 Q. Okay. And then, in the next paragraph, it 24 states: In addition, those charged with governance could 25 not explain where the ownership in the U.S. 68.3 million</p> | <p>364</p> <p>1 Multi-Strategy Credit Fund, Ltd.? 2 MS. SMITH: Objection, form. 3 THE WITNESS: Not really. 4 BY MR. BURT: 5 Q. What do you know about that entity? 6 A. I've heard the name before, but I -- I don't have 7 knowledge of the entity. 8 Q. Okay. It states there in the first line: 9 Highland Multi-Strategy Credit Fund, Ltd. ("the Fund") is 10 a security held by the Licensee, a portion of which was 11 transferred in as premium on the ATE policy. 12 Do you see that? 13 A. I see it. 14 Q. Okay. And were you aware, as part of the 15 Schedule A assets, that a portion of the -- of this fund, 16 the Multi-Strategy Credit Fund, was transferred over to 17 Sentinel? 18 A. I don't recall that specifically. 19 Q. Okay. Do you know whether Sentinel ever redeemed 20 its interest in the multi-strat fund? 21 A. I don't remember. 22 Q. Is that something that you would have been 23 involved in, if there had been a redemption? 24 A. I don't know. 25 Q. Okay. But sitting here today -- and I'm going to</p> |

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| <p style="text-align: right;">365</p> <p>1 ask this question broadly -- do you have any knowledge 2 whatsoever about whether Sentinel redeemed its interest in 3 the multi-strat -- Multi-Strategy Credit Fund? 4 A. I don't remember. 5 Q. Okay. 6 A. I've been out for a long time. I haven't thought 7 about this or focused on this for quite some time. 8 Q. I understand. And I'm just asking for your best 9 testimony, and I appreciate your efforts. 10 Looking at -- and you'll notice that this is 11 actually part of management -- if you look at page 6, this 12 comes under a heading of "Management Comments," actually. 13 Do you see that? 14 A. Oh, yes, I see that. 15 Q. Okay. And so the next heading, underneath 16 "Management Comments," is "Prior Ownership of the 17 Transferred Assets," right, on page 7? 18 A. Okay. I see where it says, "Prior Ownership of 19 the Transferred Assets" on page 7. 20 Q. Okay. And I want to look at the last paragraph 21 there. It states: The Licensee, Sentinel, acknowledges 22 that it had not undertaken documenting the ownership of 23 premiums prior to being transferred to the Licensee for 24 settlement of the ATE program. Furthermore, the Licensee 25 does not agree that it is out of compliance with</p> | <p style="text-align: right;">367</p> <p>1 "Capital Financial Group" definition is under the AML 2 guidance notes. I don't -- I don't have enough context to 3 be able to answer this in an intelligent way. 4 Q. So stepping back -- you can set that aside for a 5 minute. 6 Stepping back and talking at a higher level, 7 was it generally aware -- was it generally known that the 8 insured entities, as part of the ATE, were -- had a common 9 owner with Sentinel? 10 A. Was it -- 11 MS. SMITH: Objection to form. 12 THE WITNESS: Was it commonly known by who? 13 BY MR. BURT: 14 Q. At HCMLP. 15 We've talked about the discussions that 16 people had about the ATE policy, about the APA. Was that 17 a generally known fact that the insureds were controlled 18 by an individual who was also the ultimate owner of 19 Sentinel? 20 A. I don't know. 21 Q. You didn't -- you weren't aware of that at the 22 time; is that fair? 23 A. I don't know if I agree with the -- the summary 24 you're making. 25 Q. Well, I'm just reading from what Sentinel told</p> |
| <p style="text-align: right;">366</p> <p>1 Section 1(C)(3) of the AML guidance notes. As the 2 policyholder is within a common financial group, as the 3 insured, is controlled by an individual who is also an 4 ultimate beneficial owner of the Licensee. 5 Do you see that? 6 A. Uh-huh. 7 Q. Okay. 8 A. Yes. 9 Q. So this is under "Management Comments" telling 10 CIMA that, right? 11 A. Okay. 12 Q. Were you aware that Sentinel was taking this 13 position, that it was not out of compliance with the AML 14 guidance note because the policyholder, being the 15 insureds -- the insured entities, is within a common 16 financial group, as the insured, is controlled by an 17 individual who is also an ultimate beneficial owner of the 18 Licensee? Were you aware of that fact? 19 MS. SMITH: Objection to form. 20 THE WITNESS: I was not aware Sentinel was 21 taking this position, no. 22 BY MR. BURT: 23 Q. Okay. Do you disagree with this position? 24 A. There are too many nuances in here for me to 25 answer in an accurate way. I don't know what this</p> | <p style="text-align: right;">368</p> <p>1 the regulatory agency. This is what Sentinel said to 2 CIMA. Did Sentinel lie to CIMA? 3 MS. SMITH: Objection to form. 4 THE WITNESS: Certainly not. 5 BY MR. BURT: 6 Q. Okay. When you were working on answers or 7 assisting with certain answers to the CIMA follow-up, was 8 it important that accurate information was conveyed to 9 CIMA? 10 A. Of course. 11 MS. SMITH: Objection to form. 12 THE WITNESS: Of course. 13 BY MR. BURT: 14 Q. And -- and did people work hard to make sure the 15 -- the accurate information was provided to CIMA? 16 A. Yes. 17 Q. Did you ever hear anyone say: We want to be 18 dishonest with CIMA here? 19 A. No, absolutely not. 20 Q. Okay. I'm going to show you -- you can set that 21 aside -- what's been previously marked as Exhibit 30 -- 22 Exhibit 84. 23 MR. BURT: I'm sorry. I didn't get that. 24 (Off-record discussion.) 25 BY MR. BURT:</p> |

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| | |
|---|--|
| <p>369</p> <p>1 Q. Now, as you take a look at this exhibit, I'll 2 preface it with we -- we've talked about your August 3 meeting was with CIMA and that you do recall going to the 4 Cayman Islands to meet with CIMA in August of 2017 -- 5 2019 -- excuse me -- is that right? 6 A. I recall meeting with CIMA in August of 2019. 7 Q. All right. Now, looking at this e-mail, on 8 the -- on the -- that's -- the front page of this 9 Exhibit 84, it's from you at your Highland Capital e-mail 10 address to a Lauren Baker, cc'ing Mr. DiOrio and 11 Mr. Sevilla. 12 "Subject: Privileged and Confidential - 13 Presentation," dated 6th of August, 2019. 14 Do you see that? 15 A. (Witness nods head affirmatively.) 16 Q. Who is Mrs. -- excuse - sorry, you just have to 17 -- 18 A. Yes. 19 Q. Who is Ms. Baker? 20 A. She was an admin, I believe -- I don't want to 21 misspeak on that, she was an admin, and then began work on 22 the PR group. 23 Q. Do you recall having her print out ten bound 24 copies of this presentation? 25 A. No, I don't recall that.</p> | <p>371</p> <p>1 Q. Okay. And just - just by way of curiosity, how 2 did you get to the Cayman Islands? 3 A. We flew on a plane. 4 Q. Okay. Was it a commercial flight? 5 A. I don't remember. 6 Q. Or was it a private plane? 7 A. I don't remember. 8 Q. You don't have any recollection of whether you 9 flew commercial or whether you flew on a private plane? 10 A. For the August 2019 meeting, I don't recall. 11 Q. Did you ever fly on a private plane to the 12 Caymans? 13 A. Yes. 14 Q. How many times? 15 A. I don't remember. 16 Q. Do you know who paid for that private plane? 17 A. I don't know. 18 Q. Do you know whether Sentinel paid for that 19 private plane? 20 A. I don't know. 21 Q. Okay. So no one -- no one talked with you about 22 who's paying for the private planes to the Cayman Islands? 23 A. Not that I remember. 24 Q. Okay. And you don't recall specifically in 25 August of 2019 whether you flew private or commercial to</p> |
| <p>370</p> <p>1 Q. Do you re- -- so looking at the actual 2 presentation that follows -- go ahead and take a look at 3 it, and my question is whether you recall this 4 presentation? 5 A. (Witness reviews document.) This seems familiar, 6 yes. 7 Q. What do you recall about it? 8 A. I mean, it just -- the document looks familiar. 9 I don't recall specifics of anything. 10 Q. Okay. Did you help put it together? 11 MS. SMITH: Objection, form. 12 THE WITNESS: I don't know. 13 BY MR. BURT: 14 Q. Do you know who would have put it together? 15 A. No, I don't. 16 Q. Who all from Highland Capital was at that meeting 17 in August of 2019? 18 A. I'm trying to remember. 19 Q. Would it help if I listed some names and you 20 could answer yes or no? 21 A. No. I'm just trying to remember who -- who was 22 there. I believe it was Scott Ellington, J.P. Sevilla and 23 Matt DiOrio. 24 Q. And yourself? 25 A. And me, yes.</p> | <p>372</p> <p>1 meet with CIMA? 2 A. I don't remember. 3 Q. Where'd you stay? 4 A. At a rented house. 5 Q. Who was renting the house? 6 A. I don't know. 7 Q. Was it Mr. Ellington? 8 A. I -- I don't know who rented the house. 9 Q. No knowledge whatsoever? 10 MS. SMITH: Objection; asked and answered. 11 BY MR. BURT: 12 Q. You can answer. 13 A. Who rented the house? 14 Q. Yeah. My question is: You have no knowledge 15 whatsoever of who was renting the house? 16 A. In August of 2019? 17 Q. Yeah, where you stayed? 18 A. I don't know. 19 Q. How long did you stay? 20 A. I don't remember. 21 Q. Was it a day? More than a day? A week? 22 A. More than a day. More than a day and less than a 23 week. 24 Q. Okay. Okay. Looking at this presentation to 25 CIMA, in August -- I want to look at -- it's the fourth</p> |

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1 page -- excuse me -- fifth page with the Bates that ends
2 in 72287, and it states: ATE Policy Timeline.
3 In June of 2017, it's listed that an: ATE
4 opportunity arises. Do you know what that's referring to?
5 **A. Sorry. Where are you on this document?**
6 Q. It's the Timeline.
7 **A. Okay. I'm here.**
8 Q. And I'm looking at June of 2017 the first entry
9 in the timeline that an: ATE opportunity arises.
10 What do you know about that?
11 **A. I don't know. Could you give me a different**
12 **question or -- or a little more precise question? I don't**
13 **know what --**
14 Q. Well, I'm asking as broadly as I can whether you
15 have any knowledge of the ATE opportunity arising.
16 **A. It arose, but other than that, I don't -- I don't**
17 **know.**
18 Q. You don't know how it arose?
19 **A. I don't.**
20 Q. You don't know who brought it to the attention of
21 anybody at Sentinel?
22 **A. I don't.**
23 Q. Did any members -- did any board of directors of
24 Sentinel attend that meeting in -- in August of 2019?
25 **A. I believe so, but I can't remember specifically.**

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1 Q. Was Mr. DiOrio a member of the board at that
2 time?
3 **A. I don't know.**
4 Q. How about anybody from Beecher Carlson, did they
5 attend that meeting?
6 **A. I believe so.**
7 Q. And who would that have been?
8 **A. Clayton Price.**
9 Q. He attended the meeting in August 2019?
10 **A. I believe so.**
11 Q. Okay. In August of 2017, the next -- I'm not
12 looking at the July but the August, it states the: Board
13 reviews the opportunity and diligence, resolves to move
14 forward; ATE policy executed and takes effect.
15 What do you know about the board reviewing
16 the opportunity and any diligence that the board did?
17 **A. I don't know.**
18 Q. You recall what was discussed with CIMA about
19 that, what was represented to CIMA at that meeting about
20 that?
21 **A. No.**
22 Q. In June of 2018, it says the: Auditors and
23 actuary recommend that Board authorize adjusting the ATE
24 premium to \$68 million to account for the value of the
25 underlying securities, outside counsel consulted.

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1 You recall that being discussed at the
2 meeting with CIMA?
3 **A. No.**
4 Q. And you have no knowledge, other than looking at
5 this on the page here, about adjusting the ATE premium to
6 68 million; is that right?
7 **A. Yes, that's right; I do not have knowledge about**
8 **adjustment of the premium.**
9 Q. And is your answer the same with respect to later
10 in June of 2018, readjusting it down to 59 million?
11 **A. Yes, my answer is the same.**
12 Q. Okay. One moment, please.
13 What was your role -- excuse me. What was
14 your role specifically at the meeting?
15 **A. From what I recall, I really just took notes and**
16 **listened in on anything related to CIMA's mandate to**
17 **simplify the structure that we've talked about earlier.**
18 Q. Okay. Did you actually speak at the meeting?
19 **A. I don't remember.**
20 Q. You don't remember whether you were responsible
21 for presenting any of the slides to CIMA?
22 **A. I don't remember.**
23 Q. Okay. Looking at Slide 8, it says -- it has the
24 title of: Investment Portfolio Roll-Forward Detail.
25 And there are -- it appears about the last

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1 third -- just over a third of these investments, the
2 market value was listed as "N/A."
3 Do you see all those N/As at the bottom?
4 **A. I do see the N/As at the bottom of this page,**
5 **yes.**
6 Q. Do you recall at all why NA is listed for all of
7 those investments?
8 **A. No idea.**
9 Q. Do you recall what was said to CIMA about that at
10 that meeting?
11 **A. No, I do not recall.**
12 Q. Looking up higher in this, about five lines down
13 there's an entity that's called SeaOne, and my question
14 is: Do you know what SeaOne is?
15 **A. Yes.**
16 Q. What is that?
17 **A. SeaOne is an investment in a -- I think it's a**
18 **liquid natural gas company.**
19 Q. And an investment by whom?
20 **A. SS Holdings, Ltd., which is a subsidiary of the**
21 **regulated entity Sentinel Reinsurance, Ltd.**
22 Q. Okay. So S- -- what was it, SS Holdings?
23 **A. Limited.**
24 Q. All right. And looking at the last page, just
25 so -- on the -- there's an org chart.

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1 **A. There is.**
2 Q. There it is. So SS Holdings, Ltd., underneath
3 Sentinel Reinsurance; is that right, on -- on this org
4 chart?
5 **A. Yes, Sentinel Reinsurance, Ltd., owns SS**
6 **Holdings, Ltd.**
7 Q. And it reflects here the SeaOne investment; it
8 appears under that?
9 **A. It does on this page reflect that, yes.**
10 Q. Was SeaOne relate- -- was it affiliated in any
11 way with HCMLP?
12 **A. Not to my knowledge.**
13 Q. How about other than being owned by -- strike
14 that.
15 Do you know whether Messrs. Dondero or
16 Ellington had anything to do with SeaOne?
17 MS. SMITH: Objection, form.
18 BY MR. BURT:
19 Q. For example, was it a business venture that they
20 were pursuing?
21 **A. I don't know.**
22 Q. You don't know? Okay.
23 For this meeting, did someone ask you to
24 attend the meeting, or did you -- did you ask to go?
25 **A. I don't know.**

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1 Q. You don't recall Mr. Ellington, for example,
2 coming and saying: Hey, Katie, I'd like you to come to
3 this meeting with me; we are meeting with CIMA?
4 **A. I don't remember whether I asked or whether he**
5 **asked me.**
6 Q. Would anybody else have asked you other than
7 Mr. Ellington, or if anybody asked, would it likely have
8 been him?
9 MS. SMITH: Objection to form.
10 **THE WITNESS: If someone asked me to attend**
11 **the meeting, it would have been Mr. Ellington, yes.**
12 BY MR. BURT:
13 Q. Did he do most of the talking at this meeting, or
14 Mr. DiOrio or Leventon do the talking; do you recall?
15 **A. You said "Mr. Leventon." I don't recall him**
16 **being at that meeting.**
17 Q. Oh, Mr. Sevilla. Excuse me. You're right.
18 **A. I -- I don't remember.**
19 Q. And so we just looked at this, the very last
20 supplied, the CIMA-Approved Sentinel Structure. And
21 recalling your testimony, that this is really where you
22 were involved, the structure of -- of Sentinel in all of
23 this, did you present this slide or discuss any of this
24 with CIMA at that meeting?
25 **A. I don't remember if I presented it. I don't**

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1 **remember if I spoke at the meeting. I -- I just don't**
2 **remember.**
3 Q. Do you recall what the out- -- what the outcome
4 of that meeting was? Did CIMA indicate anything to
5 you-all at the end of the meeting?
6 **A. I don't remember.**
7 Q. Looking at -- we've -- I need the exhibit number.
8 I think it's 108.
9 **A. It's one I already have?**
10 Q. It's one you already have, Exhibit 108.
11 **A. What is it?**
12 Q. It is an e-mail from Clayton Price -- excuse me,
13 from -- again, I can't pronounce this name -- Sehliselo
14 Dube to Clayton Price, cc'ing Tom Adamczak. And this
15 contained the ITA Trust Deed that we looked at earlier.
16 **A. You said it's Exhibit 108?**
17 Q. 108.
18 **A. Let me see. I got it -- I got it in here**
19 **somewhere.**
20 Q. I know you've got a lot over there.
21 **A. Uh-huh.**
22 MS. MCLAUGHLIN: There's a bright pink stamp
23 on the back, if that helps.
24 **THE WITNESS: Got it.**
25 BY MR. BURT:

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1 Q. Okay. Now, we've looked at -- there's one
2 exhibit left to this e-mail chain that I want to look at
3 that we hadn't looked at before. It's the first
4 attachment, actually. You see there's four attachments,
5 the first attachment being 18- -- 181217 BOD Meeting
6 Minutes DRAFT.
7 You see that?
8 MS. SMITH: What's the Bates?
9 **THE WITNESS: Are you talking about an**
10 **attachment referenced here?**
11 BY MR. BURT:
12 Q. Yes. In the -- in the top e-mail, it's referring
13 to the first attachment --
14 **THE WITNESS: I think he's talking about**
15 **this (indicating).**
16 MS. SMITH: Oh.
17 MR. BURT: Right.
18 BY MR. BURT:
19 Q. And the third -- the -- three pages in, if you go
20 three pages in, is the attachment with the title Sentinel
21 Reinsurance, Ltd., (the "Company), at the very top.
22 **A. Okay. Bates 6063?**
23 Q. That's correct.
24 **A. Okay.**
25 Q. Yep.

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| | |
|---|---|
| <p style="text-align: right;">381</p> <p>1 A. I'm with you.</p> <p>2 Q. Now, here it states: Minutes of the meeting of</p> <p>3 the board of directors of the Company held via</p> <p>4 teleconference on the 17th day of December 2018 at</p> <p>5 1:00 p.m. And then it lists who was in attendance:</p> <p>6 Damien Austin, Director.</p> <p>7 Do you -- do you know Mr. Austin?</p> <p>8 A. I know of him.</p> <p>9 Q. And were you aware that he was a director at the</p> <p>10 time of Sentinel in -- in December of 2018?</p> <p>11 A. Yes, I would have been aware in 2018 that he was</p> <p>12 a director.</p> <p>13 Q. And then Jan Neveril, who we've talked about;</p> <p>14 Matt DiOrio is listed as a director there.</p> <p>15 You see that?</p> <p>16 A. I see it.</p> <p>17 Q. And Dilip Massand is listed as a director. And</p> <p>18 he was the one in the UAE, right?</p> <p>19 A. Yes. He was based out of the UAE.</p> <p>20 Q. And then it appears that you and Mr. Sevilla</p> <p>21 attended on behalf of SAS Asset Recovery, Ltd.</p> <p>22 You see that?</p> <p>23 A. I see that.</p> <p>24 Q. And then three individuals from Beecher Carlson;</p> <p>25 is that right?</p> | <p style="text-align: right;">383</p> <p>1 August 2016 and 8th of December 2017 be and hereby are</p> <p>2 approved.</p> <p>3 See where I'm reading?</p> <p>4 A. I do.</p> <p>5 Q. And then it states: The Unanimous Written</p> <p>6 Resolutions dated 6 October 2016, 26 June 2017, and it</p> <p>7 lists a number of other dates, and says: Were provided</p> <p>8 with the board materials for Director review.</p> <p>9 You see that?</p> <p>10 A. I see it here.</p> <p>11 Q. Do you know whether you received those materials?</p> <p>12 A. No idea.</p> <p>13 Q. Do you have any idea of what it's referring to?</p> <p>14 A. I don't know.</p> <p>15 Q. Now, during this board meeting, is it your</p> <p>16 testimony that you recall nothing about this board meeting</p> <p>17 whatsoever?</p> <p>18 A. I don't recall this board meeting specifically,</p> <p>19 no.</p> <p>20 Q. On Number 4 on page 2, states that: The</p> <p>21 Directors briefly discussed recent updates issued in the</p> <p>22 Guidance Notes by the Cayman Islands Monetary Authority</p> <p>23 related to AML/Compliance matters.</p> <p>24 Do you recall that being discussed at all?</p> <p>25 A. No.</p> |
| <p style="text-align: right;">382</p> <p>1 A. I see that, uh-huh.</p> <p>2 Q. Do you recall attending this board of directors</p> <p>3 meeting?</p> <p>4 A. No.</p> <p>5 Q. Do you recall attending any other board of</p> <p>6 director meetings?</p> <p>7 A. No, I don't recall.</p> <p>8 Q. Do you have any knowledge of why it was</p> <p>9 listing -- after you and Mr. Sevilla was listed -- listing</p> <p>10 SAS Asset Recovery, Ltd. as the entity on whose behalf you</p> <p>11 were attending?</p> <p>12 MS. SMITH: Objection, form.</p> <p>13 THE WITNESS: I don't know.</p> <p>14 BY MR. BURT:</p> <p>15 Q. Do you know who would have prepared these</p> <p>16 minutes?</p> <p>17 A. I don't know.</p> <p>18 Q. Do you know how frequently the board of directors</p> <p>19 of Sentinel met?</p> <p>20 A. No, I don't know.</p> <p>21 Q. Number 3 here, it states: The Directors reviewed</p> <p>22 the prior Board of Directors Meeting Minutes and Unanimous</p> <p>23 Written Resolutions since the 27th of October 2014 and</p> <p>24 following a brief discussion it was resolved that, (a) the</p> <p>25 Board of Directors Meeting Minutes of the 4th of</p> | <p style="text-align: right;">384</p> <p>1 Q. All right. When -- you can set that aside.</p> <p>2 Going back to the post bankruptcy period at</p> <p>3 HCMLP, do you recall the independent board ever asking any</p> <p>4 questions about Sentinel?</p> <p>5 A. I don't remember.</p> <p>6 MS. SMITH: Objection to form.</p> <p>7 BY MR. BURT:</p> <p>8 Q. How about any questions about the Greenbriar CLO?</p> <p>9 MS. SMITH: Objection to form.</p> <p>10 THE WITNESS: I don't know.</p> <p>11 BY MR. BURT:</p> <p>12 Q. Okay.</p> <p>13 MR. BURT: I think we are almost done. Can</p> <p>14 I have three minutes off the record just to check my</p> <p>15 notes? We'll come back and I think we're -- we can wrap</p> <p>16 it up.</p> <p>17 THE WITNESS: Okay.</p> <p>18 THE VIDEOGRAPHER: We are off record at 6:55</p> <p>19 p.m.</p> <p>20 (Brief recess taken.)</p> <p>21 THE VIDEOGRAPHER: We are back on record at</p> <p>22 7:02 p.m.</p> <p>23 BY MR. BURT:</p> <p>24 Q. If you could -- and, I apologize, one exhibit we</p> <p>25 looked at earlier, I just do have a follow-up question.</p> |

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97 (385 to 388)

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1 It was Exhibit 104 in your pile.
2 And this was -- it begins with an e-mail
3 exchange, and it had the attachment we looked at with the
4 Dondero/Patton/Ellington/Nimitz percentages, do you recall
5 that, a few hours ago?
6 **A. Was it something prepared by Beecher?**
7 Q. That was prepared by Beecher, but there's an
8 e-mail that begins the exhibit --
9 **A. Okay. Hold on.**
10 Q. -- Exhibit 104.
11 **A. I don't have a very good system going on over**
12 **here.**
13 MR. BURT: There it is.
14 THE WITNESS: Oh, got it.
15 BY MR. BURT:
16 Q. Okay. So I -- there is -- there's an e-mail here
17 in the middle from Matt DiOrio on October 2nd, 2018, to
18 Jonathan Arbeit and Alli Devins both at Beecher Carlson,
19 cc'ing Mr. Adamczak and yourself,
20 katieirving@sasmanagement.
21 And Mr. DiOrio -- do you see where I'm
22 reading --
23 **A. I do.**
24 Q. -- there?
25 Mr. DiOrio writes: Thanks, Jon. Very

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1 helpful. We are definitely aware of the cash need by
2 year-end and will not be entertaining any dividend
3 issuance while the ATE policy is active.
4 Now, are you aware of that -- what do you
5 know about that policy at Sentinel that there would be no
6 dividend issuance while the ATE policy is active?
7 MS. SMITH: Objection to form.
8 THE WITNESS: Yeah. I don't understand what
9 you're asking.
10 BY MR. BURT:
11 Q. So I -- I'm just asking about what he writes
12 here, that -- Mr. DiOrio writes that there would be no
13 dividend issuance at Sentinel while the ATE policy is
14 active.
15 What do you know about that?
16 **A. I don't, other than he -- he is making that**
17 **statement to Beecher, and I'm copied.**
18 Q. You don't recall that e-mail at all?
19 **A. I don't.**
20 Q. You don't recall that being a policy at all, that
21 Sentinel was not going to be making any dividends while
22 the ATE policy was active?
23 **A. I don't recall, no.**
24 Q. He then writes: I've copied Katie -- Katie
25 Irving in here as well who may have some additional color

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1 to provide on the capital rebalancing.
2 Do you know what he is referring to there?
3 **A. I don't remember.**
4 Q. Were you involved at all with capital rebalancing
5 at Sentinel?
6 MS. SMITH: Objection to form.
7 THE WITNESS: I don't -- I don't remember.
8 BY MR. BURT:
9 Q. We've talked about how you were part of the --
10 the struc- -- working on the structure and liquidating
11 certain entities and streamlining it for CIMA, right?
12 **A. Yes.**
13 Q. Did that involve capital rebalancing?
14 **A. I don't remember.**
15 Q. Do you remember whether you provided any
16 additional color to CIMA -- or -- excuse me -- to Beecher
17 Carlson on capital rebalancing?
18 **A. I don't remember. Capital rebalancing is**
19 **something Beecher would have handled. I don't know what**
20 **it is.**
21 Q. You didn't -- you don't -- you didn't have any
22 discussions with Beecher about capital rebalancing; is
23 that right?
24 **A. Not that I recall. Not that I recall. I don't**
25 **know.**

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1 Q. Do you recall -- at Sentinel, was it -- was it a
2 concern that -- about the amount of cash on hand that
3 Sentinel needed to have in order to -- in order to
4 justify, you know, their reserve requirements as an
5 insurance company?
6 MS. SMITH: Objection to form.
7 THE WITNESS: Was who concerned with that?
8 BY MR. BURT:
9 Q. The individuals associated with Sentinel,
10 Mr. DiOrio or yourself. Was that a concern that you were
11 -- that you discussed or were aware of?
12 MS. SMITH: Objection to form.
13 THE WITNESS: I believe I was aware that
14 CIMA had certain requirements related to cash reserves.
15 It's complex related to the insurance business.
16 BY MR. BURT:
17 Q. And was there a concern that Sentinel did not
18 have enough cash at times to meet those requirements?
19 MS. SMITH: Objection to form.
20 THE WITNESS: Not that I recall.
21 BY MR. BURT:
22 Q. Did you ever work on getting cash infusions into
23 Sentinel in order to meet the reserves?
24 **A. Not that I recall.**
25 Q. Okay. Now, just a few final, sort of, broad

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1 questions. We've -- obviously, we've talked a lot about
2 Sentinel today.
3 Is there anything related to Sentinel that
4 we didn't discuss today that you know about that you think
5 might be important for us to know?
6 MS. SMITH: Objection to form.
7 THE WITNESS: Not that I can think of.
8 BY MR. BURT:
9 Q. So as far as you're concerned, we have covered
10 all the topics about Sentinel, that you're aware of?
11 MS. SMITH: Objection to form.
12 THE WITNESS: I don't know how I can say
13 that we've covered all the topics.
14 BY MR. BURT:
15 Q. Well, I just want to make sure that -- all the
16 facts that you know about Sentinel that we've asked about
17 them today.
18 Is there any other facts about Sentinel,
19 that you're aware of, that I haven't asked about today?
20 MS. SMITH: Objection to form.
21 THE WITNESS: I don't know how to answer
22 that.
23 BY MR. BURT:
24 Q. Okay. Well, regarding your knowledge about
25 Sentinel and its provision of the ATE policy in this case

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1 that we've talked about today, are there any other facts
2 pertaining to that -- to Sentinel in that policy that we
3 have not discussed, that you're aware of, today?
4 MS. SMITH: Objection to form.
5 THE WITNESS: Not that I can think of.
6 BY MR. BURT:
7 Q. So in order to provide a complete -- a complete
8 explanation of your understanding of Sentinel, you feel
9 like we've covered everything that you know about Sentinel
10 and the ATE policy; is that correct?
11 **A. I feel like you're asking me the same question**
12 **over and over again.**
13 Q. Would you answer the question, please?
14 **A. I don't -- I can't think of anything else that --**
15 **right now.**
16 Q. Okay. Is there a reason why you can't think of
17 anything else?
18 MS. SMITH: Objection to form.
19 THE WITNESS: I just can't think of anything
20 else.
21 BY MR. BURT:
22 Q. Okay. Too many facts out there, and you can't
23 think of anything that we might not have covered?
24 **A. You've covered a lot.**
25 Q. I understand. I just want to make sure there's

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1 nothing missing that you would want to be clear about
2 Sentinel or the ATE policy later on that we haven't asked
3 about today?
4 MS. SMITH: Objection to form.
5 THE WITNESS: I feel like I keep giving you
6 the same answer: No, I can't think of anything.
7 MR. BURT: Okay. All right. We pass the
8 witness.
9 MS. SMITH: Done.
10 THE VIDEOGRAPHER: We are off the record at
11 7:10 p.m.
12 (Deposition concluded at 7:10 p.m.)
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1 IN THE UNITED STATES BANKRUPTCY COURT
2 FOR THE NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4 -----
5 IN RE: § Chapter 11
6 §
7 HIGHLAND CAPITAL §
8 MANAGEMENT, L.P., § Case No. 19-34054-SGJ11
9 §
10 Debtor. §
11 -----
12 UBS SECURITIES LLC AND §
13 UBS AG LONDON BRANCH, §
14 §
15 § Adversary Proceeding
16 § No. 21-03020-sgj
17 Plaintiffs, §
18 §
19 vs. §
20 §
21 HIGHLAND CAPITAL §
22 MANAGEMENT, L.P., §
23 §
24 Defendant. §
25 -----
REPORTER'S CERTIFICATION
ORAL & VIDEOTAPED DEPOSITION OF
KATIE LUCAS IRVING
MONDAY, NOVEMBER 15, 2021
I, Kari J. Behan, CSR, RPR, CRR, and in and for the
State of Texas, do hereby certify that the facts as stated
by me in the caption hereto are true;
That there came before me the aforementioned named
person, who was by me duly sworn to testify the truth
concerning the matters in controversy in this cause;
And that the examination was reduced to writing by
computer transcription under my supervision; that the
deposition is a true record of the testimony given by the

HIGHLY CONFIDENTIAL
Transcript of Katie Lucas Irving
Conducted on November 15, 2021

1 witness.
2 I further certify that I am neither attorney or
3 counsel for, nor related to or employed by, any of the
4 parties to the action in which this deposition is taken,
5 and further that I am not a relative or employee of any
6 attorney or counsel employed by the parties hereto, or
7 financially interested in the action.

8
9 Given under my hand and seal of office on the 23rd of
10 November, 2021.

11 
12 KARI BEHAN, CSR, CCR, RPR, CRR
13 Texas CSR NO. 8564
14 Expiration Date: 7-31-2022
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