

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Reorganized Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-
TRUST,

Plaintiff

Adv. Pro. No. 21-03076-sgj

v.

JAMES D. DONDERO; MARK A. OKADA;
SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS,
L.P.; HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.; DUGABOY
INVESTMENT TRUST AND NANCY
DONDERO, AS TRUSTEE OF DUGABOY
INVESTMENT TRUST; GET GOOD TRUST
AND GRANT JAMES SCOTT III, AS
TRUSTEE OF GET GOOD TRUST; HUNTER
MOUNTAIN INVESTMENT TRUST; MARK
& PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1 AND LAWRENCE
TONOMURA AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#2 AND LAWRENCE TONOMURA IN HIS
CAPACITY AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #2; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP.; HIGHLAND
DALLAS FOUNDATION; RAND PE FUND I,
LP, SERIES 1; MASSAND CAPITAL, LLC;
MASSAND CAPITAL, INC.; AND SAS ASSET



RECOVERY, LTD.,

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.'S MOTION TO
RECUSE

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I. INTRODUCTION

Defendant Highland Capital Management Fund Advisors, L.P. (“HCMFA” or the “Movant”) moves to recuse Judge Stacey G. Jernigan from serving as the magistrate judge in this adversary proceeding filed by Marc S. Kirschner, as Trustee for the Litigation Sub-Trust (“Adversary Proceeding”). Recusal of Judge Jernigan is mandatory under 28 U.S.C. § 144 and 28 U.S.C. § 455 because the Judge clearly possesses an abiding animus and prejudice against James D. Dondero (“Mr. Dondero”), and by association, Movant, and any objective observer would question the Judge’s impartiality under the circumstances presented.

By adopting an acerbic narrative about Mr. Dondero, his entities, his perceived affiliates, and their motivations—a narrative that the Debtor and its professionals have repeatedly used to their advantage—the Bankruptcy Judge has effectively hamstrung any litigant associated with Mr. Dondero from asserting or defending any of its positions in this Court. For example, Movant and others have alleged that the Debtor has managed and sold property and money in violation of bankruptcy provisions, or in violation of contractual obligations, fiduciary obligations, and federally-imposed duties. The Court’s persistent response has been to deny these parties substantial justice, often departing from its usual practice and procedure in doing so. At the same time, the Court has summarily rejected any challenge to the Debtor’s actions, evincing a dogmatic belief that the Debtor and its current management can do no wrong.

Moreover, Movant and other challengers to the Debtor have repeatedly been thrown out of court on unusual procedural technicalities. The Court also has stymied every attempt to hold someone on the Debtor’s side accountable under federal law, with opinions that are frequently accompanied by extensive exposition of the Judge’s unevicenced speculation regarding what dastardly plan she foiled. The Court’s repeated *ad hominem* smears against the challengers and their lawyers, and its suppositions about their supposed connections to Mr. Dondero (a feature that

does not otherwise feature in the Court’s other decisions, much less in other courts’ decisions) are telling. Movant has been punished for fighting back to protect its interests, as is its constitutional right. That relentlessly unfair treatment, coupled with a recently discovered publication that operates as a window into Judge Jernigan’s thinking about Mr. Dondero, is the basis of this motion.

Judge Jernigan has written and published a book exposing how she sees her relationship to Mr. Dondero. The book’s antagonist, Cade Graham, is “a Dallas hedge fund manager...founder and CEO of Dallas based Ranger Capital, a multibillion dollar conglomerate, which managed not just hedge funds but private equity funds, CDOs, CLOs, REITs, life settlements, and all manner of complicated financial products.” The book’s protagonist is a bankruptcy judge, Avery Lassiter, who is in a battle with Graham. Everything Graham does is a pretext for sinister and illegal activity that only the Judge sees and therefore must bring to light. The parallels do not end there. That Judge Jernigan clearly perceives a battle between *herself* and Mr. Dondero—and that she is the one tasked with bringing the truth to light—wholly undermines the legitimacy of the Court and its rulings.

While normally, losing (even losing more than once) is not enough to ask for disqualification, it is the unbalanced nature of these proceedings that raises the palpable appearance of bias. The Judge’s persistent negative treatment of Mr. Dondero and his perceived affiliates (including Movant) has chilled their invocation of legal process, making fair treatment in this Adversary Proceeding impossible. This Motion should be granted to salvage the Court’s reputation as an impartial and neutral factfinder and to ensure that justice is done.

II. LEGAL STANDARD FOR RECUSAL

Two federal statutes govern recusal of judges for bias: 28 U.S.C. §§ 144 and 455. *See U.S. v. Brocato*, 4 F.4th 296, 301 (5th Cir. 2021). A judge’s duty to rescue herself is “quite similar, if not identical” under both statutes. *U.S. v. York*, 888 F.2d 1050, 1053 (5th Cir. 1989). Notably,

both statutes are written in mandatory terms: if the terms of the statutes are met, recusal is required.

Section 144 mandates recusal when a judge “has a personal bias or prejudice” against or in favor of a party. 28 U.S.C. § 144. A motion under this statute must be supported by “a timely and sufficient affidavit” setting forth “the facts and the reasons for the belief that bias or prejudice exists[.]” *Brocato*, 4 F.4th 296 at 301 (citing 28 U.S.C. § 144). “A legally sufficient affidavit must: (1) state material facts with particularity; (2) state facts that, if true, would convince a reasonable person that a bias exists; and (3) state facts that show the bias is personal, as opposed to judicial, in nature.” *Patterson v. Mobil Oil Corp.*, 335 F.3d 476, 483 (5th Cir. 2003).

Under Section 455’s broader standard, a judge must be recused if the judge “has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding,” or if the court’s “impartiality might reasonably be questioned.” 28 U.S.C. § 455(a)-(b)(1). Thus, under Section 455, “recusal may be required even though the judge is not actually partial.” *Patterson*, 335 F.3d at 484 (citing *In re Cont’l Airlines Corp.*, 901 F.2d 1259, 1262 (5th Cir. 1990)). Therefore, the relevant inquiry under Section 455 is not whether the judge believes she is impartial. Rather, the critical question is whether “the ‘average person on the street who knows all the relevant facts of a case’” might reasonably question the judge’s impartiality. *In re Kansas Pub. Employees Retirement Sys.*, 85 F.3d 1353, 1358 (8th Cir. 1996). Where the question of whether Section 455 requires disqualification is a “close one, the balance tips in favor of recusal.” *Id.* at 484-85.

III. STATEMENT OF FACTS

Movant does not come to this Adversary Proceeding with a clean slate. To the contrary, as has been evident for several years, Judge Jernigan has an abiding animus against Mr. Dondero, Movant, and their perceived affiliates, formed well before Mr. Dondero’s firm, Highland Capital Management, L.P. (“HCMLP” or the “Debtor”), sought chapter 11 bankruptcy protection. That

animus became apparent during the 2018 bankruptcy of Acis Capital Management, L.P. and its general partner, Acis Capital Management GP, LLC—companies for which Mr. Dondero previously served as Chief Executive Officer, and for which HCMLP provided certain management services. When HCMLP’s own chapter 11 case was transferred to Judge Jernigan’s court more than a year later, the Judge immediately made clear that she would not put aside her negative opinions formed during the Acis bankruptcy. As described in greater detail below, during the pendency of the subsequently-filed HCMLP bankruptcy, Judge Jernigan has repeatedly (1) singled out Mr. Dondero, Movant, and their attorneys for unfair treatment, (2) admonished Mr. Dondero, Movant, and their attorneys for invoking proper legal process to protect their interests, (3) refused to credit evidence of record when presented by Mr. Dondero, Movant, and their attorneys (even where that evidence was undisputed), and (4) departed from normal procedure where doing so would harm the legal position or rights of Mr. Dondero, Movant, and their attorneys. In short, any objective observer would have substantial reason to doubt Judge Jernigan’s impartiality in any proceeding in which Mr. Dondero and Movant are defendants. Under these circumstances, recusal is mandatory.

A. The Court’s Animus Toward Movant Began During The Acis Bankruptcy

Mr. Dondero’s first encounter with Judge Jernigan came in the context of the involuntary bankruptcy of Acis Capital Management, L.P. and its general partner, Acis Capital Management GP, LLC (collectively, “Acis”). Prior to bankruptcy, Acis managed “hundreds of millions of dollars’ worth of CLOs [collateralized loan obligations].” *In re Acis Capital Mgmt., L.P., Bench Ruling and Memorandum of Law in Support of: (A) Final Approval of Disclosure Statement; and (B) Confirmation of Chapter 11 Trustee’s Third Amended Joint Plan (“Acis Bench Ruling”)*, Case

No. 18-30264-SGJ-11 (Bankr. N.D. Tex.), Acis Dkt. 287 at 10-11.¹ Joshua Terry (“Mr. Terry”), then an employee of HCMLP, served as portfolio manager for Acis. *Id.* at 10. But in June 2016, HCMLP terminated Mr. Terry “under contentious circumstances,” allegedly stemming from “disagreements with Mr. Dondero.” *Id.* JAMS arbitration between Mr. Terry and HCMLP ensued, and in October 2017, Mr. Terry obtained an arbitration award against Acis. *Id.* at 10-11.

Thereafter, contending that he had concerns that Acis had insufficient funds to pay his arbitration award, on January 18, 2018, Mr. Terry filed two involuntary chapter 7 bankruptcy petitions against Acis Capital Management, L.P. and Acis Capital Management GP, LLC. (the “Acis Bankruptcy”). *Id.* at 3, 11.²

After what Judge Jernigan described as an “astonishingly contentious” bankruptcy, *see id.* at 3, she issued an order confirming the Acis joint plan on January 31, 2019. *See* Acis Dkt. 829. Judge Jernigan’s simultaneous Bench Ruling is replete with negative remarks about Mr. Dondero, his management decisions, and his businesses.

Indeed, in remarks that are eerily prescient of what was to come, Judge Jernigan concluded—without citing any evidence—that various entities were merely marching to the orders of Mr. Dondero and HCMLP, that testimony given by individuals affiliated with Mr. Dondero and his entities was not credible, that “the Highlands” (i.e., Dondero-affiliated entities objecting to the Acis plan) were merely acting in “lockstep,” and that the Highlands’ party-in-interest status was “questionable.” *See, e.g.,* Acis Bench Ruling, Acis Dkt. 827, at 3, 14-15, 17, 38, 42-45.

¹ For ease of reference, where the Movant refers to court dockets other than the HCMLP bankruptcy docket, the Movant includes a shorthand description of the docket referenced. For example, references to the Acis bankruptcy docket are to “Acis Dkt.”

² The cases were later consolidated. *See* Order dated April 19, 2018, Acis Dkt. 137.

B. The Court’s Continuing Animus Has Been Evident Throughout HCMLP’s Bankruptcy Proceedings

Seeking a “fresh start,” HCMLP filed its own chapter 11 petition in Delaware on October 16, 2019. Dkt. 3; *see also* Ex. C, Dec. 3, 2019 Hr’g Tr. at 78:21-23. The Unsecured Creditors Committee (“UCC”) moved to transfer the case from the Delaware Bankruptcy Court to the United States Bankruptcy Court for the Northern District of Texas. At that time, HCMLP’s counsel—Pachulski Stang Ziehl & Jones, the same counsel that continues to represent HCMLP to this day—argued that the case should not be transferred to Judge Jernigan’s court because of the and negative opinions and “baggage” that the Court formed of HCMLP’s management during the Acis bankruptcy. *See* Ex. C, December 3, 2019 Hr’g Tr. at 78:21-23. Over HCMLP’s objection, the Delaware Bankruptcy Court transferred the case on December 4, 2019. *See* Order Transferring this Case to the United States Bankruptcy Court for the Northern District of Texas, Dkt. 1. As anticipated (and urged) by the UCC, the case landed in Judge Jernigan’s court. Following transfer, Judge Jernigan immediately targeted Mr. Dondero—treatment that, over time, extended to Mr. Dondero’s perceived affiliates (including the Movant) and even their lawyers.

What follows is a narrative description of only the most egregious examples.³

1. The Court Has Repeatedly Threatened Mr. Dondero And Movant And Accused Them Of Bad Acts Or Acting In “Bad Faith”

During the HCMLP bankruptcy proceedings, the Court has repeatedly threatened Mr. Dondero, Movant, and their lawyers or otherwise accused them of committing bad acts or acting in “bad faith,” even when those parties and counsel are raising legitimate legal arguments or defending their rights.

³ This brief seeks to highlight a sampling of Judge Jernigan’s biased treatment of Mr. Dondero and the Movant. But there are countless other examples that support recusal in this case. For brevity’s sake, the Movant attach as Exhibit B a chart containing other examples that are similar in kind, coupled with relevant citations to the record.

Indeed, at one of the earliest hearings following transfer of HCMLP’s bankruptcy to Judge Jernigan’s court, the Judge (1) expressed negative opinions about Mr. Dondero (although he had not yet filed any motion or objection in her court), (2) opined that Mr. Dondero had a *propensity* to engage in bad acts (based on Judge Jernigan’s perceptions formed during the Acis Bankruptcy), and (3) *sua sponte* insisted that language be included in her order approving a settlement between the Debtor and the UCC allowing the Court to hold Mr. Dondero in contempt for violating the terms of that settlement. *See* Ex. D, Jan. 9, 2020 Hr’g Tr. at 52:10-25, 78:23-79:16, 80:3-6.

At a separate hearing held just a few months later in June 2020, Judge Jernigan openly questioned whether lawyers for CLO Holdco—an entirely separate entity that is a wholly owned subsidiary of a charitable Donor Advised Fund (the “DAF”), established by Mr. Dondero—were acting in good faith in seeking a release of funds belonging to CLO Holdco from the Court registry. *See* Ex. E, June 30, 2020 Hr’g Tr. at 82:3-11, 85:4-16.

This reaction was surprising because there was no dispute that the funds belonged to CLO Holdco. In fact, the Judge herself acknowledged that CLO Holdco’s counsel made “perfect arguments” in support of the requested relief. *Id.* at 85:17-22. The Judge nonetheless made clear that she was suspicious of CLO Holdco’s motion—a suspicion stemming entirely from her belief (unsupported by any evidence) that Mr. Dondero was behind the CLO Holdco filing and despite that CLO Holdco had independent outside counsel representing it. *Id.* at 82:3-11, 85:4-16.

Just over a week later, at a hearing on July 8, 2020, the Court *sua sponte* directed Debtor’s counsel to investigate Mr. Dondero and certain “Highland affiliates” to ascertain whether they had received PPP loans. *See* Ex. F, July 8, 2020 Hr’g Tr. at 42:10-24. In asking for an investigation, Judge Jernigan made clear that her request was based on “extrajudicial knowledge” she had learned from reading “the newspapers, the financial papers,” rather than any evidence or argument

presented in her courtroom. *Id.*⁴

At yet another hearing on December 16, 2020, Judge Jernigan openly chastised HCMFA and NexPoint Advisors, L.P. for filing a motion seeking to stop the Debtor and its management from liquidating certain collateralized loan obligations (“CLOs”) pending confirmation of HCMLP’s Fifth Amended Plan of Reorganization (“Plan”). Dkt. 1528. As HCMFA and NexPoint explained in their motion, they were concerned that the Debtor’s premature liquidation of the CLOs would harm the investors to whom HCMFA and NexPoint owed a fiduciary duty. *Id.* at 9. Notwithstanding that concern and the very legitimate legal arguments made in the brief accompanying the motion, Judge Jernigan expressed her belief (untethered to evidence) that Mr. Dondero was behind the motion, concluded that HCMFA and NexPoint filed the motion for an improper purpose, and declared that the motion was “almost Rule 11 frivolous.” *See* Ex. G, Dec. 16, 2020 Hr’g Tr. at 63:14-64:14. The Judge then used the opportunity to publicly condemn Mr. Dondero, despite the dearth of evidence to support the Judge’s assumptions about his role in filing the motion.

That did not dissuade Judge Jernigan from reaching the same evidence-defying conclusion—and going further—just over one month later. At two hearings in January 2021, HCMFA and NexPoint were back before the Court, this time being accused by the Debtor of interfering with its management of the CLO portfolios. *See Highland Capital Mgmt., L.P. v. Highland Capital Mgmt. Fund Advisors, L.P., et al.*, Adv. Proc. No. 21-03000-sgj, Dkt. 6. Notwithstanding that Mr. Dondero had no continuing role with HCMLP and no ability to interfere with management of the CLO portfolios, Judge Jernigan yet again turned her attention to Mr.

⁴ As Debtor’s counsel confirmed, the PPP loans at issue in the article referenced by Judge Jernigan had nothing to do with HCMLP. Ex. F, July 8, 2020 Hr’g Tr. at 42:10-44:12. As a result, Judge Jernigan dropped the request.

Dondero, threatening to hold him in contempt of court based on actions taken by others, not Mr. Dondero. *See* Ex. H, Jan. 8, 2021 Hr’g Tr. at 119:6-122:25. She also suggested that Mr. Dondero had caused independent outside counsel to undertake the actions that were the subject of the adversary proceeding, without any evidence to support that finding. *See* Ex. I, Jan. 26, 2021 Hr’g Tr. at 251:24-252:5.

The Court’s view of Mr. Dondero and his affiliates as “bad faith” actors persisted though confirmation of HCMLP’s chapter 11 plan of reorganization (“Plan”). In her February 22, 2021, Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (As Modified), and (II) Granting Related Relief (“Confirmation Order”), Judge Jernigan again questioned the good faith of Mr. Dondero, and two trusts affiliated with Mr. Dondero—The Dugaboy Investment Trust and Get Good Trust—in objecting to Plan confirmation, labeling them “disruptors.” Confirmation Order, Dkt. 1943, ¶ 17; *see also id.*, ¶ 19. Their objections specifically related to their desire to protect the assets and not allow those assets to be wasted—a position that is highly meritorious and far from frivolous.

Further still, during a June 2021 hearing in connection with adversary proceedings filed by the Debtor against Mr. Dondero and various of the companies for which HCMLP provided services, Judge Jernigan went so far as to suggest to HCMLP’s counsel that HCMLP amend its complaint to include a fraudulent transfer claim against Mr. Dondero based solely on “allegedly problematic things” described by HCMLP’s counsel during the hearing. *See* Ex. J, June 10, 2021 Hr’g Tr. at 81:5-82:12. HCMLP thereafter amended its complaint per Judge Jernigan’s suggestion. *See* Adv. Case No. 21-3006-sgj, Dkt. 68.

In short, Judge Jernigan has—from start to finish and despite the evidence—consistently viewed Mr. Dondero and perceived affiliates (including Movant) as evildoers and made that bias

clear through repeated commentary and chastisements from the bench.

2. The Court Labeled Mr. Dondero as a “Vexatious” Litigant, Without Requiring Any Evidence To Support That Label

Yet another indication of the Court’s bias is its repeated refrain that Mr. Dondero is a “vexatious” litigant, notwithstanding that no such finding has ever been made (and notwithstanding that Mr. Dondero has never been given the opportunity to brief or argue the issue).⁵ Indeed, the record in the bankruptcy proceedings is littered with Judge Jernigan’s refrain that Mr. Dondero is “vexatious:”

- Speaking about a lawsuit that Judge Jernigan knew nothing about and had not even read: “If Mr. Dondero doesn’t think that is so transparently vexations litigation, yeah, I’m going out there and saying that. I haven’t seen it [the compliant she was condemning as vexatious], but, come on.” Ex. K, Hr’g Tr. dated Sep. 28, 2020 at 51:13-16.
- Offering up her *sua sponte* view on whether Mr. Dondero should be declared a “vexatious” litigant: “[A]lthough I have not been asked to declare Mr. Dondero and his affiliated entities as vexatious litigants per se, it is certainly not beyond the pale to find that his long history with regard to major creditors in this case has strayed into that possible realm, and thus this court is justified in approving this provision.” Ex. L, Hr’g Tr. dated Feb. 8, 2021 at 46:20-25.
- Chastising CLO Holdco Ltd. and The Charitable DAF Fund, LP’s counsel for filing a motion based on her view of Mr. Dondero: “I have commented before that we

⁵ Under Texas law, a court “may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant’ and one of three additional prerequisites has occurred within the last seven years.” *Baldwin v. Zurich Am. Ins. Co.*, Cause No. 1:17-CV-149-RP, 2017 WL 2963515, *4 (W.D. Tex. July 11, 2017) (citing Tex. Civ. Prac. & Rem. Code § 11.054). These additional elements include “(1) the filing of at least five suits as a pro se litigant that have been dismissed against the plaintiff; (2) relitigating a case pro se after having previously received an adverse and final determination; and a prior finding in state or federal court that the plaintiff is a vexatious litigant in an action concerning the same or substantially similar facts.” *Id.* Putting aside that Mr. Dondero rarely has been a plaintiff in any action in which he has been involved, nothing in the bankruptcy record remotely supports the existence of the three elements required for a finding that Mr. Dondero is a “vexatious litigant.”

seem to have vexatious litigation behavior with regard to Mr. Dondero and his many controlled entities.” Ex. M, Hr’g Tr. dated Jun. 25, 2021 at 109:20-22.⁶

The Judge’s “vexatious” refrain has been so ubiquitous that it has found its way into various movants’ papers and oral arguments and has been invoked as a reason to deny Mr. Dondero and Movant the relief they seek, or to reject their arguments out of hand as not credible—even when the court was not in a position to adjudge credibility. See, e.g., HCMLP’s Response to Movants’ Renewed Motion to Recuse, Dkt. 3595, ¶¶ 2, 67 (describing Mr. Dondero as “quintessentially vexatious” and invoking “the never-ending, meritless, vindictive, and vexatious litigation strategy that Mr. Dondero stubbornly clings to regardless of the burdens imposed on the judicial system...” as a reason to deny recusal); Debtor’s Omnibus Reply to Objections to Confirmation of Plan, Dkt. 1828, ¶ 22 (arguing that “[e]xculpation is particularly appropriate in this case to stem the tide of frivolous and vexatious litigation against the Exculpated Parties which Dondero and his Related Entities are seeking so desperately to continue to pursue”). Dkt. 1828, ¶ 22.

And while the Court has cited Mr. Dondero’s pre-bankruptcy litigation reputation (itself unfounded), no court has previously found that Mr. Dondero (or his entities) ever filed a meritless suit or a frivolous defense or labeled him or them vexatious. Yet Judge Jernigan saw fit to include the term in her Confirmation Order, as part of her justification for discrediting the testimony of Mr. Dondero, overruling the objections raised by him and the Movant to Plan confirmation, and requiring them to channel any future motions or litigation through her. See Confirmation Order, Dkt. 1943, ¶ 80 (positing that “[t]he Gatekeeper Provision is also consistent with the notion of a prefiling injunction to deter vexatious litigants...”).

Notably, although numerous parties-in-interest to the bankruptcy proceeding have filed

⁶ CLO Holdco Ltd., The Charitable DAF Fund, LP, Get Good Trust, and Dugaboy Investment Trust moved to modify a portion of the Court’s order retaining Mr. Seery relating to the scope of the Court’s assertion of jurisdiction. See *id.*; see also Dkt. 2248.

repeated adversary proceedings against Mr. Dondero, HCMLP, and other affiliated entities, thereby driving up bankruptcy costs, complicating settlement of claims, and reducing the amount of funds available to creditors, the Court has never even suggested that any of *that* litigation is vexatious. Apparently, it is only when Mr. Dondero and his affiliates fight back against such suits or against the depletion of the estate by the Debtor's minders in violation of their obligations that the Court labels such action vexatious.

3. The Court Has Repeatedly Sanctioned Or Threatened To Sanction Mr. Dondero And His Lawyers

Notwithstanding that most courts use sanctions sparingly and only when absolutely necessary, Judge Jernigan also has repeatedly sanctioned Mr. Dondero and his counsel or threatened them with sanctions. The Court has not imposed similar punishment (or even threatened similar punishment) on any other party to the case.

In what is perhaps the most egregious example, the Court in August 2021 sanctioned Mr. Dondero in connection with a motion filed by two entities—the DAF and CLO Holdco—in consultation with their own, independent legal counsel. Specifically, the DAF and CLO Holdco filed a motion in the District Court challenging the bankruptcy court's gatekeeping order and *seeking permission* from the Court—in light of the gatekeeping order—to add James P. Seery (the Debtor's CEO and Chief Restructuring Officer) as a defendant. *Charitable DAF Fund, L.P. v. Highland Capital Mgmt., L.P.*, Case No. 21-cv-00842 (N.D. Tex.), Dkt. 6. That Order was denied without prejudice to refile after all named defendants had been served. Nonetheless, the Debtor filed a separate motion asking the Court to impose sanctions not only on the DAF and CLO Holdco and their counsel for seeking the Court's permission, but also to impose sanctions on Mr. Dondero, a non-party to the underlying Texas state-court lawsuit. Dkt. 2247. Mr. Dondero's only action was to alert the DAF and its Counsel of recently uncovered evidence of the value of the HarbourVest

interest in Highland CLO Fund, Ltd., as that evidence suggested that perhaps Mr. Seery had lied on the stand, and Highland was engaged in inappropriate self-dealing.

At the hearing on the Debtor's sanction motion, the testimony was undisputed that the DAF's general manager, Mark Patrick, authorized both the lawsuit and the motion for leave to add Mr. Seery as a defendant. Dkt. 2660 at 19. The testimony was also undisputed that, although Mr. Dondero was asked to provide, and in fact did provide, information in connection with those proceedings, he was not in a position to authorize any of the filings at issue and did not do so. *Id.* at 21. Despite this testimony, Judge Jernigan concluded that "Mr. Dondero sparked this fire," that the evidence was "clear and convincing that Mr. Dondero encouraged Mr. Patrick to do something wrong," and that the lawsuit filed by the DAF and Holdco was, in "th[e] Court's estimation, wholly frivolous." *Id.* at 26. In the end, the Court ordered Mr. Dondero to pay a startling \$239,655, as a result of his supposed contempt, despite that the movant had only submitted bills of about \$170,000 in attorneys' fees. *Id.* at 28-30. Worse still, the Court tacked on a monetary sanction of \$100,000 to be paid by Mr. Dondero (or any other individual or entity) for any attempted appeal of the sanctions award. *Id.* at 30.⁷ These results are not surprising given that Judge Jernigan – before any evidence was heard – instituted the proceeding with an order to show cause why the "violators" of her order should not be held in contempt – not "alleged violators," just "violators." *See* Dkt. 2255. Nothing could more clearly telegraph the prejudgment that had occurred.

In short, Judge Jernigan ignored undisputed testimony, concocted a way to saddle Mr. Dondero and others with a multi-hundred-thousand-dollar liability for seeking her permission to do something (and for obeying the Court's order denying that relief), and attempted to prophylactically deny Mr. Dondero's access to the appellate courts through an additional threat of

⁷ Not even the Debtor attempted to defend this portion of the Court's sanction award.

sanctions. This ruling along smacks of bias and animus and should be sufficient to require recusal of Judge Jernigan in future proceedings where Mr. Dondero is a defendant.

Additionally, Mr. Dondero sought to file a petition under Texas Rule of Civil Procedure 202 in state court to investigate how and why two funds that are known to associate with Mr. Seery were able to purchase bankruptcy claims at a steep discount and what those funds knew or were told by Mr. Seery about the estate.⁸ Undoubtedly seeking to take advantage of Judge Jernigan's known predilection against Mr. Dondero, the funds improperly removed the Rule 202 petition to Bankruptcy Court, despite dozens of cases stating that such actions are not removable because the federal courts lack subject matter jurisdiction. With obvious reluctance, Judge Jernigan was forced to remand the case. *See* Order Granting Motion to Remand, Adv. Pro. No. 21-03051, Dkt. 22 at 20-21 (“[W]hile remand appears to be the correct result under the law, it is done here with grave misgivings ... Dondero’s standing in filing the Rule 202 Proceeding would appear to be highly questionable and his motives highly suspect.”). But she did not sanction the removing parties for the clearly frivolous removal. Instead, in a lengthy opinion, she chastised Mr. Dondero for deigning to ask questions and seek information. *Id.* at 5-6. The Judge’s allegations against him clearly carried weight in the state court and poisoned the well for that judge, who denied the Rule 202 depositions.

In addition to these orders, Judge Jernigan has sanctioned Mr. Dondero on another occasion and repeatedly threatened his lawyers with sanctions. *See, e.g.*, Dkt. 2660; Ex. N, February 23, 2021 Hr’g Tr. at 232:7-234:19 (“But it just feels like sickening games. And again, if this keeps on, if this keeps on, one day, one day, there may be an enormous attorney fee-shifting order.”). Again, notwithstanding questionable legal arguments made by other parties to the case and other dubious

⁸ *See* 95th Judicial District Court of Dallas County, Texas Cause No. DC-21-09534.

motion practice by the Debtor, the UCC, and its constituents, no other party to these proceedings has been threatened with sanctions for any reason. There is a reason for that: Judge Jernigan seeks out opportunities to punish Mr. Dondero and his affiliates.

4. The Court's Actions Have Discouraged Movant From Invoking Legal Process, Even Where Legitimate And Necessary

Ultimately, and as set forth in detail in the accompanying affidavit of Mr. Dondero, the statements made and actions taken by Judge Jernigan against him, his entities, and his perceived affiliates has had a substantial prejudicial effect on Movant, in two critical respects. *See* Ex. A, Affidavit of James D. Dondero. First, the Court's bias has caused it to make decisions that are detrimental not just to Movant but to creditors and stakeholders more generally.

For example, the Court did not require the Debtor to file Rule 2015.3 reports in bankruptcy, notwithstanding that the Debtor had at its fingertips the information with which to populate those reports (and in fact provided similar reporting to the UCC). As a result, the Debtor has been permitted by Judge Jernigan to obfuscate the true value of the bankruptcy estate, disabling meaningful settlement discussions that could have resolved the estate long ago. Indeed, the Court itself remains ignorant of the true value of the estate to this day. And as has been posited in a recently filed adversary proceeding seeking an accounting and other information from the Claimant Trustee, the bankruptcy estate is and always has been solvent, meaning that the estate could pay all creditors in full now and dispense with all further proceedings before the Court. *See* Motion for Leave, Dkt. 3662. Put another way, the Court has allowed its desire to punish Mr. Dondero and his perceived affiliates to outweigh the Court's obligation to expedite the orderly and transparent reorganization of HCMLP.

Second and more significantly, the Court's bias has had a chilling effect on Movant and its counsel. Specifically, the Court's repeated threats, negative treatment, and sanctions orders have

left Movant and its counsel with the perception that they cannot succeed on any motion or objection filed with this Court. Worse still, Movants and its counsel must proceed with extreme caution out of legitimate concern that the Court will sanction them for attempting to protect their legal rights and positions.⁹ That is precisely the type of problem that recusal is designed to prevent. No litigant should perceive that justice is impossible because of the predilections of the presiding judge.

C. Judge Jernigan Authors A Book Mirroring Her Perception of Highland And Mr. Dondero

Compounding matters, Movant recently became aware that Judge Jernigan wrote and published two novels while she was presiding over the Acis and HCMLP Bankruptcies.

Judge Jernigan’s first novel, *He Watches All My Paths*, was released on January 3, 2019, just weeks before Judge Jernigan confirmed the joint bankruptcy plan of Acis Capital Management, L.P. and Acis Capital Management GP, LLC (“Acis”)—companies for which Mr. Dondero served as CEO and for which HCMLP performed certain management services prior to Acis’s bankruptcy. Against that backdrop, Judge Jernigan describes the financial industry as being dominated by “[h]igh flying hedge fund managers” that “suck up money like an i-robot vacuum” and seem to “make money no matter what” and who routinely show “outrageous amounts of hubris” as part of their “bro culture.” Given that description, it is no wonder that the novel’s central protagonist, a Dallas federal bankruptcy judge, wonders whether the death threats she is receiving come from a hedge fund manager that has previously appeared in her court.

Judge Jernigan’s second novel, *Hedging Death*, was released in March 2022, less than a

⁹ Debtor sought to have Movant and Nexpoint sanctioned and held in contempt for making a proffer of evidence to preserve the record for appeal in the Notes cases. *See* Adv. Pro. No. 21-3004, Dkt. 130 at 10-14. Although it was the Debtor’s motions that were out of line (given that a making a proffer was the only means of preserving the record), and while Judge Jernigan denied the Debtor’s motions, she still chastised Movant and Nexpoint for protecting their rights, calling the Debtor’s motion “a close call.” Ex. O, April 20, 2022 Hr’g Tr. at 51:14-21.

year after HCMLP’s Plan was approved and while these bankruptcy proceedings were still ongoing.¹⁰ In *Hedging Death*, Judge Jernigan repeatedly invokes detail from the ACIS and Highland Bankruptcies. Again, the central protagonist of the novel is a Dallas bankruptcy judge, along with her husband, a retired police officer (like Judge Jernigan’s husband) and private investigator. The story involves a “high-flying, Dallas hedge fund manager” who, like Mr. Dondero, Judge Jernigan characterizes as a reckless investment manager and vexatious litigant. *Id.* at 10, 16. The investment firm in the novel is called Ranger Capital and is experiencing economic distress largely because of extensive litigation stemming from bad investments. *Id.* at 11, 74. This alone is astonishing: HCMLP’s original name was Ranger Asset Management, as is prominently disclosed on the website of Mr. Dondero’s investment firm NexPoint, and which has been mentioned in other filings in Judge Jernigan’s court. And HCMLP, like the supposedly fictitious Ranger, initially sought chapter 11 protection because of investor litigation. The similarities do not stop there.

In the novel, Ranger, like HCMLP, is a “multi-billion dollar conglomerate, which manage[s] not just hedge funds but private equity funds, CLOs, REITs, life settlements, and all manner of complicated financial products.” *Id.* at 11. In the novel, Judge Jernigan describes the life settlement industry—which she knows was an industry in which HCMLP and Mr. Dondero invested—as “creepy,” “immoral,” “unethical,” and “should be illegal.” *Id.* at 71-74. As Judge Jernigan is well aware, HCMLP and its affiliates managed hedge funds, private equity funds, CDOs, CLOs, REITs, life settlement portfolios, and private investment accounts for institutions around the world—exactly the same unusual mix of investments at issue in Judge Jernigan’s second “fictional” novel.

¹⁰ Stacey Jernigan, *Hedging Death* (2022).

There can be no question that Judge Jernigan learned about this mix of investments from her work on the Acis and Highland Bankruptcies. Indeed, even financial hubs such as New York and Los Angeles have only a limited number of firms with the mixture of products found at HCMLP. Given that and the books use of the name “Ranger,” anyone in the industry would readily conclude that the author was writing about Mr. Dondero and his businesses.

Moreover, Judge Jernigan has repeatedly expressed her suspicion of international tax structures and off-shore transactions (something highly regular in finance), calling them “byzantine.” *See, e.g.*, Ex. E, June 30, 2020 Hr’g Tr. at 86:16-87:15. And she expressed her suspicion in the book by setting forth how such structures are actually pretexts for hiding illegal activity and money laundering. *See, e.g., Hedging Death* at 75, 127-128 (“Graham had kept all this information secret with his byzantine web of offshore companies.”), 179. In short, Judge Jernigan’s writings (both inside and outside the courtroom) suggest that she harbors exceedingly negative views about Mr. Dondero, and that she in fact patterned the antagonist in her books after Mr. Dondero, leading any reasonable observer to question Judge Jernigan’s impartiality in these bankruptcy proceedings.

D. The Kirschner Litigation Opens The Door To Additional Abuse

Against this tortured backdrop, in September 2021, Marc S. Kirschner, as Trustee for the Litigation Sub-Trust, filed this Adversary Proceeding against Movant and numerous other defendants, claiming that various individuals and entities affiliated with HCMLP committed fraud, breached their fiduciary duties, and engaged in fraudulent transfers. *See Kirschner v. Dondero, et al.*, Adv. Proc. No. 21-03076-sgj (Bankr. N.D. Tex.) (the “Kirschner Litigation”), Dkt. 158 (Amended Complaint). The Kirschner Litigation seeks to impose on Movant and other defendants hundreds of millions of dollars of potential damages. *Id.*

To date, the Kirschner Litigation has progressed slowly. Movant and others filed motions

to withdraw the reference. On April 6, 2022, Judge Jernigan issued a Report and Recommendation in which she recommended that the reference be withdrawn but that she retain the case and preside over it as a magistrate judge until trial. Dkt. 151. Movant has objected to Judge Jernigan's Report and Recommendation (and urged that the reference be withdrawn immediately to allow this case to proceed in federal District Court), but the District Court has not yet ruled on that objection. In the interim, Movant and others have moved to dismiss the various causes of action asserted in the Kirschner Litigation. *See, e.g.*, Dkts. 182-183, 189-190. Briefing on those motions to dismiss is complete, but no oral argument has been set, and no decision on the motions has been made. Judge Jernigan has not been called upon to make any other decisions in the Adversary Proceeding to date.

Although a favorable ruling from the District Court on Movant's objection to Judge Jernigan's Report and Recommendation on the motions to withdraw the reference would moot this Motion to Recuse, in an abundance of caution and to avoid any argument about unnecessary delay, Movant decided to file the Motion now, so that it may be decided before any substantive decisions are made by Judge Jernigan in the Adversary Proceeding.

IV. RECUSAL IS WARRANTED

Based on the facts set forth above, and in the Dondero Affidavit, recusal of Judge Jernigan is mandatory in this Adversary Proceeding. The facts and accompanying evidence establish that the Court has both an actual "personal bias or prejudice," and that any reasonable and objective observer would "harbor doubts concerning the judge's impartiality." *Patterson*, 335 F.3d at 483-84 (quoting *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir.1997)).

A. Movant Has Met The Requirements Of Section 144, Mandating Recusal

The District Court should recuse Judge Jernigan in this Adversary Proceeding because Movant has met all the requirements of 28 U.S.C. § 144. Notably, there is no dispute that Judge

Jernigan already has recommended that the District Court withdraw the reference in this Adversary Proceeding. As a result, this proceeding is now a “proceeding in a district court,” as contemplated under Section 144, with Judge Jernigan serving in her capacity as a magistrate judge for the District Court. As Judge Jernigan has previously insisted, once the reference is withdrawn, “the District rules apply.” Ex. P, Hr’g Tr. dated Nov. 9, 2021, at 12:2-3, 13:9-20. Indeed, the Judge emphasized that “District Courts are very much sticklers for rules and procedures,” such that she must “do what I think the District Judge would expect me to do on all future occasions and strictly apply the rules” while sitting as a magistrate for the District Court prior to trial. *Id.* at 14:4-8. Given this procedural posture, this adversary proceeding is no different from a case pending before a magistrate in the District Court, and section 144 applies with equal force.

In addition, Movant meets both of the procedural requirements of Section 144.

First, Movant’s motion is timely. In assessing the timeliness of a Section 144 motion, “courts simply require exercise of reasonable diligence in filing an affidavit after discovering facts that show bias, or an explanation of good cause for failing to do so.” *U.S. v. Olis*, 571 F. Supp. 2d 777, 781 (S.D. Tex. 2008). “For example, courts will often consider whether the affiant has participated in substantial pre-trial motions between the time he first learned of the asserted bias and the time he filed the § 144 request.” *Smith v. Danyo*, 585 F.2d 83, 86 (3d Cir. 1978).

As explained above, if granted, Movant’s pending motion to withdraw the reference would moot this motion, as would dismissal, obviously. However, since filing the motions, Movant became aware of Judge Jernigan’s two novels. *See* Section III.C, *supra*. In light of this discovery, Movant is filing this motion now out of an abundance of caution, while this proceeding is still in its early stages and before Judge Jernigan has issued any substantive decisions in the case. Where, as here, the case is still in the preliminary stages and more than a year away from trial, there is no

risk of gamesmanship or the parties “waiting until the eve of trial and then resorting to a § 144 affidavit in order to obtain an adjournment.” *Smith*, 585 F.2d at 86. Under these circumstances, Movant’s motion is timely.

Second, Mr. Dondero has submitted a “sufficient affidavit” stating “the facts and the reasons for the belief that bias or prejudice exists[.]” 18 U.S.C. § 144. “If an affidavit filed under section 144 is timely and technically correct, its factual allegations must be taken as true for purposes of recusal. The judge must pass on the legal sufficiency of the affidavit, but he may not pass on the truth of the matters alleged.” *Phillips v. Joint Legislative Committee*, 637 F.2d, 1019-20 (5th Cir. 1981); *see also Tillotson v. Esparza*, Cause No. EP-15-CV-178-KC, 2015 WL 13333823, *2 (W.D. Tex. June 19, 2015) (denying motion under Section 144 where plaintiff “failed to attach a supporting affidavit.”); *Auf v. Howard Univ.*, Cause No. 19-22065-CIV-Smith, 2020 WL 10458573, *3 (S.D. Fla. Mar. 25, 2020) (denying motion denied where the plaintiff submitted only an unsworn statement that did not address the substance of the motion).

Here, Mr. Dondero has submitted an affidavit signed under penalty of perjury attesting to the specific facts and reasons supporting recusal, which are set forth above. *See Ex. A, Dondero Affidavit*. That affidavit is plainly legally sufficient and meets the requirements of the statute.

B. Recusal Is Required Because Judge Jernigan Harbors An Actual Personal Bias Against Mr. Dondero And, By Association, Movant

The facts described above and in the accompanying evidence establish beyond question that Judge Jernigan harbors an actual bias and animus against Mr. Dondero and his perceived affiliates (including Movant), making recusal mandatory. The Judge’s consistent threats, admonitions, assumptions and findings contrary to or in the absence of evidence, and adverse treatment of Mr. Dondero and those entities that appear aligned with him (including Movant) are more than sufficient to demonstrate that the Judge’s bias is “personal rather than judicial in nature.”

Parrish v. Board of Comm'rs, 524 F.2d 98, 100 (5th Cir. 1975).

Notably, although “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion,” the Supreme Court has also recognized that predispositions developed during the course of a trial can suffice to demonstrate the requisite bias or prejudice. *Liteky v. U.S.*, 510 U.S. 540, 555 (1994). In this regard, the words “bias” and “prejudice” mean a disposition or opinion that is somehow wrongful or inappropriate, either because: (a) it is undeserved; (b) it rests upon knowledge that the holder of the opinion ought not to possess; or (c) it is excessive in degree. *Id.* at 554. For example, the court’s consideration of an extrajudicial source of information is a factor in favor of finding either an appearance of partiality under section 455(a) or bias or prejudice under section 455(b)(1). *Bell v. Johnson*, 404 F.3d 997, 1004 (6th Cir. 2005) (citations omitted).¹¹

Moreover, “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings,” may evidence bias if the opinions reveal that they “derive from an extrajudicial source; and ***they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.***” *Liteky*, 510 U.S. at 555 (emphasis added).

Applying these standards, the federal courts have held that recusal (or reassignment to a new judge) is appropriate under several circumstances that mirror those at issue in this case. For example, the federal courts have found recusal or reassignment appropriate where (1) the judge made antagonistic statements to plaintiffs and manifested an “apparent distrust” of plaintiffs “early in the litigation,”¹² (2) the judge questioned one party’s decision to pursue a course of action and

¹¹ Importantly, consideration of an extrajudicial source is not necessary to a finding of bias or prejudice. *Liteky*, 510 U.S. at 554-55.

¹² *Sentis Group, Inc. v. Shell Oil Co.*, 559 F.3d 888, 904-05 (8th Cir. 2009) (reassigning case to a new judge on remand).

made comments that were critical of the party’s position,¹³ (3) the judge openly questioned the integrity of one party’s counsel, suggested he was proceeding in “bad faith,” and called certain decisions made by him “suspicious,”¹⁴ (4) there was “immediate, continuing, and ever-increasing tension” between the judge and one party’s counsel, the judge questioned in open court “the conduct of the lawyers” for one party, and the judge questioned one party’s “good faith,”¹⁵ (5) the judge’s comments “evidenced his distrust of [one party’s] lawyers and his generally poor view of [one party’s] practices.”¹⁶ As set forth above, the Court has engaged in *all* of these practices in this case, each of which individually would mandate recusal. *Johnson v. Sawyer*, 120 F.3d at 1334.

In short, Movant, like all other litigants, are entitled to a full and fair opportunity to make their case in an impartial forum—regardless of their history with that forum. *Miller v. Sam Houston State Univ.*, 986 F.3d 880, 893 (5th Cir. 2021) (citing *United States v. Jordan*, 49 F.3d 152, 155 (5th Cir. 1995)). Judge Jernigan’s personal bias and animus toward Mr. Dondero and his perceived affiliates (including Movant) far exceeds what is permissible in any court proceeding.

C. Recusal Is Required Because, At The Very Least, Judge Jernigan Appears Biased

In the alternative, and at the very least, the numerous examples discussed above clearly establish that an objective observer would harbor doubts about Judge Jernigan’s impartiality. This alone is grounds for mandatory recusal. As the Fifth Circuit has held, “fundamental to the judiciary

¹³ *In re U.S.*, 572 F.3d 301, 311-12 (7th Cir. 1999) (on mandamus, reversing district judge’s order denying motion to recuse and ordering that “all orders entered by the Judge after the motion for recusal was filed . . . be vacated”).

¹⁴ *U.S. v. Kennedy*, 682 F.3d 244, 258-260 (3d Cir. 2012) (ordering reassignment of the case to a different judge on remand).

¹⁵ *Johnson v. Sawyer*, 120 F.3d 1307, 1334-1337 (5th Cir. 1997) (ordering reassignment of the case to a different judge on remand and explaining that “the loss of efficiency and economy pales in comparison” to “the necessity to preserve the appearance of impartiality, fairness, and justice”).

¹⁶ *U.S. v. Microsoft Corp.*, 56 F.3d 1448, 1465 (D.C. Cir. 1995) (where a reasonable observer could question whether the presiding judge “would have difficulty putting his previous views and findings aside” on remand, case should be assigned to a different judge).

is the public’s confidence in the impartiality of [its] judges and the proceedings over which they preside.” *Id.* Thus, “justice must satisfy the appearance of justice.” *Id.* (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)). Indeed, Section 455 was “designed to promote public confidence in the impartiality of the judicial process.” *In re Drexel Burnham Lambert Inc.*, 861 F.2d 1307, 1313 (2d Cir. 1988) (quoting H.R. Rep. No. 1453); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 859-60 (1988). Accordingly, recusal is warranted where a judge’s comments would “cause a reasonable observer to question whether [the judge] ‘would have difficulty putting his previous views and findings aside.’” *Microsoft Corp.*, 56 F.3d at 1465 (quoting *U.S. v. Torkington*, 874 F.2d 1441, 1447 (11th Cir.1989)).

Even if Judge Jernigan does not harbor actual bias—and all signs point to that being true—the facts as described and the accompanying evidence establish that a reasonable observer would question her impartiality. Allowing Judge Jernigan to continue to preside over this Adversary Proceeding despite the overwhelming evidence of bias would only serve to undermine the public confidence in the judiciary. Under these circumstances, federal statute requires recusal.

V. CONCLUSION

It is time for Judge Jernigan to step aside and allow a neutral judge to preside over this Adversary Proceeding. For more than four years, she has expressed overtly hostile opinions and sentiments about Mr. Dondero and Movant, and no reasonable observer could possibly believe that Movant can receive fair treatment at Judge Jernigan’s hand. The federal recusal statutes exist to protect not just parties injured by biased judicial treatment, but to protect the public interest in a fair and rational judiciary. For all these reasons, and based on the argument and evidence presented, Movant respectfully requests that the Court grant this Motion to Recuse and assign this Adversary Proceeding to another magistrate judge pending trial.

Dated: February 27, 2023

Respectfully submitted,

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*Counsel for Highland Capital Management Fund
Advisors, L.P.*

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Highland Capital Management Fund Advisors, L.P. conferred with counsel for Plaintiff regarding the relief sought in this motion, and counsel for Plaintiff indicated that Plaintiff is unlikely to consent. Counsel for HCMFA will promptly inform the Court if counsel for Plaintiff indicates that it determines that it is not opposed to the relief sought in this motion.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 27, 2023, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez

EXHIBIT A

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.

Reorganized Debtor.

Chapter 11

Case No. 19-34054 (SGJ)

MARC S. KIRSCHNER, AS LITIGATION
TRUSTEE OF THE LITIGATION SUB-
TRUST,

Plaintiff

v.

JAMES D. DONDERO; MARK A. OKADA;
SCOTT ELLINGTON; ISAAC LEVENTON;
GRANT JAMES SCOTT III; STRAND
ADVISORS, INC.; NEXPOINT ADVISORS,
L.P.; HIGHLAND CAPITAL MANAGEMENT
FUND ADVISORS, L.P.; DUGABOY
INVESTMENT TRUST AND NANCY
DONDERO, AS TRUSTEE OF DUGABOY
INVESTMENT TRUST; GET GOOD TRUST
AND GRANT JAMES SCOTT III, AS
TRUSTEE OF GET GOOD TRUST; HUNTER
MOUNTAIN INVESTMENT TRUST; MARK
& PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1 AND LAWRENCE
TONOMURA AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #1; MARK & PAMELA
OKADA FAMILY TRUST – EXEMPT TRUST
#2 AND LAWRENCE TONOMURA IN HIS
CAPACITY AS TRUSTEE OF MARK &
PAMELA OKADA FAMILY TRUST –
EXEMPT TRUST #2; CLO HOLDCO, LTD.;
CHARITABLE DAF HOLDCO, LTD.;
CHARITABLE DAF FUND, LP.; HIGHLAND
DALLAS FOUNDATION; RAND PE FUND I,
LP, SERIES 1; MASSAND CAPITAL, LLC;

Adv. Pro. No. 21-03076-sgj

MASSAND CAPITAL, INC.; AND SAS ASSET
RECOVERY, LTD.,

Defendants.

**AFFIDAVIT OF JAMES D. DONDERO IN SUPPORT OF
MOTION TO RECUSE PURSUANT TO 28 U.S.C. § 144**

I, James D. Dondero, hereby declare as follows:

1. Previously, I served as Chief Executive Officer and director of Strand Advisors, Inc.—the general partner of Highland Capital Management, L.P. (“HCMLP”)—from the time of HCMLP’s founding until January 9, 2020. Thereafter, I remained employed as a portfolio manager (albeit without compensation) by HCMLP until October 2020.

2. I understand that this Affidavit is being submitted to the Court in connection with the motion of Defendant Highland Capital Management Fund Advisors, L.P. (“HCMFA”) to recuse Judge Stacey G. Jernigan in the above-captioned matter (the “Motion”). I also am the sole stockholder and director of Strand Advisors XVI, Inc., the general partner of HCMFA. I have personal knowledge of the matters set forth in this declaration and if called as a witness, I could and would competently testify to these matters.

3. I believe that Judge Jernigan harbors a personal bias and prejudice against me and all the entities that Judge Jernigan perceives to be related, affiliated, or controlled by me, including HCMFA. This bias has been evident throughout the *In re Highland Capital Management, L.P.* bankruptcy proceeding (“HCMLP Bankruptcy”), and it is my belief it will continue in this adversary proceeding if Judge Jernigan is not recused or disqualified from serving as magistrate judge in the case.

4. Based on my prior experiences in her courtroom and based on what I know about Judge Jernigan’s opinions of the financial industry (and in particular the mix of products and

assets owned and managed by me and my affiliates), I do not believe that Judge Jernigan can fairly adjudicate any matters involving me or any entity that she perceives to be connected to me. As set out in detail in the Motion, Judge Jernigan has repeatedly and openly expressed negative views about my character and motivations, singled out me, my lawyers, and other parties and their lawyers for unfair treatment based on their alleged connection to me, discouraged me and these other entities from fully participating in the HCMLP Bankruptcy and other adversary proceedings to protect our financial interests, threatened me and my attorneys with sanctions, and discredited my testimony while consistently crediting the testimony of HCMLP's witnesses. As a result of these experiences, I feel wrongfully targeted and have lost all confidence in the prospect of fair, unbiased decision-making by Judge Jernigan in this adversary proceeding.

5. In addition to the numerous examples set forth in the Motion, I recently became aware that Judge Jernigan wrote and published a novel that singles out the "hedge fund" industry and my business in particular. Prior to seeking chapter 11 protection in bankruptcy, HCMLP managed a unique mix of investments that included hedge funds, private equity funds, collateralized debt obligations ("CDOs"), collateralized loan obligations ("CLOs"), real estate investment trusts ("REITs"), life settlement portfolios, and private investment accounts. There are only a few investment firms in the whole country that manage this unusual mix of assets, and HCMLP was the only such firm in Dallas. This is precisely the mix of investment assets managed by the antagonist hedge fund magnate in Judge Jernigan's book, *Hedging Death*. Additionally, the firm in her book is called "Ranger Capital Management," which was the original name of HCMLP, and which can be easily ascertained by conducting a cursory search

on Defendant NexPoint Advisors, L.P.'s website. It is highly unlikely that these commonalities are mere coincidences, and I believe that Judge Jernigan based this book on me and my business.

6. The opinions expressed about me and my business in Judge Jernigan's novel is just one of many egregious examples of negative treatment that leads me to believe that Judge Jernigan has an animus against me and my entities and is incapable of impartiality in this adversary proceeding. Among other things, Judge Jernigan has engaged in procedural gamesmanship to ensure that entities connected to me cannot get relief in her Court. As but one example, when two trusts affiliated with me—The Dugaboy Investment Trust ("Dugaboy") and Get Good Trust ("Get Good")—filed a motion with the Court asking the Court to require the Debtor to make mandatory disclosures under Rule 2015.3 (disclosures that I understand the Debtor already was making to the Unsecured Creditors Committee and would have been easy to assemble for the benefit of other creditors and stakeholders), Judge Jernigan deliberately continued the motion hearing date until after the Plan's effective date to ensure the motion became moot and was never heard. In that decision, Judge Jernigan openly speculated that Dugaboy and Get Good were requesting that the Debtor prepare these reports—which are *required* by the Bankruptcy Rules—for nefarious purposes, simply because these trusts are connected to me and my family. Without those reports, and as a direct result of Judge Jernigan's unwillingness to grant relief requested by myself or any entity she perceives to be connected to me, no one knows the true value of the estate today. The dearth of real-world disclosures about that value have allowed adversary proceedings like this one to proliferate, even though there is good reason to believe that the estate has sufficient funds to pay all creditors in full, meaning that the only parties benefitting from the lawsuits are the Debtor's professionals.

7. Additionally, Judge Jernigan's treatment of me and my attorneys has had a chilling effect on my participation in the HCMLP Bankruptcy and related adversary proceedings. Judge Jernigan's repeated threats of sanctions and openly hostile remarks about my character, motivations, and business dealings have left me and my attorneys with the perception that I cannot succeed on *any* motion or filing in this Court. Indeed, the Court's willingness to sanction me and entities and lawyers the Judge believes are connected to or controlled by me has emboldened the Debtor's counsel to seek sanctions (including against counsel for HCMFA) even where none are warranted. This development has caused some of my attorneys to express reluctance to even file legitimate objections or motions out of fear of being sanctioned.

8. Judge Jernigan's incessant derogatory comments about me and my businesses feel deeply personal in nature, and her perception of me has clouded her perception of any entity that she believes to be connected to me. I believe that other entities' chances of success, including HCMFA, have been negatively impacted by Judge Jernigan's personal bias against me.

9. I have been named as a defendant in numerous lawsuits over the years in the course of running my business and have never experienced this kind of biased, unfair treatment in any other court or tribunal in the country. Prior to seeking Judge Jernigan's recusal in the HCMLP Bankruptcy, I had never sought to recuse any judge. Unfortunately, Judge Jernigan summarily denied the first recusal motion filed on my behalf in the HCMLP Bankruptcy and has still not ruled on the second recusal motion, necessitating the filing of this Motion.

10. In this adversary proceeding, the Litigation Trustee seeks to hold me, HCMFA, and several other defendants liable hundreds of millions of dollars in damages. The allegations of the 141-page Amended Complaint span over a decade and include thirty-six separate causes of action. The interests of 23 defendants are at stake, many of which have some connection to me

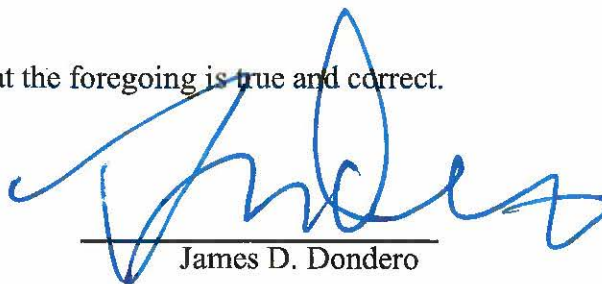
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11. In this adversary proceeding, the Litigation Trustee seeks to hold me, HCMFA, and several other defendants liable hundreds of millions of dollars in damages. The allegations of the 141-page Amended Complaint span over a decade and include thirty-six separate causes of action. The interests of 23 defendants are at stake, many of which have some connection to me or have been deemed "controlled" by me, despite the dearth of evidentiary support for that conclusion. I have a right to defend myself in this adversary proceeding, as does HCMFA and all of the defendants sued, and I should perceive the presiding judge as impartial. I do not believe Judge Jernigan is impartial, nor do I believe she can set aside her personal animus against me to render fair decisions involving me or HCMFA in this proceeding. For these reasons, I believe HCMFA has no other option but to seek recusal.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: February 21, 2023



James D. Dondero

EXHIBIT B

EXHIBIT B

EXAMPLES OF BIAS FROM BANKRUPTCY TRANSCRIPTS

Legend of Bias Categories

A	Examples of Judge Jernigan reprimanding or making negative comments about Mr. Dondero or his perceived affiliates.
B	Examples of Judge Jernigan refusing to credit Mr. Dondero or his perceived affiliates' testimony, while crediting Highland witness' testimony.
C	Examples of Judge Jernigan making findings against Mr. Dondero or his perceived affiliates untethered to evidence
D	Examples of Judge Jernigan attempting to discourage Mr. Dondero or his perceived affiliates' legitimate exercise of judicial process by overt or veiled threats.
E	<i>Sua sponte</i> rulings issued against Mr. Dondero or his perceived affiliates.

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
02/19/20	Debtor's Motion to Employ/Retain Foley Gardere, Foley & Lardner LLP as Special Texas Counsel	177:7-178:17	A / C	"But I'm concerned that Dondero or certain in-house counsel has -- you know, they're smart, they're persuasive -- that -- what are the words I want to look for -- they have exercised their powers of persuasion or whatever to make the Board and the professionals think that there is some valid prospect of benefit to Highland with these appeals, when it's really all about Neutra, HCLOF, and Mr. Dondero. That's what I believe. I mean, this is awkward, right, because you want to defer to the debtor-in-possession, but I have this long history, and I can think through the scenarios. If this is reversed, here is how it will play out. If this is reversed, here is how it might play out. And I know, you know, there are multiple ways it might play out, but I cannot believe there is a chance in the world there is economic benefit to Highland if these things get reversed. Economic benefit to Neutra: Yeah, maybe. Economic benefit to HCLOF: Well, they'll get what they want. You know, whether it's an economic benefit, I don't know. But benefit to Highland? I just don't think the evidence has been there to convince

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
				me it’s reasonable business judgment for Highland to pay the legal fees associated with the appeal. And even more concerning to me is a valid point was made that Highland is in bankruptcy because of litigation, litigation, litigation. The past officers and directors and controls’ propensity to fight about everything. This isn’t a balance sheet restructuring, okay? It’s not a Chapter 11 caused by operational problems or revenue disruption or who knows what kind of disruption. It’s about years of litigation finally coming home to roost. And this just appears to be more of the same, potentially. Okay. Parties have a right to appeal. I respect that. Neutra, go for it. HCLOF, go for it. But this estate and its creditors should not bear the burden of having Highland pay for that, when, again, I don’t think there’s any evidence to suggest they could benefit at the end of the day.”
03/04/20	Motion of the Debtor for Entry of An Order Authorizing, but not Directing, the Debtor to Cause Distributions to Certain “Related Entities”	51:10-14	A / C	“But I – I’ll want to hear that. I’ll want to hear that this was all legitimate, independent, non-affiliated investors pressing for the wind-down of these funds, and we didn’t have what I refer to as the Acis situation where – well –”
03/04/20	Motion of the Debtor for Entry of An Order Authorizing, but not Directing, the Debtor to Cause Distributions to Certain “Related Entities”	115:20-25	A	Mr. Pomerantz, counsel for Debtor, states: “Well, look, Your Honor, I certainly understand why you’re concerned. As you said at the first hearing, you have stuff in your head that you can’t forget, and I understand. I wasn’t around but I understand the history and especially the history with certainly similar things that may have happened in the Acis case. ”
06/30/20	Motion for Remittance of Funds Held in Registry of Court	87:5-15	A	“So, I’m not saying the Byzantine structure is in and of itself problematic, although one might wonder why a charitable organization needs to have three offshore entities as part of its

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
	Filed by CLO Holdco, Ltd.			structure. I digress. But we all know a Byzantine structure and ties to Dondero do not mean something is attackable in and of itself , but we have had issues raised about the Dynamic Fund and the various transfers with regard to Dugaboy, the Dondero Family Trust, and Get Good Trust and the note. All of that is worthy of examination, and the Committee has not had all that long in this case to investigate it.”
07/08/20	Motion to Extend Exclusivity Period; Motion to Extend Time to Remove Actions	42:12-20	C	“You know, I read the newspapers, the financial papers, just like everyone else, and I saw a headline that I wished almost I wouldn’t have seen, and it was a headline about Dondero or Highland affiliates getting three PPP loans . And, you know, I’m only supposed to consider evidence I hear in the courtroom, right, or things I hear in the courtroom, but I’ve got this extrajudicial knowledge right now thanks to just keeping up on current events. I decided I needed to ask about this. ”
10/21/20	Motion to Compromise Controversy with Acis Capital Management	10:21-25	B	Mr. Morris, counsel for the Debtor, notes the Court’s views on Mr. Dondero and his perceived affiliates: “the Court may not share our views on equities. The Court may not share. The Court has a lot of experience with these particular litigants. The Court has already assessed the credibility of certain witnesses in relation to the claims at issue in this matter.”
10/21/20	Motion to Compromise Controversy with Acis Capital Management	34:1-5	B	“I’m going to turn for a moment to Mr. Seery’s testimony. Just as I found his testimony to be very credible with regard to the Redeemer Committee settlement, I once again found it to be very credible and compelling in connection with the Acis and Terry settlements.”
10/21/20	Motion to Compromise Controversy with Acis Capital Management	36:1-14	B	The Court discussing report of Professor Rapoport, submitted in support of Mr. Dondero’s objection: “I respect her views tremendously -- I know she’s been a fee examiner in many, many cases and really has some bona fides in speaking about fees in bankruptcy cases -- I tend to think that is an extremely low estimate. And I can’t separate from this analysis my own experience and

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
				<p>knowledge with how litigious and expensive things have historically been between Acis and Highland. I cannot remember the final fee application amounts of the Chapter 11 Trustee and his professionals, but I know that in a year-plus of the Acis case, the fees were much, much larger than this amount, and I seem to remember that at least Foley Lardner had a very, very large unsecured claim in this case related to its fees representing Highland v. Acis, millions of dollars.”</p>
10/28/20	Patrick Daugherty's Motion to Confirm Status of Automatic Stay [1099]	30:15-22	A	<p>“Now we’re looking at a plan that's still very contested, with some large litigation claims. So, at this point, I would be hard-pressed to protect any nondebtor defendants who aren’t ponying up something to the whole plan reorganization process. So that’s not an advisory opinion. That’s just letting you know where I am at the moment on nondebtor defendants seeking some sort of extended stay to protect them or allegedly the Debtor.”</p>
12/10/20	Motion for Preliminary Injunction; Motion for Temporary Restraining Order	24:19-25	A / B	<p>“I guess another thing is there was a little bit of a theme, Mr. Bonds, in your comments that Mr. Dondero is just concerned, more than anything else, about the way employees are being treated, or at least that’s a major concern. And I don’t find that to be especially compelling. I mean, maybe if he was sworn under oath and testified, I would believe that, but it doesn’t feel like what’s really going on here.”</p>
12/10/20	Motion for Preliminary Injunction; Motion for Temporary Restraining Order	39:10-25	E	<p>“I understand what Mr. Lynn said, that this was his idea, he thought the January protocol order violated the Bankruptcy Code, blah, blah, blah, but I am going to order that Mr. Dondero be present December 16th at 1:30 and testify.”</p>
12/10/20	Motion for Preliminary Injunction; Motion for	41:2-8; 44:3-4	A	<p>“Your motion feels to me exactly like what we litigated ad nauseam in the Acis case. Now, if any of the Acis lawyers are on the line or Mr. Terry is on the line, I wonder if they are chuckling.</p>

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
	Temporary Restraining Order			And what I mean is -- I heard a chuckle. I don't know if that was Ms. Patel I read your motion yesterday with frustration.”
12/10/20	Motion for Preliminary Injunction; Motion for Temporary Restraining Order	48:16-20; 49:22-50:5	E	Judge Jernigan appears to <i>sua sponte</i> requires a witness to testify on behalf of the NexPoint Parties because she believed Mr. Dondero was behind the NexPoint Parties' litigation strategy: “So, Mr. Wright, I am also going to direct that you have a client witness to testify about these things. And I do want to understand, you know, who you're taking instructions from and who is on the board on these entities Anyway, we had a discussion about my concerns about conflicts back around that time, but here's what I'm getting at. I'm worried all over again about do we have any human beings involved calling the shots for your client, Mr. Wright, that have fiduciary duties to the Debtor, and maybe this is getting in conflict with that. I just don't know.”
12/16/20	Motion for Order Imposing Temporary Restrictions [1528]; Debtor's Emergency Motion to Quash Subpoena and for Entry of Protective Order [1564, 1565]; James Dondero's Motion for Entry of Order Requiring Notice and Hearing [1439]	63:14- 64:13	A / C	“I'm utterly dumbfounded, really I agree with part of the theme, I think, asserted by the Debtor here today that this is Mr. Dondero, through different entities, through a different motion. I feel like he sidestepped the requirement that I stated last week that if we had a contested hearing on his motion, Dondero's motion, that I was going to require Mr. Dondero to testify. He apparently worked out an eleventh hour agreement with the Debtor on his motion to avoid that. But, again, these so-called CLO Motions very clearly, very clearly, in this Court's view, were pursued at his sole direction here. This is almost Rule 11 frivolous to me. You know, we're -- we didn't have a Rule 11 motion filed ... Bluntly, don't waste my time with this kind of thing again.”
01/08/21	Preliminary Injunction Hearing	169:1-4	E	Jernigan <i>sua sponte</i> ordered Dondero to attend all future hearings: “You didn't ask me for this, but I'm going to do it. I'm going to order you, Mr. Dondero, to attend all future hearings in this bankruptcy case unless and until this Court orders otherwise.”

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
01/08/21	Preliminary Injunction Hearing	171:5-17	E	<p>“And next, I’m going to add -- and I think, Mr. Morris, you requested this at some point today in oral argument -- Mr. Ellington and Mr. Leventon shall not share any confidential information that they received ... without Debtor’s counsel’s explicit written permission And, you know, that’s a little awkward because they’re not here, they weren’t parties to the injunction, but they were Debtor employees until recently. If they want to risk violating that and come back to the Court and argue about whether they got notice and whatnot of that, they can argue that, but I want it in the order regardless.”</p>
01/14/21	Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims of Harbourvest	153:24-154:6	C	<p>“I’m very sympathetic to HarbourVest. It appears in all ways from the record, not just the record before me today, but the record in the Acis case that I presided over, that Highland back then would have rather spent HarbourVest’s investment for HCLOF legal fees than let Josh Terry get paid on his judgment. They were perfectly happy to direct the spending of other people’s money, is what the record suggested to me.”</p>
01/14/21	Motion to Prepay Loan; Motion to Compromise Controversy; Motion to Allow Claims of Harbourvest	154:7-19	C	<p>“And then, you know, I have alluded to this very recently, as recently as last Friday: I can still remember Mr. Ellington sitting on the witness stand over here to my left and telling the Court, telling the parties under oath, that HarbourVest -- he didn’t use its name back then, okay? For the first phase of the Acis case, or most of the Acis case, we were told it was an investor from Boston. And at some point someone even said their name begins with H. I mean, it seemed almost humorous. But Mr. Ellington said it was they, HarbourVest, the undisclosed investor, who was insistent that the Acis name was toxic, and so that’s what all of this had been about: the rebranding, the wanting to extract or move things away from Acis.”</p>
02/08/21	Bench Ruling on Confirmation Hearing	22:15-21	A	<p>“To be clear, the Court has allowed all of these objectors to fully present arguments and evidence in opposition to confirmation, even</p>

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
	and Agreed Motion to Assume			though their economic interests in the Debtor appear to be extremely remote and the Court questions their good faith. Specifically on that latter point, the Court considers them all to be marching pursuant to the orders of Mr. Dondero.
02/08/21	Bench Ruling on Confirmation Hearing and Agreed Motion to Assume	46:20-25	D	“Here, although I have not been asked to declare Mr. Dondero and his affiliated entities as vexatious litigants per se, it is certainly not beyond the pale to find that his long history with regard to the major creditors in this case has strayed into that possible realm , and thus this Court is justified in approving this provision.”
02/23/21	Plaintiff's Motion for Order Requiring James Dondero to Show Cause Why He Should Not Be Held in Civil Contempt for Violating the TRO; Debtor's Emergency Motion for Mandatory Injunction Requiring the Advisors to Adopt and Implement a Plan for the Transition of Services by February 28, 2021	232:7-234:19	A / B / D	“I don't want you to think my calm demeanor means that I am a happy camper. I am not. I am beyond annoyed Mr. Rukavina, you said that I have formed opinions that you don't think are fair and made comments about vexatious litigation and whatnot. But while I continue, I promise you, to have an open mind, it is days like this that make me come out with statements that Mr. Dondero, repeating his own words, apparently, he's going to burn the house down if he doesn't get his baby back. I mean, it seems so obviously transparent that he's just driving the legal fees up. It's as though he doesn't want the creditors to get anything, is the way this looks. If he wants me to have a different impression, then he needs to start behaving differently And then Mr. Dondero acting like he had no clue what the K&L Gates lawyers were saying as far as we have a deal. And Mr. Norris distancing himself from having seen any of that, and I didn't have power. You know, I'm sure he had a cell phone, like the rest of us, that gets emails. I'm making a supposition. I shouldn't make that. But it just feels like sickening games. And again, if this keeps on, if this keeps on, one day, one day, there may be an enormous attorney fee-shifting order. And, of course, I would have to find bad faith, and I wouldn't be surprised at all if I get there. So I don't know if Mr. Dondero is

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
				listening. I suspect, if he is, he doesn't care much People need to get their eye on the ball. Well, certain people do have their eye on the ball, but certain people do not. Okay? So we're done. You've got your divorce now. Okay? And if the operating plan is all shored up, as Mr. Norris testified, it sounds like you're in good shape. All right?"
03/19/21	Motions to Stay Pending Appeal	68:22-25	A	"The four Objectors, the Court continues to believe, are following the marching orders of Mr. Dondero, the company's former CEO, and are de facto controlled by him , based on prior evidence this Court has heard."
05/10/21	Trial Docket Call; Defendant's Emergency Motion to Stay Proceedings Pending Resolution of Defendant's Petition for Writ of Mandamus	44:7-46:14; 52:6-23	A	"We're going to have to work something out. Okay? This is not efficient. It's not useful. I would think a person such as Mr. Dondero would want to rein in legal fees, but maybe not Is there a way you can streamline? I mean, I know -- I almost chuckle at myself at saying ad hoc committee of Dondero-controlled entities. I know that sort of sounds, I don't know, unworkable, maybe. Maybe not. I'm not going to read 14 different objections to the UBS settlement that say the very same thing. I'm not going to read a different motion to withdraw the reference by every single defendant in every single adversary that gets filed. This is just not an efficient way to go forward I mean, it's my job. I'm going to read everything that's put before me. That's what I do. That's what I'm supposed to do. But it's out of control."
05/10/21	Trial Docket Call; Defendant's Emergency Motion to Stay Proceedings Pending Resolution of Defendant's Petition for Writ of Mandamus	51:18-20; 52:17-19	A	" I know you have all kinds of beefs, beefs about the settlement with Acis , and probably UBS and the Redeemer Committee. I understand that You know, it -- a perception could exist that you're trying to carpet-bomb us all with paper, the Court included. "

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
06/10/21	Motion to Compel Compliance with Bankruptcy Rule 2015.3	46:3-14	D	“But let me tell you something that is nagging very, very much at me, and I’ll hear whatever response you want to give to this. I just had an all-day hearing a couple of days ago, and this involved the Charitable DAF entities and a contempt motion the Debtor filed because those entities went into the U.S. District Court upstairs in April and filed a lawsuit that was all about Mr. Seery’s alleged mismanagement with regard to HarbourVest. So what I’m really worried about is the idea that your client wants this information to cobble together a new adversary alleging mismanagement. How can I not be worried about that?”
06/10/21	Motion to Compel Compliance with Bankruptcy Rule 2015.3	54:8-16	D / E	Judge Jernigan responds to a comment by Mr. Pomerantz, counsel for the Debtor, that Mr. Dondero has filed “close to a dozen appeals” and should not be allowed another opportunity to appeal: “That’s exactly where my brain went, Mr. Draper. This is an order continuing your motion. Okay? And we’ll have a status conference in early September on your motion. And you know, again, I’m just letting you know my view it will be moot if the effective date has occurred, and then we’ll get some sort of order to that effect issued at that time. And then I guess you’ll have your final order that you can appeal if you want at that point.”
06/10/21	Motion to Compel Compliance with Bankruptcy Rule 2015.3	55:3-7	E	“I am now going to make the same requirement with regard to the trusts. Any time the trusts file a pleading seeking relief, object to a pleading seeking relief, file any kind of position paper, I’m going to require a trust representative to be in court. ”
10/12/21	Motion for Remand Filed by Plaintiff James Dondero; Status Conference re: Notice of Removal	40:12-14	C	Farallon counsel suggests Jernigan is unfavorable to Dondero: “And then I dug in, talked to counsel, and understood why, why Mr. Dondero wouldn’t want to file a 2004 motion, because Mr. Dondero did not want to be in front of this Court. ”
03/01/22	Motion for Entry of An Order Approving	83:12-23	A / B	“I’m pretty exasperated with that attempt in this case. But this litigation is -- I’m going to call it the stalking lawsuit. Okay? Every

Date	Motion at Issue	Transcript Citation	Bias Category	Transcript Excerpt (Statements by Judge Jernigan Unless Otherwise Noted)
	Settlement with Patrick Daugherty			time -- I don't know how much longer it will be in my court, but as long as it's in my court I'm going to call it what it is, a stalking lawsuit. It is one grown man accusing another grown man of stalking. You know, it's just embarrassing to me, and it should be embarrassing to those involved. Now, I have read the lawsuit and I have read that Mr. Ellington accuses Mr. Daugherty of driving by his house, driving by his father's house, driving by his sister's house, driving by his office, 143 sightings, he's taking pictures. And you know, if that's true, again, that's embarrassing. If -- I don't even know what to say except this is embarrassing. One grown man accusing another grown man of stalking. Okay? A statute, by the way, that was designed to protect, you know, ex-wives, girlfriends, battered women, from abusive men. You know, gender doesn't matter, but wow. It's just -- I don't know what to say except people should be embarrassed, and so that's what I'm going to say."

EXHIBIT C

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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In the Matter of:

HIGHLAND CAPITAL MANAGEMENT, L.P., Case No.
Debtor. 19-12239(CSS)

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United States Bankruptcy Court
824 North Market Street
Wilmington, Delaware

December 2, 2019
10:07 AM

B E F O R E:
HON. CHRISTOPHER S. SONTCHI
CHIEF U.S. BANKRUPTCY JUDGE

ECR OPERATOR: LESLIE MURIN

HIGHLAND CAPITAL MANAGEMENT, L.P.

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1 appoint a trustee after this hearing. The motion has not yet
2 been filed, Your Honor, because they want Judge Jernigan to
3 rule on that motion. And it's not because she's familiar with
4 this debtor's business, this debtor's assets, or this debtor's
5 liabilities, because she generally is not. It is because she
6 formed negative views regarding certain members of the debtor's
7 management that the committee and Acis hope will carry over to
8 this case.

9 The convenience of the parties and the interests of
10 justice and how this case is so unique are just a pretext.
11 They want a trustee to run the debtor, and they want Judge
12 Jernigan and not Your Honor to rule on that motion. That, Your
13 Honor, is not a proper reason to transfer venue, but rather a
14 transparent litigation ploy.

15 Similarly, Acis also wants the case to proceed in its
16 home court where it has enjoyed success in litigating against
17 the debtor. Your Honor mentioned the conflicts-of-interest
18 theories. They're not just conflicts of interest between two
19 jointly administered debtors. These go to the crux of what the
20 Acis case is about and significant claims against the debtor.

21 The Court may ask, appropriately -- and the Court
22 did -- why would the debtor file the case in Delaware? Chapter
23 11 is all about a fresh start. The debtor recognized concerns
24 that the creditors had with certain aspects of its pre-petition
25 conduct, and proactively appointed Brad Sharp as chief

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C E R T I F I C A T I O N

I, Clara Rubin, certify that the foregoing transcript is a true and accurate record of the proceedings.



December 3, 2019

CLARA RUBIN

DATE

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New York, NY 10001
(973) 406-2250
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EXHIBIT D

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

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)	Case No. 19-34054-sgj-11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	January 9, 2020
	)	9:30 a.m. Docket
Debtor.)	
	)	DEBTOR'S MOTION TO COMPROMISE
	)	CONTROVERSY WITH OFFICIAL
	)	COMMITTEE OF UNSECURED
	)	CREDITORS [281]
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
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For the Debtors:	Ira D. Kharasch PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
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For the Debtor:	John A. Morris PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
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For the Debtors:	Melissa S. Hayward Zachery Z. Annable HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104
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1 standard that this Court has to weigh today as being: Is the
2 Debtor proposing something that is reflective of sound
3 business judgment, reasonable business judgment? And to the
4 extent this is a compromise of controversies with the
5 Committee, is this fair and equitable and in the best interest
6 of the estate?

7 And as Mr. Pomerantz has said, you know, a lot of this
8 maybe doesn't even need Court approval. But to the extent
9 there are aspects of this that are appropriate to seek Court
10 approval on, you know, this is my task. I have to look at
11 what's presented, and is this reflective of sound business
12 judgment? Is this fair and equitable? Is it in the best
13 interest?

14 So, assuming there are tons of bad facts here reflected in
15 the arbitration award, reflected in other evidence, bad facts
16 that might justify a trustee, a Chapter 11 trustee, is this
17 nevertheless, what's proposed today, a reasonable compromise
18 of, you know, the trustee arguments the Committee could make
19 or, you know, is this a reasonable framework for going
20 forward? Okay?

21 So I guess what I'm saying is I'm confused about, you
22 know, do I need to look at the arbitration award? Do we need
23 to have evidence of all of that? I can assume that there are
24 terrible facts out there that might justify a trustee, but I'm
25 looking at what's proposed. Is this a fair and equitable way

1 business justification for proposing the independent slate of
2 directors at the GP level for the Debtor, the protocols, the
3 negotiation with the Committee, the document sharing, the
4 standing given to them? Does all of this reflect reasonable
5 business judgment? And I find, quite clearly, it does. I
6 find it to be a pragmatic solution to the Committee's concerns
7 about existing management and control.

8 And I think I used the words "fair and equitable," not
9 just Ms. Lambert, because it is also presented to the Court as
10 a 9019 compromise of disputes with the Committee, and we
11 traditionally use a fair and equitable and best interest of
12 the estate analysis in this context. So, to the extent that
13 applies, I do find this a fair and equitable way of resolving
14 the disputes with the Committee, and I find this to be in the
15 best interest of the estate. So I do approve this.

16 And by approving this motion, I'm approving the term sheet
17 as it's been presented, the various terms therein, the
18 exhibits thereto. I'm specifically approving the new
19 independent directors, the document management and
20 preservation process, the standing to the Committee over
21 certain of the estate claims, the reporting requirements, the
22 operating protocols, the whole bundle of provisions.

23 Now, there is one specific thing I want to say about the
24 role of Mr. Dondero. When Ms. Patel got up and talked about
25 the newest language that has been added to the term sheet, she

1 highlighted in particular the very last sentence on Page 2 of
2 the term sheet, the sentence reading, "Mr. Dondero shall not
3 cause any related entity to terminate any agreements with the
4 Debtor." Her statement that that was important, it really
5 resonated with me, because, you know, as I said earlier, I
6 can't extract what I learned during the *Acis* case, it's in my
7 brain, and we did have many moments during the *Acis* case where
8 the Chapter 11 trustee came in and credibly testified that,
9 whether it was Mr. Dondero personally or others at Highland,
10 they were surreptitiously liquidating funds, they were
11 changing agreements, assigning agreements to others. They
12 were doing things behind the scenes that were impacting the
13 value of the Debtor in a bad way.

14 So not only do I think that language is very important,
15 but I am going to require that language to be put in the
16 order. Okay? So we're not just going to have an order
17 approving the term sheet that has that language. I want
18 language specifically in the order. You know, you can figure
19 out where the appropriate place to stick it in the order is,
20 but I want specific language in here regarding Mr. Dondero's
21 role. I also -- the language in there that his role as an
22 employee of the Debtor will be subject at all times to the
23 supervision, direction, and authority of the Debtors, I want
24 that language in there as well. Let's go ahead and put the
25 language in there that at any time, in any event, the

1 independent directors can determine he's no longer going to be
2 retained. I want that in the order.

3 And I'm sure most of you can read my mind why, but I want
4 it crystal clear that if he violates these terms, he's
5 violated a federal court order, and contempt will be one of
6 the tools available to the Court. He needs to understand
7 that. Mr. Ellington needs to understand that. You know, if
8 there are any games behind the scene, not only do I expect the
9 Committee is going to come in and highlight that to the Court
10 and file a motion for a trustee or whatever, but we're going
11 to have a contempt of court issue.

12 So, anybody want to respond to that?

13 MR. POMERANTZ: Your Honor, Jeff Pomerantz; Pachulski
14 Stang Ziehl & Jones.

15 We hear Your Honor. What I thought I'd do now is I have a
16 clean redline of the order, of course not including the
17 provision you just requested, --

18 THE COURT: Uh-huh.

19 MR. POMERANTZ: -- which we will go back and upload
20 and hope to get an order signed by Your Honor today, if you're
21 around. But to go over the other changes, the changes to
22 Jefferies, the other language changes I discussed before. I
23 gave a copy to Ms. Lambert and to the Committee. May I
24 approach with a --

25 THE COURT: You may.

1 THE COURT: All right. Very good. I'll sign your
2 order on the CRO, then.

3 MR. DEMO: Okay. Thank you, Your Honor.

4 THE COURT: All right. Well, if there's nothing
5 else, I'll be on the lookout for your orders. And, again, if
6 you could coordinate with Traci to make sure she's clear on
7 everything you need set on the 21st.

8 MR. POMERANTZ: Thank you very much, Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTE: Thank you, Your Honor.

11 MR. DEMO: Thank you, Your Honor.

12 THE CLERK: All rise.

13 (Proceedings concluded at 11:54 a.m.)

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CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

12/10/2020

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT E

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

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)	Case No. 19-34054-sgj11
In Re:)	
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	June 30, 2020
	)	9:30 a.m. Docket
Debtor.)	
	)	MOTION FOR REMITTANCE OF FUNDS
	)	HELD IN REGISTRY OF COURT
	)	FILED BY CLO HOLDCO, LTD.
	)	(590)
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:		Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Debtor:		John A. Morris Greg Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
For CLO Holdco, Ltd., Movant:		John J. Kane Brian W. Clark KANE RUSSELL COLEMAN LOGAN, P.C. 901 Main Street, Suite 5200 Dallas, TX 75202 (214) 777-4261
For the Official Committee of Unsecured Creditors:		Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539

1 THE COURT: Okay. I'll take silence to mean he's
2 probably not, but --

3 All right. I asked that question for, I guess, a couple
4 of reasons. But the main reason I asked is -- and I'm going
5 to say this as kindly as I can. They're not here to hear it
6 anyway. But I feel like perhaps they are a little tone deaf,
7 for lack of a better term, on how this all looks to the Court
8 today. And what I mean by that is, obviously, I assume it was
9 their decision to bring this motion, at least Mr. Scott's, and
10 likely Mr. Dondero as well had some involvement in that
11 decision. And the reason I say that it feels like they're a
12 little tone deaf about how this looks is that we just had an
13 extensive hearing and some very thorough pleadings, a lot of
14 evidence uploaded, on a \$2.5 million issue. And I don't --
15 you know, I appreciate that that is a significant sum of
16 money, but we've used the word context a lot this morning: In
17 the context of this reorganization, it seems like a very big
18 deal was raised here, at the choice of Mr. Scott and Mr.
19 Dondero, over a \$2.5 million issue, in the context of a
20 reorganization that involves at least hundreds of millions of
21 dollars of debt, if not over a billion. UBS says they're owed
22 a billion.

23 And I just asked my question a minute ago about the value
24 of assets that the DAF or CLO Holdco or that sub-structure has
25 managed, because while no one will commit, is it \$225 million

1 brand new motion regarding whether these monies should be
2 disbursed to CLO Holdco all over again, when that was the
3 issue that was already before the Court in March.

4 I, again, fully recognize that everybody reserved their
5 rights, but I focus on this context because, again, I wish Mr.
6 Dondero and Mr. Scott were on the call to hear this: This
7 almost feels like a good faith issue to me. You know, maybe I
8 would feel slightly different if there had been a broad
9 emphasis, heavy emphasis, CLO Holdco standing up through a
10 lawyer that day saying, We're just letting you know, we're
11 going to get together a motion in very short order and tee
12 this up again. Because I would have probably said no. You
13 know, if -- let's just hear it right now today, if this is
14 only a three-week mandate or whatever. So, good faith is
15 something that I can't help but scratch my head and be
16 troubled by.

17 So, I want to emphasize that CLO Holdco's lawyer has made
18 perfect arguments regarding the potential legal issues here.
19 There are some valid arguments here about is this tantamount,
20 holding the money in the registry of the Court that a non-
21 debtor asserts is its property, is that tantamount to a
22 prejudgment remedy? You know, did it require an adversary
23 proceeding? Did it require the traditional four-prong prove-
24 up for a preliminary injunction? And did the Court just give
25 short shrift to those legal technicalities?

1 Again, these are compelling arguments, but I'm overruling
2 the arguments because, again, I believe it ignores the context
3 that CLO Holdco essentially consented, acquiesced, in this
4 placeholder keep-the-status-quo solution. And I question its
5 good faith in, so quickly after consenting, bringing this
6 motion.

7 But moreover, I do find that in the unique context of the
8 disputes before the Court on March 4th, I did have authority
9 to issue a 105 injunction. 105, as we all know, at Subsection
10 (a) gives a bankruptcy court authority to issue orders
11 necessary or appropriate to carry out provisions of Title 11,
12 and the last sentence even provides a mechanism for the Court
13 to *sua sponte* take action to, among other things, prevent an
14 abuse of process or just do what's necessary or appropriate to
15 implement court orders or rules.

16 So I think, again, in the context before the Court, it was
17 not only a consensual thing, but the Court had authority. And
18 the backdrop of this, again, cannot be overstated. Again, to
19 use Mr. Clemente's word, we have this Byzantine structure
20 here. It's a lot for the Committee to get its arms around.
21 And even the CLO Holdco structure -- again, I'm looking at my
22 notes, my fancy chart -- we have CLO Holdco, a Cayman Island
23 entity. Its parent is Charitable DAF Fund, LP, another Cayman
24 Island entity. It, in turn, is owned by Charitable DAF
25 Holdco, Ltd., yet another Cayman Island entity. Its general

1 partner happens to be a Delaware entity, Charitable DAF GP,
2 LLC, but the beneficial owners of it are the three Highland
3 Foundations, of which Dondero is president and director, and
4 Mr. Scott the treasurer and director.

5 So, I'm not saying the Byzantine structure is in and of
6 itself problematic, although one might wonder why a charitable
7 organization needs to have three offshore entities as part of
8 its structure. I digress. But we all know a Byzantine
9 structure and ties to Dondero do not mean something is
10 attackable in and of itself, but we have had issues raised
11 about the Dynamic Fund and the various transfers with regard
12 to Dugaboy, the Dondero Family Trust, and Get Good Trust and
13 the note. All of that is worthy of examination, and the
14 Committee has not had all that long in this case to
15 investigate it.

16 So, I'm going to say a couple of more things. First, the
17 motion is denied, but I'm going to put more strings on it than
18 that. I'm denying the motion, but as part of this ruling I'm
19 going to order that the Committee has 90 days, unless the
20 Court happens to extend that on motion or agreement of the
21 parties, to file an adversary proceeding against CLO Holdco or
22 the money shall be released. Okay?

23 So, again, I intended it, as I think everybody did, to be
24 a placeholder, to keep the status quo little bit. Again, Mr.
25 Kane has raised good arguments that maybe an adversary

1 as I can to distance CLO Holdco from that taint, because
2 understanding that it's in what has been alleged as a
3 Byzantine web, we think it's important to separate CLO Holdco
4 and its operations to ensure that things are done in an
5 appropriate fashion with square corners.

6 That's all I have, Your Honor. We have no objection to
7 the additional funds being pled into the registry of the
8 Court. We can agree those funds would be adjudicated as part
9 of this dispute. We understand that we did not prevail, and
10 we appreciate your Court hearing our argument.

11 (Proceedings concluded at 12:06 p.m.)

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19 CERTIFICATE

20 I certify that the foregoing is a correct transcript to
21 the best of my ability from the electronic sound recording of
the proceedings in the above-entitled matter.

22 **/s/ Kathy Rehling**

07/02/2020

23 _____
24 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT F

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

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)	Case No. 19-34054-sgj11
In Re:)	
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	July 8, 2020
	)	1:30 p.m. Docket
Debtor.)	
	)	- MOTION TO EXTEND EXCLUSIVITY
	)	PERIOD (737)
	)	- MOTION TO EXTEND TIME TO
	)	REMOVE ACTIONS (747)
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor:		Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067 (310) 277-6910
For the Official Committee of Unsecured Creditors:		Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
For the Debtor:		Zachery Z. Annable Melissa S. Hayward HAYWARD & ASSOCIATES, PLLC 10501 N. Central Expressway, Suite 106 Dallas, TX 75231 (972) 755-7104
For Acis Capital Management GP, LLC:		Rakhee V. Patel Anmarie Antoinette Chiarello WINSTEAD, P.C. 2728 N. Harwood Street, Suite 500 Dallas, TX 75201 (214) 745-5250

1 pandemic disruption for sure. It would have been nice to have
2 that resolved one way or another by now.

3 MS. PATEL: Agreed, Your Honor. We were trying to
4 figure out, frankly, in the week to ten days that it took from
5 the scheduling to how it was cancelled, exactly how our team
6 was going to get down to New Orleans. And the -- I think the
7 leading contender was to rent an RV and drive down so we could
8 safely get there. So it certainly has been a casualty of the
9 pandemic.

10 THE COURT: Okay. All right. Two more questions.
11 And this one has been a bit of a tough one for me to decide
12 whether I should broach this topic or not. You know, I read
13 the newspapers, the financial papers, just like everyone else,
14 and I saw a headline that I wished almost I wouldn't have
15 seen, and it was a headline about Dondero or Highland
16 affiliates getting three PPP loans. And, you know, I'm only
17 supposed to consider evidence I hear in the courtroom, right,
18 or things I hear in the courtroom, but I've got this
19 extrajudicial knowledge right now thanks to just keeping up on
20 current events. I decided I needed to ask about this.

21 What can you tell me about this, Mr. Pomerantz? I mean, I
22 assumed, from less-than-clear reporting, that it wasn't
23 Highland Capital Management, LP, but I'd like to hear anything
24 you can report about this.

25 MR. POMERANTZ: So, look, Your Honor, the first I

1 could say is that, to my knowledge, Highland Capital, the
2 Debtor, has not obtained a PPP loan. I know there have been
3 discussions with certain funds that basically have certain
4 assets, private operating companies, about obtaining PPP
5 loans. I don't have the specifics for Your Honor. I'm happy
6 to provide that.

7 Of course, to the extent Mr. Dondero, on any of his
8 affiliated funds that are under the control of the Debtor, I
9 would have no way of answering that, but I'm happy to follow
10 up with that with the Board and report back to Your Honor in
11 whatever appropriate manner you felt to obtain that
12 information.

13 THE COURT: Okay. Well, let's have a report on that
14 on the 14th when we come in. You know, maybe Mr. Seery or Mr.
15 Sharp or some other person. But you can probably imagine the
16 different things going through my brain. You know, well,
17 first, let's see if it was -- you know, I don't -- again, I'm
18 not expecting it to be Highland Capital Management, LP. I
19 would be beyond shocked if, you know, that somehow happened
20 when they're in bankruptcy. And, you know, I think it would
21 require a 364 motion, just like any other borrowing, although
22 I know it's kind of a forgivable loan. Strange bird.

23 But then if it's some affiliate of Highland, I still feel
24 like we need some transparency and disclosure on that. I
25 mean, I -- and who were the human beings behind it. It just

1 raises a lot of questions in my brain. Anything else?

2 MR. POMERANTZ: Your Honor, would you mind saying
3 what newspaper you found it in? Because not everything one
4 reads in the newspaper is accurate, but we will definitely --

5 THE COURT: Oh, yeah. I know --

6 MR. POMERANTZ: -- follow up on it and --

7 THE COURT: Fake news really is a thing.

8 MR. POMERANTZ: I didn't say fake news.

9 THE COURT: Oh, I know, I know. It's not really a
10 good term. But *Business Insider*? Is that reputable? Or no?
11 I thought I saw it in one of the local papers, too. I mean,
12 someone tell me if that's, --

13 MR. POMERANTZ: We -- we --

14 THE COURT: -- you know, something unreliable.

15 MR. POMERANTZ: We will investigate it, Your Honor.
16 I don't know what confidentiality restrictions would be on
17 whether if any of those entities -- but we will get the
18 information. If there's any concern on confidentiality,
19 perhaps we could have an *in-camera* on that. But before we get
20 ahead of ourselves, let me broach the issue with the Board and
21 Mr. Sharp and then be in a position to act and respond more
22 intelligently.

23 THE COURT: Okay. My last topic is to come back to
24 mediation. I was surprised that Judge Jones' or Judge Isgur's
25 staff expressed that they had availability. They are the

1 nothing else, we'll go ahead and adjourn for today. And I'll
2 keep -- if there's anything worthwhile to report on the
3 mediation front before we have our hearing on the 14th, I'll
4 have my courtroom deputy reach out to all counsel by email and
5 let you know. Okay? All right.

6 MR. POMERANTZ: Thank you very much, Your Honor.

7 MS. PATEL: Thank you, Your Honor.

8 THE COURT: Thank you. We stand adjourned.

9 THE CLERK: All rise.

10 (Proceedings concluded at 3:00 p.m.)

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CERTIFICATE

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21 I certify that the foregoing is a correct transcript to
22 the best of my ability from the electronic sound recording of
23 the proceedings in the above-entitled matter.

24 **/s/ Kathy Rehling**

07/09/2020

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24 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT G

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

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)	Case No. 19-34054-sgj-11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	Wednesday, December 16, 2020
	)	1:30 p.m. Docket
Debtor.)	
	)	- MOTION FOR ORDER IMPOSING
	)	TEMPORARY RESTRICTIONS [1528]
	)	- DEBTOR'S EMERGENCY MOTION TO
	)	QUASH SUBPOENA AND FOR ENTRY
	)	OF PROTECTIVE ORDER [1564,
	)	1565]
	)	- JAMES DONDERO'S MOTION FOR
	)	ENTRY OF ORDER REQUIRING
	)	NOTICE AND HEARING [1439]
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey N. Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
-----------------	---

For the Debtor:	John A. Morris Gregory V. Demo PACHULSKI STANG ZIEHL & JONES, LLP 780 Third Avenue, 34th Floor New York, NY 10017-2024 (212) 561-7700
-----------------	--

For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
---	---

1 having to put on testimony to justify transactions that really
2 aren't even being questioned, Your Honor.

3 So the Debtor would respectfully move for the denial of
4 the motion and the relief sought therein.

5 THE COURT: All right. Your request for a directed
6 verdict, something equivalent to a directed verdict here, is
7 granted. I agree that the Movant has wholly failed to meet
8 its burden of proof here today to show the Court, persuade the
9 Court that, as Mr. Morris said, I should essentially tie the
10 hands of the Debtor as a portfolio manager here, as stated.
11 Nothing improper has been alleged. There has been no showing
12 of a statutory right here, or a contractual right here, on the
13 part of the Movants.

14 I am -- I'm utterly dumbfounded, really. I agree with the
15 -- I was going to say innuendo; not really innuendo -- I agree
16 with part of the theme, I think, asserted by the Debtor here
17 today that this is Mr. Dondero, through different entities,
18 through a different motion. I feel like he sidestepped the
19 requirement that I stated last week that if we had a contested
20 hearing on his motion, Dondero's motion, that I was going to
21 require Mr. Dondero to testify. He apparently worked out an
22 eleventh hour agreement with the Debtor on his motion to avoid
23 that. But, again, these so-called CLO Motions very clearly,
24 very clearly, in this Court's view, were pursued at his sole
25 direction here.

1 This is almost Rule 11 frivolous to me. You know, we're
2 -- we didn't have a Rule 11 motion filed, and, you know, I
3 guess, frankly, I'm glad that a week before the holidays begin
4 we don't have that, but that's how bad I think it was, Mr.
5 Wright and Mr. Norris. This is a very, very frivolous motion.
6 Again, no statutory basis for it. No contractual basis. You
7 know, you didn't even walk me through the provisions of the
8 contracts. I guess that would have been fruitless. But you
9 haven't even shown something equitable, some lack of
10 reasonable business judgment.

11 Bluntly, don't waste my time with this kind of thing
12 again. You wasted my time. We have 70 people on the video.
13 Utter waste of time.

14 All right. So, motion is denied. Mr. Morris, please
15 upload an order.

16 MR. MORRIS: Thank you, Your Honor.

17 THE COURT: All right. Do we have any other business
18 to accomplish today?

19 MR. POMERANTZ: I don't think so, Your Honor. I know
20 we will see you tomorrow in connection with Mr. Daugherty's
21 relief from stay motion.

22 THE COURT: Well, yeah, we do have that. Okay. We
23 will see you tomorrow. We stand adjourned.

24 MR. CLEMENTE: Thank you, Your Honor.

25 MR. MORRIS: Thank you, Your Honor.

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THE CLERK: All rise.
(Proceedings concluded at 3:05 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

12/17/2020

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT H

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

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In Re:)	Case No. 19-34054-sgj-11
)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	Friday, January 8, 2021
	)	9:30 a.m. Docket
Debtor.)	
<hr/>		
HIGHLAND CAPITAL	)	Adversary Proceeding 20-3190-sgj
MANAGEMENT, L.P.,)	
)	
Plaintiff,	)	PRELIMINARY INJUNCTION
	)	HEARING [#2]
v.)	
)	
JAMES D. DONDERO,)	
)	
Defendant.)	
<hr/>		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor/Plaintiff: Jeffrey N. Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor/Plaintiff: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

1 MR. MORRIS: I'm sorry, Your Honor. I had trouble
2 hearing that question.

3 THE COURT: Please repeat.

4 MR. BONDS: Sure.

5 BY MR. BONDS:

6 Q Do you recall the questions Debtor's counsel had regarding
7 the letters sent by K&L Gates to the clients of the Debtor --
8 to the Debtor?

9 A Yes.

10 Q You testified on direct that the letters were sent to do
11 the right thing; is that correct?

12 A Yes.

13 Q What did you mean by that?

14 A I don't want to repeat too much of what I just said, but
15 the Debtor has a contract to manage the CLOs, which in no way
16 is it not in default of. It doesn't have the staff. It
17 doesn't have the expertise. Seery has no historic knowledge
18 on the investments. The investment staff of Highland has been
19 gutted, with me being gone, with Mark Okada being gone, with
20 Trey Parker being gone, with John Poglitsch being gone.

21 And there's -- there's a couple analysts that are a year
22 or two out of school. The overall portfolio is in no way
23 being understood, managed, or monitored. And for it to be
24 amateur hour, incurring losses for no business purpose, when
25 the investors have requested numerous times for their account

1 not to be traded, is crazy to me. Where the investors say, We
2 just want our account left alone. We just want to keep the
3 exposure. And Jim Seery decides no, there's -- I'm going to
4 turn it into cash for no reason. I'm just going to sell your
5 assets and turn them to cash and incur losses by doing it the
6 week of Thanksgiving and the week of Christmas. I think it's
7 -- it's shameful. I'm glad the compliance people and the
8 general counsel at HFAM and NexPoint saw it the same way. I
9 didn't edit their letters, proof their letters, tell them how
10 to craft their letters. They did that themselves, with
11 regulatory counsel and personal liability. They put forward
12 those letters.

13 MR. MORRIS: Your Honor (garbled) the testimony that
14 Mr. Dondero just gave about these people saw it. They're not
15 here to testify how they saw it. We know that Mr. Dondero
16 personally saw and approved the letters before they went out.
17 He can testify what he thinks, what he believes. I have no
18 problem with that. But there should be no evidence in the
19 record of what the compliance people thought, believed,
20 understood, anything like that. It's not right.

21 THE COURT: All right. That's essentially a --

22 MR. BONDS: Your Honor?

23 THE COURT: -- a hearsay objection, I would say, or
24 lack of personal knowledge, perhaps. Mr. Bonds, what is your
25 response?

1 MR. BONDS: Your Honor, my response would be that
2 there are several exhibits the Debtor introduced today that
3 stand for the proposition that the compliance officers were
4 concerned. So I think there is ample evidence of that in the
5 record.

6 THE COURT: I didn't --

7 MR. MORRIS: Your Honor, the letter --

8 THE COURT: I did not understand what you said is in
9 the record. Say again.

10 MR. BONDS: Your Honor, I'm sorry. The -- there are
11 -- there are references that are replete in the record that
12 have to do with the compliance officers' understanding of the
13 transactions.

14 THE COURT: I don't know what you're referring to.

15 THE WITNESS: Your Honor?

16 THE COURT: I've got a lot of exhibits. You're going
17 to have to point out what you think --

18 THE WITNESS: Can I -- can I -- can I -- can I answer
19 for -- that for a second? The letters that were signed by the
20 compliance people or by the businesspeople at NexPoint and
21 HFAM objecting to the transactions, those letters were their
22 beliefs, their researched beliefs. They weren't --

23 THE COURT: Okay.

24 THE WITNESS: -- micromanaged by me. You know, they
25 weren't -- I agree with them, but those weren't my beliefs

1 that they've stated. Those were their own beliefs and their
2 own research, --

3 THE COURT: All right.

4 THE WITNESS: -- and the record should reflect --

5 THE COURT: This is clearly hearsay. I mean, it's
6 one thing to have a letter, but to go behind the letter and
7 say, you know, what the beliefs inherent in the words were is
8 inadmissible. All right? So I strike that.

9 THE WITNESS: Maybe ask your question again.

10 BY MR. BONDS:

11 Q Yeah. What is your understanding of the rights that these
12 parties had and what do you believe that was intended to be
13 conveyed by the compliance officers?

14 MR. MORRIS: Objection. Calls -- calls for Mr.
15 Dondero to divine the intent of third parties. Hearsay.

16 THE COURT: I sustain.

17 MR. BONDS: Your Honor, --

18 MR. MORRIS: No foundation.

19 MR. BONDS: -- I don't agree. I think that this is
20 asking Mr. Dondero what he thinks.

21 MR. MORRIS: The letters speak for themselves, Your
22 Honor.

23 THE COURT: Okay. I sustain --

24 MR. MORRIS: And Mr. --

25 THE COURT: I sustain the objection.

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MR. BONDS: Thank you, Your Honor.
(Proceedings concluded at 4:09 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

01/11/2021

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT I

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Tuesday, January 26, 2021
) 9:30 a.m. Docket
Debtor.)
) MOTION FOR ENTRY OF ORDER
) AUTHORIZING DEBTOR TO
) IMPLEMENT KEY EMPLOYEE
) PLAN [1777]

HIGHLAND CAPITAL) **Adversary Proceeding 21-3000-sjg**
MANAGEMENT, L.P.,)
)
Plaintiff,)
)
v.) PLAINTIFF'S MOTION FOR A
) PRELIMINARY INJUNCTION AGAINST
HIGHLAND CAPITAL) CERTAIN ENTITIES OWNED AND/OR
MANAGEMENT FUND ADVISORS,) CONTROLLED BY MR. JAMES
L.P., et al.) DONDERO [5]
)
Defendants.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor: Jeffrey Nathan Pomerantz
PACHULSKI STANG ZIEHL & JONES, LLP
10100 Santa Monica Blvd.,
13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

1 Investment Advisers Act today. It was put on the screen. Mr.
2 Post was asked what was unlawful as far as what had happened
3 here, what was going on here, what was fraudulent, deceptive,
4 or manipulative, in parsing through the words of the statute.
5 And he said Mr. Seery engaged in deceptive acts because he
6 wasn't trying to maximize value. Okay? I'm not an expert on
7 the Investment Advisers Act, but I know that that was not a
8 deceptive act.

9 And so I'll allow the plan to be filed under seal, but
10 it's not going to be unsealed absent an order of the Court.
11 Okay? So we'll just leave it at that for now. And while I
12 still encourage good-faith negotiations here, I've said it
13 umpteen times, where you're tired of the cliché, probably:
14 The train is leaving the station. And if you want the Court
15 to have patience in the process and if you want the parties to
16 cooperate in good faith, it might help if we didn't have
17 things like Dugaboy and Get Good Trust filing a motion for an
18 examiner 15 months into the case.

19 I mean, it feels to me, Mr. Dondero, whether I'm right or
20 wrong, that it's like you've got a twofold approach here: I
21 either get the company back or I burn the house down. And I'm
22 telling you right now, if we don't have agreements, --

23 MR. DONDERO: That's not true.

24 THE COURT: -- if we don't have agreements and we
25 come back on the 5th for a continuation of this hearing and a

1 motion to hold you in contempt, you know, I'm leaning right
2 now, based on what I've heard so far, and I know I haven't
3 heard everything, but I'm leaning right now towards finding
4 contempt and shifting a whole bundle of attorneys' fees.
5 That, to me, seems like the likely place we're heading.

6 I mean, I commented at the December hearing on the
7 preliminary injunction against you personally that it had been
8 like a \$250,000 hearing, I figured, okay, just guesstimating
9 everybody's billable rate times the hours we spent. Well,
10 here we were again, and I know we've got all this time outside
11 the courtroom preparing, taking depositions. I mean, what
12 else is a judge to think except, by God, let's drive up
13 administrative expenses as much as we can; if we can't win,
14 we're going to go down fighting? That's what this looks like.
15 Okay? So if it's not really what's going on, then you've got
16 to work hard to change my perceptions at this point.

17 MR. RUKAVINA: Your Honor, I hear everything what
18 you're saying, and I'm going to discuss it very bluntly with
19 my clients. But we're being asked not to exercise contract
20 rights in the future. This is not a contempt hearing. And
21 Your Honor, we did ask and offered the estate a million
22 dollars, found money, plus to waive almost all our plan
23 objections, if they would just put this case on pause for 30
24 days.

25 So we are trying. We are trying creative solutions here.

1 camper.

2 But upload your order on the motion to seal the plan.
3 And, again, it's not going to be unsealed absent a further
4 order of the Court. And if you all come to me next week and
5 say, hey, we've got something in the works here, okay, I'll
6 consider unsealing it and letting you go down a different
7 path. But I'm not naïve. I feel like this is just more
8 burning the house down, maybe. I don't know. I hope I'm
9 wrong. I hope I'm wrong. But all right. So I guess we'll
10 see you next week.

11 MR. POMERANTZ: Thank you, Your Honor.

12 MR. MORRIS: Thank you, Your Honor.

13 THE COURT: All right. We're adjourned.

14 MR. RUKAVINA: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 6:08 p.m.)

17 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

01/28/2021

24

25 _____
Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT J

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
 HIGHLAND CAPITAL) Dallas, Texas
 MANAGEMENT, L.P.,) Thursday, June 10, 2021
) 9:30 a.m. Docket
 Debtor.)

) MOTION TO COMPEL COMPLIANCE
) WITH BANKRUPTCY RULE 2015.3
) FILED BY GET GOOD TRUST AND
) THE DUGABOY INVESTMENT TRUST
) (2256)
)

HIGHLAND CAPITAL) **Adversary Proceeding 21-3006-sgj**
 MANAGEMENT, L.P.,)
)
 Plaintiff,) DEFENDANT'S MOTION FOR LEAVE
) TO FILE AMENDED ANSWER AND
 v.) BRIEF IN SUPPORT [15]
)

HIGHLAND CAPITAL)
 MANAGEMENT SERVICES, INC.,)
)
 Defendant.)

HIGHLAND CAPITAL) **Adversary Proceeding 21-3007-sgj**
 MANAGEMENT, L.P.,)
)
 Plaintiff,) DEFENDANT'S MOTION FOR LEAVE
 TO) TO AMEND ANSWER TO PLAINTIFF'S
 v.) COMPLAINT [16]
)

HCRE PARTNERS, LLC)
 N/K/A NEXPOINT REAL)
 ESTATE PARTNERS, LLC,)
)
 Defendant.)

1 cost, \$70 million of notes get forgiven? How is that
2 possible? How is that possible? It doesn't pass the good
3 faith test. The Court should deny the motion.

4 Thank you, Your Honor.

5 THE COURT: Mr. Morris, in all of your listing of
6 allegedly problematic things, one trail my brain was going
7 down is this: Is this adversary going to morph even further
8 to add fraudulent transfer allegations? I mean, if notes --

9 MR. MORRIS: Here's the --

10 THE COURT: -- were forgiven or agreements were made
11 --

12 MR. MORRIS: Yeah, I --

13 THE COURT: -- that they would be forgiven if, you
14 know, assets are sold at a dollar more than cost, is the
15 Debtor going to say, well, okay, if this is an agreement,
16 there was a fraudulent transfer?

17 MR. MORRIS: Your Honor, that is an excellent
18 question, one which I was discussing with my partners just
19 this morning. You know, we have to -- we're balancing a
20 number of things on our side, including the delay that that
21 might entail; including, you know, what happens if we go down
22 that path. You know, the benefit of suing under the notes, of
23 course, is that he's contractually obligated to pay all of our
24 fees.

25 And so we're balancing all of those things as these -- as

1 these defenses metastasize. But it's something that we're
2 considering, and we reserve the right to do exactly that, as
3 these defenses continue to get -- and it would be fraudulent
4 transfer, it would be breach of fiduciary duty against Nancy
5 Dondero, it would be breach of fiduciary duty against Jim
6 Dondero. I'm sure that there are other claims, Your Honor.
7 But if they want to -- if I'm forced to go down that path, I'm
8 certainly going to use every tool that I have available to
9 recover these amounts from the -- for the Debtor and their
10 creditors. This is just an abuse of process.

11 How do you -- how does one enter into agreements of this
12 type without telling your CFO, without telling your auditors,
13 without putting it in writing? And I asked Mr. Dondero, what
14 benefit did the Debtor get from all of this? And you know
15 what his answer was, Your Honor? Because it's really -- it's
16 appalling. It was going to give him heightened focus on
17 getting the job done because of this agreement that he entered
18 into with his sister, Nancy, acting on behalf of the Debtor,
19 with no information, with no documents, with no notes, with no
20 advice, with no corporate resolutions. The Debtor was going
21 to get Mr. Dondero's heightened focus to sell MGM, Trussway,
22 or Cornerstone for one dollar above cost.

23 I think the fraudulent transfer claim is probably a pretty
24 solid one. But why do we have to do this? Why do we have to
25 do this?

1 THE COURT: Please upload an order, Ms. Drawhorn,
2 granting your motion with these specific requirements that
3 I've orally worked in.

4 I think clients need to be careful what they ask for. I'm
5 very concerned. And I know it was just argument and I'll hear
6 evidence, but of all of the things that I guess -- well, I'm
7 concerned about a lot of things, but do we have audited
8 financial statements that didn't disclose these agreements
9 with regard to --

10 MR. MORRIS: Yes, Your Honor.

11 THE COURT: I mean, that's -- I'm just -- you know,
12 there's a lot to be concerned about on that point alone, I
13 would think. But, all right. If there's nothing further, we
14 are adjourned. Thank you.

15 THE CLERK: All rise.

16 (Proceedings concluded at 11:58 a.m.)

17 --oOo--

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19 CERTIFICATE

20 I certify that the foregoing is a correct transcript from
21 the electronic sound recording of the proceedings in the
above-entitled matter.

22 **/s/ Kathy Rehling**

06/12/2021

23

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT K

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:) Case No. 18-30264-SGJ-11
) Case No. 18-30265-SGJ-11
) (Jointly administered under
ACIS CAPITAL MANAGEMENT, L.P.) Case No. 18-30264-SGJ-11)
and ACIS CAPITAL MANAGEMENT GP,)
LLC,) DEBTORS' MOTION to FILE
) REDACTED QUARTERLY REPORTS
Debtors.)
) September 23, 2020
) Dallas, Texas

Appearances via video and/or telephone:

For the Reorganized Debtors: Annemarie Chiarello
Rahkee V. Patel
Winstead PC
500 Winstead Building
2728 North Harwood Street
Dallas, Texas 75201

For James Dondero: D. Michael Lynn, of Counsel
Bonds Ellis Eppich Schafer Jones LLP
420 Throckmorton Street, Suite 1000
Forth Worth, Texas 76102

For William T. Neary,
United States Trustee: Lisa L. Lambert, Assistant U.S. Trustee
Office of the U.S. Trustee, Region 6
1100 Commerce Street, Room 976
Dallas, Texas 75242-1496

Digital Court Reporter: United States Bankruptcy Court
Northern District of Texas
Michael F. Edmond, Judicial
Support Specialist
Earle Cabell Building, U.S. Courthouse
1100 Commerce Street, Room 1254
Dallas, Texas 75242
(214) 753-2062, direct; 753-2072, fax

Certified Electronic Transcriber: Palmer Reporting Services
1948 Diamond Oak Way
Manteca, California 95336-9124

Proceedings recorded by digital recording;
transcript produced by federally-approved transcription service.

The Ruling of the Court

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1 So it's very troubling to me that – well, I've said it
2 before in Highland hearings, that these battles just continue
3 on, but if it's impairing with a plan I confirmed, it's
4 impairing a plan I confirmed, it's impairing the ability to
5 perform under that plan, then that is a problem for the
6 plaintiffs.

7 Now I've heard there is no pending litigation in that
8 regard, but I'm troubled by the April 2020 letter I saw that is
9 essentially a suggestion we may start this up again, the
10 litigation that we dismissed. It's just ridiculous, for lack of
11 a better term, that Dondero and his entities would be doing some
12 of the things it sounds like they're doing: Suing Moody's, for
13 crying out loud, for not downgrading the Acis CLOs. If Mr.
14 Dondero doesn't think that is so transparently vexatious
15 litigation, yeah, I'm going out there and saying that. I
16 haven't seen it, but, come on.

17 So, bottom line, I don't find the 107 standard here is
18 met today, so I am denying entirely the motion. I haven't been
19 convinced that this is commercial information that 107(b)
20 justifies redacting or sealing. But, again, I am most troubled
21 by what I've heard today.

22 I have found Mr. Terry to be a very credible witness
23 today on these points. He's testified in this Court many times
24 and I continue to find him a very credible witness.

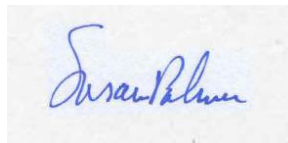
25 And so to the extent Mr. Dondero is listening or gets

State of California)
) SS.
County of San Joaquin)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Certificate Nos. CER-124 and CET-124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.



Susan Palmer
Palmer Reporting Services

Dated September 26, 2020

EXHIBIT L

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

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)	Case No. 19-34054-sgj-11
In Re:)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	Monday, February 8, 2021
	)	9:00 a.m. Docket
Debtor.)	
	)	BENCH RULING ON CONFIRMATION
	)	HEARING [1808] AND AGREED
	)	MOTION TO ASSUME [1624]
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

For the Debtor:	Jeffrey Nathan Pomerantz PACHULSKI STANG ZIEHL & JONES, LLP 10100 Santa Monica Blvd., 13th Floor Los Angeles, CA 90067-4003 (310) 277-6910
-----------------	---

For the Official Committee of Unsecured Creditors:	Matthew A. Clemente SIDLEY AUSTIN, LLP One South Dearborn Street Chicago, IL 60603 (312) 853-7539
---	---

For James Dondero:	D. Michael Lynn John Y. Bonds, III Bryan C. Assink BONDS ELLIS EPPICH SCHAFFER JONES, LLP 420 Throckmorton Street, Suite 1000 Fort Worth, TX 76102 (817) 405-6900
--------------------	---

For Get Good Trust and Dugaboy Investment Trust:	Douglas S. Draper HELLER, DRAPER & HORN, LLC 650 Poydras Street, Suite 2500 New Orleans, LA 70130 (504) 299-3300
---	--

1 under the All Writs Act, 28 U.S.C. § 1651. And additionally,
2 under the Bankruptcy Code, a bankruptcy court can issue any
3 order, including a civil contempt order, necessary or
4 appropriate to carry out the provisions of the Code, citing,
5 of course, 105 of the Bankruptcy Code.

6 The Fifth Circuit stated that, when considering whether to
7 enjoin future filings against a vexatious litigant, a
8 bankruptcy court must consider the circumstances of the case,
9 including four factors: (1) the party's history of
10 litigation; in particular, whether he has filed vexatious,
11 harassing, or duplicative lawsuits; (2) whether the party had
12 a good faith basis for pursuing the litigation, or perhaps
13 intended to harass; (3) the extent of the burden on the courts
14 and other parties resulting from the party's filings; and (4)
15 the adequacy of alternatives.

16 In the *Baum* case, the Fifth Circuit stated that the
17 traditional standards for injunctive relief -- *i.e.*,
18 irreparable harm and inadequate remedy at law -- do not apply
19 to the issuance of an injunction against a vexatious litigant.

20 Here, although I have not been asked to declare Mr.
21 Dondero and his affiliated entities as vexatious litigants *per*
22 *se*, it is certainly not beyond the pale to find that his long
23 history with regard to the major creditors in this case has
24 strayed into that possible realm, and thus this Court is
25 justified in approving this provision.

1 to win, I turned it off.

2 I'm sorry. That's terrible. You know, my law clerk, my
3 law clerk that you can't see, Nate, he is from Ann Arbor,
4 Michigan, University of Michigan, and he almost cried when I
5 said I didn't like Tom Brady the other day. So, I apologize.

6 MR. POMERANTZ: Your Honor, one other comment. We
7 had our motion to assume our nonresidential real property
8 lease that was also on. It got missed in all the fanfare, but
9 it was -- it has been unopposed and essentially done pursuant
10 to stipulation. So we'd like to submit an order on that as
11 well.

12 THE COURT: Okay. I have seen that, and I approve it
13 under 365. You may submit the order. Okay. Thank you.

14 MR. POMERANTZ: Thank you, Your Honor.

15 THE CLERK: All rise.

16 (Proceedings concluded at 10:35 a.m.)

17 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

02/09/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT M

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Friday, June 25, 2021
) 9:30 a.m. Docket
Debtor.)
) EXCERPT: MOTION FOR
) MODIFICATION OF ORDER
) AUTHORIZING RETENTION OF JAMES
) P. SEERY, JR. DUE TO LACK OF
) SUBJECT MATTER JURISDICTION
) (2248)
)

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

12

WEBEX APPEARANCES:

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16

For the Debtor: Jeffrey Nathan Pomerantz
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13th Floor
Los Angeles, CA 90067-4003
(310) 277-6910

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For the Debtor: John A. Morris
PACHULSKI STANG ZIEHL & JONES, LLP
780 Third Avenue, 34th Floor
New York, NY 10017-2024
(212) 561-7700

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For CLO Holdco, Ltd. and Jonathan E. Bridges
The Charitable DAF Fund, Mazin Ahmad Sbaiti
LP: SBAITI & COMPANY, PLLC
JP Morgan Chase Tower
2200 Ross Avenue, Suite 4900 W
Dallas, TX 75201
(214) 432-2899

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For Get Good Trust and Douglas S. Draper
Dugaboy Investment Trust: HELLER, DRAPER & HORN, LLC
650 Poydras Street, Suite 2500
New Orleans, LA 70130
(504) 299-3300

1 bring causes of action against persons, such as officers and
2 directors or other third parties, if they first come to the
3 Bankruptcy Court and show a colorable claim. They have to
4 come to the Bankruptcy Court, show they have a colorable claim
5 and they're the ones that should be able to pursue them. Not
6 exactly on point, but it's just one of many cases that one
7 could cite that certainly approve gatekeeper functions of
8 various sorts of Bankruptcy Courts.

9 It doesn't matter which court might ultimately adjudicate
10 the claims; the Bankruptcy Court can be the gatekeeper.

11 And the Court agrees with the many cases cited from
12 outside this circuit, such as the case in Alabama, in the
13 Eleventh Circuit, and there was another circuit-level case, at
14 least one other, that have held that the *Barton* doctrine
15 should be extended to other types of case fiduciaries, such as
16 debtor-in-possession management, among others.

17 Finally, as I pointed out in my confirmation ruling in
18 this case, gatekeeping provisions are commonplace for all
19 types of courts, not just Bankruptcy Courts, when vexatious
20 litigants are involved. I have commented before that we seem
21 to have vexatious litigation behavior with regard to Mr.
22 Dondero and his many controlled entities.

23 Now, as far as the Movants' argument that there was not
24 just improper gatekeeping provisions but actually an improper
25 discharge in the Seery retention order of negligence claims or

1 annoyance or anything like that. I guess what I'm trying to
2 do is I don't want anyone to mistake the delay in ruling on
3 the contempt motion to mean I'm just not that -- you know, I'm
4 not prioritizing it, other things are more serious to me or
5 important to me, or I'm going to take two months to get to it.
6 It's literally been I've been in trial almost all day long
7 every day since you were here. But trust me, I'm about as
8 upset as upset can be about what I heard on June 8th, and I'm
9 going to get to that ruling, and I know what I'm going to do.
10 And, well, like I said, it's just a matter of figuring out
11 dollars and whom, okay? There's going to be contempt. I just
12 haven't put it on paper because I've been in court all day and
13 I haven't come up with a dollar figure. Okay?

14 So I hope -- I don't know if that matters very much, but
15 it should.

16 All right. We stand adjourned.

17 (Proceedings concluded at 3:35 p.m.)

18 --oOo--

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

06/29/2021

24

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT N

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

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In Re:)	Case No. 19-34054-sgj-11
)	Chapter 11
)	
HIGHLAND CAPITAL)	Dallas, Texas
MANAGEMENT, L.P.,)	Tuesday, February 23, 2021
	)	9:00 a.m. Docket
Debtor.)	
<hr/>		
HIGHLAND CAPITAL	)	Adversary Proceeding 20-3190-sgj
MANAGEMENT, L.P.,)	
)	
Plaintiff,	)	PLAINTIFF'S MOTION FOR ORDER
	)	REQUIRING JAMES DONDERO TO
v.	)	SHOW CAUSE WHY HE SHOULD NOT
	)	BE HELD IN CIVIL CONTEMPT FOR
JAMES D. DONDERO,	)	VIOLATING THE TRO [48]
)	
Defendant.)	
<hr/>		
HIGHLAND CAPITAL	)	Adversary Proceeding 21-3010-sgj
MANAGEMENT, L.P.,)	
)	
Plaintiff,	)	DEBTOR'S EMERGENCY MOTION FOR
	)	MANDATORY INJUNCTION REQUIRING
v.	)	THE ADVISORS TO ADOPT AND
	)	IMPLEMENT A PLAN FOR THE
HIGHLAND CAPITAL MANAGEMENT	)	TRANSITION OF SERVICES BY
FUND ADVISORS, L.P.,	)	FEBRUARY 28, 2021 [2]
et al.,)	
)	
Defendants.)	
<hr/>		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX/TELEPHONIC APPEARANCES:

For the Debtor/Plaintiff:	Jeffrey N. Pomerantz
	PACHULSKI STANG ZIEHL & JONES, LLP
	10100 Santa Monica Blvd.,
	13th Floor
	Los Angeles, CA 90067-4003
	(310) 277-6910

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1 to really say anything lest I get myself in trouble. But I
2 thank you for your time today.

3 THE COURT: All right. Well, they are what they are,
4 and I hope we're not in an argument about that down the road.
5 But it seems like my hopes are always dashed when I want
6 things to be worked out.

7 I don't want you to think my calm demeanor means I am a
8 happy camper. I am not. I am beyond annoyed. I mean, I
9 can't even begin to guesstimate how many wasted hours were
10 spent on the drafting Option A, Option B. Wait. Let me pull
11 up the exact words. Mr. Norris confirming, We withdrew Option
12 B after the Debtor accepted it.

13 I mentioned fee-shifting once before in a different
14 context, and, of course, we haven't even gotten to the motion
15 for a show cause order declaring Mr. Dondero in contempt. I
16 don't know if the lawyers fully appreciate how this looks.
17 Mr. Rukavina, you said that I have formed opinions that you
18 don't think are fair and made comments about vexatious
19 litigation and whatnot. But while I continue, I promise you,
20 to have an open mind, it is days like this that make me come
21 out with statements that Mr. Dondero, repeating his own words,
22 apparently, he's going to burn the house down if he doesn't
23 get his baby back.

24 I mean, it seems so obviously transparent that he's just
25 driving the legal fees up. It's as though he doesn't want the

1 creditors to get anything, is the way this looks. If he wants
2 me to have a different impression, then he needs to start
3 behaving differently. I mean, I can't even imagine how many
4 hundreds of thousands of dollars of legal fees were probably
5 spent the past two weeks on Option A, Option B, and all the
6 different sub-agreements and whatnot. And as recently as
7 Friday afternoon, the K&L Gates lawyer saying we have a deal,
8 and then, oh, wait, maybe not, maybe we do, maybe we don't.
9 And then Mr. Dondero acting like he had no clue what the K&L
10 Gates lawyers were saying as far as we have a deal. And Mr.
11 Norris distancing himself from having seen any of that, and I
12 didn't have power. You know, I'm sure he had a cell phone,
13 like the rest of us, that gets emails. I'm making a
14 supposition. I shouldn't make that. But it just feels like
15 sickening games.

16 And again, if this keeps on, if this keeps on, one day,
17 one day, there may be an enormous attorney fee-shifting order.
18 And, of course, I would have to find bad faith, and I wouldn't
19 be surprised at all if I get there.

20 So I don't know if Mr. Dondero is listening. I suspect,
21 if he is, he doesn't care much. But I am --

22 MR. DONDERO: I'm on the line, Judge.

23 THE COURT: Okay.

24 MR. DONDERO: I'm on the line.

25 THE COURT: I'm glad you're on the line. I cannot

1 overstate how very annoyed I am by hearing all these hours of
2 testimony and to feel like none of it was necessary. None of
3 it was necessary. Okay? There could have been a consensual
4 deal --

5 MR. DONDERO: Judge, you have to pay attention --
6 Judge, you have to pay attention to what's going on, okay?

7 THE COURT: I am --

8 MR. DONDERO: When I was president of Highland, --

9 THE COURT: -- razor-sharp focused on what is going
10 on. Okay? I read every piece of paper. I listen to every
11 sentence of testimony. And what is going on --

12 MR. DONDERO: Okay. How about this, Your Honor?

13 THE COURT: -- is an enormous waste of parties and
14 lawyer time and resources. People need to get their eye on
15 the ball. Well, certain people do have their eye on the ball,
16 but certain people do not. Okay? So we're done. You've got
17 your divorce now. Okay? And if the operating plan is all
18 shored up, as Mr. Norris testified, it sounds like you're in
19 good shape. All right?

20 Mr. Morris, I'll look for the order from you.

21 MR. MORRIS: Thank you, Your Honor.

22 THE CLERK: All rise.

23 (Pause.)

24 THE COURT: Oh, Michael?

25 (Court confers with Clerk.)

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THE CLERK: All rise.

(Proceedings concluded at 4:23 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

02/24/2021

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

EXHIBIT O

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
BEFORE THE HONORABLE STACEY G. JERNIGAN, JUDGE

In Re:	)	Case No. 19-34054-sgj11
)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,)	
)	
Debtor.)	
_____)	
)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Adv. Proc. No. 21-03003-sgj
)	
Plaintiff,)	
)	
v.	)	<u>MOTION for SUMMARY JUDGMENT</u>
	)	<u>and OMNIBUS MOTION to STRIKE</u>
JAMES DONDERO,)	
)	
Defendant.)	
_____)	
)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Adv. Proc. No. 21-03004-sgj
)	
Plaintiff,)	
)	
v.	)	<u>MOTION for SUMMARY JUDGMENT</u>
	)	<u>and OMNIBUS MOTION to STRIKE</u>
HIGHLAND CAPITAL MANAGEMENT)	
FUND ADVISORS., L.P., et al.,)	
)	
Defendants.)	
_____)	
)	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	)	Adv. Proc. No. 21-03005-sgj
)	
Plaintiff,)	
)	
v.	)	<u>MOTION for SUMMARY JUDGMENT</u>
	)	<u>and OMNIBUS MOTION to STRIKE</u>
NEXPOINT ADVISORS, L.P., et al.,)	
)	
Defendants.	)	April 20, 2022
_____	)	Dallas, Texas

Captions continue on next page;
appearances begin on next page.

Plaintiff's Motion to Strike

51

1 What I'm telling Your Honor is if I had known that it
2 was going to be a live hearing with live witnesses, instead of
3 relying on what I thought was the Local Rule, then we would have
4 subpoenaed Mr. Waterhouse. He was not there because we're
5 trying to hide him or anyone is trying to him.

6 MR. MORRIS: Your Honor, just to be very clear as to
7 what happened, I didn't - I served a subpoena on the person who
8 submitted a declaration in support of the motion. I didn't call
9 any other witnesses, okay, so and I think that that was the
10 substance of Your Honor's ruling, was that if you - if you want
11 to submit a declaration, you have to put - you know when
12 somebody wants to cross-examine, you have to be able to do that.
13 And that's all I did.

14 THE COURT: Okay. All right. Well, I'm going to
15 grant the motion to strike, but I am going to deny a request to
16 issue a contempt order or to impose any sanctions. I find the
17 latter somewhat of a close call, I will tell you all. But if
18 it's a close call on something as serious as contempt or
19 sanctions, I think the better exercise of discretion is not to
20 order contempt or sanctions. And let me be clear about a couple
21 of things.

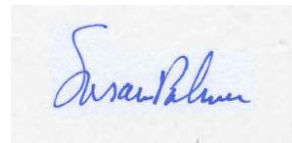
22 I feel like what we have had here has sounded a whole
23 lot like the defendants rearguing motions that I've earlier
24 denied. You know as I recall, and it's been a few weeks, with
25 regard to the Steven Pully report, you know I had no doubt about

State of California)
) SS.
County of Stanislaus)

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of Texas, Office of the Clerk, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber by the American Association of Electronic Reporters and Transcribers, Certificate Nos. CER-124 and CET-124. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.



Susan Palmer
Palmer Reporting Services
P.O. Box 4082
Modesto, California 95352
(209) 915-3065

Dated April 29, 2022

EXHIBIT P

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

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In Re:)
)
)
HIGHLAND CAPITAL)
MANAGEMENT, L.P.,)
)
Debtor.)
_____)

Case No. 19-34054-sgj-11
Chapter 11
Dallas, Texas
November 9, 2021
1:30 p.m. Docket

HIGHLAND CAPITAL)
MANAGEMENT, L.P.,)
)
Plaintiff,)
)
v.)
)
JAMES DONDERO, et al.,)
)
Defendants.)
_____)

Adversary Proceeding 21-3003-sgj
- MOTION TO DISMISS (82)
- MOTION TO COMPEL (80)
- MOTION TO STAY (85)

HIGHLAND CAPITAL)
MANAGEMENT, L.P.)
)
Plaintiff,)
)
v.)
)
NEXPOINT ADVISORS, L.P.,)
et al.,)
)
Defendants.)
_____)

Adversary Proceeding 21-3005-sgj
- MOTION TO DISMISS (68)
- MOTION TO STAY (69)
- MOTION TO COMPEL (66)

HIGHLAND CAPITAL)
MANAGEMENT, L.P.)
)
Plaintiff,)
)
v.)
)
HIGHLAND CAPITAL MANAGEMENT)
SERVICES, INC., et al.,)
)
Defendants.)
_____)

Adversary Proceeding 21-3006-sgj
- MOTION TO COMPEL (70)
- MOTION TO DISMISS (72)
- MOTION TO STAY (74)

1 MS. DEITSCH-PEREZ: Uh-huh.

2 THE COURT: And adversary proceedings are a different
3 creature altogether. And so if you're talking about someone
4 filed a reply the day before a hearing in connection with, I
5 don't know, a sale motion, a motion to compromise,
6 particularly if it was set on an expedited basis, that's an
7 altogether different context than this. So what did you mean
8 when you said the Court has allowed this plenty of times?

9 MS. DEITSCH-PEREZ: Because, as I understand it, the
10 Bankruptcy -- the Local Rules, the Bankruptcy Court Rules, do
11 not provide a deadline for reply briefs. And so throughout
12 these adversary proceedings replies have been filed on less
13 than 14 days because we're not following the District Court
14 rule.

15 And just today Mr. Morris acknowledged that by asking to
16 set a specific schedule on a motion that's set to be heard on
17 December 13th so they have more time.

18 And certainly, had they asked us for more time for their
19 response, we would have given it to them. In fact, when they
20 did ask, we gave it to them. When the day they supposedly
21 thought the reply was due came and went, they didn't inquire
22 about it. And we could have set a different schedule, but
23 because there was no -- there is no rule in the Bankruptcy
24 Court for the reply, we followed the practice that I have
25 observed from the time I've been here, and consulted with

1 people who -- I am both a litigator and a bankruptcy
2 practitioner, so I also consulted with my bankruptcy
3 colleagues in this case and was told there was no particular
4 deadline for a reply, just a reasonable time in advance of the
5 hearing.

6 THE COURT: Okay. Well, next time you might consult
7 with your adversaries in this adversary proceeding, or perhaps
8 send an email to the courtroom deputy.

9 But here's what I'm going to say for purposes of going
10 forward. You should apply the District Court rules in these
11 adversary proceedings. I think that is especially appropriate
12 considering the motion to withdraw the reference that the
13 Defendants have filed and which the Court has said, yes,
14 District Court, you should adjudicate this, but I'm just going
15 to be acting as the magistrate. Okay?

16 Those rules are always subject to the parties agreeing to
17 something different or, you know, doing mini scheduling
18 orders, alternative scheduling orders, letter agreements,
19 whatever. But absent agreements, assume the District Court
20 rules apply from now on.

21 It does seem -- well, Mr. Kroop used the word cavalier.
22 It just doesn't seem at all reasonable that you would file a
23 reply 37 days after what would have been the District Court
24 deadline if you thought it applied and two days before the
25 hearing. But we'll let it stand for now. Mr. Kroop said he

1 oral agreement that was made that provided that these notes
2 did not have to be repaid under circumstances x, y, z, but
3 there's either going to be evidence of that or not.
4 And I don't view it as complicated just because there are four
5 adversary proceedings and a lot of dollars involved.

6 So that is my view of things. We're going to have to
7 adjourn. But my courtroom deputy will reaching out to you,
8 again, I anticipate Friday before the middle of the --

9 (Proceedings concluded at 4:49 p.m.)

10 --oOo--

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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the electronic sound recording of the proceedings in the
above-entitled matter.

23 **/s/ Kathy Rehling**

11/16/2021

24 _____
25 Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date