

**STINSON LLP**  
Deborah Deitsch-Perez  
Michael P. Aigen  
2200 Ross Avenue, Suite 2900  
Dallas, Texas 75201  
Telephone: (214) 560-2201  
Facsimile: (214) 560-2203  
Email: [deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)  
Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Counsel for Dugaboy Investment Trust  
and Hunter Mountain Investment Trust*

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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Case No. 19-34054-sgj11
Reorganized Debtor.	§	
DUGABOY INVESTMENT TRUST and HUNTER MOUNTAIN INVESTMENT TRUST,	§	Adv. Pro. No. 23-03038-sgj
Plaintiffs,	§	
vs.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P. and HIGHLAND CLAIMANT TRUST,	§	
Defendants.	§	

**APPELLANTS’ STATEMENT OF ISSUES AND  
DESIGNATION OF RECORD ON APPEAL**

Pursuant to Rules 8009(a)(1)(A)-(B) and (a)(4) of the Federal Rules of Bankruptcy Procedure, Dugaboy Investment Trust and Hunter Mountain Investment Trust (“Appellants”) hereby designate the following items to be included in the record and identifies the following issues



with respect to its appeal of the Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27] which was entered by the United States Bankruptcy Court for the Northern District of Texas on May 24, 2024.

**I. STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL**

1. Whether the Bankruptcy Court erred in granting The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust.
2. Whether the Bankruptcy Court erred by dismissing Count I under Rule 12(b)(6) based on the Bankruptcy Court's finding that Appellants could not prove any facts that would entitle them to the relief that they sought when the Appellants properly alleged that they have a legal and equitable right to information under the Claimant Trust Agreement and under Delaware and Texas law.
3. Whether the Bankruptcy Court erred by dismissing Count II because it was predicated on Count I and was therefore not justiciable under Rule 12(h)(3) when Count I was improperly dismissed.
4. Whether the Bankruptcy Court erred by dismissing Count III because it was predicated on Count I and was therefore not justiciable under Rule 12(b)(1) when Count I was improperly dismissed.
5. Whether the Bankruptcy Court erred in dismissing Count III because the Bankruptcy Court found that Appellants were asking it to issue an opinion based on a set of hypothetical facts and was therefore not justiciable under Rule 12(b)(1) for lack of subject matter jurisdiction when Count III seeks only a declaration that the Claimant Trust assets exceed the obligations of the bankruptcy estate or must be deemed to do so such that Appellants' contingent trust interests are effectively vested, or as an equitable matter, must be treated as vested because the putative defendants are preventing the conditions for formal vesting from occurring.

**II. DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

1. Notice of Appeal for Bankruptcy Case Adversary Proceeding No. 23-03038-sgj11 [Doc. 30].

2. The judgment, order, or decree appealed from: Order Granting Motion to Dismiss Adversary Proceeding in which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets [Doc.26-27].
3. Any opinion, findings of fact and conclusions of law of the bankruptcy court relating to the issues on appeal, including transcripts of all oral rulings: Transcript regarding hearing held February 14, 2024 before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust [Doc. 25].
4. Docket Sheet for Adversary Proceeding No. 23-03038 kept by the Bankruptcy Clerk.
5. Documents listed below for Bankruptcy Case No. 19-34054-sgj11.

<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
02/22/2021	19-34054	1943	Order (I) Confirming the Fifth Amended Plan of Reorganization of Highland Capital Management, L.P. (as Modified) and (II) Granting Related Relief
06/25/2021	19-34054	2491	Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of and Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief
07/21/2021	19-34054	2599	Order Approving Debtor's Motion for Entry of an Order (I) Authorizing the (A) Creation of and Indemnity Subtrust and (B) Entry into an Indemnity Trust Agreement and (II) Granting Related Relief
06/30/2022	19-34054	3382	Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust
08/24/2022	19-34054	3465	Reorganized Debtor's Objection to Motion for Determination of Value
08/25/2022	19-34054	3467	Limited Response in Support of Certain Requested Relief
09/14/2022	19-34054	3520	The Highland Parties' Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order

<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
09/14/2022	19-34054	3521	Declaration of John A. Morris in Support of the Highland Parties' Motion to Quash Subpoenas Served by The Dugaboy Investment Trust or for a Protective Order
09/21/2022	19-34054	3533	Supplemental and Amended Motion for Determination of the Value of the Estate and Assets Held by the Claimant Trust
11/01/2022	19-34054	3602	The Dugaboy Investment Trust's Opposition to The Highland Parties' Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order
11/01/2022	19-34054	3605	Limited Opposition to The Highland Parties' Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order
11/01/2022	19-34054	3606	Reply in Support
11/02/2022	19-34054	3607	The Dugaboy Investment Trust's Reply in Support of its Motion for Determination of Value
11/29/2022	19-34054	3637	The Dugaboy Investment Trust's Supplemental Brief in Support of its Motion for Determination of Value
11/29/2022	19-34054	3638	Brief of Hunter Mountain as to the Question Whether the "Valuation Motion" and Relief Requested therein Requires an Adversary Proceeding or Constitutes Relief Available through a Contested Matter
11/29/2022	19-34054	3639	Highland Capital Management, L.P.'s Brief Establishing the Need for an Adversary Proceeding to Obtain the Relief Sought in Valuation Motion
12/07/2022	19-34054	3645	Order Denying the Motion [DE #3382] and Supplemental Motion [DE #3533] of Dugaboy Investment Trust Due to Procedural Deficiency: Adversary Proceeding is Required

<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
01/01/2023	19-34054	3656	Order Denying as Moot The Highland Parties' Motion to Quash Subpoenas Served by the Dugaboy Investment Trust or for a Protective Order [DE #3520]
03/28/2023	19-34054	3699	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
04/21/2023	19-34054	3757	Post-Confirmation Report of Highland Claimant Trust
04/23/2023	19-34054	3760	Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding
05/11/2023	19-34054	3780	Claim Purchaser's Objection to (I) Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding; and (II) Hunter Mountain Investment Trust's Supplement to Emergency Motion for Leave to File Verified Adversary Proceeding
05/11/2023	19-34054	3783	Highland Capital Management, L.P., Highland Claimant Trust, and James P. Seery, Jr.'s Joint Opposition to Hunter Mountain Investment Trust's Motion for Leave to File Verified Adversary Proceeding
06/05/2023	19-34054	3815	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
06/05/2023	19-34054	3816	Hunter Mountain Investment Trust's Emergency Motion for Leave to File Verified Adversary Proceeding
07/06/2023	19-34054	3872	Notice of Filing of the Current Balance Sheet of the Highland Claimant Trust

DATE	CASE NO.	DKT. NO.	DESCRIPTION
08/25/2023	19-34054	3903	Memorandum Opinion and Order Pursuant to Plan “Gatekeeper Provision” and Pre-Confirmation “Gatekeeper Orders”: Denying Hunter Mountain Investment Trust’s Emergency Motion for Leave to File Verified Adversary Proceeding [Bankr. Dkt. Nos. 3699, 3760, 3815, and 3816]
09/08/2023	19-34054	3905	Hunter Mountain Investment Trust’s Motion to Alter or Amend Order, to Amend or Make Additional Findings, for Relief from Order, or, Alternatively, for New Trial under Federal Rules of Bankruptcy Procedure 7052, 9023, 9024 and Incorporated Brief
10/058/2023	19-34054	3936	Order Denying Motion of Hunter Mountain Investment Trust Seeking Relief Pursuant to Federal Rules of Bankruptcy Procedure 7052, 9023, 9024
10/19/2023	19-34054	3945	Hunter Mountain Investment Trust’s Second Amended Notice of Appeal
01/01/2024	19-34054	4000	Motion for Leave to File a Delaware Complaint
01/01/2024	19-34054	4001	Appendix in Support of Motion for Leave to File a Delaware Complaint
01/23/2024	19-34054	4022	Hunter Mountain Investment Trust’s Response in Opposition to Highland’s Motion to Stay Contested Matter [Dkt. No. 4000] or for Alternative Relief
01/31/2024	19-34054	4033	Order Granting in Part Highland’s Motion to Stay Contested Matter
06/11/2024	19-34054	4087	Hunter Mountain Investment Trust’s Supplement to Response to Motion to Stay

6. Documents listed below and as described in the Docket Sheet for Bankruptcy Case Proceeding No. 23-03038-sgj.

DATE	CASE NO.	DKT. NO.	DESCRIPTION
05/10/2023	23-03038	0001	Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
05/11/2023	23-03038	0004	Order Regarding Adversary Proceedings Trial Setting and Alternative Scheduling Order [Trial Docket Call date set for 11/13/2023 at 01:30 PM at <a href="https://us-courts.webex.com/meet/jerniga">https://us-courts.webex.com/meet/jerniga</a> . Trial will be held during the week of 11/20/2023.]
11/13/2023	23-03038	0007	Stipulation and Proposed Scheduling Order
11/21/2023	23-03038	0012	Order Approving Stipulation and Proposed Scheduling Order
11/22/2023	23-03038	0013	The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
11/22/2023	23-03038	0014	Memorandum of Law in Support of Highland Capital Management L.P. and the Highland Claimant Trust's Motion to Dismiss Complaint
12/22/2023	23-03038	0016	Stipulation and Proposed Scheduling Order

DATE	CASE NO.	DKT. NO.	DESCRIPTION
12/29/2023	23-03038	0017	The Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust
12/29/2023	23-03038	0018	Appendix in Support of the Dugaboy Investment Trust and Hunter Mountain Investment Trust's Response to the Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interest in the Claimant Trust
01/19/2024	23-03038	0021	The Highland Parties' Reply in Further Support of Motion to Dismiss Complaint
05/20/2024	23-03038	0025	Transcript Regarding Hearing Held February 14, 2024 Before Judge Stacey G.C. Jernigan re: The Highland Parties' Motion to Dismiss Complaint to (I) Compel Disclosures About the Assets of the Highland Claimant Trust and (II) Determine (A) Relative Value of Those Assets, and (B) Nature of Plaintiffs' Interests in the Claimant Trust
05/24/2024	23-03038	0026	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets
05/24/2024	23-03038	0027	Memorandum Opinion and Order Granting Motion to Dismiss Adversary Proceeding in Which Contingent Interest Holders in Chapter 11 Plan Trust Seek a Post-Confirmation Valuation of Trust Assets



<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
06/07/2024	23-03038	0030	Notice of Appeal [Appellant Designation due by 06/21/2024] (Filed by Plaintiffs Dugaboy Investment Trust, Hunter Mountain Investment Trust)

7. Hearing transcripts listed below for Bankruptcy Case No. 19-34054-sgj11.

<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
04/25/2023	19-34054	3765	April 24, 2023 Hearing Transcript
01/25/2024	19-34054	4030	January 24, 2024 Hearing Transcript
06/13/2024	19-34054	4091	June 12, 2024 Hearing Transcript

8. Hearing transcripts listed below and as described in the Docket Sheet for Adversary Proceeding No. 23-03038-sgj.

<b>DATE</b>	<b>CASE NO.</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
05/20/2024	23-03038	0025	February 14, 2024 Hearing Transcript

Dated: June 21, 2024

**STINSON LLP**

/s/Deborah Deitsch-Perez

Deborah Deitsch-Perez

Texas Bar No. 24036072

Michael P. Aigen

Texas Bar No. 24012196

2200 Ross Avenue, Suite 2900

Dallas, Texas 75201

Telephone: (214) 560-2201

Facsimile: (214) 560-2203

Email: [deborah.deitschperez@stinson.com](mailto:deborah.deitschperez@stinson.com)

Email: [michael.aigen@stinson.com](mailto:michael.aigen@stinson.com)

*Counsel for Dugaboy Investment Trust and the  
Hunter Mountain Investment Trust*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 21, 2024 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